

H.B. NO. 2311

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. The employees' retirement system of the State
2 of Hawaii is intended to be a tax-qualified retirement plan
3 under section 401(a) of the Internal Revenue Code of 1986, as
4 amended (Code). Section 414(h) (2) of the Code provides for
5 favorable tax treatment for employee contributions "picked up"
6 (made by the employer on behalf of the employee) to a tax-
7 qualified retirement plan established by a state or county or by
8 an agency or instrumentality of a state or county. However, the
9 tax-qualified status of a government retirement plan may be
10 jeopardized if the plan allows members to receive a refund of
11 the contributions made under section 414(h) (2) of the Code while
12 the member is employed by the government or if a member who
13 received a refund of contributions made under section 414(h) (2)
14 of the Code while the member was still employed by the
15 government is allowed to have additional contributions made on
16 behalf of the member under section 414(h) (2). The purpose of
17 this Act is to repeal the portions of chapter 88, Hawaii Revised

1 Statutes, that allow members of the employees' retirement system
2 to receive a refund of contributions made under section
3 414(h)(2) of the Code while the member is still employed by the
4 State or a county or that allow members of the employees'
5 retirement system who received a refund of contributions made
6 under section 414(h)(2) of the Code while still employed by the
7 State or a county to have additional contributions made on
8 behalf of the member under section 414(h)(2).

9 SECTION 2. Section 88-271, Hawaii Revised Statutes, is
10 amended by amending subsections (d) and (e) to read as follows:

11 "(d) ~~[Any class A or class H member who elects and is~~
12 ~~approved to withdraw the member's contributions may become a~~
13 ~~class C member in accordance with section 88-46.5. Upon~~
14 ~~approval of the election:~~

15 ~~(1) All rights as a class A or class H member shall be~~
16 ~~extinguished;~~

17 ~~(2) The member's accumulated contributions shall be~~
18 ~~refunded; and~~

19 ~~(3) The member shall not be required to make further~~
20 ~~contributions to the system.~~

21 ~~This election shall be irrevocable.]~~ The election by any class
22 A member to become a class C member pursuant to section 88-46.5

1 in the form in which it existed at any time prior to July 1,
2 2006, shall be irrevocable upon refund of the member's
3 accumulated contributions.

4 (e) The system shall provide information explaining the
5 effects of any election made under subsection (a) [~~r~~] or (c) [~~r~~ ~~or~~
6 ~~(d)~~]."

7 SECTION 3. Section 88-321, Hawaii Revised Statutes, is
8 amended by amending subsection (c) to read as follows:

9 "(c) The following members may not elect to become a class
10 H member under subsection (a):

- 11 (1) Judges, elected officials, and legislative officers;
- 12 (2) Investigators of the department of the attorney
13 general, narcotics enforcement investigators, water
14 safety officers not making the election under section
15 88-271, prosecuting attorney investigators not making
16 the election under section 88-271, corrections
17 officers not making the election under section 88-271,
18 and public safety investigations staff investigators;
- 19 (3) Police officers and firefighters;
- 20 (4) All employees who were members on July 1, 1957, who
21 elected not to be covered by the Social Security Act;
22 [~~and~~]

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- 1 (5) Former class A, B, or C retirants[-]; and
2 (6) Any former class A member who received a refund of
3 contributions picked up and paid by the member's
4 employer pursuant to section 88-46(b), unless the
5 refund was made pursuant to section 88-96, including
6 any class C member whose contributions were refunded
7 to the member pursuant to section 88-46.5 in the form
8 in which it existed at any time prior to July 1,
9 2006."

