

ACT 47

S.B. NO. 3005

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. 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 of 1986, as amended. Section 414(h)(2) of the Internal Revenue 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 or county or by an agency or instrumentality of a state or county. However, the tax-qualified status of the employees' retirement system may be jeopardized by the provisions of chapter 88, Hawaii Revised Statutes, that provide for optional membership in the system. These provisions include provisions allowing elective officers to exercise their option to join the system at any time during their term of office and provisions allowing elective officers and judges to withdraw from membership in the employees' retirement system while remaining in office. As defined by section 88-21, Hawaii Revised Statutes, an elective officer includes but is not limited to those persons elected to the county councils, the office of Hawaiian affairs, and the legislature.

This Act repeals the provisions of chapter 88, Hawaii Revised Statutes, that make membership in the system by elective officers optional and replaces those provisions with a new section to provide that an elective officer shall be a member of the employee's retirement system when elected for the first time (or, in the case of existing office holders, by October 1, 2008), unless the elective officer exercises a one-time irrevocable election to be excluded from membership in the employees' retirement system. This Act also sets forth the requirements that must be satisfied for retirees to return to service as elective officers without suspension of retirement benefits.

This Act also repeals the statutory provision that allows elective officers and judges who have reached the statutory cap on retirement benefits to withdraw from membership in the employees' retirement system by nominally retiring even though they remain in office.

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

“§88-A Membership of elective officers. (a) An elective officer shall be a member of the employees’ retirement system; provided that an elective officer shall have a one-time election to be excluded from membership in the employees’ retirement system.

(b) Unless the elective officer is a member of the system, a former member of the system, or a retirant, an elective officer shall make the election to be excluded from membership in the system no later than thirty days following the elective officer’s taking office. The election shall be irrevocable. If the elective officer fails to make an election to be excluded from membership in the system within the period allowed for making the election, the elective officer shall become a member effective as of the date the elective officer takes office.

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

- (1) Retired pursuant to section 88-73(d); or
- (2) Has been retired for at least twelve consecutive months prior to return to service and elects to have the retirement allowance continue. The election whether or not to have the retirant’s retirement allowance continue shall be irrevocable and shall be made no later than thirty days following the retirant’s first return to service as an elective officer.

If the retirant’s retirement allowance is not suspended, the retirant shall not become a member of the system and shall not earn additional service credit or gain any additional retirement benefits.

(d) An elective officer who retired pursuant to section 88-73(d) shall not be eligible for membership in the system while serving as an elective officer.”

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “employee” to read as follows:

““Employee”: any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, including the trustees of the office of Hawaiian affairs, year-round legislative employees who are employed on a full-time basis, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88-49.7, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) [~~Members of the legislature~~] Elective officers who do not elect to be members as provided in section [~~88-42;~~] 88-A;
- (3) Session employees of the legislature employed after October 31, 2006, in accordance with section 88-54.2; and
- (4) Persons excluded by rules of the board pursuant to section 88-43.

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

SECTION 4. Section 88-42, Hawaii Revised Statutes, is amended to read as follows:

“§88-42 Membership generally. Except as otherwise provided in this part, all employees of the Territory or any county on July 1, 1945, shall be members of the system on ~~[such]~~ that date, and all persons who thereafter enter or reenter the service of the State or any county shall become members at the time of their entry or reentry.

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

Members of the legislature shall become eligible for membership on July 1, 1951. Any member of the legislature in service on July 1, 1951, or thereafter entering ~~[or reentering]~~ the legislature, ~~[may]~~ shall become a member ~~[upon the legislator's own election.]~~ or elect to be excluded from membership in the system as provided in section 88-A.”

SECTION 5. Section 88-43, Hawaii Revised Statutes, is amended to read as follows:

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

~~[Elective officers shall be eligible for membership, and their individual entrance into membership shall be at their option.]”~~

SECTION 6. Section 88-54.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-54.5 Service while a member of the board of trustees of the office of Hawaiian affairs. Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees' retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member ~~[upon the trustee's election]~~ in accordance with section 88-43 by October 1, 2002;
- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, ~~[may]~~ shall become a member ~~[upon the trustee's election]~~ or elect to be excluded from membership in the system in accordance with section ~~[88-43;]~~ 88-A;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59, 88-272, and 88-324; and

- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002.”

