

JAN 22 2016

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

PART I. INVESTMENT PERSONNEL

SECTION 1. Section 88-29.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§88-29.5[+] Investment personnel. The board [~~may~~], through its executive director, may appoint one or more investment officers, other investment professionals, and investment support staff, under the direction of the chief investment officer, [~~prescribing~~] prescribe their duties and qualifications and [~~fixing~~] fix their salaries[~~, who~~]. Investment officers and other investment professionals, including investment specialists, who are appointed pursuant to this section, shall be exempt from [~~chapter~~] chapters 76[~~-~~] and 89. Investment support staff, who are appointed pursuant to this section, at the board's discretion, may be exempt from chapters 76 and 89. However, section 76-16(b)(17) shall apply to the positions established under this section."



1 SECTION 2. As of the effective date of this part,
2 investment specialist positions and their incumbents shall be
3 subject to section 88-29.5, Hawaii Revised Statutes, as amended
4 by this Act; provided that any incumbent of an investment
5 specialist position as of the effective date of this part shall
6 have the option, which, if exercised, shall be revocable, to
7 remain subject to chapter 76, Hawaii Revised Statutes, for as
8 long as the incumbent holds that position.

9 PART II. DOMESTIC RELATIONS ORDERS

10 SECTION 3. The purpose of this part is to authorize and
11 require the employees' retirement system to make direct payments
12 to the spouse or former spouse of an employees' retirement
13 system member or retirant when the spouse or former spouse has
14 been awarded all or a portion of the member's or retirant's
15 retirement benefits as part of a property division adjudicated,
16 ordered, or decreed by a court in a domestic relations
17 proceeding. The actuarial cost of the benefits paid by the
18 employees retirement system to the retirant and the retirant's
19 beneficiaries, if any, and the retirant's spouse or former
20 spouse shall not exceed the actuarial cost of the benefits that
21 would be payable to the retirant and the retirant's



1 beneficiaries, if any, in the absence of this part. It is the
2 intent of the legislature that the approach taken by this part,
3 for the allocation of the benefit when the award is made prior
4 to the member's retirement, be based upon what is often referred
5 to as a "separate interest approach." The legislature also
6 intends that the approach taken by this part, for the allocation
7 of the benefit when the award is made after the member's
8 retirement, be based upon what is often referred to as a "shared
9 payment approach."

10 The legislature recognizes that the employees' retirement
11 system is not subject to the Employee Retirement Income Security
12 Act of 1974 and it is not the intent of the legislature to
13 require the employees' retirement system to comply with the
14 provisions of that act. It is, however, the legislature's
15 intent that this part shall comply with the requirements of
16 section 414(p)(11) of the Internal Revenue Code of 1986, as
17 amended, to the extent necessary to allow the distributions or
18 payments made by the employees' retirement system pursuant to
19 this part to be treated as made pursuant to a qualified domestic
20 relations order for federal income tax purposes.



SECTION 4. Chapter 88, part II, subpart C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§88- Distribution of property in a divorce action.

(a) As used in this section:

"Alternate payee" means a spouse or former spouse of a member or retirant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to that member or retirant.

"Benefits payable with respect to a member or retirant" means any payment required to be made to a member or retirant.

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

- (1) Relates to the provision of marital property rights to a spouse or former spouse of a member or retirant; and
- (2) Is made pursuant to a domestic relations law of this State or another state.

"Qualified domestic relations order" means a domestic relations order that:



(1) Creates or recognizes the right of an alternate payee, or assigns to an alternate payee, the right to receive all or a portion of the benefits payable with respect to a member or retirant under the system;

(2) Directs the system to disburse benefits to the alternate payee; and

(3) Meets the requirements of this section.

(b) A qualified domestic relations order shall clearly specify:

(1) The name and last known mailing address, if any, of the member or retirant;

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

(3) The amount or percentage of the member or retirant's benefits to be paid by the system to the alternate payee, or the manner in which the amount or percentage is to be determined;

(4) The number of payments or period to which the order applies; and

(5) That the order applies to the system.



