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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. Act 263, Session Laws of Hawaii 2016, is  
2 amended as follows:

3 1. By amending section 2 to read:

4 "SECTION 2. Chapter 88, part II, subpart C, Hawaii Revised  
5 Statutes, is amended by adding a new section to be appropriately  
6 designated and to read as follows:

7 "**§88- Distribution of property in a divorce action.** (a)

8 As used in this section:

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

15 "Benefits payable with respect to a member, a former member  
16 with vested benefit status, or retirant" means any payment



1 required to be made to a member, a former member with vested  
2 benefit status, or retirant.

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

6 (1) Relates to the provision of marital property rights to  
7 a spouse or former spouse of a member, a former member  
8 with vested benefit status, or retirant; and

9 (2) Is made pursuant to a domestic relations law of this  
10 State or another state.

11 "Hawaii domestic relations order" means a domestic  
12 relations order that:

13 (1) Creates or recognizes the right of an alternate payee,  
14 or assigns to an alternate payee, the right to receive  
15 all or a portion of the benefits payable with respect  
16 to a member, a former member with vested benefit  
17 status, or retirant under the system;

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

20 (3) Meets the requirements of this section.



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

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

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

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

13 [~~(4)~~] ~~The number of payments or period to which the order~~  
14 ~~applies; and~~

15 ~~(5)]~~ (4) That the order applies to the system.

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

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



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



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

1 (e) Upon receipt of a copy of the complaint for divorce,  
2 certified by the clerk of the court in which the complaint was  
3 filed, and a written request that identifies the member, former  
4 member with vested benefit status, or retirant by name and  
5 social security number and states the date of the marriage, the  
6 system shall provide the spouse or former spouse of a member,  
7 former member with vested benefit status, or retirant with the  
8 same information that would be provided to the member, former  
9 member with vested benefit status, or retirant on the member's,  
10 former member's with vested benefit status, or retirant's  
11 benefits that is relevant to the spouse's or former spouse's  
12 interest in the member's, former member's with vested benefit  
13 status, 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 Hawaii domestic relations order shall submit  
18 to the system a written request for review and a copy of the  
19 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 Hawaii 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 Hawaii domestic relations  
21 order, the member, former member with vested benefit status,



1 retirant, or the alternate payee shall submit a certified copy  
2 of the amended order to the system. The system shall review any  
3 amended order that it receives according to the same rules  
4 applicable to all other orders.

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

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

17 (2) If the order has been entered by the court, the system  
18 shall notify the member, former member with vested  
19 benefit status, or retirant and the alternate payee in  
20 writing of the determination that the order is or is  
21 not a Hawaii domestic relations order, identifying any



1 provisions of this section that the order does not  
2 meet.

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



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



1 domestic relations order shall apply prospectively only and  
2 shall not affect benefits already paid to the member, former  
3 member with vested benefit status, or retirant.

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

15 (j) If a member terminates membership in the system by  
16 withdrawal of contributions or hypothetical account balance, the  
17 system shall pay all or a portion of the amount withdrawn to any  
18 alternate payee as directed by a Hawaii domestic relations  
19 order. Payment to any alternate payee pursuant to this  
20 subsection shall be in a lump sum. If the former member later  
21 resumes membership in the system, the system shall pay to an



1 alternate payee no portion of any benefits payable to the member  
2 or retirant that result from the resumption of membership, even  
3 if those benefits result in part from reinstatement of service  
4 credit initially credited during the marriage.

5 (k) In order to receive credit for all service represented  
6 by withdrawn or refunded contributions, a member, in reinstating  
7 service credit by repaying amounts previously withdrawn or  
8 refunded, shall repay the entire amount withdrawn or refunded,  
9 regardless of whether a portion or all of the amount was paid to  
10 an alternate payee.

11 (l) When the system has not yet begun to make payment to  
12 an alternate payee under this section and is provided with proof  
13 of the death of the alternate payee, benefits payable with  
14 respect to the member, former member with vested benefit status,  
15 or retirant shall be paid without regard to the Hawaii domestic  
16 relations order.

