

---

---

# 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) Unless the elective officer is already a member of the  
7 system, a former member with vested benefit rights, or a  
8 retirant, an elective officer shall make an election to become a  
9 member or not become a member no later than the later of the  
10 elective officer's taking office, or thirty days following the  
11 elective officer's election or appointment to office. The  
12 election shall be irrevocable. If the elective officer fails to  
13 make an election to become a member within the period allowed  
14 for making the election, the elective officer shall be deemed to  
15 have elected to become a member effective as of the date of  
16 election or appointment. An elective officer includes, but is  
17 not limited to those persons elected to the county councils, the  
18 office of Hawaiian affairs, and the legislature.



1        (b) Notwithstanding section 88-21, 88-98, 88-273(c), or  
2 88-344, or any other law to the contrary, the retirement  
3 allowance of a retirant who returns to service as an elective  
4 officer shall not be suspended if the retirant:

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

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

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

9            (B) Returns to service in a different position from  
10           the position held by the retirant immediately  
11           prior to retirement.

12 If the retirant's retirement allowance is not suspended, the  
13 retirant shall not become a member of the system and shall not  
14 earn additional service credit or gain any additional retirement  
15 benefits."

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

19        "'Employee": any employee or officer of the State or any  
20 county, including inspectors, principals, teachers and special  
21 teachers, regularly employed in the public schools, cafeteria  
22 managers and cafeteria workers, apprentices and on-the-job



1 trainees whether or not supported in whole or in part by any  
2 federal grants, members of the legislature and other elective  
3 officers, including the trustees of the office of Hawaiian  
4 affairs, legislative employees who are employed on a full-time  
5 basis during and between sessions, probationary and provisional  
6 employees, any employee of the educational nonprofit public  
7 corporation as provided in section 88-49.7, per diem employees  
8 and others who are made eligible by reason of their employment  
9 to membership in the system by or pursuant to any other  
10 provision of law, but excluding:

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

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



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

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

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

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



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

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

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

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



1           "§88-54.5 Service while a member of the board of trustees  
2 of the office of Hawaiian affairs. [~~Notwithstanding any~~  
3 ~~provisions of section 10-9 that may previously have precluded a~~  
4 ~~member of the board of trustees of the office of Hawaiian~~  
5 ~~affairs from participating as a member of the employees'~~  
6 ~~retirement system: (1)] (a) Any trustee of the office of  
7 Hawaiian affairs in service on July 1, 2002, may become a member  
8 upon the trustee's election in accordance with section 88-43 by  
9 October 1, 2002[+].~~

10           [+2] (b) Any trustee of the office of Hawaiian affairs  
11 elected or appointed after July 1, 2002, may become a member  
12 upon the trustee's election in accordance with section [88-43+]  
13 88-A.

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

20           [+4] (d) Any former trustee of the office of Hawaiian  
21 affairs who retired from service prior to July 1, 2002, shall



1 not be entitled to claim membership service as a trustee during  
2 the period July 1, 1993, through June 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 last becoming a member that is not credited to  
10 the member, for which the member claims prior service credit,  
11 and also a statement of the services for which the member claims  
12 membership service credit and for which the member agrees to  
13 have additional deductions made from the member's compensation  
14 or to make a lump sum payment as described in this section.

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

20 (1) By deductions from the member's compensation pursuant  
21 to section 414(h)(2) of the Internal Revenue Code of  
22 1986, as amended, under the employer pick up plan



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

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

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

17 (2) By lump sum payment of contributions computed at the  
18 contribution rate provided for in section 88-45  
19 applied to the member's monthly rate of compensation  
20 at the time of payment multiplied by the number of  
21 months for which membership service credit is  
22 allowable; provided that after July 1, 1982, this



1 method shall not be available to any new member with  
2 fewer than five years of membership service exclusive  
3 of any previous service acquired under paragraph (1).

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

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

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

15 ~~[Any member of the legislature who reenrolls as an active~~  
16 ~~member in accordance with section 88-62 and who desires to~~  
17 ~~obtain membership service for a period of service as a member of~~  
18 ~~the legislature during which the member received a retirement~~  
19 ~~allowance, in addition to complying with this section, shall~~  
20 ~~refund while a reenrolled active member the retirement allowance~~  
21 ~~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, 88-48,  
15 88-52, 88-59, 88-59.5, [~~88-59.6,~~] 88-61, and 88-62;
- 16 (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74,  
17 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84, 88-85,  
18 88-87, 88-88, 88-89, 88-96, 88-97, and 88-98;
- 19 (4) Subpart D, except sections 88-112 and 88-113; and
- 20 (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, 88-85,  
10 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~~  
22 ~~that when the judge retires, it shall be as if it were for the~~



1 ~~first time, and sections 88-73(a), 88-74(3), and 88-76 shall be~~  
2 ~~used to determine the retirement allowance.~~

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

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

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



1 SECTION 14. In codifying the new section added to chapter  
2 88, Hawaii Revised Statutes, by section 1 of this Act, the  
3 revisor of statutes shall substitute an appropriate section  
4 number for the letter used in the designation of the new section  
5 and the references to that new section in this Act.

6 SECTION 15. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

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



**Report Title:**

ERS Election

**Description:**

Repeals provisions that allow: elective officers to exercise their option to join the ERS at any time during their term of office; and elective officers and judges to withdraw from ERS membership while remaining in office. Repeals the provisions 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). Sets forth the circumstances under which retirants may return to service as elective officers without suspension of retirement benefits. Repeals the provision that allows 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. (HB1292 CD2)

