
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

PART I. INVESTMENT PERSONNEL

SECTION 1. Section 88-29.5, Hawaii Revised Statutes, is amended to read as follows:

"~~[+] §88-29.5~~ ~~[+]~~ Investment personnel. The board may, through its executive director, appoint one or more investment officers, investment professionals, and investment support staff, under the direction of the chief investment officer, prescribing their duties and qualifications and fixing their salaries ~~[, who]~~; provided that any appointed investment officers and investment professionals, including investment specialists, shall be exempt from ~~[chapter]~~ chapters 76 ~~[,]~~ and 89."

SECTION 2. A person in service as an investment specialist on the effective date of this Act shall have the option, which if exercised shall be irrevocable, to remain subject to chapter 76, Hawaii Revised Statutes, so long as the person remains an investment specialist.



1 PART II. DOMESTIC RELATIONS ORDERS

2 SECTION 3. The purpose of this part is to authorize and

3 require the employees' retirement system to make direct payment

4 to the spouse or former spouse of a member or retirant of the

5 employees' retirement system, when the spouse or former spouse

6 has been awarded all or a portion of the member or retirant's

7 retirement benefits as part of a property division adjudicated,

8 ordered, or decreed by a court in a domestic relations

9 proceeding. The actuarial cost of the benefits paid by the

10 employees' retirement system to the retirant and the retirant's

11 beneficiaries, if any, and the retirant's spouse or former

12 spouse shall not exceed the actuarial cost of the benefits that

13 would be payable to the retirant and the retirant's

14 beneficiaries, if any, in the absence of this part. The

15 approach taken by this part for the allocation of benefits when

16 the award is made prior to the member's retirement is based on

17 what is often referred to as a separate interest approach. The

18 approach taken by this part for the allocation of benefits when

19 the award is made after the member's retirement is based on what

20 is often referred to as a shared payment approach.



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

12 SECTION 4. Chapter 88, Hawaii Revised Statutes, is amended
13 by adding a new section to subpart C of part II, to be
14 appropriately designated and to read as follows:

15 "§88- Distribution of property in a divorce action. (a)

16 As used in this section:

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



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 "Hawaii 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 Hawaii domestic relations order shall clearly
20 specify:



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



- 1 (2) Purport to require the selection of a particular
2 benefit payment plan or option or to limit the benefit
3 payment plans or options from which the member or
4 retirant may select;
- 5 (3) Require any action on the part of the system contrary
6 to its governing laws or plan provisions other than
7 the direct payment of the benefit awarded to an
8 alternate payee;
- 9 (4) Make the award to the alternate payee an interest that
10 is contingent on any condition other than those
11 conditions resulting in the liability of the system
12 for payment under its plan provisions;
- 13 (5) Purport to give to someone other than a member or
14 retirant the right to designate a beneficiary or to
15 choose any retirement plan or option available from
16 the system;
- 17 (6) Attach a lien to any part of amounts payable with
18 respect to a member or retirant;
- 19 (7) Award an alternate payee a portion of the benefits
20 payable with respect to a member or retirant under the
21 system and purport to require the system to make a



- 1 lump sum payment to the alternate payee, of the
2 awarded portion of the benefits that is not payable in
3 a lump sum;
- 4 (8) Purport to require the system, without action by the
5 member, to terminate a member from membership or
6 employment, to refund contributions, or to retire a
7 member;
- 8 (9) Provide any type or form of benefit, or any option,
9 not otherwise provided by the system;
- 10 (10) Provide increased benefits, determined on the basis of
11 actuarial value; or
- 12 (11) Require the system to provide benefits or refunds to
13 an alternate payee that are required to be paid to
14 another alternate payee pursuant to an earlier Hawaii
15 domestic relations order.
- 16 (e) Upon receipt of a copy of the complaint for divorce,
17 certified by the clerk of the court in which the complaint was
18 filed, and a written request that identifies the member or
19 retirant by name and social security number and states the date
20 of the marriage, the system shall provide the spouse or former
21 spouse of a member or retirant with the same information that



1 would be provided to the member or retirant on the member or
2 retirant's benefits that is relevant to the spouse's or former
3 spouse's interest in the member or retirant's benefits.

4 (f) A person who wishes to have the system review a
5 domestic relations order or a proposed domestic relations order
6 to establish whether the order or proposed order meets the
7 requirements for a Hawaii domestic relations order shall submit
8 to the system a written request for review and a copy of the
9 order or proposed order. If the order has been entered by a
10 court, the copy of the order shall be certified by the clerk of
11 the court that entered the order. The order or proposed order
12 shall be reviewed as provided by this section.

13 The filing fee in effect at the time that a domestic
14 relations order or proposed domestic relations order is
15 submitted, shall be paid before the order or proposed order is
16 processed or reviewed. In addition, the system shall charge for
17 legal and actuarial services as provided by subsection (s).

18 Before any legal or actuarial services are performed, the
19 system shall notify the person who requested the review of the
20 order or proposed order that services will need to be performed
21 as part of the review. The notification shall include an



1 estimate of the extent of the services and the estimated costs
2 relating to those services. The charges for legal and actuarial
3 services shall be paid before the system may issue notification
4 of determination on an order of notification whether a proposed
5 order meets the requirements for a Hawaii domestic relations
6 order.

