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# 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 is intended to be a tax-qualified retirement plan  
3 under section 401(a) of the Internal Revenue Code of 1986, as  
4 amended. Section 414(h)(2) of the Internal Revenue Code  
5 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 employees' retirement  
10 system may be jeopardized by the provisions of chapter 88,  
11 Hawaii Revised Statutes, that provide for optional membership in  
12 the system. These provisions include provisions allowing  
13 elective officers to exercise their option to join the system at  
14 any time during their term of office and provisions allowing  
15 elective officers and judges to withdraw from membership in the  
16 employees' retirement system while remaining in office. As  
17 defined by section 88-21, Hawaii Revised Statutes, an elective



1 officer includes, but is not limited to, those persons elected  
2 to the county councils, the office of Hawaiian affairs, and the  
3 legislature.

4 This Act repeals the provisions of chapter 88, Hawaii  
5 Revised Statutes, that make membership in the system by elective  
6 officers optional and replaces those provisions with a new  
7 section to provide that an elective officer shall be a member of  
8 the employee's retirement system when elected for the first time  
9 (or, in the case of existing office holders, by October 1,  
10 2008), unless the elective officer exercises a one-time  
11 irrevocable election to be excluded from membership in the  
12 employees' retirement system. The new section also sets forth  
13 the requirements that must be satisfied for retirants to return  
14 to service as elective officers without suspension of retirement  
15 benefits.

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



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

4 "§88-A Membership of elective officers. (a) An elective  
5 officer shall be a member of the employees' retirement system;  
6 provided that an elective officer shall have a one-time election  
7 to be excluded from membership in the employees' retirement  
8 system.

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

18 (c) Notwithstanding section 88-21, 88-98, 88-273(c), or  
19 88-344, or any other law to the contrary, the retirement  
20 allowance of a retirant who returns to service as an elective  
21 officer shall not be suspended if the retirant:

22 (1) Retired pursuant to section 88-73(d); or



1       (2) Has been retired for at least twelve consecutive  
2       months prior to return to service and elects to have  
3       the retirement allowance continue. The election  
4       whether or not to have the retirant's retirement  
5       allowance continue shall be irrevocable and shall be  
6       made no later than thirty days following the  
7       retirant's first return to service as an elective  
8       officer.

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

13      (d) An elective officer who retired pursuant to section  
14      88-73(d) shall not be eligible for membership in the system  
15      while serving as an elective officer."

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

19           " "Employee": any employee or officer of the State or any  
20      county, including inspectors, principals, teachers and special  
21      teachers, regularly employed in the public schools, cafeteria  
22      managers and cafeteria workers, apprentices and on-the-job



1 trainees whether or not supported in whole or in part by any  
 2 federal grants, members of the legislature and other elective  
 3 officers, including the trustees of the office of Hawaiian  
 4 affairs, year-round legislative employees who are employed on a  
 5 full-time basis, probationary and provisional employees, any  
 6 employee of the educational nonprofit public corporation as  
 7 provided in section 88-49.7, per diem employees and others who  
 8 are made eligible by reason of their employment to membership in  
 9 the system by or pursuant to any other provision of law, but  
 10 excluding:

- 11 (1) Per diem employees who elect to withdraw or not to  
 12 become members as provided in section 88-42;
- 13 (2) [~~Members of the legislature~~] Elective officers who do  
 14 not elect to be members as provided in section [~~88-~~  
 15 ~~42+~~] 88-A;
- 16 (3) Session employees of the legislature employed after  
 17 October 31, 2006, in accordance with section 88-54.2;  
 18 and
- 19 (4) Persons excluded by rules of the board pursuant to  
 20 section 88-43.

21 An individual is an employee during the period of a leave  
 22 of absence if the individual is in service, as defined in this



1 part, during the period of the leave of absence and the board  
2 shall determine who are employees within the meaning of this  
3 part."

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

6 "**§88-42 Membership generally.** Except as otherwise  
7 provided in this part, all employees of the Territory or any  
8 county on July 1, 1945, shall be members of the system on [~~such~~]  
9 that date, and all persons who thereafter enter or reenter the  
10 service of the State or any county shall become members at the  
11 time of their entry or reentry.

12 Per diem workers shall become eligible for membership on  
13 January 1, 1952, and all persons who are employed as per diem  
14 workers after December 31, 1951, shall become members of the  
15 system. Any person who was a per diem worker before January 1,  
16 1952, [~~shall not,~~] so long as the person is employed as a per  
17 diem worker, shall not be required to become a member or to  
18 remain a member if the person has elected before October 2,  
19 1953, to withdraw as a member.

20 Members of the legislature shall become eligible for  
21 membership on July 1, 1951. Any member of the legislature in  
22 service on July 1, 1951, or thereafter entering [~~or reentering~~]



1 the legislature, [~~may~~] shall become a member [~~upon the~~  
2 ~~legislator's own election.~~] or elect to be excluded from  
3 membership in the system as provided in section 88-A."

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

6 "**§88-43 Persons ineligible for membership**[~~, optional~~  
7 **membership**]. Except with respect to faculty members or  
8 lecturers employed on one or more campuses of the University of  
9 Hawaii who hold multiple part-time appointments or positions, in  
10 such capacities, any of which may be less than one-half of a  
11 full-time equivalent but all of which, when added together,  
12 aggregate to at least one-half of a full-time equivalent  
13 position, the board [~~of trustees~~] may deny membership to any  
14 class of part-time employees or persons engaged in temporary  
15 employment of three months or less[~~, or it may, in its~~  
16 ~~discretion, make optional with persons in such classes their~~  
17 ~~individual entrance into membership~~]; provided that no officer  
18 or employee entering service after January 1, 1928, who is  
19 entitled to become a member of any pension system under part III  
20 shall be entitled to become a member of the system.



