

# S.B. NO. 2842

JAN 27 2016

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## A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. Section 88-74.7, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§88-74.7 Commencement of benefits on required beginning  
4 date. (a) The purpose of this section is to provide for  
5 distribution of benefits in accordance with a reasonable and  
6 good faith interpretation of section 401(a)(9) of the Internal  
7 Revenue Code. Section 401(a)(9) of the Internal Revenue Code  
8 requires that the "entire interest" of a member be distributed  
9 or that distribution of the member's benefits begin no later  
10 than the member's "required beginning date".

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

15 (c) [A] Subject to the suspension and forfeiture  
16 provisions of this section and sections 88-96 and 88-341, a  
17 member or former member's accumulated contributions or  
18 hypothetical account balance, as defined in section 88-311,

1 shall be paid to the member or former member, or payment of the  
2 benefits payable under part II, VII, or VIII of this chapter  
3 shall commence, no later than the member's or former member's  
4 required beginning date. The payment or payments shall be made  
5 on, or beginning no later than, the member's or former member's  
6 required beginning date even if the member or former member does  
7 not apply for payment or file a retirement application.

8 (d) ~~[If]~~ Subject to the suspension and forfeiture  
9 provisions of this section and sections 88-96 and 88-341, if by  
10 a member's or former member's required beginning date:

11 (1) The ~~[member]~~ member's or former member's accumulated  
12 contributions or hypothetical account balance, as  
13 defined in section 88-311, are not paid to the member  
14 or former member; or

15 (2) Payment of the benefits payable under part II, VII, or  
16 VIII of this chapter do not commence, the system shall  
17 pay the service retirement benefits for which the  
18 member or former member is eligible pursuant to part  
19 II, VII, or VIII of this chapter, as applicable,  
20 retroactive to the member's or former member's  
21 required beginning date with regular interest.

22 (e) If the system does not receive a written election from  
23 the member or former member under section 88-83, 88-283, or 88-

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1 333, as applicable, prior to the later of the member's or former  
2 member's required beginning date or sixty days following the  
3 receipt by the member or former member of notice from the system  
4 that the member or former member is required to make an  
5 election, the following election shall be deemed to have been  
6 made as of the ~~member~~ member's or former member's required  
7 beginning date:

8 (1) If the member or former member is unmarried or has no  
9 reciprocal beneficiary, the member or former member  
10 shall be deemed to have elected the maximum retirement  
11 allowance; or

12 (2) If the member or former member is married or has a  
13 reciprocal beneficiary, the member or former member  
14 shall be deemed to have elected option 3 under section  
15 88-83, or option A under section 88-283, as  
16 applicable, and to have designated the member's or  
17 former member's spouse or reciprocal beneficiary as  
18 the member's or former member's beneficiary; provided  
19 that if the system receives the written election after  
20 the member's or former member's required beginning  
21 date, but within sixty days following receipt by the  
22 member or former member of notice from the system that  
23 the member or former member is required to make the

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1 election, the written election shall apply, and the  
2 member's or former member's retirement benefit shall  
3 be recomputed, based on the written election,  
4 retroactive to the ~~[member]~~ member's or former  
5 member's required beginning date. The amount of any  
6 underpayment resulting from recomputing the benefit  
7 shall bear regular interest. If recomputing the  
8 benefit results in an overpayment, payments shall be  
9 adjusted so that the actuarial equivalent of the  
10 benefit to which the member or former member was  
11 correctly entitled shall be paid.

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

- 16 (1) If the member or former member was married or had a  
17 reciprocal beneficiary at the time the member or  
18 former member last provided information to the system  
19 about the member's or former member's marital or  
20 reciprocal beneficiary status, it shall be presumed  
21 that the member or former member is still married to  
22 the same spouse or is in the same reciprocal  
23 beneficiary relationship. If the system does not have

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1 information as to the age of the spouse or reciprocal  
2 beneficiary, the spouse or reciprocal beneficiary  
3 shall be presumed to be forty years younger than the  
4 member or former member for purposes of computing the  
5 member's or former member's benefit; and

6 (2) If the member or former member was unmarried and did  
7 not have a reciprocal beneficiary at the time the  
8 member or former member last provided information to  
9 the system about the [~~member~~] member's or former  
10 member's marital or reciprocal beneficiary status, it  
11 shall be presumed that the member or former member is  
12 married and that the spouse of the member or former  
13 member is forty years younger than the member or  
14 former member.

