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A BILL FOR AN ACT

RELATING TO QUALIFIED DOMESTIC RELATIONS ORDERS.

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

1 SECTION 1. Section 88-93.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[~~f~~]~~\$~~88-93.5[~~f~~] **Distribution of property in a divorce**  
4 **action.** (a) As used in this section:

5 "Alternate payee" means a spouse or former spouse of a  
6 member, a former member who has vested benefit  
7 status, or retirant who is recognized by a domestic relations  
8 order as having a right to receive all or a portion of the  
9 benefits payable by the system with respect to that member,  
10 former member with vested benefit status, or retirant.

11 "Benefits payable with respect to a member, a former member  
12 with vested benefit status, or retirant" means any payment  
13 required to be made to a member, a former member with vested  
14 benefit status, or retirant.

15 "Benefit the member or former member with vested benefit  
16 status is expected to receive" means the benefit the member or

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1 former member with vested benefit status is expected to receive  
2 without regard to any Hawaii domestic relations order.

3 "Benefit the retirant is receiving" means the benefit the  
4 retirant is receiving without regard to any Hawaii domestic  
5 relations order.

6 "Domestic relations order" means a judgment, decree, or  
7 order, including approval of a property settlement agreement,  
8 that:

- 9 (1) Relates to the provision of marital property rights to  
10 a spouse or former spouse of a member, a former member  
11 with vested benefit status, or retirant; and  
12 (2) Is made pursuant to a domestic relations law of this  
13 State or another state.

14 "Hawaii domestic relations order" means a domestic  
15 relations order that:

- 16 (1) Creates or recognizes the right of an alternate payee,  
17 or assigns to an alternate payee, the right to receive  
18 all or a portion of the benefits payable with respect  
19 to a member, a former member with vested benefit  
20 status, or retirant under the system;  
21 (2) Directs the system to disburse benefits to the  
22 alternate payee; and

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1 (3) Meets the requirements of this section.

2 (b) A Hawaii domestic relations order shall clearly  
3 specify:

4 (1) The name and last known mailing address, if any, of  
5 the member, former member with vested benefit  
6 status, or retirant;

7 (2) The name and mailing address of the alternate payee  
8 covered by the order;

9 (3) The amount or percentage of the member's, former  
10 member's with vested benefit status, or retirant's  
11 benefits to be paid by the system to the alternate  
12 payee, or the manner in which the amount or percentage  
13 is to be determined; and

14 (4) That the order applies to the system.

15 (c) If, pursuant to a Hawaii domestic relations order, an  
16 alternate payee is receiving all or a portion of  
17 a retirant's pension, annuity, or retirement allowance, the  
18 alternate payee shall be entitled to receive a post retirement  
19 allowance as provided by section 88-90.

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

21 (1) Purport to require the designation by the member,  
22 former member with vested benefit

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

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

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1 request that identifies the member, former member with vested  
2 benefit status, or retirant by name and social security number  
3 and states the date of the marriage, the system shall provide  
4 the spouse or former spouse of a member, former member with  
5 vested benefit status, or retirant with the same information  
6 that would be provided to the member, former member with vested  
7 benefit status, or retirant the member's, former member's with  
8 vested benefit status, or retirant's benefits that is relevant  
9 to the spouse's or former spouse's interest in the member's,  
10 former member's with vested benefit status, or the retirant's  
11 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.

21 The filing fee in effect at the time that an order or  
22 proposed order is submitted shall be paid before the order or

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1 proposed order is processed or reviewed. In addition, the  
2 system shall charge for legal and actuarial services as provided  
3 by subsection (s).

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

14 If a domestic relations order is submitted for review after  
15 it has been entered by the court and is thereafter amended with  
16 the intention that it shall be a Hawaii domestic relations  
17 order, the member, former member with vested benefit  
18 status, retirant, or the alternate payee shall submit a  
19 certified copy of the amended order to the system. The system  
20 shall review any amended order that it receives according to the  
21 same rules applicable to all other orders.

