

JAN 24 2018

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 by amending section 2 to read as follows:

3 "Alternate payee" means a spouse or former spouse of a
4 member, a former member who has vested benefit status or
5 retirant who is recognized by a domestic relations order as
6 having a right to receive all or a portion of the benefits
7 payable by the system with respect to that member, former member
8 with vested benefit status or retirant.

9 "Benefits payable with respect to a member, a former
10 member with vested benefit status or retirant" means any payment
11 required to be made to a member, a former member with vested
12 benefit status or retirant.

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

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

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

3 "Hawaii domestic relations order" means a domestic
4 relations order that:

5 (1) Creates or recognizes the right of an alternate
6 payee, or assigns to an alternate payee, the right to receive
7 all or a portion of the benefits payable with respect to a
8 member, a former member with vested benefit status or retirant
9 under the system;

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

12 (3) Meets the requirements of this section.

13 (b) A Hawaii domestic relations order shall clearly
14 specify:

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

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

20 (3) The amount or percentage of the member, former
21 member with vested benefit status or retirant's benefits to be
22 paid by the system to the alternate payee, or the manner in
23 which the amount or percentage is to be determined; and

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

3 (5) That the order applies to the system.

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

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

10 (1) Purport to require the designation by the member,
11 former member with vested benefit status or retirant of a
12 particular person as the recipient of benefits upon the death of
13 the member, former member with vested benefit status or
14 retirant;

15 (2) Purport to require the selection of a particular
16 benefit payment plan or option or to limit the benefit payment
17 plans or options from which the member, or former member with
18 vested benefit status may select;

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

22 (4) Make the award to the alternate payee an interest
23 that is contingent on any condition other than those conditions

1 resulting in the liability of the system for payment under its
2 plan provisions;

3 (5) Purport to give to someone other than a member,
4 former member with vested benefit status or retirant the right
5 to designate a beneficiary or to choose any retirement plan or
6 option available from the system;

7 (6) Attach a lien to any part of amounts payable with
8 respect to a member, former member with vested benefit status or
9 retirant;

10 (7) Award an alternate payee a portion of the
11 benefits payable with respect to a member, former member with
12 vested benefit status or retirant under the system and purport
13 to require the system to make a lump sum payment of the awarded
14 portion of the benefits to the alternate payee that are not
15 payable in a lump sum;

16 (8) Purport to require the system, without action by
17 the member, to terminate a member from membership or employment,
18 to refund contributions, or to retire a member, or former member
19 with vested benefit status;

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

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

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

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

18 (f) A person who wishes to have the system review a
19 domestic relations order or a proposed domestic relations order
20 to establish whether the order or proposed order meets the
21 requirements for a Hawaii domestic relations order shall submit
22 to the system a written request for review and a copy of the
23 order or proposed order. If the order has been entered by a

1 court, the copy of the order shall be certified by the clerk of
2 the court that entered the order. The order or proposed order
3 shall be reviewed as provided by this section.

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

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

19 If a domestic relations order is submitted for review
20 after it has been entered by the court and is thereafter amended
21 with the intention that it shall be a Hawaii domestic relations
22 order, the member, former member with vested benefit status,
23 retirant, or the alternate payee shall submit a certified copy

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

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

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

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

21 (h) During any period not exceeding eighteen months,
22 beginning on the date on which the first payment would be
23 required to be made to the alternate payee under the domestic

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

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

18 (i) Subject to the limitations of applicable statutes
19 and this section, if a domestic relations order is determined to
20 be a Hawaii domestic relations order, the system shall pay
21 benefits in accordance with the order at the time benefits
22 become payable to, or in the case of contributions or
23 hypothetical account balances, are withdrawn by, the member,

1 former member with vested benefit status or retirant. Any
2 determination that an order is a Hawaii domestic relations order
3 is voidable or subject to modification if the system determines
4 that the provisions of the order have been changed or that
5 circumstances relevant to the determination have changed.

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

17 (k) In order to receive credit for all service
18 represented by withdrawn or refunded contributions, a member, in
19 reinstating service credit by repaying amounts previously
20 withdrawn or refunded, shall repay the entire amount withdrawn
21 or refunded, regardless of whether a portion or all of the
22 amount was paid to an alternate payee.