1 (c) If, pursuant to a qualified domestic relations order,
2 an alternate payee is receiving all or a portion of a retirant's
3 pension, annuity, or retirement allowance, the alternate payee
4 shall be entitled to receive a post retirement allowance as
5 provided by section 88-90.

6 (d) A qualified domestic relations order shall not:

7 (1) Purport to require the designation by the member or
8 retirant of a particular person as the recipient of
9 benefits upon the death of the member or retirant;

10 (2) Purport to require the selection of a particular
11 benefit payment plan or option or to limit the benefit
12 payment plans or options from which the member may
13 select;

14 (3) Require any action on the part of the system contrary
15 to its governing laws or plan provisions other than
16 the direct payment of the benefit awarded to an
17 alternate payee;

18 (4) Make the award to the alternate payee an interest that
19 is contingent on any condition other than those
20 conditions resulting in the liability of the system
21 for payment under its plan provisions;



1 (5) Purport to give to someone other than a member or
2 retirant the right to designate a beneficiary or to
3 choose any retirement plan or option available from
4 the system;

5 (6) Attach a lien to any part of amounts payable with
6 respect to a member or retirant;

7 (7) Award an alternate payee a portion of the benefits
8 payable with respect to a member or retirant under the
9 system and purport to require the system to make a
10 lump sum payment of the awarded portion of the
11 benefits to the alternate payee that are not payable
12 in a lump sum;

13 (8) Purport to require the system, without action by the
14 member, to terminate a member from membership or
15 employment, to refund contributions, or to retire a
16 member;

17 (9) Provide any type or form of benefit, or any option,
18 not otherwise provided by the system;

19 (10) Provide increased benefits, determined on the basis of
20 actuarial value; or



1 (11) Require the system to provide benefits or refunds to
2 an alternate payee that are required to be paid to
3 another alternate payee pursuant to an earlier
4 qualified domestic relations order.

5 (e) Upon receipt of a copy of the complaint for divorce,
6 certified by the clerk of the court in which the complaint was
7 filed, and a written request that identifies the member or
8 retirant by name and social security number and states the date
9 of the marriage, the system shall provide the spouse or former
10 spouse of a member or retirant with the same information that
11 would be provided to the member or retirant on the member's or
12 retirant's benefits that is relevant to the spouse's or former
13 spouse's interest in the member's or retirant's benefits.

14 (f) A person who wishes to have the system review a
15 domestic relations order or a proposed domestic relations order
16 to establish whether the order or proposed order meets the
17 requirements for a qualified domestic relations order shall
18 submit to the system a written request for review and a copy of
19 the order or proposed order. If the order has been entered by a
20 court, the copy of the order shall be certified by the clerk of



1 the court that entered the order. The order or proposed order
2 shall be reviewed as provided by this section.

3 The filing fee in effect at the time that an order or
4 proposed order is submitted shall be paid before the order or
5 proposed order is processed or reviewed. In addition, the
6 system shall charge for legal and actuarial services as provided
7 by subsection (s).

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

18 If a domestic relations order is submitted for review after
19 it has been entered by the court and is thereafter amended with
20 the intention that it shall be a qualified domestic relations
21 order, the member, retirant, or the alternate payee shall submit



1 a certified copy of the amended order to the system. The system
2 shall review any amended order that it receives according to the
3 same rules applicable to all other orders.

4 (g) The system shall review an order or proposed order for
5 compliance with the requirements imposed by this section. Upon
6 completion of the review:

7 (1) The system shall not issue a determination that a
8 proposed order is or is not a qualified domestic
9 relations order but shall notify the person who
10 submitted the proposed order, in writing, and may also
11 notify the member or alternate payee whether the
12 proposed order meets the requirements for a qualified
13 domestic relations order, identifying any provisions
14 of this section that the proposed order does not meet;
15 and

16 (2) If the order has been entered by the court, the system
17 shall notify the member or retirant and the alternate
18 payee in writing of the determination that the order
19 is or is not a qualified domestic relations order,
20 identifying any provisions of this section that the
21 order does not meet.



