
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 PART I. INVESTMENT PERSONNEL

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

4 " ~~[+]§88-29.5[+]~~ Investment personnel. The board ~~[may]~~,
5 through its executive director, may appoint one or more
6 investment officers, other investment professionals, and
7 investment support staff, under the direction of the chief
8 investment officer, ~~[prescribing]~~ prescribe their duties and
9 qualifications, and ~~[fixing]~~ fix their salaries~~[, who]~~.
10 Investment officers and other investment professionals,
11 including investment specialists, who are appointed pursuant to
12 this section, shall be exempt from ~~[chapter]~~ chapters 76~~[-]~~ and
13 89. Investment support staff, who are appointed pursuant to
14 this section, at the board's discretion, may be exempt from
15 chapters 76 and 89. However, section 76-16(b)(17) shall apply
16 to the positions established under this section."

17 SECTION 2. As of the effective date of this part,
18 investment specialist positions and their incumbents shall be



1 subject to section 88-29.5, Hawaii Revised Statutes, as amended
2 by this Act; provided that any incumbent of an investment
3 specialist position as of the effective date of this part shall
4 have the option, which, if exercised, shall be revocable, to
5 remain subject to chapter 76, Hawaii Revised Statutes, for as
6 long as the incumbent holds that position.

7 PART II. DOMESTIC RELATIONS ORDERS

8 SECTION 3. The purpose of this part is to authorize and
9 require the employees' retirement system to make direct payments
10 to the spouse or former spouse of an employees' retirement
11 system member or retirant when the spouse or former spouse has
12 been awarded all or a portion of the member's or retirant's
13 retirement benefits as part of a property division adjudicated,
14 ordered, or decreed by a court in a domestic relations
15 proceeding. The actuarial cost of the benefits paid by the
16 employees' retirement system to the retirant and the retirant's
17 beneficiaries, if any, and the retirant's spouse or former
18 spouse shall not exceed the actuarial cost of the benefits that
19 would be payable to the retirant and the retirant's
20 beneficiaries, if any, in the absence of this part. It is the
21 intent of the legislature that the approach taken by this part,



1 for the allocation of the benefit when the award is made prior
2 to the member's retirement, be based upon what is often referred
3 to as a "separate interest approach." The legislature also
4 intends that the approach taken by this part, for the allocation
5 of the benefit when the award is made after the member's
6 retirement, be based upon what is often referred to as a "shared
7 payment approach."

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

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



1 "§88- Distribution of property in a divorce action.

2 (a) As used in this section:

3 "Alternate payee" means a spouse or former spouse of a
4 member or retirant who is recognized by a domestic relations
5 order as having a right to receive all or a portion of the
6 benefits payable by the system with respect to that member or
7 retirant.

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

10 "Domestic relations order" means a judgment, decree, or
11 order, including approval of a property settlement agreement,
12 that:

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

17 "Hawaii domestic relations order" means a domestic
18 relations order that:

- 19 (1) Creates or recognizes the right of an alternate payee,
20 or assigns to an alternate payee, the right to receive



- 1 all or a portion of the benefits payable with respect
2 to a member or retirant under the system;
- 3 (2) Directs the system to disburse benefits to the
4 alternate payee; and
- 5 (3) Meets the requirements of this section.
- 6 (b) A Hawaii domestic relations order shall clearly
7 specify:
- 8 (1) The name and last known mailing address, if any, of
9 the member or retirant;
- 10 (2) The name and mailing address of the alternate payee
11 covered by the order;
- 12 (3) The amount or percentage of the member or retirant's
13 benefits to be paid by the system to the alternate
14 payee, or the manner in which the amount or percentage
15 is to be determined;
- 16 (4) The number of payments or period to which the order
17 applies; and
- 18 (5) That the order applies to the system.
- 19 (c) If, pursuant to a Hawaii domestic relations order, an
20 alternate payee is receiving all or a portion of a retirant's
21 pension, annuity, or retirement allowance, the alternate payee



1 shall be entitled to receive a post retirement allowance as
2 provided by section 88-90.

3 (d) A Hawaii domestic relations order shall not:

4 (1) Purport to require the designation by the member or
5 retirant of a particular person as the recipient of
6 benefits upon the death of the member or retirant;

7 (2) Purport to require the selection of a particular
8 benefit payment plan or option or to limit the benefit
9 payment plans or options from which the member may
10 select;

11 (3) Require any action on the part of the system contrary
12 to its governing laws or plan provisions other than
13 the direct payment of the benefit awarded to an
14 alternate payee;

15 (4) Make the award to the alternate payee an interest that
16 is contingent on any condition other than those
17 conditions resulting in the liability of the system
18 for payment under its plan provisions;

19 (5) Purport to give to someone other than a member or
20 retirant the right to designate a beneficiary or to



- 1 choose any retirement plan or option available from
2 the system;
- 3 (6) Attach a lien to any part of amounts payable with
4 respect to a member or retirant;
- 5 (7) Award an alternate payee a portion of the benefits
6 payable with respect to a member or retirant under the
7 system and purport to require the system to make a
8 lump sum payment of the awarded portion of the
9 benefits to the alternate payee that are not payable
10 in a lump sum;
- 11 (8) Purport to require the system, without action by the
12 member, to terminate a member from membership or
13 employment, to refund contributions, or to retire a
14 member;
- 15 (9) Provide any type or form of benefit, or any option,
16 not otherwise provided by the system;
- 17 (10) Provide increased benefits, determined on the basis of
18 actuarial value; or
- 19 (11) Require the system to provide benefits or refunds to
20 an alternate payee that are required to be paid to



1 another alternate payee pursuant to an earlier Hawaii
2 domestic relations order.