SECTION 7. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

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

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

- (1) By deductions from the member’s compensation pursuant to ~~[section]~~ Section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The member may elect to have:
 - (A) Deductions from the member’s compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
 - (B) Deductions from the member’s compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable not to exceed sixty months; ~~[or]~~

or
- (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member’s monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under paragraph (1).

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

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

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

~~[Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a~~

period of service as a member of the legislature during which the member received a retirement allowance, in addition to complying with this section, shall refund while a reenrolled active member the retirement allowance received during the period of legislative service.]”

SECTION 8. Section 88-61, Hawaii Revised Statutes, is amended to read as follows:

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

(b) Any member who withdraws the member’s contributions, becomes a retiree, or dies, ceases to be a member as of the date of withdrawal, retirement, or death.

~~[(c) The membership of an elective officer or judge in the system may be terminated upon election of the member to retire whenever the allowance for the member reaches seventy-five per cent of the member’s average final compensation. The member’s right to receive the retirement allowance prescribed in section 88-74 after the member’s future separation from service as provided in section 88-73 shall vest on the date of the election. Upon the date of the election, the member shall be entitled to receive the portion of the accumulated contributions, if any, which would be required to be returned to the member under section 88-74(3) as if the member’s retirement allowance had commenced on that date, and after the date of the election the member shall not be allowed or required to make any future contributions.]”~~

SECTION 9. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

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

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

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

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

~~[(e) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member’s average final compensation, shall be used as the date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service. Upon leaving active ser-~~

~~vice, the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post-retirement allowances provided for in section 88-90, effective on the first day of a month except the month of December when retirement benefits shall be effective on the first or last day of the month. Post-retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day.~~

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

SECTION 10. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

“§88-251 Applicability. The following provisions of part II shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88-261;
- (2) Subpart B, except sections 88-45, 88-45.5, 88-46, 88-48, 88-52, 88-59, 88-59.5, [88-59.6,] 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-80, 88-83, 88-84, 88-85, 88-87, 88-88, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E.”

SECTION 11. Section 88-301, Hawaii Revised Statutes, is amended to read as follows:

“§88-301 Applicability. The following provisions of part II of this chapter shall apply to this part:

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

SECTION 12. Section 88-59.6, Hawaii Revised Statutes, is repealed.

SECTION 13. Elective officers in office on the effective date of this Act, who are not retirants of the employees’ retirement system, shall be deemed to have exercised the one-time election under subsection (a) of the new section added to chapter 88, Hawaii Revised Statutes, by section 2 of the Act.

SECTION 14. Elective officers who are retirants of the employees’ retirement system of the State of Hawaii shall make an election, not later than the effective date of this Act, whether or not to have their retirement allowance continue as provided by section 2 of this Act. If the elective officer makes no election, the elective officer’s retirement allowance shall continue. An elective officer whose retirement allowance continues pursuant¹ this section shall not be eligible for membership in the employees’ retirement system of the State of Hawaii while serving as an elective officer.

SECTION 15. The requirement of section 2 of this Act, that a retirant who returns to service as an elective officer shall have been retired for a least twelve consecutive months prior to return to service to be eligible to make an election to have the retirant's retirement allowance continue, shall not be applicable to any retirant who returns to service as an elective officer prior to January 3, 2009, provided that the retirant did not retire as an elective officer.

SECTION 16. Sections 8 and 9 of this Act shall not be applied to affect the rights of any retirants, as defined in section 88-21, Hawaii Revised Statutes, who retired prior to the effective date of this Act, or rights of the beneficiaries or survivors of those retirants.

SECTION 17. In codifying the new section added to chapter 88, Hawaii Revised Statutes, by section 2¹ this Act, the revisor of statutes shall substitute an appropriate section number for the letter used in the designation of the new section and the references to that new section in this Act.

SECTION 18. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 19. This Act shall take effect on October 1, 2008.

(Approved April 30, 2008.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.