1 (h) During any period not exceeding eighteen months,
2 beginning on the date on which the first payment would be
3 required to be made to the alternate payee under the domestic
4 relations order, in which a domestic relations order is under
5 review to determine whether it is a qualified domestic relations
6 order, or a determination that an order is not qualified is on
7 appeal to the board or to a court, the system shall limit the
8 member's or retirant's rights in the member's or retirant's
9 benefits to the extent the system deems appropriate to protect
10 the largest amount that would be payable to the proposed
11 alternate payee under the system's interpretation of the
12 domestic relations order. Any amounts not paid to the member or
13 retirant during this eighteen-month period shall be separately
14 accounted for. If the domestic relations order is determined to
15 be a qualified domestic relations order before the end of the
16 eighteen-month period, the system shall pay benefits to the
17 member or retirant and the alternate payee in accordance with
18 the qualified domestic relations order and the terms of the
19 plan, including any benefits separately accounted for during the
20 period between the date on which the first payment was to be
21 made under the qualified domestic relations order and the date



1 the determination is made. If the domestic relations order is
2 finally determined not to be a qualified domestic relations
3 order, or if the eighteen-month period expires without a
4 determination that the domestic relations order is a qualified
5 domestic relations order, none of the amounts separately
6 accounted for shall be paid to the alternate payee, and the
7 member or retirant shall be entitled to the member's or
8 retirant's full benefits in accordance with the terms of this
9 chapter, including any benefits that had been separately
10 accounted for and withheld from the member or retirant. If the
11 domestic relations order is determined to be a qualified
12 domestic relations order after the end of the eighteen-month
13 period, or if the system later receives another domestic
14 relations order that is determined to be a qualified domestic
15 relations order, the qualified domestic relations order shall
16 apply prospectively only and shall not affect benefits already
17 paid to the member or retirant.

18 (i) Subject to the limitations of applicable statutes and
19 this section, if a domestic relations order is determined to be
20 a qualified domestic relations order, the system shall pay
21 benefits in accordance with the order at the time benefits



1 become payable to, or in the case of contributions or
2 hypothetical account balances, are withdrawn by, the member or
3 retirant. Any determination that an order is a qualified
4 domestic relations order is voidable or subject to modification
5 if the system determines that the provisions of the order have
6 been changed or that circumstances relevant to the determination
7 have changed.

8 (j) If a member terminates membership in the system by
9 withdrawal of contributions or hypothetical account balance, the
10 system shall pay all or a portion of the amount withdrawn to any
11 alternate payee as directed by a qualified domestic relations
12 order. Payment to any alternate payee pursuant to this
13 subsection shall be in a lump sum. If the former member later
14 resumes membership in the system, the system shall pay to an
15 alternate payee no portion of any benefits payable to the member
16 or retirant that result from the resumption of membership, even
17 if those benefits result in part from reinstatement of service
18 credit initially credited during the marriage.

19 (k) In order to receive credit for all service represented
20 by withdrawn or refunded contributions, a member who, in
21 reinstating service credit by repaying amounts previously



1 withdrawn or refunded, shall repay the entire amount withdrawn
2 or refunded, regardless of whether a portion or all of the
3 amount was paid to an alternate payee.

4 (1) When the system has not yet begun to make payment to
5 an alternate payee under this section and is provided with proof
6 of the death of the alternate payee, benefits payable with
7 respect to the member or retirant shall be paid without regard
8 to the qualified domestic relations order.

