

SB 2764

SD-2

RELATING TO
EMPLOYEES'
RETIREMENT
SYSTEM

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

SECTION 1. Section 88-74.7, Hawaii Revised Statutes, is amended to read as follows:

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

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

(c) ~~[A member]~~ Subject to the suspension and forfeiture provisions of this section and sections 88-96 and 88-341, a 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



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

(i) If after commencing the payment of benefits payable
under part II, VII, or VIII of this chapter, the system cannot
locate the retirant, beneficiary, or other person or entity
entitled to payment of those benefits, the further payment of
those benefits shall be forfeited to the system and shall not
escheat under the laws of any state; provided that the benefit
forfeited shall be restored if the retirant, beneficiary, or
other person or entity entitled to payment of the forfeited
benefit makes a proper application to the system for restoration
of the benefit. Any benefit that is restored shall be without
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.



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

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

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

If the contributions are not withdrawn by the former employee within four calendar years following the calendar year in which the former employee's employment terminates, the former employee shall have established vested benefit status and shall 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



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

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

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

"§88-341 Rights of members separated from service. (a)

Any class H member who ceases to be an employee and who became a member before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who becomes a 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 H 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 former member's contributions, upon application,
7 there shall be paid to the former member's estate or to the
8 person that the former member has nominated by written
9 designation duly 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.



Report Title:

Employees' Retirement System; Unclaimed Property

Description:

Preserves the Employees' Retirement System's use and control of unclaimed member contributions and benefit payments. (SD2)

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



SB 2764

SD-2

TESTIMONY

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

**TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII**

**TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
SENATE BILL NO. 2764, S.D. 2**

**March 20, 2018
9:00 A.M.
Conference Room 309**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Johanson, Vice Chair Holt and Members of the Committee,

S.B. 2764, S.D. 2, proposes to amend sections 88-74.7, 88-96, and 88-341, Hawaii Revised Statutes (HRS) to preserve until otherwise claimed the use and control by the Employees' Retirement System (ERS) of unclaimed member benefits and contributions that would otherwise be paid to the State's Unclaimed Property Program or escheated to other states. The level of such unclaimed member benefits varies from year to year but generally ranges between \$500,000 and \$1,000,000 annually.

The Board of Trustees of the Employees' Retirement System supports this legislation.

Under sections 88-74.7, 88-96, and 88-341, the ERS is required to return member contributions and to commence the payment of benefits to members, former members, beneficiaries, or other persons or entities at certain required distribution dates. Despite its best efforts, the ERS sometimes loses contact with its member, former member, beneficiary, person or entity to be



Employees' Retirement System
of the State of Hawaii

paid by or at the required distribution dates. In addition, after the ERS has started paying benefits to a retired member or beneficiary, through no fault of its own the ERS is sometimes prevented from making make payments, e.g., checks or electronic payments are returned without a forwarding address. Under the State's Uniform Unclaimed Property Act, the unclaimed member contributions and benefit payments are presumed abandoned after a period of time and are required to be paid to the State's Unclaimed Property Program.

This bill would preserve the ERS's use and control of unclaimed member contributions and benefit payments by suspending the requirement that they be paid to the State's Unclaimed Property Program or escheated to another state. The temporary retention by the ERS of these unclaimed member benefits would increase the fund's investment return and reduce its unfunded liability.

Irrespective of our temporary retention of unclaimed funds, the bill preserves the ability of the member, former member, beneficiary, or other person or entity to recover the unclaimed contributions or benefit payments by submitting a valid request for repayment. Similar legislation was approved by the Legislature as Act 144 for the Employer Union Health Benefits Trust fund (EUTF) in 2017, allowing the EUTF to retain forfeited member benefits until reimbursement is claimed.

The bill would also ease the ERS's administrative burdens of complying with the Uniform Unclaimed Property Act, which can be complicated when lifelong monthly benefit payments are involved.

Thank you for this opportunity to provide testimony on S.B. 2764, S.D. 2.

SB 2764

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TESTIMONY