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

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

15 ~~Payment under this subsection shall be determined as~~
16 ~~follows:~~

17 ~~(1) As of the date payment to the alternate payee is~~
18 ~~scheduled to begin, the system shall determine the single life~~
19 ~~annuity value of the retirement benefit payable to the member,~~

20 ~~(2) If the portion of the benefit awarded to the~~
21 ~~alternate payee by the order is not clearly stated as a~~
22 ~~percentage of the member's maximum retirement allowance, the~~
23 ~~system shall determine the percentage of the member's maximum~~

1 ~~retirement allowance that is the equivalent to the benefit~~
2 ~~awarded to the alternate payee;~~

3 ~~(3) The single life annuity value determined by the~~
4 ~~system shall be multiplied by the percentage of the member's~~
5 ~~maximum retirement allowance awarded to the alternate~~
6 ~~payee. The result of this calculation shall be actuarially~~
7 ~~converted to a single life annuity payable to the alternate~~
8 ~~payee for the lifetime of the alternate payee;~~

9 ~~(4) The benefit payable to the member shall be~~
10 ~~reduced by an amount actuarially equivalent to the value of the~~
11 ~~benefit payable to the alternate payee; payment by the system of~~
12 ~~the alternate payee's interest as provided by this section shall~~
13 ~~have no effect on the right of a member to name a beneficiary or~~
14 ~~the right of a member to choose an optional method of payment~~
15 ~~upon retirement; and] a portion of the retirement benefit the~~
16 ~~member or former member with vested benefit status is expected~~
17 ~~to receive as follows:~~

18 ~~(1) If the alternate payee will be named beneficiary~~
19 ~~under any option elected by the retirant at retirement, the~~
20 ~~benefit to which the retirant is entitled, without regard to the~~
21 ~~Hawaii domestic relations order, shall be apportioned between~~
22 ~~the retirant and the alternate payee according to the terms of~~
23 ~~the Hawaii domestic relations order. Upon the death of the~~

retirant or the alternate payee, the benefit amount to be paid
to the survivor shall be the amount required under the option
elected by the retirant at retirement, as though no Hawaii
domestic relations order had existed; or

(2) If the alternate payee will not be a named
beneficiary under the option elected by the retirant at
retirement, the benefit to which the retirant is entitled
without regard to the Hawaii domestic relations order, shall be
apportioned between the retirant and the alternate payee
according to the terms of the Hawaii domestic relations
order. If the retirant predeceases the alternate payee,
payments to the alternate payee shall cease and payments to the
retirant's named beneficiary or beneficiaries shall be made as
required under the option elected by the retirant at retirement,
as though no Hawaii domestic relations order had existed. If
the alternate payee predeceases the retirant, the benefit then
being paid to the retirant shall be increased by the amount of
the benefit that was being paid to the alternate payee at time
of death.

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

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

8 (1) If the alternate payee is already a named
9 beneficiary under any option elected by the retirant at
10 retirement, the benefit to which the retirant is entitled,
11 without regard to the Hawaii domestic relations order, shall be
12 apportioned between the retirant and the alternate payee
13 according to the terms of the Hawaii domestic relations
14 order. Upon the death of the retirant or the alternate payee,
15 the benefit amount to be paid to the survivor shall be the
16 amount required under the option elected by the retirant at
17 retirement, as though no Hawaii domestic relations order had
18 existed; or

19 (2) If the alternate payee is not a named beneficiary
20 under the option elected by the retirant at retirement, the
21 benefit to which the retirant is entitled without regard to the
22 Hawaii domestic relations order, shall be apportioned between
23 the retirant and the alternate payee according to the terms of

1 the Hawaii domestic relations order. If the retirant
2 predeceases the alternate payee, payments to the alternate payee
3 shall cease and payments to the retirant's named beneficiary or
4 beneficiaries shall be made as required under the option elected
5 by the retirant at retirement, as though no Hawaii domestic
6 relations order had existed. If the alternate payee predeceases
7 the retirant, the benefit then being paid to the retirant shall
8 be increased by the amount of the benefit that was being paid to
9 the alternate payee at time of death.

