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## A BILL FOR AN ACT

RELATING TO FEDERAL TAX QUALIFICATION REQUIREMENTS FOR THE  
EMPLOYEES' RETIREMENT SYSTEM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The employees' retirement system of the State  
2 of Hawaii is intended to be a tax-qualified retirement plan  
3 under section 401(a) of the Internal Revenue Code of 1986, as  
4 amended. The Heroes Earnings Assistance and Relief Tax Act of  
5 2008 (HEART Act) imposes requirements on tax-qualified  
6 retirement plans regarding benefits payable to the survivors of  
7 members who die while performing qualified military service.  
8 The legislature finds that, although existing provisions of  
9 chapter 88, Hawaii Revised Statutes, provide the benefits that  
10 the HEART Act requires, chapter 88, Hawaii Revised Statutes,  
11 must be amended to include the specific wording required by the  
12 HEART Act in order to maintain the tax-qualified status of the  
13 employees' retirement system. The legislature also finds that  
14 chapter 88 should be amended to address in greater detail the  
15 requirement of section 401(a)(9) of the Internal Revenue Code  
16 that qualified retirement benefits commence no later than April  
17 1 of the calendar year following the later of the year in which

1 an employees' retirement system member terminates employment or  
2 attains age seventy and one-half.

3 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended  
4 by adding to part II a new section to be appropriately  
5 designated and to read as follows:

6 "§88- Commencement of benefits on required beginning  
7 date. (a) The purpose of this section is to provide for  
8 distribution of benefits in accordance with a reasonable and  
9 good faith interpretation of section 401(a) (9) of the Internal  
10 Revenue Code. Section 401(a) (9) of the Internal Revenue Code  
11 requires that the "entire interest" of a member be distributed,  
12 or that distribution of the member's benefits must begin, no  
13 later than the member's "required beginning date".

14 (b) For the purposes of this section, "required beginning  
15 date" means April 1 of the calendar year following the later of  
16 the calendar year in which a member terminates service or a  
17 member or former member attains age seventy and one-half.

18 (c) A member or former member's accumulated contributions  
19 or hypothetical account balance, as defined in section 88-311,  
20 shall be paid to the member or former member, or payment of the  
21 benefits payable under part II, VII, or VIII of this chapter  
22 shall commence, not later than the member's or former member's

1 required beginning date. The payment or payments will be made  
2 on, or beginning not later than, the member's or former member's  
3 required beginning date even if the member or former member does  
4 not apply for payment or file a retirement application.

5 (d) If, by a member's or former member's required  
6 beginning date:

7 (1) The member or former member's accumulated  
8 contributions or hypothetical account balance, as  
9 defined in section 88-311, are not paid to the member  
10 or former member; or

11 (2) Payment of the benefits payable under part II, VII, or  
12 VIII of this chapter do not commence,  
13 the system shall pay the service retirement benefits for which  
14 the member or former member is eligible pursuant to section 88-  
15 73, 88-281, or 88-332, as applicable, retroactive to the  
16 member's or former member's required beginning date with regular  
17 interest.

18 (e) If the system does not receive a written election from  
19 the member or former member under section 88-83, 88-283, or 88-  
20 333, as applicable, prior to the later of the member's or former  
21 member's required beginning date or sixty days following the  
22 receipt by the member or former member of notice from the system

1 that the member or former member must make an election, the  
2 following election shall be deemed to have been made as of the  
3 member or former member's required beginning date:

4 (1) If the member or former member is unmarried or has no  
5 reciprocal beneficiary, the member or former member  
6 shall be deemed to have elected the maximum retirement  
7 allowance; or

8 (2) If the member or former member is married or has a  
9 reciprocal beneficiary, the member or former member  
10 shall be deemed to have elected option 3 under section  
11 88-83, or option A under section 88-283, as  
12 applicable, and to have designated the member's or  
13 former member's spouse or reciprocal beneficiary as  
14 the member's or former member's beneficiary;

15 provided that, if the system receives the written election after  
16 the member's or former member's required beginning date, but  
17 within sixty days following receipt by the member or former  
18 member of notice from the system that the member or former  
19 member must make the election, the written election shall apply,  
20 and the member's or former member's retirement benefit shall be  
21 recomputed, based on the written election, retroactive to the  
22 member or former member's required beginning date. The amount

1 of any underpayment resulting from recomputing the benefit shall  
2 bear regular interest. If recomputing the benefit results in an  
3 overpayment, payments shall be adjusted so that the actuarial  
4 equivalent of the benefit to which the member or former member  
5 was correctly entitled shall be paid.

6 (f) If the system does not have current information about  
7 the member's or former member's marital or reciprocal  
8 beneficiary status at the time of a deemed election, the  
9 following presumptions shall apply:

10 (1) If the member or former member was married or had a  
11 reciprocal beneficiary at the time the member or  
12 former member last provided information to the system  
13 about the member's or former member's marital or  
14 reciprocal beneficiary status, it shall be presumed  
15 that member or former member is still married to the  
16 same spouse or is in the same reciprocal beneficiary  
17 relationship. If the system does not have information  
18 as to the age of the spouse or reciprocal beneficiary,  
19 the spouse or reciprocal beneficiary shall be presumed  
20 to be forty years younger than the member or former  
21 for purposes of computing the member's or former  
22 member's benefit.

1        (2) If the member or former member was unmarried and did  
2        not have a reciprocal beneficiary at the time the  
3        member or former member last provided information to  
4        the system about his or her marital status, it shall  
5        be presumed that the member or former member is  
6        married and that the spouse of the member or former  
7        member is forty years younger than the member or  
8        former member.