15 (g) The presumptions of subsection (f) shall cease to  
16 apply when the member or former member provides the system with  
17 current information as to the member's or former member's  
18 marital or reciprocal beneficiary status and the age of the  
19 [~~member~~] member's or former member's spouse or reciprocal  
20 beneficiary, if any, on the member's or former member's required  
21 beginning date. The information shall be provided in a form  
22 satisfactory to the system. At that time, the member's or  
23 former member's retirement allowance shall be recomputed,

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1 retroactive to the member's or former member's required  
2 beginning date, based on the updated information; provided that,  
3 except as provided in subsection (e), the member or former  
4 member shall not be permitted to change the member's or former  
5 member's retirement allowance option election or beneficiary;  
6 provided further that the benefit being paid to any member or  
7 former member who, on the member's or former member's required  
8 beginning date, was unmarried and did not have a reciprocal  
9 beneficiary, but who was deemed to elect option 3 or option A  
10 with an assumed spouse or reciprocal beneficiary, shall be  
11 converted to the maximum retirement allowance retroactive to the  
12 member's or former member's required beginning date. The amount  
13 of any underpayment resulting from recomputing the benefit shall  
14 bear regular interest. If recomputing the benefit results in an  
15 overpayment, payments shall be adjusted so that the actuarial  
16 equivalent of the benefit to which the member or former member  
17 was correctly entitled shall be paid.

18 (h) If the system cannot locate the member or former  
19 member, ~~[the member's or former member's benefit shall be~~  
20 ~~payable only until the end of the member's or former member's~~  
21 ~~life expectancy, as determined at the member's or former~~  
22 ~~member's required beginning date. If the member or former~~  
23 ~~member has not by that time made a claim for benefits, the~~

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1 ~~member or former member shall be deemed to be deceased at that~~  
2 ~~time. Interest under subsection (d) shall cease on benefits~~  
3 ~~presumed to be abandoned property, pursuant to part I of chapter~~  
4 ~~523A, upon payment of the property to the administrator under~~  
5 ~~part I of chapter 523A] by April 1 of the year following the~~  
6 ~~member's or former member's required beginning date, the~~  
7 ~~member's or former member's benefit, including accumulated~~  
8 ~~contributions, hypothetical account balance, and payment of the~~  
9 ~~benefits payable under part II, VII, or VIII of this chapter, if~~  
10 ~~any, shall be forfeited to the system and shall not escheat~~  
11 ~~under the laws of any state; provided that the benefit forfeited~~  
12 ~~shall be restored if the member or former member makes a proper~~  
13 ~~application to the system for restoration of the benefit. Any~~  
14 ~~benefit that is restored shall be without interest, earnings, or~~  
15 ~~losses for the time period that the benefit was forfeited. All~~  
16 ~~applications for restoration of a forfeited benefit shall be in~~  
17 ~~a form satisfactory to the system.~~

18 (i) If after commencing the payment of benefits payable  
19 under part II, VII, or VIII of this chapter, the system cannot  
20 locate the retirant, beneficiary, or other person or entity  
21 entitled to payment of those benefits, the further payment of  
22 those benefits shall be forfeited to the system and shall not  
23 escheat under the laws of any state; provided that the benefit

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1 forfeited shall be restored if the retirant, beneficiary, or  
2 other person or entity entitled to payment of the forfeited  
3 benefit makes a proper application to the system for restoration  
4 of the benefit. Any benefit that is restored shall be without  
5 interest, earnings, or losses for the time period that the  
6 benefit was forfeited. All applications for restoration of a  
7 forfeited benefit shall be in a form satisfactory to the system.

8 [~~(i)~~] (j) Rules necessary for the purposes of this section  
9 shall be adopted as provided in section 88-22.5."

