
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:

1 SECTION 1. The Employees' Retirement System of the State
2 of Hawaii (the "system") is intended to be a tax-qualified
3 retirement plan under section 401(a) of the Internal Revenue
4 Code of 1986, as amended (the "Code"). Section 414(h)(2) of the
5 Code provides favorable tax treatment for employee contributions
6 "picked up" (made by the employer on behalf of the employee) to
7 a tax-qualified retirement plan established by a state or county
8 or by an agency or instrumentality of a state or county.
9 However, the tax-qualified status of the system may be
10 jeopardized by the provisions of chapter 88, Hawaii Revised
11 Statutes, that provide for optional membership in the system.
12 These provisions include provisions allowing elective officers
13 to exercise their option to join the system at any time during
14 their term of office and provisions allowing elective officers
15 and judges to withdraw from ERS membership while remaining in
16 office. As defined by section 88-21, Hawaii Revised Statutes,



1 an elective officer includes those persons elected to the county
2 councils, the office of Hawaiian affairs, and the legislature.

3 This bill repeals the provisions of chapter 88, Hawaii
4 Revised Statutes, that make membership in the system by elective
5 officers optional and replaces those provisions with a new
6 section that requires elective officers to exercise a one-time
7 irrevocable election to join the system when they are elected
8 for the first time (or, in the case of existing office holders,
9 by October 1, 2008). The new section also sets forth the
10 requirements that must be satisfied for retirants to return to
11 service as elective officers without suspension of retirement
12 benefits.

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

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

20 "§88-A Membership of elective officers. (a) An elective
21 officer shall have a one-time election to be excluded from
22 membership in the system.



1 (b) Unless the elective officer is a member of the system,
2 a former member of the system, or a retirant, an elective
3 officer shall elect to be excluded from membership in the system
4 no later than thirty days following the elective officer's
5 taking office. The election shall be irrevocable. If the
6 elective officer fails to elect to be excluded from membership
7 in the system within the period allowed for making the election,
8 the elective officer shall become a member effective as of the
9 date the elective officer takes office.

10 (c) Notwithstanding section 88-21, 88-98, 88-273(c), or 88
11 344, or any other law to the contrary, the retirement allowance
12 of a retirant who returns to service as an elective officer
13 shall not be suspended if the retirant:

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



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

5 (d) An elective officer who retired pursuant to section
6 88-73(d) shall not be eligible for membership in the system
7 while serving as an elective officer."

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

11 "Employee": any employee or officer of the State or any
12 county, including inspectors, principals, teachers and special
13 teachers, regularly employed in the public schools, cafeteria
14 managers and cafeteria workers, apprentices and on-the-job
15 trainees whether or not supported in whole or in part by any
16 federal grants, members of the legislature and other elective
17 officers, including the trustees of the office of Hawaiian
18 affairs, year-round legislative employees who are employed on a
19 full-time basis, probationary and provisional employees, any
20 employee of the educational nonprofit public corporation as
21 provided in section 88-49.7, per diem employees and others who
22 are made eligible by reason of their employment to membership in



1 the system by or pursuant to any other provision of law, but
2 excluding:

- 3 (1) Per diem employees who elect to withdraw or not to
4 become members as provided in section 88-42;
- 5 (2) [~~Members of the legislature~~] Elective officers who do
6 not elect to be members as provided in section [~~88-~~
7 ~~42;~~] 88-A;
- 8 (3) Session employees of the legislature employed after
9 October 31, 2006, in accordance with section 88-54.2;
10 and
- 11 (4) Persons excluded by rules of the board pursuant to
12 section 88-43.

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

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

20 "**§88-42 Membership generally.** Except as otherwise
21 provided in this part, all employees of the Territory or any
22 county on July 1, 1945, shall be members of the system on [~~such~~]



1 that date, and all persons who thereafter enter or reenter the
2 service of the State or any county shall become members at the
3 time of their entry or reentry.

4 Per diem workers shall become eligible for membership on
5 January 1, 1952, and all persons who are employed as per diem
6 workers after December 31, 1951, shall become members of the
7 system. Any person who was a per diem worker before January 1,
8 1952, shall not, so long as the person is employed as a per diem
9 worker, be required to become a member or to remain a member if
10 the person has elected before October 2, 1953, to withdraw as a
11 member.