3 (e) Upon receipt of a copy of the complaint for divorce,
4 certified by the clerk of the court in which the complaint was
5 filed, and a written request that identifies the member or
6 retirant by name and social security number and states the date
7 of the marriage, the system shall provide the spouse or former
8 spouse of a member or retirant with the same information that
9 would be provided to the member or retirant on the member's or
10 retirant's benefits that is relevant to the spouse's or former
11 spouse's interest in the member's or retirant's benefits.

12 (f) A person who wishes to have the system review a
13 domestic relations order or a proposed domestic relations order
14 to establish whether the order or proposed order meets the
15 requirements for a Hawaii domestic relations order shall submit
16 to the system a written request for review and a copy of the
17 order or proposed order. If the order has been entered by a
18 court, the copy of the order shall be certified by the clerk of
19 the court that entered the order. The order or proposed order
20 shall be reviewed as provided by this section.



1 The filing fee in effect at the time that an order or
2 proposed order is submitted shall be paid before the order or
3 proposed order is processed or reviewed. In addition, the
4 system shall charge for legal and actuarial services as provided
5 by subsection (s).

6 Before any legal or actuarial services are performed, the
7 system shall notify the person who requested the review of the
8 order or proposed order that the services will be needed as part
9 of the review. The notification shall include an estimate of
10 the extent of the services and the estimated costs relating to
11 those services. The charges for legal and actuarial services
12 shall be paid before the system may issue notification of
13 determination on an order or notification whether or not a
14 proposed order meets the requirements for a Hawaii domestic
15 relations order.

16 If a domestic relations order is submitted for review after
17 it has been entered by the court and is thereafter amended with
18 the intention that it shall be a Hawaii domestic relations
19 order, the member, retirant, or the alternate payee shall submit
20 a certified copy of the amended order to the system. The system



1 shall review any amended order that it receives according to the
2 same rules applicable to all other orders.

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

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

15 (2) If the order has been entered by the court, the system
16 shall notify the member or retirant and the alternate
17 payee in writing of the determination that the order
18 is or is not a Hawaii domestic relations order,
19 identifying any provisions of this section that the
20 order does not meet.



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



1 determination is made. If the domestic relations order is
2 finally determined not to be a Hawaii domestic relations order,
3 or if the eighteen-month period expires without a determination
4 that the domestic relations order is a Hawaii domestic relations
5 order, none of the amounts separately accounted for shall be
6 paid to the alternate payee, and the member or retirant shall be
7 entitled to the member's or retirant's 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 is
11 determined to be a Hawaii domestic relations order after the end
12 of the eighteen-month period, or if the system later receives
13 another domestic relations order that is determined to be a
14 Hawaii domestic relations order, the Hawaii domestic relations
15 order shall apply prospectively only and shall not affect
16 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 Hawaii domestic relations order, the system shall pay benefits
20 in accordance with the order at the time benefits become payable
21 to, or in the case of contributions or hypothetical account



1 balances, are withdrawn by, the member or retirant. Any
2 determination that an order is a Hawaii domestic relations order
3 is voidable or subject to modification if the system determines
4 that the provisions of the order have been changed or that
5 circumstances relevant to the determination have changed.

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

17 (k) In order to receive credit for all service represented
18 by withdrawn or refunded contributions, a member, in reinstating
19 service credit by repaying amounts previously withdrawn or
20 refunded, shall repay the entire amount withdrawn or refunded,



1 regardless of whether a portion or all of the amount was paid to
2 an alternate payee.

3 (1) When the system has not yet begun to make payment to
4 an alternate payee under this section and is provided with proof
5 of the death of the alternate payee, benefits payable with
6 respect to the member or retirant shall be paid without regard
7 to the Hawaii domestic relations order.

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

16 Payment under this subsection shall be determined as
17 follows:

18 (1) As of the date payment to the alternate payee is
19 scheduled to begin, the system shall determine the
20 single life annuity value of the retirement benefit
21 payable to the member;



- 1 (2) If the portion of the benefit awarded to the alternate
2 payee by the order is not clearly stated as a
3 percentage of the member's maximum retirement
4 allowance, the system shall determine the percentage
5 of the member's maximum retirement allowance that is
6 the equivalent to the benefit awarded to the alternate
7 payee;
- 8 (3) The single life annuity value determined by the system
9 shall be multiplied by the percentage of the member's
10 maximum retirement allowance awarded to the alternate
11 payee. The result of this calculation shall be
12 actuarially converted to a single life annuity payable
13 to the alternate payee for the lifetime of the
14 alternate payee;
- 15 (4) The benefit payable to the member shall be reduced by
16 an amount actuarially equivalent to the value of the
17 benefit payable to the alternate payee; payment by the
18 system of the alternate payee's interest as provided
19 by this section shall have no effect on the right of a
20 member to name a beneficiary or the right of a member



1 to choose an optional method of payment upon
2 retirement; and
3 (5) Payment of the alternate payee's interest under this
4 subsection shall be effective as of the same date that
5 benefit payments are effective for the member.

