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

3           "~~[§88-74.7]~~ **Commencement of benefits on required**  
4 **beginning date.** (a) The purpose of this section is to provide  
5 for distribution of benefits in accordance with a reasonable and  
6 good faith interpretation of section 401(a)(9) of the Internal  
7 Revenue Code. Section 401(a)(9) of the Internal Revenue Code  
8 requires that the "entire interest" of a member be distributed  
9 or that distribution of the member's benefits begin no later  
10 than the member's "required beginning date".

11           (b) For purposes of this section, "required beginning  
12 date" means April 1 of the calendar year following the calendar  
13 year in which a member terminates service or attains age seventy  
14 and one-half, whichever is later.

15           (c) ~~[A member]~~ Subject to the suspension and forfeiture  
16 provisions of this section and sections 88-96 and 88-341, a  
17 member's or former member's accumulated contributions or



1 hypothetical account balance, as defined in section 88-311,  
2 shall be paid to the member or former member, or payment of the  
3 benefits payable under part II, VII, or VIII of this chapter  
4 shall commence, no later than the member's or former member's  
5 required beginning date. The payment or payments shall be made  
6 on, or beginning no later than, the member's or former member's  
7 required beginning date even if the member or former member does  
8 not apply for payment or file a retirement application.

9 (d) ~~[If]~~ Subject to the suspension and forfeiture  
10 provisions of this section and sections 88-96 and 88-341, if by  
11 a member's or former member's required beginning date:

12 (1) The ~~[member]~~ member's or former member's accumulated  
13 contributions or hypothetical account balance, as  
14 defined in section 88-311, are not paid to the member  
15 or former member; or

16 (2) Payment of the benefits payable under part II, VII, or  
17 VIII of this chapter do not commence,  
18 the system shall pay the service retirement benefits for which  
19 the member or former member is eligible pursuant to part II,  
20 VII, or VIII of this chapter, as applicable, retroactive to the



1 member's or former member's required beginning date with regular  
2 interest.

3 (e) If the system does not receive a written election from  
4 the member or former member under section 88-83, 88-283, or  
5 88-333, as applicable, prior to the later of the member's or  
6 former member's required beginning date or sixty days following  
7 the receipt by the member or former member of notice from the  
8 system that the member or former member is required to make an  
9 election, the following election shall be deemed to have been  
10 made as of the ~~[member]~~ member's or former member's required  
11 beginning date:

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

16 (2) If the member or former member is married or has a  
17 reciprocal beneficiary, the member or former member  
18 shall be deemed to have elected option 3 under section  
19 88-83, or option A under section 88-283, as  
20 applicable, and to have designated the member's or



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

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



- 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~~] member's or former  
18          member's marital or reciprocal beneficiary status, it  
19          shall be presumed that the member or former member is  
20          married and that the spouse of the member or former



1 member is forty years younger than the member or  
2 former member.

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



1 converted to the maximum retirement allowance retroactive to the  
2 member's or former member's required beginning date. The amount  
3 of any underpayment resulting from recomputing the benefit shall  
4 bear regular interest. If recomputing the benefit results in an  
5 overpayment, payments shall be adjusted so that the actuarial  
6 equivalent of the benefit to which the member or former member  
7 was correctly entitled shall be paid.

8 (h) If the system cannot locate the member or former  
9 member, ~~[the member's or former member's benefit shall be  
10 payable only until the end of the member's or former member's  
11 life expectancy, as determined at the member's or former  
12 member's required beginning date. If the member or former  
13 member has not by that time made a claim for benefits, the  
14 member or former member shall be deemed to be deceased at that  
15 time. Interest under subsection (d) shall cease on benefits  
16 presumed to be abandoned property, pursuant to part I of chapter  
17 523A, upon payment of the property to the administrator under  
18 part I of chapter 523A.]~~ by April 1 of the year following the  
19 member's or former member's required beginning date, the  
20 member's or former member's benefit, including accumulated  
21 contributions, hypothetical account balance, and payment of the



1 benefits payable under part II, VII, or VIII of this chapter, if  
2 any, shall be forfeited to the system and shall not escheat  
3 under the laws of any state; provided that the benefit forfeited  
4 shall be restored if the member or former member makes a proper  
5 application to the system for restoration of the benefit. Any  
6 benefit that is restored shall be without interest, earnings, or  
7 losses for the time period that the benefit was forfeited. All  
8 applications for restoration of a forfeited benefit shall be in  
9 a form satisfactory to the system.

10 (i) If after commencing the payment of benefits payable  
11 under part II, VII, or VIII of this chapter, the system cannot  
12 locate the retirant, beneficiary, or other person or entity  
13 entitled to payment of those benefits, the further payment of  
14 those benefits shall be forfeited to the system and shall not  
15 escheat under the laws of any state; provided that the benefit  
16 forfeited shall be restored if the retirant, beneficiary, or  
17 other person or entity entitled to payment of the forfeited  
18 benefit makes a proper application to the system for restoration  
19 of the benefit. Any benefit that is restored shall be without  
20 interest, earnings, or losses for the time period that the



1 benefit was forfeited. All applications for restoration of a  
2 forfeited benefit shall be in a form satisfactory to the system.