17 (m) When the system receives a certified copy of a  
18 domestic relations order prior to a member's retirement, and if  
19 the domestic relations order is determined to be a Hawaii  
20 domestic relations order, the system, except as provided in  
21 subsection (j), shall pay the alternate payee [~~an amount that is~~



1 ~~the actuarial equivalent of the benefit that is awarded to the~~  
2 ~~alternate payee in the form of an annuity payable in equal~~  
3 ~~monthly installments for the life of the alternate payee.~~

4 ~~Payment under this subsection shall be determined as~~  
5 ~~follows:~~

- 6 ~~(1) As of the date payment to the alternate payee is~~  
7 ~~scheduled to begin, the system shall determine the~~  
8 ~~single life annuity value of the retirement benefit~~  
9 ~~payable to the member;~~
- 10 ~~(2) If the portion of the benefit awarded to the alternate~~  
11 ~~payee by the order is not clearly stated as a~~  
12 ~~percentage of the member's maximum retirement~~  
13 ~~allowance, the system shall determine the percentage~~  
14 ~~of the member's maximum retirement allowance that is~~  
15 ~~the equivalent to the benefit awarded to the alternate~~  
16 ~~payee;~~
- 17 ~~(3) The single life annuity value determined by the system~~  
18 ~~shall be multiplied by the percentage of the member's~~  
19 ~~maximum retirement allowance awarded to the alternate~~  
20 ~~payee. The result of this calculation shall be~~  
21 ~~actuarially converted to a single life annuity payable~~



1 ~~to the alternate payee for the lifetime of the~~  
2 ~~alternate payee;~~

3 ~~(4) The benefit payable to the member shall be reduced by~~  
4 ~~an amount actuarially equivalent to the value of the~~  
5 ~~benefit payable to the alternate payee; payment by the~~  
6 ~~system of the alternate payee's interest as provided~~  
7 ~~by this section shall have no effect on the right of a~~  
8 ~~member to name a beneficiary or the right of a member~~  
9 ~~to choose an optional method of payment upon~~  
10 ~~retirement; and]~~

11 a portion of the retirement benefit the member or former member  
12 with vested benefit status is expected to receive as follows:

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



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



1        [~~5~~] Payment of the alternate payee's interest under this  
2 subsection shall be effective as of the same date that benefit  
3 payments are effective for the member.

4        (n) When the system receives a certified copy of a  
5 domestic relations order subsequent to the member's or former  
6 member's with vested benefit status retirement, and if the  
7 domestic relations order is determined to be a Hawaii domestic  
8 relations order, the interest awarded to the alternate payee by  
9 the Hawaii domestic relations order shall be paid as a portion  
10 of the retirement benefit the retirant is receiving as follows:

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



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

20          Payment according to the terms of the Hawaii domestic  
21          relations order under this subsection shall commence as of the



1 first day of the month following the date upon which the order  
2 is determined to be qualified, unless the parties jointly direct  
3 that payment shall commence at a later date.

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

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

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

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

16 (q) A court does not have jurisdiction over the system  
17 with respect to a divorce or other domestic relations action in  
18 which an alternate payee's right to receive all or a portion of  
19 the benefits payable to a member, former member with vested  
20 benefit status, or retirant is created or established. A  
21 determination by the system that a domestic relations order is



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

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



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

17 (s) The board shall adopt rules in accordance with chapter  
18 91, and adopt forms as it deems necessary to effectuate this  
19 section. The board, by motion at a duly noticed meeting of the  
20 board, may establish and revise from time to time:



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

4 (2) A schedule of charges for legal and actuarial services  
5 incurred by the system in the review and processing of  
6 domestic relations orders and proposed Hawaii domestic  
7 relations orders for the purposes of this section; and

8 (3) A required form or forms for Hawaii domestic relations  
9 orders." "

10 2. By amending section 5 to read:

11 "SECTION 5. This Act shall take effect on July 1, [~~2018-~~  
12 2020."]

13 SECTION 2. There is appropriated out of the expense fund  
14 of the employees' retirement system the sum of \$ or so  
15 much thereof as may be necessary for fiscal year 2018-2019 for  
16 computer and office automation to support the implementation of  
17 this Act.

18 The sum appropriated shall be expended by the department of  
19 budget and finance for the purposes of this Act.

20 SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on January 1, 2050.



**Report Title:**

ERS; Qualified Domestic Relations Orders; Appropriation

**Description:**

Amends Act 263, SLH 2016 to: allow the Employees' Retirement System to make direct payments to spouses or former spouses of ERS members or retirants to include former spouses or former members with vested benefit status when the former spouse has been awarded all or a portion of ERS retirement benefits as ordered or decreed in a domestic relations proceeding; and make the ERS benefits payable to an alternate payee. Delays implementation of Act 263, SLH 2016, to 7/1/2020. Makes an appropriation. Effective 1/1/2050. (SD2)

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