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1 (g) The system shall review ~~[an]~~ a domestic relations  
2 order or proposed domestic relations order for compliance with  
3 the requirements imposed by this section. Upon completion of  
4 the review:

5 (1) The system shall not issue a determination that a  
6 proposed domestic relations order is or is not a  
7 Hawaii domestic relations order but shall ~~[notify]~~  
8 issue a notification to the person who submitted the  
9 proposed domestic relations order, in writing, [and  
10 ~~may also notify the member, former member with vested~~  
11 ~~benefit status, or alternate payee]~~ whether the  
12 proposed domestic relations order meets the  
13 requirements for a Hawaii domestic relations order,  
14 identifying any provisions of this section that the  
15 proposed domestic relations order does not meet~~[+]~~.  
16 The notification may also be provided to the member,  
17 former member with vested benefit status, retirant, or  
18 alternate payee. The system's notification is  
19 advisory, and shall not constitute a determination  
20 that a proposed domestic relations order is or is not  
21 a Hawaii domestic relations order; and



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1           (2) If the domestic relations order has been entered by  
2           the court, the system shall [~~notify~~] issue to the  
3           member, former member with vested benefit  
4           status, or retirant and the alternate payee [~~in~~  
5           ~~writing of the~~] a determination in writing that the  
6           domestic relations order is or is not a Hawaii  
7           domestic relations order, identifying any provisions  
8           of this section that the order does not meet.

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

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

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

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

19 (j) If a member or former member with vested benefit  
20 status terminates membership in the system by withdrawal of  
21 contributions or hypothetical account balance, the system shall  
22 pay all or a portion of the amount withdrawn to any alternate

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1 payee as directed by a Hawaii domestic relations order. Payment  
2 to any alternate payee pursuant to this subsection shall be in a  
3 lump sum. If after terminating membership in the system by  
4 withdrawal of contributions or hypothetical account balance, the  
5 former member or former member with vested benefit status later  
6 resumes membership in the system, the system shall pay to an  
7 alternate payee no portion of any benefits [~~payable to the~~  
8 ~~member or retiree~~] that result from the resumption of  
9 membership, even if those benefits result in part from  
10 reinstatement of service credit initially credited during the  
11 marriage.

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

18 (l) When the system has not yet begun to make payment to  
19 an alternate payee under this section and is provided with proof  
20 of the death of the alternate payee, benefits payable with  
21 respect to the member, former member with vested benefit

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1 status, or retirant shall be paid without regard to the Hawaii  
2 domestic relations order.

3 (m) When the system receives a certified copy of a  
4 domestic relations order prior to a member's retirement, and if  
5 the domestic relations order is determined to be a Hawaii  
6 domestic relations order, the system, except as provided in  
7 subsection (j), shall pay the alternate payee a portion of the  
8 retirement benefit the member or former member with vested  
9 benefit status is expected to receive as follows:

10 (1) If the alternate payee will be named beneficiary under  
11 any option elected by the retirant at retirement, the  
12 benefit to which the retirant is entitled, without  
13 regard to the Hawaii domestic relations order, shall  
14 be apportioned between the retirant and the alternate  
15 payee according to the terms of the Hawaii domestic  
16 relations order. Upon the death of the retirant or  
17 the alternate payee, the benefit amount to be paid to  
18 the survivor shall be the amount required under the  
19 option elected by the retirant at retirement, as  
20 though no Hawaii domestic relations order had existed;  
21 or

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1           (2) If the alternate payee will not be a named beneficiary  
2           under the 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  
6           the retirant and the alternate payee according to the  
7           terms of the Hawaii domestic relations order. If  
8           the retirant predeceases the alternate payee, payments  
9           to the alternate payee shall cease and payments to  
10          the retirant's named beneficiary or beneficiaries  
11          shall be made as required under the option elected by  
12          the retirant at retirement, as though no Hawaii  
13          domestic relations order had existed. If the  
14          alternate payee predeceases the retirant, the benefit  
15          then being paid to the retirant shall be increased by  
16          the amount of the benefit that was being paid to the  
17          alternate payee at time of death.

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

21          (n) When the system receives a certified copy of a  
22          domestic relations order subsequent to the member's or former

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1 member's with vested benefit status retirement, and if the  
2 domestic relations order is determined to be a Hawaii domestic  
3 relations order, the interest awarded to the alternate payee by  
4 the Hawaii domestic relations order shall be paid as a portion  
5 of the retirement benefit the retirant is receiving as follows:

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

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

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

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

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

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



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

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

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

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1 fees in the action, including attorneys' fee and costs for  
2 obtaining a dismissal.

