
A BILL FOR AN ACT

RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS.

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

1 SECTION 1. The purpose of this Act is to authorize and
2 require the employees' retirement system to make direct payment
3 to the spouse or former spouse of an employees' retirement
4 system member or retirant when the spouse or former spouse has
5 been awarded all or a portion of the member's or retirant's
6 retirement benefits as part of a property division adjudicated,
7 ordered, or decreed by a court in a domestic relations
8 proceeding. The actuarial cost of the benefits paid by the
9 employees' retirement system to the retirant and the retirant's
10 beneficiaries, if any, and the retirant's spouse or former
11 spouse shall not exceed the actuarial cost of the benefits that
12 would be payable to the retirant and the retirant's
13 beneficiaries, if any, in the absence of this Act. The approach
14 taken by this Act for the allocation of the benefit when the
15 award is made prior to the member's retirement is based on what
16 is often referred to as a "separate interest approach." The
17 approach taken by this Act for the allocation of the benefit

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1 when the award is made after the member's retirement is based on
2 what is often referred to as a "shared payment approach."

3 The legislature recognizes that the employees' retirement
4 system is not subject to the Employee Retirement Income Security
5 Act of 1974 (ERISA) and it is not the intent of the legislature
6 to require the employees' retirement system to comply with the
7 provisions of ERISA. It is, however, the legislature's intent
8 that this bill comply with the requirements of section
9 414(p)(11) of the Internal Revenue Code of 1986, as amended, to
10 the extent necessary to allow the distributions or payments made
11 by the employees' retirement system pursuant to this Act to be
12 treated as made pursuant to a qualified domestic relations order
13 for federal income tax purposes.

14 SECTION 2. Chapter 88, part II, Hawaii Revised Statutes,
15 is amended by adding to subpart C a new section to be
16 appropriately designated and to read as follows:

17 "§88- Distribution of property in a divorce action.

18 (a) As used in this section:

19 "Alternate payee" means a spouse or former spouse of a
20 member or retirant who is recognized by a domestic relations
21 order as having a right to receive all or a portion of the
22 benefits payable by the system with respect to that member or
23 retirant.

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1 "Benefits payable with respect to a member or retirant"
2 means any payment required to be made to a member or retirant.

3 "Domestic relations order" means a judgment, decree, or
4 order, including approval of a property settlement agreement,
5 that:

- 6 (1) Relates to the provision of marital property rights to
7 a spouse or former spouse of a member or retirant; and
8 (2) Is made pursuant to a domestic relations law of this
9 State or another state.

10 "Qualified domestic relations order" means a domestic
11 relations order that:

- 12 (1) Creates or recognizes the right of an alternate payee,
13 or assigns to an alternate payee, the right to receive
14 all or a portion of the benefits payable with respect
15 to a member or retirant under the system;
16 (2) Directs the system to disburse benefits to the
17 alternate payee; and
18 (3) Meets the requirements of this section.

19 (b) A qualified domestic relations order shall clearly
20 specify:

- 21 (1) The name and last known mailing address (if any) of
22 the member or retirant;

- 1 (2) The name and mailing address of the alternate payee
- 2 covered by the order;
- 3 (3) The amount or percentage of the member or retirant's
- 4 benefits to be paid by the system to the alternate
- 5 payee, or the manner in which such amount or
- 6 percentage is to be determined;
- 7 (4) The number of payments or period to which such order
- 8 applies; and
- 9 (5) That the order applies to the system.
- 10 (c) If, pursuant to a qualified domestic relations order,
- 11 an alternate payee is receiving all or a portion of a retirant's
- 12 pension, annuity, or retirement allowance, the alternate payee
- 13 shall be entitled to receive a post retirement allowance as
- 14 provided by section 88-90.
- 15 (d) A qualified domestic relations order shall not:
- 16 (1) Purport to require the designation by the member or
- 17 retirant of a particular person as the recipient of
- 18 benefits upon the death of the member or retirant;
- 19 (2) Purport to require the selection of a particular
- 20 benefit payment plan or option or to limit the benefit
- 21 payment plans or options from which the member may
- 22 select;