1       ~~[Elective officers shall be eligible for membership, and~~  
2 ~~their individual entrance into membership shall be at their~~  
3 ~~option.] "~~

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

6       "**§88-54.5 Service while a member of the board of trustees**  
7 **of the office of Hawaiian affairs.** Notwithstanding any  
8 provisions of section 10-9 that may previously have precluded a  
9 member of the board of trustees of the office of Hawaiian  
10 affairs from participating as a member of the employees'  
11 retirement system:

12       (1) Any trustee of the office of Hawaiian affairs in  
13 service on July 1, 2002, may become a member ~~[upon the~~  
14 ~~trustee's election]~~ in accordance with section 88-43  
15 by October 1, 2002;

16       (2) Any trustee of the office of Hawaiian affairs elected  
17 or appointed after July 1, 2002, ~~[may]~~ shall become a  
18 member ~~[upon the trustee's election]~~ or elect to be  
19 excluded from membership in the system in accordance  
20 with section ~~[88-43,]~~ 88-A;

21       (3) Any service as a trustee of the office of Hawaiian  
22 affairs during the period of July 1, 1993, through





1 July 1, 2002, if claimed by the member, shall be  
2 credited in the member's class at the time the service  
3 is acquired; provided that membership service shall be  
4 credited in accordance with sections 88-59, 88-272,  
5 and 88-324; and

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

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

13 **"§88-59 Acquisition of membership service.** (a) Under  
14 rules as the board [~~of trustees~~] may adopt, any member may file  
15 with the board a statement of all service as an employee or  
16 other service paid for by the State or a county rendered prior  
17 to the member's last becoming a member that is not credited to  
18 the member, for which the member claims prior service credit,  
19 and also a statement of the services for which the member claims  
20 membership service credit and for which the member agrees to  
21 have additional deductions made from the member's compensation  
22 or to make a lump sum payment as described in this section.



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

6        (1) By deductions from the member's compensation pursuant  
7 to section 414(h) (2) of the Internal Revenue Code of  
8 1986, as amended, under the employer pick up plan  
9 under section 88-46. An irrevocable payroll  
10 authorization filed by the member for a period not to  
11 exceed sixty months shall remain in effect until the  
12 completion of the payroll payments or termination of  
13 employment, whichever is earlier. The member may  
14 elect to have:

15        (A) Deductions from the member's compensation of  
16 twice the contribution rate provided for in  
17 section 88-45 over a period equal to the period  
18 for which membership service credit is allowable  
19 not to exceed sixty months; or

20        (B) Deductions from the member's compensation of one  
21 and one-half times the contribution rate provided  
22 for in section 88-45 over a period equal to twice



1           the period for which membership service credit is  
2           allowable not to exceed sixty months; or

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

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

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

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



1       ~~[Any member of the legislature who reenrolls as an active~~  
2 ~~member in accordance with section 88-62 and who desires to~~  
3 ~~obtain membership service for a period of service as a member of~~  
4 ~~the legislature during which the member received a retirement~~  
5 ~~allowance, in addition to complying with this section, shall~~  
6 ~~refund while a reenrolled active member the retirement allowance~~  
7 ~~received during the period of legislative service.]"~~

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

10       "**§88-61 Termination of membership.** (a) Except as  
11 otherwise provided by section 88-96, any member absent from  
12 service for four calendar years following the calendar year in  
13 which the member's employment terminated shall cease to be a  
14 member, and the former member's credited service shall be  
15 forfeited.

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

19       ~~[(c) The membership of an elective officer or judge in the~~  
20 ~~system may be terminated upon election of the member to retire~~  
21 ~~whenever the allowance for the member reaches seventy five per~~  
22 ~~cent of the member's average final compensation. The member's~~



1 ~~right to receive the retirement allowance prescribed in section~~  
2 ~~88-74 after the member's future separation from service as~~  
3 ~~provided in section 88-73 shall vest on the date of the~~  
4 ~~election. Upon the date of the election, the member shall be~~  
5 ~~entitled to receive the portion of the accumulated~~  
6 ~~contributions, if any, which would be required to be returned to~~  
7 ~~the member under section 88-74(3) as if the member's retirement~~  
8 ~~allowance had commenced on that date, and after the date of the~~  
9 ~~election the member shall not be allowed or required to make any~~  
10 ~~future contributions.] "~~

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

13 **"§88-73 Service retirement.** (a) Any member who has at  
14 least five years of credited service and who has attained age  
15 fifty-five or any member who has at least twenty-five years of  
16 credited service or any member who has at least ten years of  
17 credited service, which includes service as a judge before  
18 July 1, 1999, an elective officer, or a legislative officer,  
19 shall become eligible to receive a retirement allowance after  
20 the member has terminated service.

21 (b) Any member who first earned credited service as a  
22 judge after June 30, 1999, and who has at least five years of



1 credited service and has attained age fifty-five or has at least  
2 twenty-five years of credited service shall become eligible to  
3 receive a retirement allowance after the member has terminated  
4 service.

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

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

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



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

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

15       SECTION 10. 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,  
2 88-48, 88-52, 88-59, 88-59.5, [~~88-59.6~~] 88-61, and  
3 88-62;

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,  
6 88-87, 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 11. 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,  
18 88-85, 88-88, 88-96, 88-97, and 88-98;

19 (4) Subpart D; and

20 (5) Subpart E."

21 SECTION 12. 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 13. 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 the Act.

21       SECTION 14. 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 15. 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 16. 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 17. 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 18. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8           SECTION 19. 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.  
(SB3005 SD2)

