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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. The purpose of this Act is to maintain the  
2 employees' retirement system of the State of Hawaii's (the  
3 "system") federal tax qualification requirements by conforming  
4 chapter 88, Hawaii Revised Statutes, to updated requirements of  
5 the Internal Revenue Code of 1986, as amended, regarding  
6 automatic disbursements, including required minimum  
7 distributions, by the Setting Every Community Up for Retirement  
8 Enhancement 2.0 Act of 2022.

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

11       "**§88-74.7 Commencement of benefits on required beginning**  
12 **date.** (a) The purpose of this section is to provide for  
13 distribution of benefits in accordance with a reasonable and  
14 good faith interpretation of section 401(a)(9) of the Internal  
15 Revenue Code. Section 401(a)(9) of the Internal Revenue Code  
16 requires that the "entire interest" of a member be distributed  
17 or that distribution of the member's benefits begin no later  
18 than the member's "required beginning date"[-], as defined in

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1 section 401(a)(9) of the Internal Revenue Code of 1986, as  
2 amended.

3 ~~[(b) For the purposes of this section, "required beginning~~  
4 ~~date" means April 1 of the calendar year following the calendar~~  
5 ~~year in which a member terminates service or attains age seventy~~  
6 ~~and one-half, whichever is later.~~

7 ~~(e)]~~ (b) A member or former member's accumulated  
8 contributions or hypothetical account balance, as defined in  
9 section 88-311, shall be paid to the member or former member, or  
10 payment of the benefits payable under part II, VII, or VIII of  
11 this chapter shall commence, no later than the member's or  
12 former member's required beginning date. The payment or  
13 payments shall be made on, or beginning no later than, the  
14 member's or former member's required beginning date even if the  
15 member or former member does not apply for payment or file a  
16 retirement application.

17 ~~[(d)]~~ (c) If, by a member's or former member's required  
18 beginning date:

19 (1) The member or former member's accumulated  
20 contributions or hypothetical account balance, as  
21 defined in section 88-311, are not paid to the member  
22 or former member; or

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

~~[(e)]~~ (d) If the system does not receive a written election from the member or former member under section 88-83, 88-283, or 88-333, as applicable, prior to the later of the member's or former member's required beginning date or sixty days following the receipt by the member or former member of notice from the system that the member or former member is required to make an election, the following election shall be deemed to have been made as of the member or former member's required beginning date:

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

(2) If the member or former member is married or has a reciprocal beneficiary, the member or former member

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1           shall be deemed to have elected option 3 under section  
2           88-83, or option A under section 88-283, as  
3           applicable, and to have designated the member's or  
4           former member's spouse or reciprocal beneficiary as  
5           the member's or former member's beneficiary;  
6   provided that if the system receives the written election after  
7   the member's or former member's required beginning date, but  
8   within sixty days following receipt by the member or former  
9   member of notice from the system that the member or former  
10   member is required to make the election, the written election  
11   shall apply, and the member's or former member's retirement  
12   benefit shall be recomputed, based on the written election,  
13   retroactive to the member or former member's required beginning  
14   date. The amount of any underpayment resulting from recomputing  
15   the benefit shall bear regular interest. If recomputing the  
16   benefit results in an overpayment, payments shall be adjusted so  
17   that the actuarial equivalent of the benefit to which the member  
18   or former member was correctly entitled shall be paid.

19       ~~[(f)]~~ (e) If the system does not have current information  
20   about the member's or former member's marital or reciprocal  
21   beneficiary status at the time of a deemed election, the  
22   following presumptions shall apply:

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- 1           (1) If the member or former member was married or had a  
2           reciprocal beneficiary at the time the member or  
3           former member last provided information to the system  
4           about the member's or former member's marital or  
5           reciprocal beneficiary status, it shall be presumed  
6           that the member or former member is still married to  
7           the same spouse or is in the same reciprocal  
8           beneficiary relationship. If the system does not have  
9           information as to the age of the spouse or reciprocal  
10          beneficiary, the spouse or reciprocal beneficiary  
11          shall be presumed to be forty years younger than the  
12          member or former member for purposes of computing the  
13          member's or former member's benefit; and
- 14          (2) If the member or former member was unmarried and did  
15          not have a reciprocal beneficiary at the time the  
16          member or former member last provided information to  
17          the system about the member or former member's marital  
18          status, it shall be presumed that the member or former  
19          member is married and that the spouse of the member or  
20          former member is forty years younger than the member  
21          or former member.

