

S.B. NO. 1378

JAN 22 2007

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

4 "§88-A Membership of elective officers. (a) An elective
5 officer shall have a one-time election to become a member.

6 (b) An elective officer shall make an election to become a
7 member or to not become a member no later than the later of (1)
8 the elective officer's taking office, or (2) thirty days
9 following the elective officer's election or appointment to
10 office. The election shall be irrevocable. If the elective
11 officer fails to make an election with respect to membership
12 within the period for making the election, the elective officer
13 shall be deemed to have elected to become a member effective as
14 of date the elective officer took office.

15 (c) Notwithstanding section 88-21, 88-98, 88-273(c), or
16 88-344, or any other law to the contrary, the retirement

1 allowance of a retirant who returns to service as an elective
2 officer shall not be suspended if the retirant:

3 (1) Retired pursuant to section 88-73(d); or

4 (2) Elects to have the retirement allowance continue, and:

5 (A) Has been retired for at least twelve consecutive
6 months prior to return to service; or

7 (B) Returns to service in a different position than
8 the position held by the retirant immediately
9 prior to retirement; or

10 If the retirant's retirement allowance is not suspended, the
11 retirant: (i) shall not become a member of the system; and (ii)
12 shall not earn additional service credit or gain any additional
13 retirement benefits."

14 SECTION 2. Section 88-21, Hawaii Revised Statutes, is
15 amended by amending the definition of "employee" to read as
16 follows:

17 "Employee": any employee or officer of the State or any
18 county, including inspectors, principals, teachers and special
19 teachers, regularly employed in the public schools, cafeteria
20 managers and cafeteria workers, apprentices and on-the-job
21 trainees whether or not supported in whole or in part by any
22 federal grants, members of the legislature and other elective

1 officers, including the trustees of the office of Hawaiian
2 affairs, legislative employees who are employed on a full-time
3 basis during and between sessions, probationary and provisional
4 employees, any employee of the educational nonprofit public
5 corporation as provided in section 88-49.7, per diem employees
6 and others who are made eligible by reason of their employment
7 to membership in the system by or pursuant to any other
8 provision of law, but excluding:

- 9 (1) Per diem employees who elect to withdraw or not to
10 become members as provided in section 88-42;
- 11 (2) [~~Members of the legislature~~] Elective officers who do
12 not elect to be members as provided in section [~~88-~~
13 ~~42+~~] 88-A;
- 14 (3) Persons excluded by rules of the board pursuant to
15 section 88-43.

16 An individual is an employee during the period of a leave
17 of absence if the individual is in service, as defined in this
18 part, during the period of the leave of absence and the board
19 shall determine who are employees within the meaning of this
20 part."

21 SECTION 3. Section 88-42, Hawaii Revised Statutes, is
22 amended to read as follows:

1 "**§88-42 Membership generally.** Except as otherwise
2 provided in this part, all employees of the Territory or any
3 county on July 1, 1945, shall be members of the system on such
4 date, and all persons who thereafter enter or reenter the
5 service of the State or any county shall become members at the
6 time of their entry or reentry.

7 Per diem workers shall become eligible for membership on
8 January 1, 1952, and all persons who are employed as per diem
9 workers after December 31, 1951, shall become members of the
10 system. Any person who was a per diem worker before January 1,
11 1952, shall not, so long as the person is employed as a per diem
12 worker, be required to become a member or to remain a member if
13 the person has elected before October 2, 1953, to withdraw as a
14 member.

15 Members of the legislature shall become eligible for
16 membership on July 1, 1951. Any member of the legislature in
17 service on July 1, 1951, or thereafter entering [~~or reentering~~]
18 the legislature, may become a member [~~upon the legislator's own~~
19 ~~election.~~] as provided in section 88-A."

20 SECTION 4. Section 88-43, Hawaii Revised Statutes, is
21 amended to read as follows:

1 **"§88-43 Persons ineligible for membership**~~[, optional~~
2 **membership]**. Except with respect to faculty members or
3 lecturers employed on one or more campuses of the University of
4 Hawaii who hold multiple part-time appointments or positions, in
5 such capacities, any of which may be less than one-half of a
6 full-time equivalent but all of which, when added together,
7 aggregate to at least one-half of a full-time equivalent
8 position, the board ~~[of trustees]~~ may deny membership to any
9 class of part-time employees or persons engaged in temporary
10 employment of three months or less~~[, or it may, in its~~
11 ~~discretion, make optional with persons in such classes their~~
12 ~~individual entrance into membership]~~; provided that no officer
13 or employee entering service after January 1, 1928, who is
14 entitled to become a member of any pension system under part III
15 shall be entitled to become a member of the system.

