

S.B. NO. 1360

JAN 23 2025

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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1 written application, contemporaneously with the
2 member's return to service, for return of such
3 contributions, the member, except as provided by
4 section 88-341, may not withdraw the member's
5 accumulated contributions for the class A or B
6 credited service that was converted to class C
7 credited service until the member retires or [~~attains~~
8 ~~age sixty-two;~~] pursuant to sections 88-22.5 and 88-
9 74.7;

10 (3) A class A member who returns to service after June 30,
11 2008, with vested benefit status and who does not
12 return to service as a class B member shall return to
13 service as a class A member; and

14 (4) A class B member who returns to service after June 30,
15 2008, with vested benefit status and who does not
16 return to service as a class B member shall return to
17 service as a class A member."

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

20 "(a) Any class H member who ceases to be an employee and
21 who became a member before July 1, 2012, and has fewer than five
22 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 soon 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.

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8

INTRODUCED BY: 

9

BY REQUEST

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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

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

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.