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1        [~~(g)~~] (f) The presumptions in subsection [~~(f)~~] (e) shall  
2        cease to apply when the member or former member provides the  
3        system with current information as to the member's or former  
4        member's marital or reciprocal beneficiary status and the age of  
5        the member or former member's spouse or reciprocal beneficiary,  
6        if any, on the member's or former member's required beginning  
7        date. The information shall be provided in a form satisfactory  
8        to the system. At that time, the member's or former member's  
9        retirement allowance shall be recomputed, retroactive to the  
10       member's or former member's required beginning date, based on  
11       the updated information; provided that, except as provided in  
12       subsection [~~(e)~~], (d), the member or former member shall not be  
13       permitted to change the member's or former member's retirement  
14       allowance option election or beneficiary; provided further that  
15       the benefit being paid to any member or former member who, on  
16       the member's or former member's required beginning date, was  
17       unmarried and did not have a reciprocal beneficiary, but who was  
18       deemed to elect option 3 or option A with an assumed spouse or  
19       reciprocal beneficiary, shall be converted to the maximum  
20       retirement allowance retroactive to the member's or former  
21       member's required beginning date. The amount of any  
22       underpayment resulting from recomputing the benefit shall bear

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1 regular interest. If recomputing the benefit results in an  
2 overpayment, payments shall be adjusted so that the actuarial  
3 equivalent of the benefit to which the member or former member  
4 was correctly entitled shall be paid.

5 ~~[(h)]~~ (g) If the system cannot locate the member or former  
6 member, the member's or former member's benefit shall be payable  
7 only until the end of the member's or former member's life  
8 expectancy, as determined at the member's or former member's  
9 required beginning date. If the member or former member has not  
10 by that time made a claim for benefits, the member or former  
11 member shall be deemed to be deceased at that time. Interest  
12 under subsection ~~[(d)]~~ (c) shall cease on benefits presumed to  
13 be abandoned property, pursuant to part I of chapter 523A, upon  
14 payment of the property to the administrator under part I of  
15 chapter 523A.

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

18 SECTION 3. Section 88-321, Hawaii Revised Statutes, is  
19 amended by amending subsection (b) to read as follows:

20 "(b) Notwithstanding any other law to the contrary:

21 (1) A class C member who returns to service after June 30,  
22 2006, and who does not return to service as a class A

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1 or class B member shall become a class H member upon  
2 return to service; provided that, if the member is a  
3 former class A or class B member who received a refund  
4 of contributions picked up and paid by the member's  
5 employer pursuant to section 88-46(b), the member may  
6 not become a class H member and shall return to  
7 service as a class C member, unless the refund was  
8 made pursuant to section 88-96 or 88-271(b);

9 (2) A class A or a class B member, who returns to service  
10 after June 30, 2006, but does not have vested benefit  
11 status as provided in section 88-96(b) and who does  
12 not return to service as a class A or class B member,  
13 shall become a class H member upon return to service  
14 and the member's credited service as a class A or B  
15 member shall be converted to class C credited service.  
16 The system shall return to the member the member's  
17 accumulated contributions if the member's accumulated  
18 contributions are \$1,000 or less at the time of  
19 distribution. If the member's accumulated  
20 contributions for the class A or B credited service  
21 that was converted to class C credited service are  
22 greater than \$1,000 and the member does not make



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written application, contemporaneously with the member's return to service, for return of such contributions, the member, except as provided by section 88-341, may not withdraw the member's accumulated contributions for the class A or B credited service that was converted to class C credited service until the member retires or [attains ~~age sixty-two,~~] pursuant to sections 88-22.5 and 88-74.7;

(3) A class A member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member; and

(4) A class B member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member."

SECTION 4. Section 88-341, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any class H member who ceases to be an employee and who became a member before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who

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1 becomes a member after June 30, 2012, and has fewer than ten  
2 years of credited service, excluding unused sick leave, shall,  
3 upon application to the board, be paid all of the former  
4 employee's accumulated contributions, and the former employee's  
5 membership shall thereupon terminate and all credited service  
6 shall be forfeited; provided that an individual shall not be  
7 paid the individual's accumulated contributions if 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 return of accumulated  
12 contributions is received by the board, the individual  
13 has become an employee again.

