ACT 7 H.B. NO. 7

A Bill for an Act Relating to Deferred Compensation Plans for Public Employees.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read:

"CHAPTER
DEFERRED COMPENSATION PLAN

§ -1 **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

(1) "State" means the State of Hawaii.

(2) "County" means the counties of Hawaii, Kauai and Maui, and the city and county of Honolulu.

(3) "Employee" means a person who is eligible to participate in the employees' retirement system of the State of Hawaii as defined in section 88-21.

§ -2 **State deferred compensation plan.** The State may establish a deferred compensation plan in accordance with section 457 of the Internal Revenue Code of 1954, as amended, for the benefit of employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be by written agreement between the employee and the State. The county may enter into a formal agreement with the State to extend the plan to employees of the county; provided that the agreement designates one of the county's agencies to locally coordinate the plan. Participation in the plan by a county employee shall be by written agreement between the employee and the county. An employee may authorize deductions to be made from the employee's wages for the purpose of participation in the plan.

§ -3 **Board of trustees.** The authority to establish the plan and make this chapter effective is vested in the board of trustees. The board shall be placed within the department of personnel services for administrative purposes.

The board shall adopt such rules to carry out this chapter in accordance with chapter 91. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board.

§ -4 **Composition of the board of trustees.** The board of trustees shall consist of seven members as follows:

(1) The director of personnel services of the State who shall serve as its chairperson;
(2) The director of finance of the State, ex officio;
(3) Five other persons, three of whom shall be public employees and represent employee interests.

§ -5 **Appointment and terms.** Except for the directors of personnel services and finance, the members of the board shall be nominated and, by and with the advice and consent of the Senate, appointed by the governor and shall serve terms of four years each; provided that of the trustees first appointed upon establishment of the board one shall be appointed for one year, one shall be appointed for two years, one shall be appointed for three years, and two shall be appointed for four years.

A vacancy on the board shall be filled by appointment of the governor. The person appointed to fill a vacancy shall serve for the remainder of the unexpired term. If by the end of a term a trustee is not reappointed or a successor is not appointed, the trustee shall serve until his successor is appointed.

Membership on the board shall not be deemed incompatible with the holding of any other public employment.

§ -6 **Compensation and expenses.** Each trustee shall serve without compensation but shall be reimbursed from the fund for any necessary expense incurred in the performance of his duties.

§ -7 **Legal advisor.** The attorney general shall be the legal advisor of the board.

§ -8 **Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with such amounts and income attributable to such amounts, shall remain an unrestricted asset of the respective state or county jurisdiction.

§ -9 **Investments.** The board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan. Funds held by the board pursuant to a plan established under this chapter shall be invested in accordance with investment products permitted under the plan; provided that any investment contract entered into shall be made with companies authorized and licensed to do business in the State. Investment products shall be limited to annuities, life insurance, savings accounts, mutual funds, or any combination thereof which shall have been reviewed and selected by the board after a competitive bidding process based on the specifications and considerations deemed appropriate by the board. The investments shall not be construed to be a prohibited use of general assets of the State. Nothing in this chapter shall be construed to permit any type of investment prohibited by law.

§ -10 **Custodian of the funds.** The state director of finance shall be the custodian of the funds created under the plan. All payments from the fund shall be made by the director only upon vouchers signed by the chairperson of the board and countersigned by other persons designated by the board.

§ -11 **Limitation on liability.** The State or county shall not be liable for the sums deferred or the results of any investment product.

§ -12 **Deferred amounts as compensation.** Any compensation deferred pursuant to a plan established under this chapter shall be deemed regular compensation for the purpose of computing contributions or benefits under existing retirement, pension, or social security systems applicable to participating employees but shall not be included in the computation of federal income taxes withheld on behalf of any participating employee.

§ -13 **Costs of the plan.** Costs for implementing and administering the plan shall be borne by the plan and its participants, except for incidental expenses, such as, the cost of payroll deductions and the routine processing of forms.

§ -14 **County deferred compensation plans.** The counties may establish deferred compensation plans for their respective employees. A plan so established need not be subject to the other provisions of this chapter, but shall be in compliance with applicable federal laws and regulations.

§ -15 **Existing deferred compensation plans.** This chapter shall not affect any existing deferred compensation plan established under section 457 of the Internal Revenue Code, as amended."

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $30,000, or so much thereof as may be necessary, for fiscal year 1981-82, for initial implementing costs in carrying out the purposes of this Act. The sum appropriated shall be expended by the department of personnel services. Any sums so expended shall be reimbursed by the plan.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 29, 1981.)