12 Members of the legislature shall become eligible for
13 membership on July 1, 1951. Any member of the legislature in
14 service on July 1, 1951, or thereafter entering [~~or reentering~~]
15 the legislature, [~~may~~] shall become a member [~~upon the~~
16 ~~legislator's own election.~~] as provided in section 88-A."

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

19 "**§88-43 Persons ineligible for membership** [~~; optional~~
20 **membership**]. Except with respect to faculty members or
21 lecturers employed on one or more campuses of the University of
22 Hawaii who hold multiple part-time appointments or positions, in



1 such capacities, any of which may be less than one-half of a
2 full-time equivalent but all of which, when added together,
3 aggregate to at least one-half of a full-time equivalent
4 position, the board [~~of trustees~~] may deny membership to any
5 class of part-time employees or persons engaged in temporary
6 employment of three months or less [~~, or it may, in its~~
7 ~~discretion, make optional with persons in such classes their~~
8 ~~individual entrance into membership~~]; provided that no officer
9 or employee entering service after January 1, 1928, who is
10 entitled to become a member of any pension system under part III
11 shall be entitled to become a member of the system.

12 [~~Elective officers shall be eligible for membership, and~~
13 ~~their individual entrance into membership shall be at their~~
14 ~~option.~~]"

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

17 "**§88-54.5 Service while a member of the board of trustees**
18 **of the office of Hawaiian affairs.** Notwithstanding any
19 provisions of section 10-9 that may previously have precluded a
20 member of the board of trustees of the office of Hawaiian
21 affairs from participating as a member of the employees'
22 retirement system:



- 1 (1) Any trustee of the office of Hawaiian affairs in
2 service on July 1, 2002, may become a member [~~upon the~~
3 ~~trustee's election~~] in accordance with section 88-43
4 by October 1, 2002;
- 5 (2) Any trustee of the office of Hawaiian affairs elected
6 or appointed after July 1, 2002, may become a member
7 [~~upon the trustee's election~~] in accordance with
8 section [~~88-43;~~] 88-A;
- 9 (3) Any service as a trustee of the office of Hawaiian
10 affairs during the period of July 1, 1993, through
11 July 1, 2002, if claimed by the member, shall be
12 credited in the member's class at the time the service
13 is acquired; provided that membership service shall be
14 credited in accordance with sections 88-59, 88-272,
15 and 88-324; and
- 16 (4) Any former trustee of the office of Hawaiian affairs
17 who retired from service prior to July 1, 2002, shall
18 not be entitled to claim membership service as a
19 trustee during the period July 1, 1993, through June
20 30, 2002."

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



1 "§88-59 Acquisition of membership service. (a) Under
2 rules as the board [~~of trustees~~] may adopt, any member may file
3 with the board a statement of all service as an employee or
4 other service paid for by the State or a county rendered prior
5 to the member's last becoming a member that is not credited to
6 the member, for which the member claims prior service credit,
7 and also a statement of the services for which the member claims
8 membership service credit and for which the member agrees to
9 have additional deductions made from the member's compensation
10 or to make a lump sum payment as described in this section.

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

16 (1) By deductions from the member's compensation pursuant
17 to section 414(h)(2) of the Internal Revenue Code of
18 1986, as amended, under the employer pick up plan
19 under section 88-46. An irrevocable payroll
20 authorization filed by the member for a period not to
21 exceed sixty months shall remain in effect until the
22 completion of the payroll payments or termination of



1 employment, whichever is earlier. The member may
2 elect to have:

3 (A) Deductions from the member's compensation of
4 twice the contribution rate provided for in
5 section 88-45 over a period equal to the period
6 for which membership service credit is allowable
7 not to exceed sixty months; or

8 (B) Deductions from the member's compensation of one
9 and one-half times the contribution rate provided
10 for in section 88-45 over a period equal to twice
11 the period for which membership service credit is
12 allowable not to exceed sixty months; or

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



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

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

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

12 ~~[Any member of the legislature who reenrolls as an active~~
13 ~~member in accordance with section 88-62 and who desires to~~
14 ~~obtain membership service for a period of service as a member of~~
15 ~~the legislature during which the member received a retirement~~
16 ~~allowance, in addition to complying with this section, shall~~
17 ~~refund while a reenrolled active member the retirement allowance~~
18 ~~received during the period of legislative service.]"~~

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

21 "**§88-61 Termination of membership.** (a) Except as
22 otherwise provided by section 88-96, any member absent from



1 service for four calendar years following the calendar year in
2 which the member's employment terminated shall cease to be a
3 member, and the former member's credited service shall be
4 forfeited.

