

H.B. NO. 1063

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,

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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;

19 provided that if the system receives the written election after
20 the member's or former member's required beginning date, but
21 within sixty days following receipt by the member or former
22 member of notice from the system that the member or former
23 member is required to make the election, the written election

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

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

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

1 shall be presumed to be forty years younger than the
2 member or former member for purposes of computing the
3 member's or former member's benefit; and

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

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

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

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

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

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

1 benefit makes a proper application to the system for restoration
2 of the benefit. Any benefit that is restored shall be without
3 interest, earnings, or losses for the time period that the
4 benefit was forfeited. All applications for restoration of a
5 forfeited benefit shall be in a form satisfactory to the system.

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

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

10 "**§88-96 Rights of members separated from service.** (a)

11 Any member who ceases to be an employee and who became a member
12 before July 1, 2012, and has fewer than five years of credited
13 service, excluding unused sick leave, or who becomes a member
14 after June 30, 2012, and has fewer than ten years of credited
15 service, excluding unused sick leave, shall, upon application to
16 the board, be paid all of the member's accumulated contributions
17 and the member's membership shall thereupon terminate and all
18 credited service shall be forfeited; provided that a member
19 shall not be paid the member's accumulated contributions:

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

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

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

22 (b) Any member who ceases to be an employee and who became
23 a member before July 1, 2012, and has more than five years of

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1 credited service, excluding unused sick leave, or who becomes a
2 member after June 30, 2012, and has more than ten years of
3 credited service, excluding unused sick leave, shall, upon
4 application to the board, be paid all of the member's
5 accumulated contributions and thereupon the former employee's
6 membership shall terminate and all credited service shall be
7 forfeited; provided that the member shall not be paid the
8 member's accumulated contributions:

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

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

15 If the contributions are not withdrawn by the former
16 employee within four calendar years following the calendar year
17 in which the former employee's employment terminates, the former
18 employee shall have established vested benefit status and shall
19 be eligible for the service retirement benefit in effect at the
20 time of the former employee's retirement, payable in accordance
21 with this chapter; provided that if the former employee
22 withdraws the former employee's accumulated contributions, the

1 former employee's vested benefit status shall terminate and all
2 credited service shall be forfeited.

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

8 (c) If the system cannot locate a former employee at the
9 time the former employee's accumulated contributions are to be
10 returned under this section, the system's obligation to return
11 the accumulated contributions shall be suspended and regular
12 interest shall cease to be credited to the former employee's
13 account. If the system cannot locate the former employee by
14 April 1 of the calendar year following the calendar year in
15 which the system's obligation to return the accumulated
16 contributions was suspended, the accumulated contributions and
17 interest on the former employee's account shall be forfeited to
18 the system; provided that the accumulated contributions and
19 interest forfeited shall be restored if the former employee
20 makes a proper application to the system for restoration of the
21 benefit. Any contributions and interest that are restored under
22 this subsection shall be without interest, earnings, or losses
23 for the time period that the contributions and interest were

1 forfeited. All applications for restoration shall be in a form
2 satisfactory to the system.

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

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

12 **"§88-341 Rights of members separated from service. (a)**
13 Any class H member who ceases to be an employee and who became a
14 member before July 1, 2012, and has fewer than five years of
15 credited service, excluding unused sick leave, or who becomes a
16 member after June 30, 2012, and has fewer than ten years of
17 credited service, excluding unused sick leave, shall, upon
18 application to the board, be paid all of the former employee's
19 accumulated contributions, and the former employee's membership
20 shall thereupon terminate and all credited service shall be
21 forfeited; provided that an individual shall not be paid the
22 individual's accumulated contributions if either:

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

4 (2) At the time the application for return of accumulated
5 contributions is received by the board, the individual
6 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 withdrawn; provided that the former employee's membership
10 shall not continue after the fourth full year following the
11 calendar year in which the individual's employment terminates.
12 If the former employee does not become an employee again and has
13 not withdrawn the former employee's accumulated contributions,
14 the system shall return the former employee's accumulated
15 contributions to the former employee as soon as possible after
16 the later of: (A) the former employee attaining age sixty-two;
17 or (B) the termination of the former employee's membership.

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

1 former employee's hypothetical account balance and the former
2 employee's membership shall thereupon terminate and all credited
3 service shall be forfeited; provided that the individual shall
4 not be paid the individual's hypothetical account balance if
5 either:

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

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

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

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

1 ~~has nominated by written designation duly executed and filed~~
2 ~~with the board:~~

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

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

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

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

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

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

22 (2) The former member's hypothetical account balance, if
23 the former member became a member before July 1, 2015,

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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 chapter 523A, HRS. 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 Section 523A-14, HRS.

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.