3 (r) If a member, former member with vested benefit  
4 status, or retirant, or the beneficiary or estate of  
5 any, receives the amount of any distribution that should have  
6 been paid by the system to the spouse or former spouse of the  
7 member, former member with vested benefit status, or retirant,  
8 the recipient shall be designated a constructive trustee for the  
9 amount received and shall immediately transmit that amount to  
10 the person to whom the amount should have been paid. If a  
11 spouse or former spouse of a member, former member with vested  
12 benefit status, or retirant, or the estate, heirs, or legatees  
13 of the spouse or former spouse receive any amount of a  
14 distribution that should have been paid to a member, former  
15 member with vested benefit status, or retirant, or the estate,  
16 heirs, or legatees of any, the recipient shall be designated a  
17 constructive trustee for the amount received and shall  
18 immediately transmit that amount to the member, former member  
19 with vested benefit status, or retirant or other person to whom  
20 the amount should have been paid. If a member, former member  
21 with vested benefit status, retirant, or the beneficiary,  
22 estate, heirs, or legatees of any, receives any amount that

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1 should not have been paid by the system, the recipient shall be  
2 designated a constructive trustee for the amount received and  
3 shall immediately transmit that amount to the system. If an  
4 alternate payee or the estate, heirs, or legatee of the  
5 alternate payee, receives any amount that should not have been  
6 paid by the system, the recipient shall be designated a  
7 constructive trustee for the amount received and shall  
8 immediately transmit that amount to the system.

9 (s) The board shall adopt rules in accordance with chapter  
10 91, and adopt forms as it deems necessary to effectuate this  
11 section. The board, by motion at a duly noticed meeting of the  
12 board, may establish and revise from time to time:

13 (1) A filing fee for processing and review of domestic  
14 relations orders and proposed domestic relations  
15 orders for the purposes of this section;

16 (2) A schedule of charges for legal and actuarial services  
17 incurred by the system in the review and processing of  
18 domestic relations orders and proposed Hawaii domestic  
19 relations orders for the purposes of this section; and

20 (3) A required form or forms for Hawaii domestic relations  
21 orders.

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1       (t) Payments made to alternate payees according to the  
2 terms of Hawaii domestic relations orders are payments received  
3 by the retirant for purposes of sections 88-83(f) and 88-333(c),  
4 and the benefit that the retirant received for purposes of  
5 section 88-283(g).

6       (u) The priority of Hawaii domestic relations orders shall  
7 be determined by the order in which the certified copies of  
8 domestic relations orders are received by the system for  
9 qualification as a Hawaii domestic relations order, and not by  
10 the order in which domestic relations orders are determined to  
11 be Hawaii domestic relations orders, the order in which the  
12 domestic relations orders are entered by the court, the date the  
13 complaint for divorce is filed, the date upon which an order of  
14 divorce is entered, or the date of marriage."

15       SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17       SECTION 3. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: \_\_\_\_\_



21

BY REQUEST

JAN 21 2020

# H.B. NO. 2312

**Report Title:**

Employees' Retirement System; Hawaii Domestic Relations Orders

**Description:**

Amendments to clarify benefits to alternate payees, advisory review determinations of Hawaii Domestic Relations Orders and the priority of multiple orders.

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

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

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

PURPOSE: This bill amends section 88-93.5, Hawaii Revised Statutes (HRS), to clarify specific benefit- and processing-related details to facilitate its implementation and to provide transparency to Employees' Retirement System ("ERS") members, retirants, beneficiaries, and alternate payees regarding Hawaii Domestic Relations Orders.

MEANS: Amends section 88-93.5, HRS.

JUSTIFICATION: The ERS will begin processing Hawaii Domestic Relations Orders to allow the ERS to make direct payments to alternate payees on July 1, 2020. In order to facilitate its implementation and to provide transparency on ERS benefits payable to parties involved, this bill specifies the benefits payable and clarifies the process of the qualification, approval, and application of Hawaii Domestic Relations Orders. This bill clarifies the following: (1) that Hawaii Domestic Relations Orders apply to benefits the ERS member is expected to receive or is receiving, (2) that the release of a member's ERS information may be initiated by a complaint for divorce or by a divorce decree, (3) that the ERS will notify the parties of the advisory review determination on proposed domestic relations orders, (4) that a Hawaii Domestic Relations Order applied to a termination refund will not apply to any future return to work benefits, (5) that, should a retirant be deceased within a year of retirement, any payments made to an alternate payee will be considered payments to the retirant, should the beneficiary select an alternative

benefit option, and (6) that the priority of multiple orders will be based upon the date of the receipt of the domestic relations order.

Impact on the public: None.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2020.