5 (b) Any member who withdraws the member's contributions,
6 becomes a retirant, or dies, ceases to be a member as of the
7 date of withdrawal, retirement, or death.

8 ~~[(c) The membership of an elective officer or judge in the
9 system may be terminated upon election of the member to retire
10 whenever the allowance for the member reaches seventy-five per
11 cent of the member's average final compensation. The member's
12 right to receive the retirement allowance prescribed in section
13 88-74 after the member's future separation from service as
14 provided in section 88-73 shall vest on the date of the
15 election. Upon the date of the election, the member shall be
16 entitled to receive the portion of the accumulated
17 contributions, if any, which would be required to be returned to
18 the member under section 88-74(3) as if the member's retirement
19 allowance had commenced on that date, and after the date of the
20 election the member shall not be allowed or required to make any
21 future contributions.]"~~



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

3 "**§88-73 Service retirement.** (a) Any member who has at
4 least five years of credited service and who has attained age
5 fifty-five or any member who has at least twenty-five years of
6 credited service or any member who has at least ten years of
7 credited service, which includes service as a judge before July
8 1, 1999, an elective officer, or a legislative officer, shall
9 become eligible to receive a retirement allowance after the
10 member has terminated service.

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

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



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

4 ~~[(e) For the purpose of computing or determining benefits~~
5 ~~for an elective officer or judge, or any beneficiary of either,~~
6 ~~the date upon which the elective officer or judge makes an~~
7 ~~election to retire, as provided by section 88-61(e), after~~
8 ~~attaining an allowance of seventy-five per cent of the member's~~
9 ~~average final compensation, shall be used as the date the member~~
10 ~~is eligible to receive a service retirement benefit. The~~
11 ~~elective officer or judge may continue in active service, but~~
12 ~~shall not receive a retirement allowance until termination of~~
13 ~~active service. Upon leaving active service, the elective~~
14 ~~officer or judge shall receive the retirement allowance provided~~
15 ~~for in section 88-74, together with the post retirement~~
16 ~~allowances provided for in section 88-90, effective on the first~~
17 ~~day of a month except the month of December when retirement~~
18 ~~benefits shall be effective on the first or last day of the~~
19 ~~month. Post retirement allowances shall be computed from the~~
20 ~~date of the election as though the elective officer or judge had~~
21 ~~left active service on that day.~~



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

6 SECTION 10. Section 88-74, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§88-74 Allowance on service retirement.** (a) Upon
9 retirement from service, a member shall receive a maximum
10 retirement allowance as follows:

11 (1) If the member has attained age fifty-five, a
12 retirement allowance of two per cent of the member's
13 average final compensation multiplied by the total
14 number of years of the member's credited service as a
15 class A and B member, excluding any credited service
16 as a judge, elective officer, or legislative officer,
17 plus a retirement allowance of one and one-fourth per
18 cent of the member's average final compensation
19 multiplied by the total number of years of prior
20 credited service as a class C member, plus a
21 retirement allowance of two per cent of the member's
22 average final compensation multiplied by the total



1 number of years of prior credited service as a class H
2 member; provided that:

3 (A) After June 30, 1968, if the member has at least
4 ten years of credited service of which the last
5 five or more years prior to retirement is
6 credited service as a firefighter, police
7 officer, or an investigator of the department of
8 the prosecuting attorney;

9 (B) After June 30, 1977, if the member has at least
10 ten years of credited service of which the last
11 five or more years prior to retirement is
12 credited service as a corrections officer;

13 (C) After June 16, 1981, if the member has at least
14 ten years of credited service of which the last
15 five or more years prior to retirement is
16 credited service as an investigator of the
17 department of the attorney general;

18 (D) After June 30, 1989, if the member has at least
19 ten years of credited service of which the last
20 five or more years prior to retirement is
21 credited service as a narcotics enforcement
22 investigator;