7 If a domestic relations order is submitted for review after
8 it has been entered by the court and is thereafter amended with
9 the intention that it be a Hawaii domestic relations order, the
10 member or retirant or the alternate payee shall submit a
11 certified copy of the amended order to the system. The system
12 shall review any amended order that it receives according to the
13 same rules applicable to all other orders.

14 (g) The system shall review a domestic relations order or
15 a proposed domestic relations order for compliance with the
16 requirements imposed by this section. Upon completion of the
17 review:

18 (1) The system shall not issue a determination that a
19 proposed order is or is not a Hawaii domestic
20 relations order but shall notify the person who
21 submitted the proposed order, in writing, and may also



1 notify the member or alternate payee, whether the
2 proposed order meets the requirements for a Hawaii
3 domestic relations order, identifying any provisions
4 of this section that the proposed order does not meet;
5 and

6 (2) If the order has been entered by the court, the system
7 shall notify the member or retirant and the alternate
8 payee in writing of the determination that the order
9 is or is not a Hawaii domestic relations order,
10 identifying any provisions of this section that the
11 order does not meet.

12 (h) During any period, not to exceed eighteen months,
13 beginning on the date on which the first payment would be
14 required to be made to the alternate payee under the domestic
15 relations order, in which a domestic relations order is under
16 review to determine whether it is a Hawaii domestic relations
17 order, or in which a determination that an order is not
18 qualified is on appeal to the board or to court, the system
19 shall limit the member or retirant's benefit rights to the
20 extent the system deems appropriate to protect the largest
21 amount that would be payable to the proposed alternate payee



1 under the system's interpretation of the domestic relations
2 order. Any amounts not paid to the member or retirant during
3 this eighteen-month period shall be separately accounted for.
4 If the domestic relations order is determined to be a Hawaii
5 domestic relations order before the end of the eighteen-month
6 period, the system shall pay benefits to the member or retirant
7 and the alternate payee in accordance with the Hawaii domestic
8 relations order and the terms of the plan, including any
9 benefits separately accounted for during the period between the
10 date on which the first payment was to be made under the Hawaii
11 domestic relations order and the date the determination is made.
12 If the domestic relations order is finally determined not to be
13 a Hawaii domestic relations order, or if the eighteen-month
14 period expires without a determination that the domestic
15 relations order is a Hawaii domestic relations order, none of
16 the amounts separately accounted for shall be paid to the
17 alternate payee, and the member or retirant will be entitled to
18 the member or retirant's full benefits in accordance with the
19 terms of this chapter, including any benefits that had been
20 separately accounted for and withheld from the member or
21 retirant. If the domestic relations order is determined to be a



1 Hawaii domestic relations order after the end of the eighteen-
2 month period, or if the system later receives another domestic
3 relations order that is determined to be a Hawaii domestic
4 relations order, the Hawaii domestic relations order shall apply
5 prospectively only and shall not affect benefits already paid to
6 the member or retirant.

7 (i) Subject to the limitations of applicable statutes and
8 this section, if a domestic relations order is determined to be
9 a Hawaii domestic relations order, the system shall pay benefits
10 in accordance with the order at the time benefits become payable
11 to, or in the case of contributions or hypothetical account
12 balances are withdrawn by, the member or retirant. Any
13 determination that an order is a Hawaii domestic relations order
14 is voidable or subject to modification if the system determines
15 that the provisions of the order have been changed or that
16 circumstances relevant to the determination have changed.

17 (j) If a member terminates membership in the system by
18 withdrawal of contributions or a hypothetical account balance,
19 the system shall pay all or a portion of the amount withdrawn to
20 any alternate payee as directed by a Hawaii domestic relations
21 order. Payment to any alternate payee pursuant to this



1 subsection shall be in a lump sum. If the former member later
2 resumes membership in the system, the system shall pay to an
3 alternate payee no portion of any benefits payable to the member
4 or retirant that results from the resumption of membership, even
5 if those benefits result in part from reinstatement of service
6 credit initially credited during the marriage.

7 (k) To receive credit for all service represented by
8 withdrawn or refunded contributions, a member who is reinstating
9 service credit by repaying amounts previously withdrawn or
10 refunded shall repay the entire amount withdrawn or refunded,
11 regardless of whether a portion or all of the amount was paid to
12 an alternate payee.

13 (l) When the system has not yet begun to make payment to
14 an alternate payee under this section and is provided with proof
15 of the death of the alternate payee, benefits payable with
16 respect to the member or retirant shall be paid without regard
17 to the Hawaii domestic relations order.

18 (m) When the system receives a certified copy of the
19 Hawaii domestic relations order prior to a member's retirement,
20 and if the domestic relations order is determined to be a Hawaii
21 domestic relations order, the system shall, except as provided



1 in subsection (j), pay the alternate payee an amount that is the
2 actuarial equivalent of the benefit that is awarded to the
3 alternate payee in the form of an annuity payable in equal
4 monthly installments for the life of the alternate payee.