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

5 SECTION 2. Section 88-96, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§88-96 Rights of members separated from service.** (a)

8 Any member who ceases to be an employee and who became a member  
9 before July 1, 2012, and has fewer than five years of credited  
10 service, excluding unused sick leave, or who becomes a member  
11 after June 30, 2012, and has fewer than ten years of credited  
12 service, excluding unused sick leave, shall, upon application to  
13 the board, be paid all of the member's accumulated contributions  
14 and the member's membership shall thereupon terminate and all  
15 credited service shall be forfeited; provided that a member  
16 shall not be paid the member's accumulated contributions:

17 (1) If the member becomes an employee again within fifteen  
18 calendar days from the date the member ceased to be an  
19 employee; or



1           (2) If, at the time the application for return of  
2           accumulated contributions is received by the board,  
3           the member has become an employee again.

4           Regular interest shall be credited to the former employee's  
5           account until the former employee's accumulated contributions  
6           are returned to the former employee; provided that the former  
7           employee's membership shall not continue after the fourth full  
8           year following the calendar year in which the individual's  
9           employment terminates. Upon termination of the former  
10          employee's membership, the former employee's credited service  
11          shall be forfeited and, if the former employee's accumulated  
12          contributions are \$1,000 or less at the time of distribution,  
13          the system shall return the former employee's contributions to  
14          the former employee. If the former employee does not become an  
15          employee again and if the former employee's accumulated  
16          contributions have not been withdrawn by the former employee or  
17          previously returned by the system to the former employee, the  
18          system shall return the former employee's accumulated  
19          contributions to the former employee as soon as possible after  
20          the later of: (A) the former employee attaining age sixty-two;  
21          or (B) the termination of the former employee's membership.



1           (b) Any member who ceases to be an employee and who became  
2 a member before July 1, 2012, and has more than five years of  
3 credited service, excluding unused sick leave, or who becomes a  
4 member after June 30, 2012, and has more than ten years of  
5 credited service, excluding unused sick leave, shall, upon  
6 application to the board, be paid all of the member's  
7 accumulated contributions and thereupon the former employee's  
8 membership shall terminate and all credited service shall be  
9 forfeited; provided that the member shall not be paid the  
10 member's accumulated contributions:

11           (1) If the member becomes an employee again within fifteen  
12 calendar days from the date the member ceased to be an  
13 employee; or

14           (2) If, at the time the application for return of the  
15 member's accumulated contributions is received by the  
16 board, the member has become an employee again.

17           If the contributions are not withdrawn by the former  
18 employee within four calendar years following the calendar year  
19 in which the former employee's employment terminates, the former  
20 employee shall have established vested benefit status and shall  
21 be eligible for the service retirement benefit in effect at the



1 time of the former employee's retirement, payable in accordance  
2 with this chapter; provided that if the former employee  
3 withdraws the former employee's accumulated contributions, the  
4 former employee's vested benefit status shall terminate and all  
5 credited service shall be forfeited.

6 (c) ~~[In the case of the death of any former member after~~  
7 ~~the termination of service, the former member's accumulated~~  
8 ~~contributions shall be payable to the former member's estate or~~  
9 ~~to such person as the former member has nominated by written~~  
10 ~~designation duly executed and filed with the board.] If the~~  
11 system cannot locate a former employee at the time the former  
12 employee's accumulated contributions are to be returned under  
13 this section, the system's obligation to return the accumulated  
14 contributions shall be suspended and regular interest shall  
15 cease to be credited to the former employee's account. If the  
16 system cannot locate the former employee by April 1 of the  
17 calendar year following the calendar year in which the system's  
18 obligation to return the accumulated contributions was  
19 suspended, the accumulated contributions and interest on the  
20 former employee's account shall be forfeited to the system;  
21 provided that the accumulated contributions and interest



1 forfeited shall be restored if the former employee makes a  
2 proper application to the system for restoration of the benefit.  
3 Any contributions and interest that are restored under this  
4 subsection shall be without interest, earnings, or losses for  
5 the time period that the contributions and interest were  
6 forfeited. All applications for restoration shall be in a form  
7 satisfactory to the system.

8 (d) In the case of the death after the termination of  
9 service and prior to retirement of a former member who has not  
10 withdrawn the former member's contributions, the former member's  
11 accumulated contributions shall upon application be paid to the  
12 former member's estate or to such person as the former member  
13 has nominated by written designation duly executed and filed  
14 with the board."