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- 1 (3) Require any action on the part of the system contrary
2 to its governing laws or plan provisions other than
3 the direct payment of the benefit awarded to an
4 alternate payee;
- 5 (4) Make the award to the alternate payee an interest that
6 is contingent on any condition other than those
7 conditions resulting in the liability of the system
8 for payment under its plan provisions;
- 9 (5) Purport to give to someone other than a member or
10 retirant the right to designate a beneficiary or to
11 choose any retirement plan or option available from
12 the system;
- 13 (6) Attach a lien to any part of amounts payable with
14 respect to a member or retirant;
- 15 (7) Award an alternate payee a portion of the benefits
16 payable with respect to a member or retirant under the
17 system and purport to require the system to make a
18 lump sum payment of the awarded portion of the
19 benefits to the alternate payee that are not already
20 required by law to be paid in a lump sum;
- 21 (8) Purport to require the system, without action by the
22 member, to terminate a member from membership or

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1 employment, to refund contributions, or to retire a
2 member;

3 (9) Provide any type or form of benefit, or any option,
4 not otherwise provided by the system;

5 (10) Provide increased benefits, determined on the basis of
6 actuarial value; or

7 (11) Require the system to provide benefits or refunds to
8 an alternate payee that are required to be paid to
9 another alternate payee pursuant to a qualified
10 domestic relations order previously received by the
11 system.

12 (e) Upon receipt of a copy of the complaint for divorce,
13 certified by the clerk of the court in which the complaint was
14 filed, and a written request that identifies the member or
15 retirant by name and social security number and states the date
16 of the marriage, the system shall provide the spouse or former
17 spouse of a member or retirant with the same information that
18 would be provided to the member or retirant on the member's or
19 retirant's benefits to the extent that it is relevant to the
20 spouse's or former spouse's interest in the member's or
21 retirant's benefits.

22 (f) A person who wishes to have the system review a
23 domestic relations order or a proposed domestic relations order

1 to establish whether the order or proposed order meets the
2 requirements for a qualified domestic relations order shall
3 submit to the system a written request for review and a copy of
4 the order or proposed order. If the order has been entered by a
5 court, the copy of the order shall be certified by the clerk of
6 the court that entered the order. The order or proposed order
7 shall be reviewed as provided by this section.

8 The filing fee in effect at the time that an order or
9 proposed order is submitted, shall be paid before the order or
10 proposed order is processed or reviewed. In addition, the
11 system shall charge for legal and actuarial services as provided
12 by subsection (s).

13 Before any legal or actuarial services are performed, the
14 system shall notify the person who requested the review of the
15 order or proposed order that such services will be needed as
16 part of the review. The notification shall include an estimate
17 of the extent of the services and the estimated costs relating
18 to those services. The charges for legal and actuarial services
19 shall be paid before the system may issue notification of
20 determination on an order or notification whether or not a
21 proposed order meets the requirements for a qualified domestic
22 relations order.

1 If a domestic relations order is submitted for review after
2 it has been entered by the court and is thereafter amended with
3 the intention that it be a qualified domestic relations order,
4 the member or retirant or the alternate payee shall submit a
5 certified copy of the amended order to the system. The system
6 shall review any amended order that it receives according to the
7 same rules applicable to all other orders.

8 (g) The system shall review an order or proposed order for
9 compliance with the requirements imposed by this section. Upon
10 completion of the review:

11 (1) The system shall not issue a determination that a
12 proposed order is or is not a qualified domestic
13 relations order but shall notify the person who
14 submitted the proposed order, in writing, and may also
15 notify the member or alternate payee, whether the
16 proposed order meets the requirements for a qualified
17 domestic relations order, identifying any provisions
18 of this section that the proposed order does not meet;

19 (2) If the order has been entered by the court, the system
20 shall notify the member or retirant and the alternate
21 payee in writing of the determination that the order
22 is or is not a qualified domestic relations order,

1 identifying any provisions of this section that the
2 order does not meet.