10 SECTION 2. Section 88-96, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "**§88-96 Rights of members separated from service.** (a)  
13 Any member who ceases to be an employee and who became a member  
14 before July 1, 2012, and has fewer than five years of credited  
15 service, excluding unused sick leave, or who becomes a member  
16 after June 30, 2012, and has fewer than ten years of credited  
17 service, excluding unused sick leave, shall, upon application to  
18 the board, be paid all of the member's accumulated contributions  
19 and the member's membership shall thereupon terminate and all  
20 credited service shall be forfeited; provided that a member  
21 shall not be paid the member's accumulated contributions:



1 (1) If the member becomes an employee again within fifteen  
2 calendar days from the date the member ceased to be an  
3 employee; or

4 (2) If, at the time the application for return of  
5 accumulated contributions is received by the board,  
6 the member has become an employee again.

7 Regular interest shall be credited to the former employee's  
8 account until the former employee's accumulated contributions  
9 are returned to the former employee; provided that the former  
10 employee's membership shall not continue after the fourth full  
11 year following the calendar year in which the individual's  
12 employment terminates. Upon termination of the former  
13 employee's membership, the former employee's credited service  
14 shall be forfeited and, if the former employee's accumulated  
15 contributions are \$1,000 or less at the time of distribution,  
16 the system shall return the former employee's contributions to  
17 the former employee. If the former employee does not become an  
18 employee again and if the former employee's accumulated  
19 contributions have not been withdrawn by the former employee or  
20 previously returned by the system to the former employee, the  
21 system shall return the former employee's accumulated  
22 contributions to the former employee as soon as possible after

1 the later of: (A) the former employee attaining age sixty-two;  
2 or (B) the termination of the former employee's membership.

3 (b) Any member who ceases to be an employee and who became  
4 a member before July 1, 2012, and has more than five years of  
5 credited service, excluding unused sick leave, or who becomes a  
6 member after June 30, 2012, and has more than ten years of  
7 credited service, excluding unused sick leave, shall, upon  
8 application to the board, be paid all of the member's  
9 accumulated contributions and thereupon the former employee's  
10 membership shall terminate and all credited service shall be  
11 forfeited; provided that the member shall not be paid the  
12 member's accumulated contributions:

13 (1) If the member becomes an employee again within fifteen  
14 calendar days from the date the member ceased to be an  
15 employee; or

16 (2) If, at the time the application for return of the  
17 member's accumulated contributions is received by the  
18 board, the member has become an employee again.

19 If the contributions are not withdrawn by the former  
20 employee within four calendar years following the calendar year  
21 in which the former employee's employment terminates, the former  
22 employee shall have established vested benefit status and shall  
23 be eligible for the service retirement benefit in effect at the

1 time of the former employee's retirement, payable in accordance  
2 with this chapter; provided that if the former employee  
3 withdraws the former employee's accumulated contributions, the  
4 former employee's vested benefit status shall terminate and all  
5 credited service shall be forfeited.

6 ~~[(c) In the case of the death of any former member after  
7 the termination of service, the former member's accumulated  
8 contributions shall be payable to the former member's estate or  
9 to such person as the former member has nominated by written  
10 designation duly executed and filed with the board.]~~

11 (c) If the system cannot locate a former employee at the  
12 time the former employee's accumulated contributions are to be  
13 returned under this section, the system's obligation to return  
14 the accumulated contributions shall be suspended and regular  
15 interest shall cease to be credited to the former employee's  
16 account. If the system cannot locate the former employee by  
17 April 1 of the calendar year following the calendar year in  
18 which the system's obligation to return the accumulated  
19 contributions was suspended, the accumulated contributions and  
20 interest on the former employee's account shall be forfeited to  
21 the system; provided that the accumulated contributions and  
22 interest forfeited shall be restored if the former employee  
23 makes a proper application to the system for restoration of the

1 benefit. Any contributions and interest that are restored under  
2 this subsection shall be without interest, earnings, or losses  
3 for the time period that the contributions and interest were  
4 forfeited. All applications for restoration shall be in a form  
5 satisfactory to the system.