5 Payment under this subsection shall be determined as
6 follows:

- 7 (1) As of the date payment to the alternate payee is
8 scheduled to begin, the system shall determine the
9 single life annuity value of the retirement benefit
10 payable to the member;
- 11 (2) If the portion of the benefit awarded to the alternate
12 payee by the order is not clearly stated as a
13 percentage of the member's maximum retirement
14 allowance, the system shall determine the percentage
15 of the member's maximum retirement allowance that is
16 the equivalent to the benefit awarded to the alternate
17 payee;
- 18 (3) The single life annuity value determined by the system
19 shall be multiplied by the percentage of the member's
20 maximum retirement allowance awarded to the alternate
21 payee. The result of this calculation shall be



1 actuarially converted to a single life annuity payable
2 to the alternate payee for the lifetime of the
3 alternate payee;

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

12 (5) Payment of the alternate payee's interest under this
13 subsection will be effective as of the same date
14 benefit payments are effective for the member.

15 (n) When the system receives a certified copy of the
16 domestic relations order subsequent to the member's retirement,
17 and if the domestic relations order is determined to be a Hawaii
18 domestic relations order, the interest awarded the alternate
19 payee by the Hawaii domestic relations order shall be paid as a
20 portion of the retirement benefit the retirant is receiving as
21 follows:



- 1 (1) If the alternate payee is already a named beneficiary
2 under any option elected by the retirant at
3 retirement, the benefit to which the retirant is
4 entitled, without regard to the Hawaii domestic
5 relations order, shall be apportioned between the
6 retirant and the alternate payee according to the
7 terms of the Hawaii domestic relations order. Upon
8 the death of the retirant or the alternate payee, the
9 benefit amount to be paid to the survivor shall be
10 that required under the option elected by the retirant
11 at retirement, as though no Hawaii domestic relations
12 order had existed; or
- 13 (2) If the alternate payee is not a named beneficiary
14 under the option elected by the retirant at
15 retirement, the benefit to which the retirant is
16 entitled without regard to the Hawaii domestic
17 relations order, shall be apportioned between the
18 retirant and the alternate payee according to the
19 terms of the Hawaii domestic relations order. If the
20 retirant predeceases the alternate payee, payments to
21 the alternate payee shall cease and payments to the



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

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

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

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

19 (2) The system shall pay to an alternate payee no portion
20 of any benefits payable to the retirant that result
21 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 Hawaii domestic relations order applicable to the retirant.

6 (q) 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 Hawaii domestic relations order shall
12 be subject to review as provided in chapter 91 and the system's
13 rules relating to contested cases. The system shall not be made
14 party to any other judicial proceedings except as provided in
15 this subsection. A party to any action who attempts to make the
16 system a party to the action contrary to the provision of this
17 subsection shall be liable to the system for the system's costs
18 and attorneys' fees in such action, including attorneys' fees
19 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



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



1 received and shall immediately transmit that amount to the
2 system.

3 (s) The board shall adopt rules in accordance with chapter
4 91 and produce such forms as it deems necessary to effectuate
5 this section. The board may, by motion at a duly noticed
6 meeting of the board, establish and revise from time to time:

7 (1) A filing fee for processing and review of domestic
8 relations orders and proposed domestic relations
9 orders for the purposes of this section;

10 (2) A schedule of charges for legal and actuarial services
11 incurred by the system in the review and processing of
12 domestic relations orders and proposed Hawaii domestic
13 relations orders for the purposes of this section; and

14 (3) A required form or forms for Hawaii domestic relations
15 orders."

16 SECTION 5. Section 88-91, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§88-91 Exemption from taxation and execution. The right
19 of a person to a pension, an annuity or a retirement allowance,
20 to the return of contributions, the pension, annuity or
21 retirement allowance itself, any optional benefit or death



1 benefit, any other right accrued or accruing to any person under
2 this part and the moneys in the various funds created under this
3 part are exempted from any tax of the State and, except as
4 provided in [~~section~~] sections 88-92 [~~provided,~~] and 88- ,
5 shall not be subject to execution, garnishment, or any other
6 process and shall be unassignable except as in this part
7 specifically provided."

8 PART III. GENERAL

9 SECTION 6. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2016-2017 for one
12 full-time equivalent (1.00 FTE) claims examiner position.

13 The sum appropriated shall be expended by the employees'
14 retirement system for the purposes of this Act.

15 SECTION 7. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2016-2017 for the
18 planning and expenditures necessary for the implementation of
19 this Act.

20 The sum appropriated shall be expended by the employees'
21 retirement system for the purposes of this Act.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2016;
4 provided that sections 4 and 5 shall take effect on January 1,
5 2018.



Report Title:

ERS; Investment Personnel; Domestic Relations Order;
Appropriation

Description:

Expands the types of investment personnel that may be appointed by the ERS. Authorizes the ERS board to appoint investment professionals and support staff. Exempts appointed investment officers, professionals, and specialists from civil service law and collective bargaining. Provides option for incumbent investment specialists to remain subject to civil service law. Authorizes and requires the ERS 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 benefits pursuant to a Hawaii domestic relations order. Appropriates funds. (SB2346 HD1)

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