- 1 (E) After December 31, 1993, if the member has at
2 least ten years of credited service of which the
3 last five or more years prior to retirement is
4 credited service as a water safety officer;
- 5 (F) After June 30, 1994, if the member has at least
6 ten years of credited service, of which the last
7 five or more years prior to retirement are
8 credited service as a public safety
9 investigations staff investigator;
- 10 (G) After June 30, 2002, if the member:
11 (i) Has at least ten years of credited service
12 as a firefighter;
13 (ii) Is deemed permanently medically disqualified
14 due to a service related disability to be a
15 firefighter by the employer's physician; and
16 (iii) Continues employment in a class A or B
17 position other than a firefighter; and
- 18 (H) After June 30, 2004, if the member:
19 (i) Has at least ten years of credited service
20 as a police officer;
21 (ii) Is deemed permanently medically disqualified
22 due to a service related disability to be a



1 police officer by the employer's physician;

2 and

3 (iii) Continues employment in a class A or B

4 position other than a police officer;

5 then for each year of service as a firefighter, police

6 officer, corrections officer, investigator of the

7 department of the prosecuting attorney, investigator

8 of the department of the attorney general, narcotics

9 enforcement investigator, water safety officer, or

10 public safety investigations staff investigator, the

11 retirement allowance shall be two and one-half per

12 cent of the member's average final compensation. The

13 maximum retirement allowance for those members shall

14 not exceed eighty per cent of the member's average

15 final compensation. If the member has not attained

16 age fifty-five, the member's retirement allowance

17 shall be computed as though the member had attained

18 age fifty-five, reduced for age as provided in

19 subsection (b);

20 (2) If the member has credited service as a judge, the

21 member's retirement allowance shall be computed on the

22 following basis:



- 1 (A) For a member who has credited service as a judge
2 before July 1, 1999, irrespective of age, for
3 each year of credited service as a judge, three
4 and one-half per cent of the member's average
5 final compensation in addition to an annuity that
6 is the actuarial equivalent of the member's
7 accumulated contributions allocable to the period
8 of service; and
- 9 (B) For a member who first earned credited service as
10 a judge after June 30, 1999, for each year of
11 credited service as a judge, three and one-half
12 per cent of the member's average final
13 compensation in addition to an annuity that is
14 the actuarial equivalent of the member's
15 accumulated contributions allocable to the period
16 of service. If the member has not attained age
17 fifty-five, the member's retirement allowance
18 shall be computed as though the member had
19 attained age fifty-five, reduced for age as
20 provided in subsection (b); or
- 21 (C) For a judge with other credited service, as
22 provided in paragraph (1). If the member has not



1 attained age fifty-five, the member's retirement
2 allowance shall be computed as though the member
3 had attained age fifty-five, reduced for age as
4 provided in subsection (b); or

5 (D) For a judge with credited service as an elective
6 officer or as a legislative officer, as provided
7 in paragraph (3).

8 ~~[No allowance shall exceed seventy five per cent of~~
9 ~~the member's average final compensation. If the~~
10 ~~allowance exceeds this limit, it shall be adjusted by~~
11 ~~reducing the annuity included in subparagraphs (A) and~~
12 ~~(B) and the portion of the accumulated contributions~~
13 ~~specified in the subparagraphs in excess of the~~
14 ~~requirements of the reduced annuity shall be returned~~
15 ~~to the member upon the member's retirement or paid to~~
16 ~~the member's designated beneficiary upon the member's~~
17 ~~death while in service or while on authorized leave~~
18 ~~without pay. The allowance for judges under this~~
19 ~~paragraph, together with the retirement allowance~~
20 ~~provided by the federal government for similar~~
21 ~~service, shall in no case exceed seventy five per cent~~
22 ~~of the member's average final compensation;] or~~



1 (3) If the member has credited service as an elective
2 officer or as a legislative officer, the member's
3 retirement allowance shall be derived by adding the
4 allowances computed separately under subparagraphs
5 (A), (B), (C), and (D) as follows:

6 (A) Irrespective of age, for each year of credited
7 service as an elective officer, three and one-
8 half per cent of the member's average final
9 compensation as computed under section 88-
10 81(e)(1), in addition to an annuity that is the
11 actuarial equivalent of the member's accumulated
12 contributions allocable to the period of service;
13 and

