

ACT 124

H.B. NO. 805

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. In 2009, the employees' retirement system applied to the Internal Revenue Service for a determination that the employees' retirement system's "plan document" (i.e., the wording of the statutes, administrative rules, and board of trustee actions that govern the employees' retirement system) meets the federal tax qualification requirements in section 401(a) of the Internal Revenue Code that are applicable to pension plans sponsored by state and local governments. The employees' retirement system received a favorable determination letter on March 21, 2012. The Internal Revenue Service conditioned the favorable determination letter on amendments made to chapter 88, Hawaii Revised Statutes, to meet certain vesting rules that were applicable to tax qualified plans prior to the enactment of the federal Employee Retirement Income Security Act on September 2, 1974. Those vesting rules require that a member's right to the member's accrued retirement benefit be non-forfeitable upon the attainment of normal retirement age, the completion of any required years of service, and any other reasonable requirements set forth in the plan.

The favorable determination letter was also conditioned upon the adoption of amendments to section 88-83.5, Hawaii Revised Statutes, to comply with final regulations under section 415 of the Internal Revenue Code.

The specific statutory amendments upon which the favorable determination letter was conditioned were approved by the Internal Revenue Service as part of its determination process.

The legislature finds that, to maintain the federal tax qualification of the employees' retirement system, chapter 88, Hawaii Revised Statutes, should be amended to incorporate the amendments approved by the Internal Revenue Service as part of its determination process.

SECTION 2. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

§88-73 Service retirement. (a) Any member who:

- (1) Became a member before July 1, 2012, and has at least five years of credited service and has attained age fifty-five;
- (2) Became a member before July 1, 2012, and has at least twenty-five years of credited service;

- (3) 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;
- (4) Becomes a member after June 30, 2012, and has at least ten years of credited service and has attained age sixty; or
- (5) Becomes a member after June 30, 2012, and has at least twenty-five years of credited service and has attained age fifty-five,

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, but before July 1, 2012, 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. Any member who first earned credited service as a judge after June 30, 2012, and has at least ten years of credited service and has attained age sixty or has at least twenty-five years of credited service and has attained age fifty-five shall be 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) 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.

(f) A member's right to the member's accrued retirement benefit is non-forfeitable upon the attainment of normal retirement age and the completion of the requisite years of credited service.

For the purpose of this subsection:

"Normal retirement age" means age sixty-five.

"Requisite years of credited service" means five years for class A and B members who became members before July 1, 2012, and ten years for class A and B members who became members after June 30, 2012."

SECTION 3. Section 88-83.5, Hawaii Revised Statutes, is amended to read as follows:

"§88-83.5 Benefit limitations. (a) Notwithstanding any other law to the contrary, the benefits payable to all employees who first become members on or after January 1, 1990, shall be subject to the limitations set forth in section 415 of the Internal Revenue Code of 1986, as amended, applicable to governmental plans. The dollar limit in section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, shall be adjusted automatically under section 415(d) of the Internal Revenue Code of 1986, as amended, effective January 1 of each year, as published in the Internal Revenue Bulletin. The automatic adjustment shall apply to members, former employees[;] with vested benefit status, and retirants[;] and beneficiaries]. To the extent the applicable interest rate, as defined in section 417(e)(3) of the Internal Revenue Code of 1986, as amended, is used in computing the limitations under section 415 of the Internal Revenue Code of 1986, as amended, the stability period for the purposes of applying section

1.417(e)-1(d) (4) of the United States Treasury Regulations shall be one calendar year beginning January 1, and the lookback month for the purposes of applying section 1.417(e)-1(d)(4) of the United States Treasury Regulations shall be the fourth full calendar month preceding the first day of the stability period (September).

(b) Effective January 1, 2009, the following rules shall apply for the purposes of applying the limitations in section 415(b) of the Internal Revenue Code of 1986, as amended:

- (1) The dollar limit in section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, shall be applied to the member's annual benefit as of the member's annuity starting date, as defined in section 417(f)(2) of the Internal Revenue Code of 1986, as amended, without regard to any automatic cost-of-living increases; and
- (2) In no event may the member's annual benefit exceed the dollar limit applicable at the member's annuity starting date, as defined in section 417(f)(2) of the Internal Revenue Code of 1986, as amended, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code of 1986, as amended.