10 SECTION 4. Section 88-46.5, Hawaii Revised Statutes, is
11 repealed.

12 [~~"§88-46.5 Withdrawal of contributions and transfer to the~~
13 ~~noncontributory plan. (a) Notwithstanding any other provisions~~
14 ~~of this chapter to the contrary, a member who is in a position~~
15 ~~covered by Title II of the Social Security Act may apply to the~~
16 ~~system for a one-time withdrawal of the member's contributions~~
17 ~~in the event of economic hardship.~~

18 (b) ~~Upon approval of the member's election, all rights as~~
19 ~~a class A or class H member shall be extinguished and the member~~
20 ~~shall:~~

- 21 (1) ~~Become a class C member;~~
22 (2) ~~Be refunded the member's contributions; and~~

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- 1 ~~(3) Not be required to make any further contributions.~~
- 2 ~~(c) The system shall administer this section and shall:~~
- 3 ~~(1) Prescribe the verification needed for the withdrawal~~
- 4 ~~election authorized under this section;~~
- 5 ~~(2) Provide the member with information explaining the~~
- 6 ~~effects of the election;~~
- 7 ~~(3) Review the facts and make a case by case~~
- 8 ~~determination; and~~
- 9 ~~(4) Notify the member in writing of the approval of the~~
- 10 ~~withdrawal or the disapproval and the reasons for the~~
- 11 ~~disapproval.~~
- 12 ~~(d) For the purposes of this section, "economic hardship"~~
- 13 ~~means a financial hardship resulting from any of the following~~
- 14 ~~conditions that cannot be satisfied by other resources,~~
- 15 ~~including:~~
- 16 ~~(1) A sudden and unexpected illness or accident of the~~
- 17 ~~member or the member's dependent;~~
- 18 ~~(2) The loss of the member's property due to a casualty;~~
- 19 ~~or~~
- 20 ~~(3) Any other extraordinary and unforeseeable circumstance~~
- 21 ~~arising as a result of events beyond the member's~~
- 22 ~~control."]~~

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1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2006,
4 except that sections 2 and 3 shall take effect retroactive to
5 July 1, 2004.

6 INTRODUCED BY: _____

Calvin K. H. Song

7 BY REQUEST

JAN 23 2006

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to exclude from membership in the hybrid plan members of the employees' retirement system who received in-service refunds of pension contributions made under section 414(h)(2) of the Internal Revenue Code and to repeal the provision for hardship withdrawal of employees' retirement system contributions.

MEANS: Amend sections 88-271 and 88-321, Hawaii Revised Statutes, and repeal section 88-46.5, Hawaii Revised Statutes.

JUSTIFICATION: The employees' retirement system is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Section 414(h)(2) of the Code provides for 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 if members are allowed to receive a refund of the contributions made under section 414(h)(2) of the Code while the member is employed by the State or a county or if a member who received a refund of contributions made under section 414(h)(2) of the Code while the member was still employed by the State or a county is allowed to have additional contributions made on behalf of the member under Section 414(h)(2). The bill repeals section 88-46.5, Hawaii Revised Statutes, which allows contributory plan members to withdraw their

accumulated employees' retirement system contributions in the event of economic hardship while still employed by the State or a county. The bill also amends section 88-321, Hawaii Revised Statutes, to prohibit former contributory plan members, who withdrew or received refunds of their contributions made under section 414(h)(2) of the Code while still employed by the State or a county, from joining the employees' retirement system's hybrid plan. The bill also makes a conforming amendment to section 88-271, Hawaii Revised Statutes.

Impact on the public: None.

Impact on the department and other agencies: State and county employees will not be allowed to withdraw their contributions to the employees' retirement system while they are still employed. State and county employees who received a hardship withdrawal of their contributions or who withdrew or received a refund of their contributions made under section 414(h)(2) of the Code while still employed by the State or a county from rejoining the employees' retirement system's contributory plan or from joining the employees' retirement system's hybrid plan. One member received a hardship withdrawal. Twenty-two water safety officers received refunds of section 414(h)(2) contributions when they left the contributory plan and rejoined the noncontributory plan pursuant to Act 276, Session Laws of Hawaii 1994.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION:

OTHER AFFECTED

AGENCIES:

Counties that employ the water safety officers who received refunds of their section 414(h) (2) contributions under Act 276, Session Laws of Hawaii 1994.

EFFECTIVE DATE:

July 1, 2006, except for sections 2 and 3, which shall be retroactive to July 1, 2004.