15 SECTION 3. Section 88-341, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 **"§88-341 Rights of members separated from service. (a)**  
18 Any class H member who ceases to be an employee and who became a  
19 member before July 1, 2012, and has fewer than five years of  
20 credited service, excluding unused sick leave, or who becomes a  
21 member after June 30, 2012, and has fewer than ten years of



1 credited service, excluding unused sick leave, shall, upon  
2 application to the board, be paid all of the former employee's  
3 accumulated contributions, and the former employee's membership  
4 shall thereupon terminate and all credited service shall be  
5 forfeited; provided that an individual shall not be paid the  
6 individual's accumulated contributions if either:

7 (1) The individual becomes an employee again within  
8 fifteen calendar days from the date the individual  
9 ceased to be an employee; or

10 (2) At the time the application for return of accumulated  
11 contributions is received by the board, the individual  
12 has become an employee again.

13 Regular interest shall be credited to the former employee's  
14 account until the former employee's accumulated contributions  
15 are withdrawn; provided that the former employee's membership  
16 shall not continue after the fourth full year following the  
17 calendar year in which the individual's employment terminates.  
18 If the former employee does not become an employee again and has  
19 not withdrawn the former employee's accumulated contributions,  
20 the system shall return the former employee's accumulated  
21 contributions to the former employee as soon as possible after



1 the later of: (A) the former employee attaining age sixty-two;  
2 or (B) the termination of the former employee's membership.

3 (b) Any class H member who ceases to be an employee and  
4 who became a member before July 1, 2012, and has more than five  
5 years of credited service, excluding unused sick leave, or who  
6 becomes a member after June 30, 2012, and has more than ten  
7 years of credited service, excluding unused sick leave, shall,  
8 upon application to the board, be paid an amount equal to the  
9 former employee's hypothetical account balance and the former  
10 employee's membership shall thereupon terminate and all credited  
11 service shall be forfeited; provided that the individual shall  
12 not be paid the individual's hypothetical account balance if  
13 either:

- 14 (1) The individual becomes an employee again within  
15 fifteen calendar days from the date the individual  
16 ceased to be an employee; or
- 17 (2) At the time the application for payment of the  
18 individual's hypothetical account balance is received  
19 by the board, the individual has become an employee  
20 again.



1           If the contributions are not withdrawn by the former  
2 employee after the individual's employment terminates, the  
3 former employee shall have vested benefit status and shall be  
4 eligible for the service retirement benefit in effect at the  
5 time of the former employee's retirement, payable in accordance  
6 with this chapter.

7           ~~(c) [In case of the death after the termination of service  
8 and prior to retirement of any former class II member who has not  
9 withdrawn the member's contributions, there shall be paid to the  
10 former member's estate or to the person that the former member  
11 has nominated by written designation duly executed and filed  
12 with the board.]~~

13           ~~(1) The former member's accumulated contributions, if the  
14 former member became a member before July 1, 2015, and  
15 had fewer than five years of credited service at the  
16 time of death or if the former member became a member  
17 after June 30, 2015, and had fewer than ten years of  
18 credited service at the time of death; or~~

19           ~~(2) The former member's hypothetical account balance, if  
20 the former member became a member before July 1, 2015,  
21 and had five or more years of credited service at the~~



1 ~~time of death or if the former member became a member~~  
2 ~~after June 30, 2015, and had ten or more years of~~  
3 ~~credited service at the time of death.]~~ If the system  
4 cannot locate a former employee at the time the former  
5 employee's accumulated contributions are to be  
6 returned under this section, the system's obligation  
7 to return the accumulated contributions shall be  
8 suspended and regular interest shall cease to be  
9 credited to the former employee's account. If the  
10 system cannot locate the former employee by April 1 of  
11 the calendar year following the calendar year in which  
12 the system's obligation to return the accumulated  
13 contributions was suspended, the accumulated  
14 contributions and interest on the former employee's  
15 account shall be forfeited to the system; provided  
16 that the accumulated contributions and interest  
17 forfeited shall be restored if the former employee  
18 makes a proper application to the system for  
19 restoration of the benefit. Any contributions and  
20 interest that are restored under this subsection shall  
21 be without interest, earnings, or losses for the time



1 period that the contributions and interest were  
2 forfeited. All applications for restoration shall be  
3 in a form satisfactory to the system.

4 (d) In the case of the death after termination of service  
5 and prior to retirement of any former class H member who has not  
6 withdrawn the member's contributions, upon application, there  
7 shall be paid to the former member's estate or to the person  
8 that the former member has nominated by written designation duly  
9 executed and filed with the board:

10 (1) The former member's accumulated contributions, if the  
11 former member became a member before July 1, 2015, and  
12 had fewer than five years of credited service at the  
13 time of death or if the former member became a member  
14 after June 30, 2015, and had fewer than ten years of  
15 credited service at the time of death; or

16 (2) The former member's hypothetical account balance, if  
17 the former member became a member before July 1, 2015,  
18 and had five or more years of credited service at the  
19 time of death or if the former member became a member  
20 after June 30, 2015, and had ten or more years of  
21 credited service at the time of death."



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

3 SECTION 5. This Act shall take effect upon its approval.

4



**Report Title:**

Employees' Retirement System; Unclaimed Property

**Description:**

Preserves the Employees' Retirement System's use and control of unclaimed member contributions and benefit payments. (SD1)

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

