

## ACT 96

H.B. NO. 1036

A Bill for an Act Relating to Federal Tax Qualification Requirements for the Employees' Retirement System.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The employees' retirement system of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code. The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Public Law No. 110-245, imposes requirements on tax-qualified retirement plans regarding benefits payable to the survivors of members who die while performing qualified military service.

The legislature finds that although existing provisions of chapter 88, Hawaii Revised Statutes, provide the benefits that the HEART Act requires, chapter 88, Hawaii Revised Statutes, must be amended to include the specific wording required by the HEART Act to maintain the tax-qualified status of the employees' retirement system. The legislature also finds that chapter 88, Hawaii Revised Statutes, should be amended to address in greater detail the requirement of section 401(a)(9) of the Internal Revenue Code that qualified retirement benefits commence no later than April 1 of the calendar year following the calendar year in which an employees' retirement system member terminates employment or attains age seventy and one-half, whichever is later.

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

**“§88- 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 the 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 or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, shall be paid to the member or former member, or payment of the benefits payable under part II, VII, or VIII of this chapter shall commence, no later than the member's or former member's required beginning date. The payment or payments shall be made on,

or beginning no later than, the member's or former member's required beginning date even if the member or former member does not apply for payment or file a retirement application.

- (d) If, by a member's or former member's required beginning date:
- (1) The member or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, are not paid to the member or former member; or
- (2) Payment of the benefits payable under part II, VII, or VIII of this chapter do not commence,

the system shall pay the service retirement benefits for which the member or former member is eligible pursuant to part II, VII, or VIII of this chapter, as applicable, retroactive to the member's or former member's required beginning date with regular interest.

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

- (1) If the member or former member is unmarried or has no civil union partner or reciprocal beneficiary, the member or former member shall be deemed to have elected the maximum retirement allowance; or
- (2) If the member or former member is married or has a civil union partner or reciprocal beneficiary, the member or former member shall be deemed to have elected option 3 under section 88-83, or option A under section 88-283, as applicable, and to have designated the member's or former member's spouse, civil union partner, or reciprocal beneficiary as the member's or former member's beneficiary;

provided that if the system receives the written election after the member's or former member's required beginning date, but within sixty days following receipt by the member or former member of notice from the system that the member or former member is required to make the election, the written election shall apply, and the member's or former member's retirement benefit shall be recomputed, based on the written election, retroactive to the member or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

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

- (1) If the member or former member was married or had a civil union partner or reciprocal beneficiary at the time the member or former member last provided information to the system about the member's or former member's marital, civil union, or reciprocal beneficiary status, it shall be presumed that the member or former member is still married to the same spouse, is in the same civil union partnership, or is in the same reciprocal beneficiary relationship. If the system does not have information as to the age of the spouse, civil union partner, or reciprocal beneficiary, the spouse, civil union

partner, or reciprocal beneficiary shall be presumed to be forty years younger than the member or former member for purposes of computing the member's or former member's benefit; and

- (2) If the member or former member was unmarried and did not have a civil union partner or reciprocal beneficiary at the time the member or former member last provided information to the system about the member or former member's marital status, it shall be presumed that the member or former member is married and that the spouse of the member or former member is forty years younger than the member or former member.

(g) The presumptions in subsection (f) shall cease to apply when the member or former member provides the system with current information as to the member's or former member's marital, civil union, or reciprocal beneficiary status and the age of the member or former member's spouse, civil union partner, or reciprocal beneficiary, if any, on the member's or former member's required beginning date. The information shall be provided in a form satisfactory to the system. At that time, the member's or former member's retirement allowance shall be recomputed, retroactive to the member's or former member's required beginning date, based on the updated information; provided that, except as provided in subsection (e), the member or former member shall not be permitted to change the member's or former member's retirement allowance option election or beneficiary; provided further that the benefit being paid to any member or former member who, on the member's or former member's required beginning date, was unmarried and did not have a civil union partner or reciprocal beneficiary, but who was deemed to elect option 3 or option A with an assumed spouse, civil union partner, or reciprocal beneficiary, shall be converted to the maximum retirement allowance retroactive to the member's or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(h) If the system cannot locate the member or former member, the member's or former member's benefit shall be payable only until the end of the member's or former member's life expectancy, as determined at the member's or former member's required beginning date. If the member or former member has not by that time made a claim for benefits, the member or former member shall be deemed to be deceased at that time. Interest under subsection (d) shall cease on benefits presumed to be abandoned property, pursuant to part I of chapter 523A, upon payment of the property to the administrator under part I of chapter 523A.

(i) Rules necessary for the purposes of this section shall be adopted as provided in section 88-22.5."

SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), ~~and~~ (31), and (37) of the Internal Revenue Code of 1986, as amended. Without limiting the generality of the foregoing and notwithstanding any provision of chapter 88 to the contrary:

- (1) Prior to the satisfaction of all liabilities with respect to members and their beneficiaries, no part of the corpus or income of the system shall be used for or diverted to purposes other than for the exclusive benefit of members and their beneficiaries. The payment of

- reasonable expenses from the expense fund for the administration of the system in accordance with section 88-116 shall be deemed to be for the benefit of members and their beneficiaries;
- (2) Benefits forfeited by a member for any reason shall not be applied to increase the benefits a member or beneficiary would otherwise receive under the system;
  - (3) In accordance with section 88- and rules adopted by the board of trustees, the entire interest of a member shall be distributed or distribution shall begin no later than the member's "required beginning date", as defined in section 401(a)(9) of the Internal Revenue Code of 1986, as amended;
  - (4) In accordance with rules adopted by the board of trustees, a member or beneficiary may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution" paid in a "direct rollover" to an "eligible retirement plan", as ~~[such]~~ those terms are defined in section 401(a)(31) of the Internal Revenue Code of 1986, as amended; ~~[and]~~
  - (5) In the event of the termination of or complete discontinuance of employer contributions to the system, the rights of all members to benefits accrued as of the date of ~~[such]~~ the termination or discontinuance, to the extent then funded, shall be nonforfeitable~~[-]; and~~
  - (6) In the case of a member who dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under this chapter had the member resumed and then terminated employment on account of death; provided that this paragraph shall not limit the rights to which a member's designated beneficiary, spouse, civil union partner, reciprocal beneficiary, or children are otherwise entitled by this chapter; provided further that the legislature finds that section 88-137 provides the benefits required by this paragraph."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval.  
(Approved June 9, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.