3 (h) During any period, not to exceed eighteen months,
4 beginning on the date on which the first payment would be
5 required to be made to the alternate payee under the domestic
6 relations order, in which a domestic relations order is under
7 review to determine whether it is a qualified domestic relations
8 order, or a determination that an order is not qualified is on
9 appeal to the board or to court, the system shall limit the
10 member's or retirant's rights in benefits to the extent the
11 system deems appropriate to protect the largest amount that
12 would be payable to the proposed alternate payee under the
13 system's interpretation of the domestic relations order. Any
14 amounts not paid to the member or retirant during this eighteen-
15 month period shall be separately accounted for. If the domestic
16 relations order is determined to be a qualified domestic
17 relations order before the end of the eighteen-month period, the
18 system shall pay benefits to the member or retirant and the
19 alternate payee in accordance with the qualified domestic
20 relations order and the terms of the plan (including any
21 benefits separately accounted for during the period between the
22 date on which the first payment was to be made under the
23 qualified domestic relations order and the date the

1 determination is made). If the domestic relations order is
2 finally determined not to be a qualified domestic relations
3 order, or if the eighteen-month period expires without a
4 determination that the domestic relations order is a qualified
5 domestic relations order, none of the amounts separately
6 accounted for shall be paid to the alternate payee, and the
7 member or retirant will be entitled to full benefits in
8 accordance with the terms of this chapter (including any
9 benefits that had been separately accounted for and withheld
10 from the member or retirant). If the domestic relations order
11 is determined to be a qualified domestic relations order after
12 the end of the eighteen-month period, or if the system later
13 receives another domestic relations order that is determined to
14 be a qualified domestic relations order, the qualified domestic
15 relations order shall apply prospectively only and shall not
16 affect benefits already paid to the member or retirant.

17 (i) Subject to the limitations of applicable statutes and
18 this section, if a domestic relations order is determined to be
19 a qualified domestic relations order, the system shall pay
20 benefits in accordance with the order at the time benefits
21 become payable to, or in the case of contributions or
22 hypothetical account balances are withdrawn by, the member or
23 retirant. Any determination that an order is a qualified

1 domestic relations order is voidable or subject to modification
2 if the system determines that the provisions of the order have
3 been changed or that circumstances relevant to the determination
4 have changed.

5 (j) If a member terminates membership in the system by
6 withdrawal of contributions or hypothetical account balance, the
7 system shall pay all or a portion of the amount withdrawn to any
8 alternate payee as directed by a qualified domestic relations
9 order. Payment to any alternate payee pursuant to this
10 subsection shall be in a lump sum. If the former member later
11 resumes membership in the system, the system shall pay to an
12 alternate payee no portion of any benefits payable to the member
13 or retirant that result from the resumption of membership, even
14 if those benefits result in part from reinstatement of service
15 credit initially credited during the marriage.

16 (k) In order to receive credit for all service represented
17 by withdrawn or refunded contributions, a member who, in
18 reinstating service credit by repaying amounts previously
19 withdrawn or refunded, shall repay the entire amount withdrawn
20 or refunded, regardless of whether a portion or all of the
21 amount was paid to an alternate payee.

22 (l) When the system has not yet begun to make payment to
23 an alternate payee under this section and is provided with proof

1 of the death of the alternate payee, benefits payable with
2 respect to the member or retirant shall be paid without regard
3 to the qualified domestic relations order.

4 (m) When the system receives a certified copy of a
5 domestic relations order prior to a member's retirement, and if
6 the domestic relations order is determined to be a qualified
7 domestic relations order, the system shall, except as provided
8 in subsection (j), pay the alternate payee an amount that is the
9 actuarial equivalent of the benefit that is awarded to the
10 alternate payee in the form of an annuity payable in equal
11 monthly installments for the life of the alternate payee.