16 ~~[Elective officers shall be eligible for membership, and~~
17 ~~their individual entrance into membership shall be at their~~
18 ~~option.]"~~

19 SECTION 5. Section 88-54.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 **"§88-54.5 Service while a member of the board of trustees**
22 **of the office of Hawaiian affairs.** Notwithstanding any

1 provisions of section 10-9 that may previously have precluded a
2 member of the board of trustees of the office of Hawaiian
3 affairs from participating as a member of the employees'
4 retirement system:

5 (1) Any trustee of the office of Hawaiian affairs in
6 service on July 1, 2002, may become a member upon the
7 trustee's election in accordance with section 88-43 by
8 October 1, 2002;

9 (2) Any trustee of the office of Hawaiian affairs elected
10 or appointed after July 1, 2002, may become a member
11 upon the trustee's election in accordance with section
12 [~~88-43~~] 88-A;

13 (3) Any service as a trustee of the office of Hawaiian
14 affairs during the period of July 1, 1993, through
15 July 1, 2002, if claimed by the member, shall be
16 credited in the member's class at the time the service
17 is acquired; provided that membership service shall be
18 credited in accordance with sections 88-59, 88-272,
19 and 88-324; and

20 (4) Any former trustee of the office of Hawaiian affairs
21 who retired from service prior to July 1, 2002, shall
22 not be entitled to claim membership service as a

1 trustee during the period July 1, 1993, through June
2 30, 2002."

3 SECTION 6. Section 88-59, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§88-59 Acquisition of membership service.** (a) Under
6 rules as the board [~~of trustees~~] may adopt, any member may file
7 with the board a statement of all service as an employee or
8 other service paid for by the State or a county rendered prior
9 to the [~~member's~~] member last becoming a member that is not
10 credited to the member, for which the member claims prior
11 service credit, and also a statement of the services for which
12 the member claims membership service credit and for which the
13 member agrees to have additional deductions made from the
14 member's compensation or to make a lump sum payment as described
15 in this section.

16 (b) After the filing of the statement, the board shall
17 verify the service claimed and determine the service credit
18 allowable. Verified prior service shall be credited. Verified
19 membership service shall be paid for by the member in any one of
20 the following methods, at the member's option:

21 (1) By deductions from the member's compensation pursuant
22 to section 414(h)(2) of the Internal Revenue Code of

1 1986, as amended, under the employer pick up plan
2 under section 88-46. An irrevocable payroll
3 authorization filed by the member for a period not to
4 exceed sixty months shall remain in effect until the
5 completion of the payroll payments or termination of
6 employment, whichever is earlier. The member may
7 elect to have:

8 (A) Deductions from the member's compensation of
9 twice the contribution rate provided for in
10 section 88-45 over a period equal to the period
11 for which membership service credit is allowable
12 not to exceed sixty months; or

13 (B) Deductions from the member's compensation of one
14 and one-half times the contribution rate provided
15 for in section 88-45 over a period equal to twice
16 the period for which membership service credit is
17 allowable not to exceed sixty months; or

18 (2) By lump sum payment of contributions computed at the
19 contribution rate provided for in section 88-45
20 applied to the member's monthly rate of compensation
21 at the time of payment multiplied by the number of
22 months for which membership service credit is

1 allowable; provided that after July 1, 1982, this
2 method shall not be available to any new member with
3 fewer than five years of membership service exclusive
4 of any previous service acquired under paragraph (1).

5 The deductions from compensation or lump sum payment shall be
6 paid to the system and shall be credited to the member's
7 individual account and become part of the member's accumulated
8 contributions.

9 (c) Membership service credit, in addition to any other
10 service credited to the member, shall be allowed for the period
11 for which the deductions from compensation or lump sum payment
12 have been made as described in this section.

13 (d) The contribution rates under section 88-45 shall be
14 reduced by one and eight-tenths per cent for any service being
15 claimed that was rendered prior to July 1, 1961.

16 ~~[Any member of the legislature who reenrolls as an active~~
17 ~~member in accordance with section 88-62 and who desires to~~
18 ~~obtain membership service for a period of service as a member of~~
19 ~~the legislature during which the member received a retirement~~
20 ~~allowance, in addition to complying with this section, shall~~
21 ~~refund while a reenrolled active member the retirement allowance~~
22 ~~received during the period of legislative service.]"~~

1 SECTION 7. Section 88-61, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-61 Termination of membership.** (a) Except as
4 otherwise provided by section 88-96, any member absent from
5 service for four calendar years following the calendar year in
6 which the member's employment terminated shall cease to be a
7 member, and the former member's credited service shall be
8 forfeited.