10 Payment according to the terms of the Hawaii domestic
11 relations order under this subsection shall commence as of the
12 first day of the month following the date upon which the order
13 is determined to be qualified, unless the parties jointly direct
14 that payment shall commence at a later date.

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

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

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

22 (p) For the purpose of calculating earnings
23 limitations for retirants who have been restored to service, the

1 retirant's maximum retirement allowance shall be considered to
2 be the amount that would have been paid if there had not been
3 any Hawaii domestic relations order applicable to the retirant.

4 (q) A court does not have jurisdiction over the
5 system with respect to a divorce or other domestic relations
6 action in which an alternate payee's right to receive all or a
7 portion of the benefits payable to a member, former member with
8 vested benefit status or retirant is created or established. A
9 determination by the system that a domestic relations order is
10 not a Hawaii domestic relations order shall be subject to review
11 as provided in chapter 91 and the system's rules relating to
12 contested cases. The system shall not be made party to any
13 other judicial proceedings except as provided in this
14 subsection. A party to any action who attempts to make the
15 system a party to the action contrary to this subsection shall
16 be liable to the system for the system's costs and attorney's
17 fees in the action, including attorneys' fee and costs for
18 obtaining a dismissal.

19 (r) If a member, former member with vested benefit
20 status or retirant, or the beneficiary or estate of ~~[either]~~any,
21 receives the amount of any distribution that should have been
22 paid by the system to the spouse or former spouse of the member,
23 former member with vested benefit status or retirant, the

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

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

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

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

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

SECTION 2. There is appropriated out of the expense fund of the employees' retirement system the sum of \$ or so much thereof as may be necessary for fiscal year 2018-2019 for the planning and expenditures necessary for the implementation of this Act.

SECTION 3. Act 263, Session Laws of Hawaii 2016, is amended by repealing section 5.

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

SECTION 4. This Act shall take effect on July 1, 2020.

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INTRODUCED BY:

J.M.P.M.

3

BY REQUEST

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Report Title:

Employees' Retirement System; Hawaii Domestic Relations Orders.

Description:

Amends the effective date for the implementation of Hawaii Domestic Relations Orders by the Employees' Retirement System.

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 QUALIFIED DOMESTIC RELATIONS ORDERS.

PURPOSE: To amend the authorization and requirement of the Employees' Retirement System ("ERS") to make direct payment to the spouse or former spouse of an ERS member or retirant to include the spouse or former spouse of former members with vested benefit status when the spouse or former spouse has been awarded all or a portion of ERS retirement benefits as order or decreed by a court in a domestic relations proceeding. In addition, this bill makes consistent the benefits payable to an alternate payee whether the qualified domestic relations order is certified prior to, or after, the member, former member with vested benefit status or retirant, retires. Further, this bill amends the effective date of Act 253, Session Laws of Hawaii, 2016 to July 1, 2020.

MEANS: Amend Act 263, Session Laws of Hawaii, 2016.

JUSTIFICATION: As funding was not approved from the ERS expense fund for Act 263, Session Laws of Hawaii, 2016, this bill is intended to amend the scope and implementation date of Hawaii Domestic Relations Orders by: (1) making consistent the benefits payable to alternate payees regardless of whether the qualified domestic relations order is certified prior to, or after, the member, former member with vested benefit status or retirant, retires and (2) delays the implementation of Act 263 until the ERS is approved to expend adequate funds and resources to support the implementation costs to program its computer system, to educate members and other

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affected parties and to cover increased operational costs for the review of domestic relations orders and to perform or obtain actuarial and other calculations to allocate retirement benefits pursuant to a qualified domestic relations order.

Impact on the public: Delayed implementation of the program that allows spouses or former spouses of State and county employees to receive direct payment of a share of the employee's retirement benefits as part of a settlement in a domestic relations proceeding.

Impact on the department and other agencies: The Employees' Retirement System will incur implementation costs to program its computer system, to develop policies and procedures, to educate members and other affected parties and would also increase operational costs to review domestic relations orders and perform or obtain actuarial and other calculations to allocate retirement benefits pursuant to a qualified domestic relations order.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	BUF 141/Retirement
OTHER AFFECTED AGENCIES:	Employees' Retirement System.
EFFECTIVE DATE:	July 1, 2020.