12 Payment under this subsection shall be determined as
13 follows:

14 (1) As of the date payment to the alternate payee is
15 scheduled to begin, the system shall determine the
16 single life annuity value of the retirement benefit
17 payable to the member;

18 (2) If the portion of the benefit awarded to the alternate
19 payee by the order is not clearly stated as a
20 percentage of the member's maximum retirement
21 allowance, the system shall determine the percentage
22 of the member's maximum retirement allowance that is

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1 the equivalent to the benefit awarded to the alternate
2 payee;

3 (3) The single life annuity value determined by the system
4 shall be multiplied by the percentage of the member's
5 maximum retirement allowance awarded to the alternate
6 payee. The result of this calculation shall be
7 actuarially converted to a single life annuity payable
8 to the alternate payee for the lifetime of the
9 alternate payee;

10 (4) The benefit payable to the member shall be reduced by
11 an amount actuarially equivalent to the value of the
12 benefit payable to the alternate payee; payment by the
13 system of the alternate payee's interest as provided
14 by this section shall have no effect on the right of a
15 member to name a beneficiary or the right of a member
16 to choose an optional method of payment upon
17 retirement; and

18 (5) Payment of the alternate payee's interest under this
19 subsection shall be effective as of the same date
20 benefit payments are effective for the member.

21 (n) When the system receives a certified copy of a
22 domestic relations order subsequent to the member's retirement,
23 and if the domestic relations order is determined to be a

1 qualified domestic relations order, the interest awarded the
2 alternate payee by the qualified domestic relations order shall
3 be paid as a portion of the retirement benefit the retirant is
4 receiving as follows:

5 (1) If the alternate payee is already a named beneficiary
6 under any option elected by the retirant at
7 retirement, the benefit to which the retirant is
8 entitled, without regard to the qualified domestic
9 relations order, shall be apportioned between the
10 retirant and the alternate payee according to the
11 terms of the qualified domestic relations order. Upon
12 the death of the retirant or the alternate payee, the
13 benefit amount to be paid to the survivor shall be
14 that required under the option elected by the retirant
15 at retirement, as though no qualified domestic
16 relations order had existed; or

17 (2) If the alternate payee is not a named beneficiary
18 under the option elected by the retirant at
19 retirement, the benefit to which the retirant is
20 entitled without regard to the qualified domestic
21 relations order, shall be apportioned between the
22 retirant and the alternate payee according to the
23 terms of the qualified domestic relations order. If

1 the retirant predeceases the alternate payee, payments
2 to the alternate payee shall cease and payments to the
3 retirant's named beneficiary or beneficiaries shall be
4 made as required under the option elected by the
5 retirant at retirement, as though no qualified
6 domestic relations order had existed. If the
7 alternate payee predeceases the retirant, the benefit
8 then being paid to the retirant shall be increased by
9 the amount of the benefit that was being paid to the
10 alternate payee at time of death.

11 Payment according to the terms of the qualified domestic
12 relations order under this subsection shall commence as of the
13 first day of the month following the date upon which the order
14 is determined to be qualified, unless the parties jointly direct
15 that payment is to commence at a later date.

16 (o) If a retirant returns to employment requiring active
17 membership in the system:

18 (1) Payments to an alternate payee pursuant to a qualified
19 domestic relations order shall not be suspended; and

20 (2) The system shall pay to an alternate payee no portion
21 of any benefits payable to the retirant that result
22 from the resumption of membership.

1 (p) For the purpose of calculating earnings limitations
2 for retirants who have been restored to service, the retirant's
3 maximum retirement allowance shall be considered to be the
4 amount that would have been paid if there had not been any
5 qualified domestic relations order applicable to the retirant.