~~[(b)]~~ (c) Notwithstanding any other law to the contrary, the benefits payable to all employees who first became members before January 1, 1990, shall be subject to the greater of the following limitations as provided in section 415(b) (10) of the Internal Revenue Code of 1986, as amended:

- (1) The limitations set forth in section 415 of the Internal Revenue Code of 1986, as amended; or
- (2) The benefit of the member without regard to any benefit increases pursuant to an amendment adopted after October 14, 1987.

~~[(e)]~~ (d) The system shall establish a benefit restoration plan for the payment of retirement benefits as permitted under section 415(m) of the Internal Revenue Code of 1986, as amended, as follows:

- (1) All retirants and beneficiaries of the system whose pension has been limited by section 415 of the Internal Revenue Code shall receive a monthly benefit from the plan established pursuant to this subsection that is equal to the difference between the retirement benefit otherwise payable and the retirement benefit payable because of section 415 of the Internal Revenue Code of 1986, as amended;
- (2) Participation in the plan shall be determined for each plan year and shall cease whenever the retirement benefit is not limited by section 415 of the Internal Revenue Code of 1986, as amended;
- (3) The plan shall be funded on a plan-year-to-plan-year basis and shall not be used to pay any benefits payable in future years. Upon the recommendation of the system's actuary, the required contribution amount shall be determined by the board and deposited in a separate fund from an allocation of employer contribution amounts pursuant to this chapter;
- (4) The board shall administer the plan and may make modifications to the benefits payable as may be necessary to maintain the qualified status of the plan under section 415(m) of the Internal Revenue Code of 1986, as amended."

SECTION 4. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

"§88-281 Service retirement. (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited

service who has attained the age of fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to receive a retirement allowance when the member has attained age sixty-five.

(e) If a member has at least thirty years of credited service through June 30, 2003; twenty-nine years of credited service on or after July 1, 2004; twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the emergency medical technician shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(f) A member may retire upon the written application to the board, specifying the desired date of retirement, which shall be not 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.

(g) A member's right to the member's accrued retirement benefit is non-forfeitable upon the attainment of normal retirement age and the completion of ten years of credited service.

For the purpose of this section, "normal retirement age" means age sixty-five."

SECTION 5. Section 88-331, Hawaii Revised Statutes, is amended to read as follows:

“§88-331 Service retirement. (a) A class H member who:

- (1) Became a member before July 1, 2012, has at least five years of credited service, and has attained age sixty-two;
- (2) Became a member before July 1, 2012, has at least thirty years of credited service, and has attained the age of fifty-five; or
- (3) Becomes a member after June 30, 2012, has at least ten years of credited service, and has attained age sixty-five; or
- (4) Becomes a member after June 30, 2012, has at least thirty years of credited service, and has attained age sixty,

shall become eligible to receive a retirement allowance after the member has terminated service.

(b) A class H member who became a member before July 1, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service. A class H member who becomes a member after June 30, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five

or more years prior to retirement is credited service in that capacity, and has attained age fifty-five shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service.

(c) A class H member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) If a class H member, who became a member before July 1, 2012, has at least twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service. If a class H member, who becomes a member after June 30, 2012, has at least twenty-five years of credited service as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, and has attained age fifty-five, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(e) A class H member may retire upon the written application to the system, specifying the desired date of retirement, which shall be not 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.

(f) A member's right to the member's accrued retirement benefit is non-forfeitable upon the attainment of normal retirement age and the completion of the requisite years of credited service.

For the purpose of this subsection:

"Normal retirement age" means age sixty-five.

"Requisite years of credited service" means five years for class H members who became members before July 1, 2012, and ten years for class H members who became members after June 30, 2012."

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

SECTION 7. This Act shall take effect upon its approval.

(Approved June 14, 2013.)