9 (m) When the system receives a certified copy of a
10 domestic relations order prior to a member's retirement, and if
11 the domestic relations order is determined to be a qualified
12 domestic relations order, the system, except as provided in
13 subsection (j), shall pay the alternate payee an amount that is
14 the actuarial equivalent of the benefit that is awarded to the
15 alternate payee in the form of an annuity payable in equal
16 monthly installments for the life of the alternate payee.

17 Payment under this subsection shall be determined as
18 follows:

19 (1) As of the date payment to the alternate payee is
20 scheduled to begin, the system shall determine the



1 single life annuity value of the retirement benefit
2 payable to the member;

3 (2) If the portion of the benefit awarded to the alternate
4 payee by the order is not clearly stated as a
5 percentage of the member's maximum retirement
6 allowance, the system shall determine the percentage
7 of the member's maximum retirement allowance that is
8 the equivalent to the benefit awarded to the alternate
9 payee;

10 (3) The single life annuity value determined by the system
11 shall be multiplied by the percentage of the member's
12 maximum retirement allowance awarded to the alternate
13 payee. The result of this calculation shall be
14 actuarially converted to a single life annuity payable
15 to the alternate payee for the lifetime of the
16 alternate payee;

17 (4) The benefit payable to the member shall be reduced by
18 an amount actuarially equivalent to the value of the
19 benefit payable to the alternate payee; payment by the
20 system of the alternate payee's interest as provided
21 by this section shall have no effect on the right of a



1 member to name a beneficiary or the right of a member
2 to choose an optional method of payment upon
3 retirement; and

4 (5) Payment of the alternate payee's interest under this
5 subsection shall be effective as of the same date that
6 benefit payments are effective for the member.

7 (n) When the system receives a certified copy of a
8 domestic relations order subsequent to the member's retirement,
9 and if the domestic relations order is determined to be a
10 qualified domestic relations order, the interest awarded the
11 alternate payee by the qualified domestic relations order shall
12 be paid as a portion of the retirement benefit the retirant is
13 receiving as follows:

14 (1) If the alternate payee is already a named beneficiary
15 under any option elected by the retirant at
16 retirement, the benefit to which the retirant is
17 entitled, without regard to the qualified domestic
18 relations order, shall be apportioned between the
19 retirant and the alternate payee according to the
20 terms of the qualified domestic relations order. Upon
21 the death of the retirant or the alternate payee, the



1 benefit amount to be paid to the survivor shall be the
2 amount required under the option elected by the
3 retirant at retirement, as though no qualified
4 domestic relations order had existed; or

5 (2) If the alternate payee is not a named beneficiary
6 under the option elected by the retirant at
7 retirement, the benefit to which the retirant is
8 entitled without regard to the qualified domestic
9 relations order, shall be apportioned between the
10 retirant and the alternate payee according to the
11 terms of the qualified domestic relations order. If
12 the retirant predeceases the alternate payee, payments
13 to the alternate payee shall cease and payments to the
14 retirant's named beneficiary or beneficiaries shall be
15 made as required under the option elected by the
16 retirant at retirement, as though no qualified
17 domestic relations order had existed. If the
18 alternate payee predeceases the retirant, the benefit
19 then being paid to the retirant shall be increased by
20 the amount of the benefit that was being paid to the
21 alternate payee at time of death.



1 Payment according to the terms of the qualified domestic
2 relations order under this subsection shall commence as of the
3 first day of the month following the date upon which the order
4 is determined to be qualified, unless the parties jointly direct
5 that payment shall commence at a later date.

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

8 (1) Payments to an alternate payee pursuant to a qualified
9 domestic relations order shall not be suspended; and

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

13 (p) For the purpose of calculating earnings limitations
14 for retirants who have been restored to service, the retirant's
15 maximum retirement allowance shall be considered to be the
16 amount that would have been paid if there had not been any
17 qualified domestic relations order applicable to the retirant.