9 (b) Any member who withdraws the member's contributions,
10 becomes a retirant, or dies, ceases to be a member as of the
11 date of withdrawal, retirement, or death.

12 ~~[(c) The membership of an elective officer or judge in the~~
13 ~~system may be terminated upon election of the member to retire~~
14 ~~whenever the allowance for the member reaches seventy five per~~
15 ~~cent of the member's average final compensation. The member's~~
16 ~~right to receive the retirement allowance prescribed in section~~
17 ~~88-74 after the member's future separation from service as~~
18 ~~provided in section 88-73 shall vest on the date of the~~
19 ~~election. Upon the date of the election, the member shall be~~
20 ~~entitled to receive the portion of the accumulated~~
21 ~~contributions, if any, which would be required to be returned to~~
22 ~~the member under section 88-74(3) as if the member's retirement~~

1 ~~allowance had commenced on that date, and after the date of the~~
2 ~~election the member shall not be allowed or required to make any~~
3 ~~future contributions.]"~~

4 SECTION 8. Section 88-73, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§88-73 Service retirement.** (a) Any member who has at
7 least five years of credited service and who has attained age
8 fifty-five or any member who has at least twenty-five years of
9 credited service or any member who has at least ten years of
10 credited service, which includes service as a judge before July
11 1, 1999, an elective officer, or a legislative officer, shall
12 become eligible to receive a retirement allowance after the
13 member has terminated service.

14 (b) Any member who first earned credited service as a
15 judge after June 30, 1999, and who has at least five years of
16 credited service and has attained age fifty-five or has at least
17 twenty-five years of credited service shall become eligible to
18 receive a retirement allowance after the member has terminated
19 service.

20 (c) A member may retire upon the written application
21 specifying the date of retirement, which shall not be less than
22 thirty days nor more than one hundred fifty days subsequent to

1 the date of filing. Retirement shall be effective on the first
2 day of a month, except for the month of December when retirement
3 on the first or last day of the month shall be allowed.

4 (d) Any member of the legislature who attains age sixty-
5 five may retire and receive a service retirement allowance
6 although the member continues to fill the elective position.

7 ~~[(e) For the purpose of computing or determining benefits~~
8 ~~for an elective officer or judge, or any beneficiary of either,~~
9 ~~the date upon which the elective officer or judge makes an~~
10 ~~election to retire, as provided by section 88-61(c), after~~
11 ~~attaining an allowance of seventy five per cent of the member's~~
12 ~~average final compensation, shall be used as the date the member~~
13 ~~is eligible to receive a service retirement benefit. The~~
14 ~~elective officer or judge may continue in active service, but~~
15 ~~shall not receive a retirement allowance until termination of~~
16 ~~active service. Upon leaving active service, the elective~~
17 ~~officer or judge shall receive the retirement allowance provided~~
18 ~~for in section 88-74, together with the post retirement~~
19 ~~allowances provided for in section 88-90, effective on the first~~
20 ~~day of a month except the month of December when retirement~~
21 ~~benefits shall be effective on the first or last day of the~~
22 ~~month. Post retirement allowances shall be computed from the~~

1 ~~date of the election as though the elective officer or judge had~~
2 ~~left active service on that day.~~

3 ~~(f)~~ (e) In the case of a class A or B member who also has
4 prior credited service under part VII or part VIII, total
5 credited service as a class A, class B, class C, and class H
6 member shall be used to determine the eligibility for retirement
7 allowance."

8 SECTION 9. Section 88-251, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§88-251 Applicability.** The following provisions of part
11 II shall apply to this part:

12 (1) Subpart A, except the definitions provided in section
13 88-21, unless expressly adopted in section 88-261;

14 (2) Subpart B, except sections 88-45, 88-45.5, 88-46,
15 88-48, 88-52, 88-59, 88-59.5, [~~88-59.6,~~] 88-61, and 88-
16 62;

17 (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74,
18 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84,
19 88-85, 88-87, 88-88, 88-89, 88-96, 88-97, and 88-98;

20 (4) Subpart D, except sections 88-112 and 88-113; and

21 (5) Subpart E."

1 SECTION 10. Section 88-301, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§88-301 **Applicability.** The following provisions of part
4 II of this chapter shall apply to this part:

- 5 (1) Subpart A;
- 6 (2) Subpart B, except sections 88-45, 88-46, 88-48, 88-52,
7 88-59, 88-59.5, [~~88-59.6,~~] 88-61, and 88-62;
- 8 (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74,
9 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84,
10 88-85, 88-88, 88-89, 88-96, 88-97, and 88-98;
- 11 (4) Subpart D; and
- 12 (5) Subpart E."