14 Regular interest shall be credited to the former employee's  
15 account until the former employee's accumulated contributions  
16 are withdrawn; provided that the former employee's membership  
17 shall not continue after the fourth full year following the  
18 calendar year in which the individual's employment terminates.

19 If the former employee does not become an employee again and has  
20 not withdrawn the former employee's accumulated contributions,  
21 the system shall return the former employee's accumulated  
22 contributions to the former employee [~~as seen as possible after~~

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1 ~~the later of: (A) the former employee attaining age sixty-two,~~  
2 ~~or (B) the termination of the former employee's membership.]~~  
3 pursuant to sections 88-22.5 and 88-74.7."

4 SECTION 5. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

7  
8 INTRODUCED BY: Nash K. Nuhn

9 BY REQUEST

JAN 21 2025

# H.B. NO. 1041

**Report Title:**

Employees' Retirement System; Required Beginning Dates;  
Automatic Payments

**Description:**

Amends chapter 88, HRS, to conform to updated required beginning dates and automatic cashout requirements in the Internal Revenue Code of 1986, as amended.

*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 THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To conform the Employees' Retirement System of the State of Hawaii's (ERS) federal tax qualification requirements to the requirements of the Internal Revenue Code of 1986, as amended, (IRC) regarding automatic disbursements by updating chapter 88, Hawaii Revised Statutes (HRS).

MEANS: Repeal section 88-74.7(b), HRS, and amend sections 88-321(b) and 88-341(a), HRS.

JUSTIFICATION: The Employees' Retirement System of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the IRC. As such, the system must maintain compliance with all applicable sections under the IRC. Section 107 of the SECURE 2.0 Act of 2022 implemented changes to section 401(a)(9) of the IRC introduced optional staggered Required Beginning Dates (RBD) based on year of birth when determining Required Minimum Distributions (RMD).

Specifically, the bill proposes to reference the IRC definition of the RBD for the tiered increase in ages for RMD and remove the automatic distribution requirement for non-vested hybrid members so as not to mandate administration of a third-party retirement account vendor as instituted by the Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022.

Section 88-74.7(b), HRS, currently defines the RMD age as 70 1/2, as previously established by the IRC. Subsequent to the enactment of section 88-74.7, HRS, additional RBD ages of 72, 73, and 75, based

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on various year end effective dates, were introduced into the IRC.

The ERS has chosen to implement these staggered beginning dates by proposing to rely on the "required beginning date", as defined in section 401(a)(9) of the IRC, as amended, and already referenced in section 88-22.5(a)(3), HRS. This is proposed alongside a repeal of section 88-74.7(b) which solely describes the previously existing RBD determination and is no longer accurate nor necessary, and the inclusion of a reference to the "required beginning date" as defined in section 401(a)(9) of the IRC, as amended.

The proposed repeal of the requirement of an automatic disbursement for a non-vested terminated hybrid member under section 88-341 would relieve the ERS of the administrative burden and cost of establishing a default IRA for automatic disbursements that fall under the parameters of section 4975(d) IRC to be transferred into and out of.

The amendment to section 88-321(b)(2) would conform the parameters of a former non-vested class A or B member to receive a refund of their class A or B accumulated contributions to the proposed amendment of section 88-341.

The function of the automatic cashout proposed for repeal is also redundant as it is currently filled by complying with the RMD requirements of section 401(a)(9) of the IRC as well as sections 88-22.5 and 88-74.7, HRS. Repeal of the automatic cashout would allow former members a longer period in which to elect their cashout prior to being subject to the required beginning date under section 401(a)(9) of the IRC.

Impact on the public: Conforms the initiation of RMDs to updated ages under

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section 401(a)(9) of the IRC, as amended.  
Defers non-elective disbursements for non-vested hybrid members to the RBD under section 401(a)(9) of the IRC.

Impact on the department and other agencies:  
Maintains beneficial tax qualification under IRC 401(a) and reduces the administrative burden and cost of instituting and maintaining a default IRA with automatic portability services.

GENERAL FUND:	None.
OTHER FUNDS:	Indeterminate cost savings to the ERS fund.
PPBS PROGRAM DESIGNATION:	BUF-141.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.