18 (q) A court does not have jurisdiction over the system
19 with respect to a divorce or other domestic relations action in
20 which an alternate payee's right to receive all or a portion of
21 the benefits payable to a member or retirant is created or



1 established. A determination by the system that a domestic
2 relations order is not a qualified domestic relations order
3 shall be subject to review as provided in chapter 91 and the
4 system's rules relating to contested cases. The system shall
5 not be made party to any other judicial proceedings except as
6 provided in this subsection. A party to any action who attempts
7 to make the system a party to the action contrary to this
8 subsection shall be liable to the system for the system's costs
9 and attorney's fees in the action, including attorneys' fee and
10 costs for obtaining a dismissal.

11 (r) If a member or retirant, or the beneficiary or estate
12 of either, receives the amount of any distribution that should
13 have been paid by the system to the spouse or former spouse of
14 the member or retirant, the recipient shall be designated a
15 constructive trustee for the amount received and shall
16 immediately transmit that amount to the person to whom the
17 amount should have been paid. If a spouse or former spouse of a
18 member or retirant, or the estate, heirs, or legatees of the
19 spouse or former spouse receives any amount of a distribution
20 that should have been paid to a member or retirant, or the
21 estate, heirs, or legatees of either, the recipient shall be



1 designated a constructive trustee for the amount received and
2 shall immediately transmit that amount to the member or retirant
3 or other person to whom the amount should have been paid. If a
4 member, retirant, or the beneficiary, estate, heirs, or legatees
5 of either, receives any amount that should not have been paid by
6 the system, the recipient shall be designated a constructive
7 trustee for the amount received and shall immediately transmit
8 that amount to the system. If an alternate payee or the estate,
9 heirs, or legatee of the alternate payee, receives any amount
10 that should not have been paid by the system, the recipient
11 shall be designated a constructive trustee for the amount
12 received and shall immediately transmit that amount to the
13 system.

14 (s) The board shall adopt rules in accordance with chapter
15 91, and adopt forms as it deems necessary to effectuate this
16 section. The board, by motion at a duly noticed meeting of the
17 board, may establish and revise from time to time:

18 (1) A filing fee for processing and review of domestic
19 relations orders and proposed domestic relations
20 orders for the purposes of this section;



- 1 (2) A schedule of charges for legal and actuarial services
2 incurred by the system in the review and processing of
3 domestic relations orders and proposed qualified
4 domestic relations orders for the purposes of this
5 section; and
- 6 (3) A required form or forms for qualified domestic
7 relations orders."

8 SECTION 5. Section 88-91, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§88-91 Exemption from taxation and execution.** The right
11 of a person to a pension, an annuity or a retirement allowance,
12 to the return of contributions, the pension, annuity or
13 retirement allowance itself, any optional benefit or death
14 benefit, any other right accrued or accruing to any person under
15 this part and the moneys in the various funds created under this
16 part are exempted from any tax of the State and, except as
17 provided in [section] sections 88-92 [provided,] and 88-____,
18 shall not be subject to execution, garnishment or any other
19 process and shall be unassignable except as in this part
20 specifically provided."



1 SECTION 6. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2016-2017 for
4 one full-time equivalent (1.00 FTE) claims examiner position.

5 The sum appropriated shall be expended by the employees'
6 retirement system for the purposes of this Act.

7 SECTION 7. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so
9 much thereof as may be necessary for fiscal year 2016-2017 for
10 the planning and expenditures necessary for the implementation
11 of this Act.

12 The sum appropriated shall be expended by the employees'
13 retirement system for the purposes of this Act.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on July 1, 2016;
17 provided that sections 4 and 5 shall take effect on January 1,
18 2018.

19 INTRODUCED BY:

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V. D. D. J. J. 22

S.B. NO. 2346

Report Title:

ERS; Investment Personnel; Domestic Relations Order

Description:

Expands the types of investment personnel that may be appointed by the ERS. Requires ERS to make direct payments to a spouse of a system member or retirant pursuant to a qualified domestic relations order.

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

