

ACT 182

S.B. NO. 2879

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

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding to subpart A of part II a new section to be appropriately designated and to read as follows:

“§88- Federal tax qualification requirements. (a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), and (31) 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 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 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 termination or discontinuance, to the extent then funded, shall be nonforfeitable.

(b) The board of trustees shall adopt rules necessary for the purposes of this section. Rules adopted for the purposes of this section shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the rules shall be adopted at a public meeting subject to the requirements of part I of chapter 92 and a copy of the proposed rules shall be available for public inspection at the office of the system at least six calendar days before the meeting."

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section immediately following section 88-21 to be designated as section 88-21.5 and to read as follows:

"§88-21.5 Compensation. Unless a different meaning is plainly required by context, as used in this part, "compensation" means normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed; overtime, differentials, and supplementary payments; bonuses and lump sum salary supplements; and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended. Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months prior to the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:

- (1) During the period agreed-upon by the employer and employee, but in any event over a period of not less than twelve months; or
- (2) In the absence of an agreement between the employer and the employee, over the twelve months prior to the date on which the bonus or lump sum salary supplement is payable."

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "actuarial equivalent" to read as follows:

"'Actuarial equivalent': a benefit of equal value to the accumulated contributions, annuity, pension or retirement allowance, when computed upon the

basis of the actuarial tables ~~[in use by the system.]~~ and other assumptions approved by the board of trustees from time to time and specified in writing.”

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

SECTION 5. This Act shall take effect upon its approval.

(Approved July 7, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.