9        (g) The presumptions in subsection (f) shall cease to  
10      apply when the member or former member provides the system with  
11      current information as to the member's or former member's  
12      marital or reciprocal beneficiary status and the age of his or  
13      her spouse or reciprocal beneficiary (if any) on his or her  
14      required beginning date. The information shall be provided in a  
15      form satisfactory to the system. At that time, the member's or  
16      former member's retirement allowance shall be recomputed,  
17      retroactive to the member or former member's required beginning  
18      date, based on the updated information, but, except as provided  
19      in subsection (e), the member or former member shall not be  
20      permitted to change the member or former member's retirement  
21      allowance option election or beneficiary; provided that the  
22      benefit being paid to any member or former member who, on the

1 member or former member's required beginning date, was unmarried  
2 and did not have a reciprocal beneficiary, but who was deemed to  
3 elect option 3 or option A with an assumed spouse or reciprocal  
4 beneficiary, shall be converted to the maximum retirement  
5 allowance retroactive to the member or former member's required  
6 beginning date. The amount of any underpayment resulting from  
7 recomputing the benefit shall bear regular interest. If  
8 recomputing the benefit results in an overpayment, payments  
9 shall be adjusted so that the actuarial equivalent of the  
10 benefit to which the member or former member was correctly  
11 entitled shall be paid.

12 (h) If the system cannot locate the member or former  
13 member, the member's or former member's benefit shall be payable  
14 only until the end of the member's or former member's life  
15 expectancy, as determined at the member's or former member's  
16 required beginning date. If the member or former member has not  
17 by that time made a claim for benefits, the member or former  
18 member will be deemed to be deceased at that time. Interest  
19 under subsection (d) shall cease on benefits presumed to be  
20 abandoned property pursuant to the Uniform Unclaimed Property  
21 Act upon payment of the property to the administrator under the  
22 Uniform Unclaimed Property Act.

1        (i) Rules necessary for the purposes of this section shall  
2 be adopted as provided in section 88-22.5."

3            SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5            "(a) The system shall be administered in accordance with  
6 the requirements of section 401(a)(1), (2), (8), (9), (25),  
7 [~~and~~] (31), and (37) of the Internal Revenue Code of 1986, as  
8 amended. Without limiting the generality of the foregoing and  
9 notwithstanding any provision of chapter 88 to the contrary:

10            (1) Prior to the satisfaction of all liabilities with  
11            respect to members and their beneficiaries, no part of  
12            the corpus or income of the system shall be used for  
13            or diverted to purposes other than for the exclusive  
14            benefit of members and their beneficiaries. The  
15            payment of reasonable expenses from the expense fund  
16            for the administration of the system in accordance  
17            with section 88-116 shall be deemed to be for the  
18            benefit of members and their beneficiaries;

19            (2) Benefits forfeited by a member for any reason shall  
20            not be applied to increase the benefits a member or  
21            beneficiary would otherwise receive under the system;



- 1 (3) In accordance with section 88- , and rules adopted by  
2 the board of trustees, the entire interest of a member  
3 shall be distributed or distribution shall begin no  
4 later than the member's "required beginning date", as  
5 defined in section 401(a)(9) of the Internal Revenue  
6 Code of 1986, as amended;
- 7 (4) In accordance with rules adopted by the board of  
8 trustees, a member or beneficiary may elect, at the  
9 time and in the manner prescribed by the board of  
10 trustees, to have any portion of an "eligible rollover  
11 distribution" paid in a "direct rollover" to an  
12 "eligible retirement plan", as such terms are defined  
13 in section 401(a)(31) of the Internal Revenue Code of  
14 1986, as amended; [~~and~~]
- 15 (5) In the event of the termination of or complete  
16 discontinuance of employer contributions to the  
17 system, the rights of all members to benefits accrued  
18 as of the date of such termination or discontinuance,  
19 to the extent then funded, shall be nonforfeitable[-];  
20 and
- 21 (6) In the case of a member who dies while performing  
22 qualified military service, as defined in section



**Report Title:**

Employees' Retirement System; Qualified Military Service Benefits; Required Distributions

**Description:**

Adopts language, regarding death benefits for Employees' Retirement System member on qualified military service, required to maintain the tax-qualified status of the Employees' Retirement System and adopts provisions, for the commencement of benefits, required to maintain the tax qualified status of the Employees' Retirement System.

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO FEDERAL TAX QUALIFICATION REQUIREMENTS FOR THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to include provisions required by federal law to maintain the status of the Employees' Retirement System as a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code.

MEANS: Add a new section to part II of chapter 88 and amend section 88-22.5(a), Hawaii Revised Statutes.

JUSTIFICATION: The Employees' Retirement System of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code. The following amendments to chapter 88, Hawaii Revised Statutes, are required by federal law to maintain the tax-qualified status of the system:

The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act) requires that a tax-qualified retirement plan must provide that, in the case of a member who dies while performing qualified military service, the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the member resumed and then terminated employment on account of death. Although existing provisions of chapter 88, Hawaii Revised Statutes, provide the benefits that the HEART Act requires, the specific language required by the HEART Act is not currently in chapter 88.

Section 401(a)(9) of the Internal Revenue Code requires that qualified retirement benefits commence no later than the "required beginning date," which is April 1 of the calendar year following the later of the year in which a plan member terminates employment or attains age seventy and one-half. If payment of benefits does not commence by the required beginning date, Internal Revenue Service guidance for corrections requires that the unpaid benefits accrue interest from the required beginning date until paid. Under current law, retirement benefits do not commence until after the Employees' Retirement System has received a retirement application, and the system is not authorized to pay interest on benefits that are paid retroactively. This bill provides for the commencement of retirement benefits on the "required beginning date" under section 401(a)(9) of the Internal Revenue Code, and for interest on unpaid benefits from the "required beginning date" until paid.

Impact on the public: None.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.