6 (g) A court does not have jurisdiction over the system
7 with respect to a divorce or other domestic relations action in
8 which an alternate payee's right to receive all or a portion of
9 the benefits payable to a member or retirant is created or
10 established. A determination by the system that a domestic
11 relations order is not a qualified domestic relations order
12 shall be subject to review as provided in chapter 91 and the
13 system's rules relating to contested cases. The system shall
14 not be made party to any other judicial proceedings except as
15 provided in this subsection. A party to any action who attempts
16 to make the system a party to the action contrary to the
17 provision of this subsection shall be liable to the system for
18 the system's costs and attorney's fees in such action, including
19 attorneys' fee and costs for obtaining a dismissal.

20 (r) If a member or retirant, or the beneficiary or estate
21 of either, receives the amount of any distribution that should
22 have been paid by the system to the spouse or former spouse of
23 the member or retirant, the recipient shall be designated a

1 constructive trustee for the amount received and shall
2 immediately transmit that amount to the person to whom the
3 amount should have been paid. If a spouse or former spouse of a
4 member or retirant, or the estate, heir, or legatee of the
5 spouse or former spouse receives any amount of a distribution
6 that should have been paid to a member or retirant, or the
7 estate, heir, or legatee of either, the recipient shall be
8 designated a constructive trustee for the amount received and
9 shall immediately transmit that amount to the member or retirant
10 or other person to whom the amount should have been paid. If a
11 member, retirant, or the beneficiary, estate, heir, or legatee
12 of either, receive any amount that should not have been paid by
13 the system, the recipient shall be designated a constructive
14 trustee for the amount received and shall immediately transmit
15 that amount to the system. If an alternate payee or the estate,
16 heir or legatee of the alternate payee, receive any amount that
17 should not have been paid by the system, the recipient shall be
18 designated a constructive trustee for the amount received and
19 shall immediately transmit that amount to the system.

20 (s) The board shall adopt rules in accordance with chapter
21 91 and produce such forms as it deems necessary to effectuate
22 this section. The board may, by motion at a duly noticed
23 meeting of the board, establish and revise from time to time:

- 1 (1) A filing fee for processing and review of domestic
2 relations orders and proposed domestic relations
3 orders for the purposes of this section;
- 4 (2) A schedule of charges for legal and actuarial services
5 incurred by the system in the review and processing of
6 domestic relations orders and proposed qualified
7 domestic relations orders for the purposes of this
8 section; and
- 9 (3) A required form or forms for qualified domestic
10 relations orders."

11 SECTION 3. Section 88-91, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§88-91 Exemption from taxation and execution. The right
14 of a person to a pension, an annuity or a retirement allowance,
15 to the return of contributions, the pension, annuity, or
16 retirement allowance itself, any optional benefit or death
17 benefit, any other right accrued or accruing to any person under
18 this part and the moneys in the various funds created under this
19 part are exempted from any tax of the State and, except as
20 provided in [~~sections~~] sections 88-92 [~~provided,~~] and 88-_____,
21 shall not be subject to execution, garnishment, or any other
22 process and shall be unassignable except as in this part
23 specifically provided."

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1 SECTION 4. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2016-2017, for
4 one full-time equivalent (1.00 FTE) claims examiner position.

5 The sums appropriated shall be expended by the employees'
6 retirement system of the State of Hawaii for the purposes of
7 this Act.

8 SECTION 5. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2016-2017 for
11 the planning and expenditures necessary for the implementation
12 of this Act.

13 The sums appropriated shall be expended by the employees'
14 retirement system of the State of Hawaii for the purposes of
15 this Act.

16 SECTION 6. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval;
19 provided that sections 2 and 3 shall take effect on January 1,
20 2018.

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INTRODUCED BY: 

BY REQUEST JAN 25 2016

Report Title:

Employees' Retirement System; Qualified Domestic Relations Order

Description:

Authorizes and requires the Employees' Retirement System to make direct payment to a spouse or former spouse of a system member or retirant of all or a portion of the member's or retirant's retirement benefits pursuant to a "qualified domestic relations order."

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: BUDGET AND FINANCE

TITLE: A BILL FOR AN ACT RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS.