14 (B) Irrespective of age, for each year of credited
15 service as a legislative officer, three and one-
16 half per cent of the member's average final
17 compensation as computed under section 88-
18 81(e)(2), in addition to an annuity that is the
19 actuarial equivalent of the member's accumulated
20 contributions allocable to the period of service;



1 (C) If the member has credited service as a judge,
2 the member's retirement allowance shall be
3 computed on the following basis:

4 (i) For a member who has credited service as a
5 judge before July 1, 1999, irrespective of
6 age, for each year of credited service as a
7 judge, three and one-half per cent of the
8 member's average final compensation as
9 computed under section 88-81(e)(3), in
10 addition to an annuity that is the actuarial
11 equivalent of the member's accumulated
12 contributions allocable to the period of
13 service; and

14 (ii) For a member who first earned credited
15 service as a judge after June 30, 1999, and
16 has attained the age of fifty-five, for each
17 year of credited service as a judge, three
18 and one-half per cent of the member's
19 average final compensation as computed under
20 section 88-81(e)(3), in addition to an
21 annuity that is the actuarial equivalent of
22 the member's accumulated contributions



1 allocable to the period of service. If the
2 member has not attained age fifty-five, the
3 member's retirement allowance shall be
4 computed as though the member had attained
5 age fifty-five, reduced for age as provided
6 in subsection (b); and

7 (D) For each year of credited service not included in
8 subparagraph (A), (B), or (C), the average final
9 compensation as computed under section 88-
10 81(e)(4) shall be multiplied by two per cent for
11 credited service earned as a class A or class H
12 member, two and one-half per cent for credited
13 service earned as a class B member, and one and
14 one-quarter per cent for credited service earned
15 as a class C member. If the member has not
16 attained age fifty-five, the member's retirement
17 allowance shall be computed as though the member
18 had attained age fifty-five, reduced for age as
19 provided in subsection (b).

20 ~~[The total retirement allowance shall not exceed~~
21 ~~seventy five per cent of the member's highest average~~
22 ~~final compensation calculated under section 88-~~



1 ~~81(e) (1), (2), (3), or (4). If the allowance exceeds~~
2 ~~this limit, it shall be adjusted by reducing any~~
3 ~~annuity accrued under subparagraphs (A), (B), and (C)~~
4 ~~and the portion of the accumulated contributions~~
5 ~~specified in these subparagraphs in excess of the~~
6 ~~requirements of the reduced annuity shall be returned~~
7 ~~to the member upon the member's retirement or paid to~~
8 ~~the member's designated beneficiary upon the member's~~
9 ~~death while in service or while on authorized leave~~
10 ~~without pay.] If a member has service credit as an~~
11 ~~elective officer or as a legislative officer in~~
12 ~~addition to service credit as a judge, then the~~
13 ~~retirement benefit calculation contained in this~~
14 ~~paragraph shall supersede the formula contained in~~
15 ~~paragraph (2).~~

16 (b) Except as provided in subsection (a), if a member has
17 not attained age fifty-five at the date of retirement, the
18 member's retirement allowance shall be reduced, for each month
19 the member's age at the date of retirement is below age fifty-
20 five, as follows:

- 21 (1) 0.4166 per cent for each month below age fifty-five
22 and above age forty-nine and eleven months; plus



1 (2) 0.3333 per cent for each month below age fifty and
2 above age forty-four and eleven months; plus
3 (3) 0.2500 per cent for each month below age forty-five
4 and above age thirty-nine and eleven months; plus
5 (4) 0.1666 per cent for each month below age forty;
6 provided that no reduction shall be made if the member has at
7 least twenty-five years of credited service as a firefighter,
8 police officer, corrections officer, investigator of the
9 department of the prosecuting attorney, investigator of the
10 department of the attorney general, narcotics enforcement
11 investigator, public safety investigations staff investigator,
12 sewer worker, or water safety officer, of which the last five or
13 more years prior to retirement is credited service in these
14 capacities."