6 (n) When the system receives a certified copy of a
7 domestic relations order subsequent to the member's retirement,
8 and if the domestic relations order is determined to be a Hawaii
9 domestic relations order, the interest awarded to the alternate
10 payee by the Hawaii domestic relations order shall be paid as a
11 portion of the retirement benefit the retirant is receiving as
12 follows:

13 (1) If the alternate payee is already a named beneficiary
14 under any 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. Upon
20 the death of the retirant or the alternate payee, the
21 benefit amount to be paid to the survivor shall be the



1 amount required under the option elected by the
2 retirant at retirement, as though no Hawaii domestic
3 relations order had existed; or

4 (2) If the alternate payee is not a named beneficiary
5 under the option elected by the retirant at
6 retirement, the benefit to which the retirant is
7 entitled without regard to the Hawaii domestic
8 relations order, shall be apportioned between the
9 retirant and the alternate payee according to the
10 terms of the Hawaii domestic relations order. If the
11 retirant predeceases the alternate payee, payments to
12 the alternate payee shall cease and payments to the
13 retirant's named beneficiary or beneficiaries shall be
14 made as required under the option elected by the
15 retirant at retirement, as though no Hawaii domestic
16 relations order had existed. If the alternate payee
17 predeceases the retirant, the benefit then being paid
18 to the retirant shall be increased by the amount of
19 the benefit that was being paid to the alternate payee
20 at time of death.



1 Payment according to the terms of the Hawaii domestic
2 relations order under this subsection shall commence as of the
3 first day of the month following the date upon which the order
4 is determined to be qualified, unless the parties jointly direct
5 that payment shall commence at a later date.

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

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

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

13 (p) For the purpose of calculating earnings limitations
14 for retirants who have been restored to service, the retirant's
15 maximum retirement allowance shall be considered to be the
16 amount that would have been paid if there had not been any
17 Hawaii domestic relations order applicable to the retirant.

18 (q) A court does not have jurisdiction over the system
19 with respect to a divorce or other domestic relations action in
20 which an alternate payee's right to receive all or a portion of
21 the benefits payable to a member or retirant is created or



1 established. A determination by the system that a domestic
2 relations order is not a Hawaii domestic relations order shall
3 be subject to review as provided in chapter 91 and the system's
4 rules relating to contested cases. The system shall not be made
5 party to any other judicial proceedings except as provided in
6 this subsection. A party to any action who attempts to make the
7 system a party to the action contrary to this subsection shall
8 be liable to the system for the system's costs and attorney's
9 fees in the action, including attorneys' fee and costs for
10 obtaining a dismissal.

11 (r) If a member or retirant, or the beneficiary or estate
12 of either, receives the amount of any distribution that should
13 have been paid by the system to the spouse or former spouse of
14 the member or retirant, the recipient shall be designated a
15 constructive trustee for the amount received and shall
16 immediately transmit that amount to the person to whom the
17 amount should have been paid. If a spouse or former spouse of a
18 member or retirant, or the estate, heirs, or legatees of the
19 spouse or former spouse receives any amount of a distribution
20 that should have been paid to a member or retirant, or the
21 estate, heirs, or legatees of either, the recipient shall be



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

14 (s) The board shall adopt rules in accordance with chapter
15 91, and adopt forms as it deems necessary to effectuate this
16 section. The board, by motion at a duly noticed meeting of the
17 board, may establish and revise from time to time:

18 (1) A filing fee for processing and review of domestic
19 relations orders and proposed domestic relations
20 orders for the purposes of this section;



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

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

9 "§88-91 **Exemption from taxation and execution.** The right
10 of a person to a pension, an annuity or a retirement allowance,
11 to the return of contributions, the pension, annuity or
12 retirement allowance itself, any optional benefit or death
13 benefit, any other right accrued or accruing to any person under
14 this part and the moneys in the various funds created under this
15 part are exempted from any tax of the State and, except as
16 provided in [section] sections 88-92 [provided,] and 88- ,
17 shall not be subject to execution, garnishment or any other
18 process and shall be unassignable except as in this part
19 specifically provided."



1 PART III. GENERAL

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

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

8 SECTION 7. 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 sum appropriated shall be expended by the employees'
14 retirement system for the purposes of this Act.

15 SECTION 8. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 9. This Act shall take effect on July 1, 2016;
18 provided that sections 4 and 5 shall take effect on January 1,
19 2018.



Report Title:

ERS; Investment Personnel; Domestic Relations Order;
Appropriation

Description:

Expands the types of investment personnel that may be appointed by the ERS. Beginning on 1/1/2018, requires ERS to make direct payments to a spouse of a system member or retirant pursuant to a Hawaii domestic relations order. (SD2)

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