6 (d) In the case of the death after the termination of  
7 service and prior to retirement of a former member who has not  
8 withdrawn the former member's contributions, the former member's  
9 accumulated contributions shall upon application be paid to the  
10 former member's estate or to such person as the former member  
11 has nominated by written designation duly executed and filed  
12 with the board."

13 SECTION 3. Section 88-341, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§88-341 Rights of members separated from service. (a)  
16 Any class H member who ceases to be an employee and who became a  
17 member before July 1, 2012, and has fewer than five years of  
18 credited service, excluding unused sick leave, or who becomes a  
19 member after June 30, 2012, and has fewer than ten years of  
20 credited service, excluding unused sick leave, shall, upon  
21 application to the board, be paid all of the former employee's  
22 accumulated contributions, and the former employee's membership  
23 shall thereupon terminate and all credited service shall be

1 forfeited; provided that an individual shall not be paid the  
2 individual's accumulated contributions if either:

3 (1) The individual becomes an employee again within  
4 fifteen calendar days from the date the individual  
5 ceased to be an employee; or

6 (2) At the time the application for return of accumulated  
7 contributions is received by the board, the individual  
8 has become an employee again.

9 Regular interest shall be credited to the former employee's  
10 account until the former employee's accumulated contributions  
11 are withdrawn; provided that the former employee's membership  
12 shall not continue after the fourth full year following the  
13 calendar year in which the individual's employment terminates.  
14 If the former employee does not become an employee again and has  
15 not withdrawn the former employee's accumulated contributions,  
16 the system shall return the former employee's accumulated  
17 contributions to the former employee as soon as possible after  
18 the later of: (A) the former employee attaining age sixty-two;  
19 or (B) the termination of the former employee's membership.

20 (b) Any class H member who ceases to be an employee and  
21 who became a member before July 1, 2012, and has more than five  
22 years of credited service, excluding unused sick leave, or who  
23 becomes a member after June 30, 2012, and has more than ten

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1 years of credited service, excluding unused sick leave, shall,  
2 upon application to the board, be paid an amount equal to the  
3 former employee's hypothetical account balance and the former  
4 employee's membership shall thereupon terminate and all credited  
5 service shall be forfeited; provided that the individual shall  
6 not be paid the individual's hypothetical account balance if  
7 either:

8 (1) The individual becomes an employee again within  
9 fifteen calendar days from the date the individual  
10 ceased to be an employee; or

11 (2) At the time the application for payment of the  
12 individual's hypothetical account balance is received  
13 by the board, the individual has become an employee  
14 again.

15 If the contributions are not withdrawn by the former  
16 employee after the individual's employment terminates, the  
17 former employee shall have vested benefit status and shall be  
18 eligible for the service retirement benefit in effect at the  
19 time of the former employee's retirement, payable in accordance  
20 with this chapter.

21 ~~[(c) In case of the death after the termination of service~~  
22 ~~and prior to retirement of any former class II member who has not~~  
23 ~~withdrawn the member's contributions, there shall be paid to the~~

1 ~~former member's estate or to the person that the former member~~  
2 ~~has nominated by written designation duly executed and filed~~  
3 ~~with the board:~~

4 ~~(1) The former member's accumulated contributions, if the~~  
5 ~~former member became a member before July 1, 2015, and~~  
6 ~~had fewer than five years of credited service at the~~  
7 ~~time of death or if the former member became a member~~  
8 ~~after June 30, 2015, and had fewer than ten years of~~  
9 ~~credited service at the time of death; or~~

10 ~~(2) The former member's hypothetical account balance, if~~  
11 ~~the former member became a member before July 1, 2015,~~  
12 ~~and had five or more years of credited service at the~~  
13 ~~time of death or if the former member became a member~~  
14 ~~after June 30, 2015, and had ten or more years of~~  
15 ~~credited service at the time of death.]~~

16 (c) If the system cannot locate a former employee at the  
17 time the former employee's accumulated contributions are to be  
18 returned under this section, the system's obligation to return  
19 the accumulated contributions shall be suspended and regular  
20 interest shall cease to be credited to the former employee's  
21 account. If the system cannot locate the former employee by  
22 April 1 of the calendar year following the calendar year in  
23 which the system's obligation to return the accumulated

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1 contributions was suspended, the accumulated contributions and  
2 interest on the former employee's account shall be forfeited to  
3 the system; provided that the accumulated contributions and  
4 interest forfeited shall be restored if the former employee  
5 makes a proper application to the system for restoration of the  
6 benefit. Any contributions and interest that are restored under  
7 this subsection shall be without interest, earnings, or losses  
8 for the time period that the contributions and interest were  
9 forfeited. All applications for restoration shall be in a form  
10 satisfactory to the system.