15 SECTION 11. Section 88-251, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§88-251 Applicability.** The following provisions of part
18 II shall apply to this part:

19 (1) Subpart A, except the definitions provided in section
20 88-21, unless expressly adopted in section 88-261;



1 (2) Subpart B, except sections 88-45, 88-45.5, 88-46, 88-
2 48, 88-52, 88-59, 88-59.5, [~~88-59.6,~~] 88-61, and 88-
3 62;

4 (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74,
5 88-74.6, 88-75, 88-76, 88-80, 88-83, 88-84, 88-85, 88-
6 87, 88-88, 88-96, 88-97, and 88-98;

7 (4) Subpart D, except sections 88-112 and 88-113; and

8 (5) Subpart E."

9 SECTION 12. Section 88-301, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§88-301 **Applicability.** The following provisions of part
12 II of this chapter shall apply to this part:

13 (1) Subpart A;

14 (2) Subpart B, except sections 88-45, 88-46, 88-48, 88-52,
15 88-59, 88-59.5, [~~88-59.6,~~] 88-61, and 88-62;

16 (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74,
17 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84, 88-
18 85, 88-88, 88-96, 88-97, and 88-98;

19 (4) Subpart D; and

20 (5) Subpart E."

21 SECTION 13. Section 88-59.6, Hawaii Revised Statutes, is
22 repealed.



1 ~~["§88-59.6 Previous membership service credit for judges.~~

2 ~~(a) Notwithstanding any other law to the contrary, any judge~~
3 ~~who retires under section 88-61(c) and continues in service as a~~
4 ~~judge shall be allowed membership in the system and entitlement~~
5 ~~to membership service credit for any eligible class A service,~~
6 ~~provided that the membership service shall be credited in~~
7 ~~accordance with section 88-59; and provided further that when~~
8 ~~the judge retires, it shall be as if it were for the first time,~~
9 ~~and sections 88-73(a), 88-74(3), and 88-76 shall be used to~~
10 ~~determine the retirement allowance.~~

11 ~~(b) Those judges who are entitled to membership service~~
12 ~~credit under this section may elect to cancel retirement under~~
13 ~~section 88-61(c) and, no later than July 1, 1993, begin to make~~
14 ~~additional deductions or make a lump sum payment for such~~
15 ~~service pursuant to section 88-59."]~~

16 SECTION 14. Elective officers in office on the effective
17 date of this Act, who are not retirants of the employees'
18 retirement system, shall be deemed to have exercised the one-
19 time election under subsection (a) of the new section added to
20 chapter 88, Hawaii Revised Statutes, by section 2 of this Act.

21 SECTION 15. Elective officers who are retirants of the
22 employees' retirement system of the State of Hawaii shall make



1 an election, not later than the effective date of this Act,
2 whether or not to have their retirement allowance continue as
3 provided by section 2 of this Act. If the elective officer
4 makes no election, the elective officer's retirement allowance
5 shall continue. An elective officer whose retirement allowance
6 continues pursuant this section shall not be eligible for
7 membership in the employees' retirement system of the State of
8 Hawaii while serving as an elective officer.

9 SECTION 16. The requirement of section 2 of this Act, that
10 a retirant who returns to service as an elective officer shall
11 have been retired for a least twelve consecutive months prior to
12 return to service to be eligible to make an election to have the
13 retirant's retirement allowance continue, shall not be
14 applicable to any retirant who returns to service as an elective
15 officer prior to January 3, 2009; provided that the retirant did
16 not retire as an elective officer.

17 SECTION 17. Sections 8 and 9 of this Act shall not be
18 applied to affect the rights of any retirants, as defined in
19 section 88-21, Hawaii Revised Statutes, who retired prior to the
20 effective date of this Act, or rights of the beneficiaries or
21 survivors of those retirants.



1 SECTION 18. In codifying the new section added to chapter
2 88, Hawaii Revised Statutes, by section 2 this Act, the revisor
3 of statutes shall substitute an appropriate section number for
4 the letter used in the designation of the new section and the
5 references to that new section in this Act.

6 SECTION 19. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 20. This Act shall take effect on October 1, 2008.



Report Title:

ERS; Membership of Elective Officers and Judges

Description:

Repeals the provisions that (1) make ERS membership by elective officers optional and (2) allow elective officers and judges to withdraw from ERS membership by nominally retiring even though they remain in office. Provides for service by retirants as elective officers without suspension of retirement benefits. Lifts the 75% retirement benefit ceiling for judges and elective officers. Effective 07/01/2059. (HB3083 HD1)