PURPOSE: To authorize and require the Employees' Retirement System to make direct payment to the spouse or former spouse of an Employees' Retirement System member or retirant when the spouse or former spouse has been awarded all or a portion of the member's or retirant's retirement benefits as part of a property division adjudicated, ordered, or decreed by a court in a domestic relations proceeding and to allow distributions or payments authorized by the bill to be treated as payments made pursuant to a "qualified domestic relations order" for federal income tax purposes.

MEANS: Add a new section to part IIC of chapter 88, Hawaii Revised Statutes (HRS), and amend section 88-91, HRS.

JUSTIFICATION: The Employees' Retirement System is prohibited by section 88-91, HRS, from making direct payment to the spouse or former spouse of a retirant when the spouse or former spouse has been awarded a portion of the retirant's retirement benefits as part of a property division in a domestic relations proceedings. The retirant is responsible for complying with the court order. If the retirant fails to make payment as provided by the court order, the spouse or former spouse has the burden of enforcing the court order. The retirant is responsible for the entire federal tax on the retirement benefits, even if the retirant pays a portion of the benefits to the retirant's spouse or former spouse as required by the court order.

The federal Employee Retirement Income Security Act of 1974 (ERISA) requires private sector retirement plans subject to ERISA to pay all or a portion of an individual's retirement benefits to an "alternate payee" pursuant to a "qualified domestic relations order." Government pension plans, such as the Employees' Retirement System, are not subject to this provision of ERISA. Hawaii is not required to follow the ERISA provisions for qualified domestic relations orders, but may establish its own qualification requirements for domestic relations orders that the Employees' Retirement System is required to follow.

Federal tax law allows payments made pursuant to domestic relations orders that satisfy the requirements of section 414(p)(11) of the Internal Revenue Code of 1986, as amended, to be treated as payments made pursuant to a "qualified domestic relations order" for federal income tax purposes, thereby allowing a retirant and the "alternate payee" to be taxed separately on their respective shares of the retirant's retirement benefits.

This bill is intended to create a Hawaii version of a "qualified domestic relations order" that: (1) allows direct payment of all or a portion of a member's or retirant's retirement benefits from the Employees' Retirement System to an "alternate payee" as part of a property settlement in a domestic relations proceeding and (2) satisfies the Internal Revenue Code's requirements for separate federal taxation of the retirant's and alternate payee's respective portions of the benefits.

The general fund appropriation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes.

Including appropriations made up to and including the regular session of 2015, the Executive Branch appropriation ceiling for fiscal year 2016-2017 has already been exceeded by \$14,892,787 or 0.2 percent. Funding requested in this measure is for a new position and for planning and expenditures necessary for implementation of the bill which will result in the appropriation ceiling for the Executive Branch to now be exceeded in fiscal year 2016-2017 by an additional \$ ____ or ____ percent. This current declaration takes into account additional general fund appropriations authorized for fiscal year 2016-2017 in this measure only, and does not include other general fund appropriations for fiscal year 2016-2017 that may be authorized for the Executive Branch in other legislation submitted to the Legislature during the regular session of 2016.

Impact on the public: Allows spouses or former spouses of state and county employees to receive direct payment of a share of the employee's retirement benefits as part of a property settlement in a domestic relations proceeding.

Impact on the department and other agencies: This bill would require the Employees' Retirement System to incur implementation costs to program its computer system and develop policies and procedures and educate members and other affected parties and would also increase operational costs for the Employees' Retirement System to review domestic relations orders and perform or obtain actuarial and other calculations to allocate retirement benefits pursuant to a qualified domestic relations order.

GENERAL FUND:

The bill includes appropriations from the general fund in the amount of \$ ____ for a new position and for planning and expenditures necessary for implementation of the bill.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BUF 141/Retirement.

OTHER AFFECTED
AGENCIES: Employees' Retirement System.

EFFECTIVE DATE: January 1, 2018; appropriation and creation
of additional staff position, upon approval.