13 SECTION 11. Section 88-59.6, Hawaii Revised Statutes, is
14 repealed:

15 [~~§88-59.6] ~~Previous membership service credit for~~
16 ~~judges.~~ (a) ~~Notwithstanding any other law to the contrary, any~~
17 ~~judge who retires under section 88-61(c) and continues in~~
18 ~~service as a judge shall be allowed membership in the system and~~
19 ~~entitlement to membership service credit for any eligible class~~
20 ~~A service; provided that the membership service shall be~~
21 ~~credited in accordance with section 88-59; and provided further~~~~

1 ~~that when the judge retires, it shall be as if it were for the~~
2 ~~first time, and sections 88-73(a), 88-74(3), and 88-76 shall be~~
3 ~~used to determine the retirement allowance.~~

4 ~~(b) Those judges who are entitled to membership service~~
5 ~~credit under this section may elect to cancel retirement under~~
6 ~~section 88-61(c) and, no later than July 1, 1993, begin to make~~
7 ~~additional deductions or make a lump sum payment for such~~
8 ~~service pursuant to section 88-59."]~~

9 SECTION 12. Elective officers, who first took office prior
10 to the effective date of this Act and who are not members or
11 retirants of the employees' retirement system of the State of
12 Hawaii, shall make the election to become or to not become a
13 member of the employees' retirement system of the State of
14 Hawaii as provided in section 1 of this Act before February 1,
15 2008. The election shall be irrevocable. If the elective
16 officer fails to make an election with respect to membership
17 before February 1, 2008, the elective officer shall be deemed to
18 have elected to become a member effective February 1, 2008.

19 SECTION 13. Sections 7 and 8 of this Act shall not be
20 applied to affect the rights of any retirants, as defined in
21 section 88-21, Hawaii Revised Statutes, who retired prior to the

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1 effective date of this Act, or rights of the beneficiaries or
2 survivors of those retirants.

3 SECTION 14. In codifying the new section, added to chapter
4 88, Hawaii Revised Statutes, by section 1 of this Act, the
5 revisor of statutes shall substitute an appropriate section
6 number the letter used in the designation of the new section and
7 the references to that new section for section in this Act.

8 SECTION 15. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 16. This Act shall take effect on January 1, 2008.

11

12

INTRODUCED BY: _____

13

BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To repeal the provisions of chapter 88, Hawaii Revised Statutes, that provide for optional membership in the Employees' Retirement System ("ERS").

MEANS: Add a new section to chapter 88, Hawaii Revised Statutes, amend sections 88-21, 88-42, 88-43, 88-54.5, 88-59, 88-61, 88-73, 88-251, 88-301, Hawaii Revised Statutes, and repeal section 88-59.6, Hawaii Revised Statutes.

JUSTIFICATION: The ERS is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended ("Code"). Section 414(h)(2) of the Code provides favorable tax treatment for employee contributions "picked up" (made by the employer on behalf of the employee) to a tax-qualified retirement plan established by a state. However, the tax-qualified status of the ERS may be jeopardized by the provisions of chapter 88, Hawaii Revised Statutes, that provide for optional membership in the ERS. These provisions allow elective officers to exercise their option to join the ERS at any time during their term of office and also allow elective officers and judges to withdraw from ERS membership while remaining in office.

The bill repeals the provisions of chapter 88, Hawaii Revised Statutes, that make ERS membership by elective officers optional and replaces those provisions with a new section that requires elective officers to exercise a one-time irrevocable option to join the ERS when they are elected for the first time (or, in the case of existing office holders,

by February 1, 2008). The new section also sets forth the circumstances under which retirants may return to service as elective officers without suspension of retirement benefits.

The bill also repeals the statutory provision that allow elective officers and judges who have reached the statutory cap on retirement benefits to withdraw from ERS membership by nominally retiring even though they remain in office. Even though the judges and elective officials do not receive a retirement allowance until they actually leave office, the practice of nominal retirement raises issues of impermissible "in-service" refunds of pre-tax contributions, which may jeopardize the ERS' tax-qualified status.

Impact on the public: None.

Impact on the department and other agencies:
The amendments will require newly elected state and county officials to make a decision whether to opt out of membership in the ERS as soon as they are elected.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED AGENCIES: The Judiciary and elected state and county officials.

EFFECTIVE DATE: January 1, 2008.