11 (d) In the case of the death after termination of service  
12 and prior to retirement of any former class H member who has not  
13 withdrawn the member's contributions, upon application, there  
14 shall be paid to the former member's estate or to the person  
15 that the former member has nominated by written designation duly  
16 executed and filed with the board:

17 (1) The former member's accumulated contributions, if the  
18 former member became a member before July 1, 2015, and  
19 had fewer than five years of credited service at the  
20 time of death or if the former member became a member  
21 after June 30, 2015, and had fewer than ten years of  
22 credited service at the time of death; or



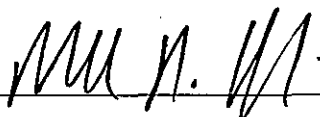
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1        (2) The former member's hypothetical account balance, if  
2        the former member became a member before July 1, 2015,  
3        and had five or more years of credited service at the  
4        time of death or if the former member became a member  
5        after June 30, 2015, and had ten or more years of  
6        credited service at the time of death."

7        SECTION 4. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9        SECTION 5. This Act shall take effect upon its approval.

10  
11  
12

INTRODUCED BY:   
BY REQUEST

**Report Title:**

Employees' Retirement System; Unclaimed Property

**Description:**

Preserves the Employees' Retirement System's use and control of unclaimed member contributions and benefit payments.

*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: DEPARTMENT OF BUDGET AND FINANCE

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

PURPOSE: To preserve the use and control by the Employees' Retirement System (ERS) of unclaimed member benefits and contributions that would otherwise be paid to the State's Unclaimed Property Program or escheated to other states.

MEANS: Amend sections 88-74.7, 88-96, and 88-341, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Under sections 88-74.7, 88-96, and 88-341, the ERS is required to return member contributions and to commence the payment of benefits to members, former members, beneficiaries, or other persons or entities at certain required distribution dates. Despite a reasonably diligent search, the ERS sometimes cannot locate the member, former member, beneficiary, person or entity to be paid by or at the required distribution dates. In addition, after the ERS has started paying benefits to a retired member or beneficiary, the ERS sometimes ceases to be able to locate and make payments to them, e.g., checks or electronic payments are returned without a forwarding address. Under the State's Uniform Unclaimed Property Act, the unclaimed member contributions and benefit payments are presumed abandoned after a period of time and are required to be paid to the State's Unclaimed Property Program. See part I of HRS chapter 523A. If the person or entity to be paid is under the jurisdiction of another state, the unclaimed member contributions and benefit payments may have to be paid to that state. See HRS § 523A-14.

This bill would preserve the ERS's use and control of unclaimed member contributions and benefit payments by suspending and forfeiting them to the ERS prior to the time that they would be required to be paid to the State's Unclaimed Property Program or escheated to another state. In addition, the bill preserves the ability of the member, former member, beneficiary, or other person or entity to recover the forfeited contributions or benefit payments by providing a means for those persons or entities to apply to the ERS for recovery of those forfeited contributions and benefit payments.

The bill would also ease the ERS's administrative burdens of complying with the Uniform Unclaimed Property Act, which can be complicated when long term monthly benefit payments are involved.

Impact on the public: None.

Impact on the department and other agencies: Would eliminate the ERS's payment of unclaimed member contributions and benefits to the State's Unclaimed Property Program.

GENERAL FUND: None.

OTHER FUNDS: Would reduce amounts paid by the ERS to the State's unclaimed property trust fund.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: Unclaimed Property Program in the Department of Budget and Finance.

EFFECTIVE DATE: Upon approval.