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# A BILL FOR AN ACT

RELATING TO THE EMPLOYMENT OF EMPLOYEES' RETIREMENT SYSTEM  
RETIRANTS.

**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 qualified retirement plan under  
3 Section 401(a) (with respect to qualified pension, profit-  
4 sharing, and stock bonus plans) of the Internal Revenue Code  
5 (Code). Generally, the Code prohibits distribution of  
6 retirement benefits prior to an employee's "retirement." If a  
7 retiree is reemployed, without a bona fide separation from  
8 service, the retiree may not be considered to be retired for  
9 purposes of the Code. The legislature finds that chapter 88,  
10 Hawaii Revised Statutes, should be amended to clarify the  
11 circumstances under which an employees' retirement system  
12 retirant may be reemployed without the suspension of the  
13 retirant's benefits and to provide remedies for the employees'  
14 retirement system if a retirant is reemployed in violation of  
15 chapter 88 and the Code.



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- Employment of retirants. (a) A retirant may not  
5 be employed by the State or by any county unless the retirant is  
6 reenrolled in the system pursuant to this chapter, or unless the  
7 employment, without reenrollment, is authorized by this section.  
8 A retirant whose employment without reenrollment in the system  
9 is authorized by this section shall acquire no service credit or  
10 retirement rights under this chapter with respect to the  
11 employment and shall not be considered to be in service for  
12 purposes of this chapter.

13 (b) Any retirant employed in violation of this section  
14 shall:

15 (1) Reimburse the system for any retirement allowance or  
16 other benefit received from the system during the  
17 period or periods of employment in violation of this  
18 section, plus interest thereon at the rate of eight  
19 per cent per annum;

20 (2) Pay the system an amount of money equal to the  
21 employee contributions that would otherwise have been  
22 paid during the period or periods of employment in



1 violation of this section, plus interest thereon at  
2 the rate of eight per cent per annum; and

3 (3) Contribute toward reimbursement of the system for  
4 administrative expenses incurred in responding to the  
5 situation, to the extent that the retirant is  
6 determined by the administrator to be at fault.

7 (c) Any employer that employs a retirant in violation of  
8 this section shall:

9 (1) Pay to the system an amount of money equal to the  
10 employer contributions that would otherwise have been  
11 paid for the period or periods of employment in  
12 violation of this section, plus interest thereon at  
13 the rate of eight per cent per annum; and

14 (2) Contribute toward reimbursement of the system for  
15 administrative expenses incurred in responding to the  
16 situation, to the extent that the employer is  
17 determined by the administrator to be at fault.

18 (d) A retirant may be employed without reenrollment in the  
19 system and suffer no loss or interruption of benefits provided  
20 by the system or under chapter 87A if the retirant is employed:



- 1        (1) As an elective officer pursuant to section 88-42.6(c)  
2        or as a member of the legislature pursuant to section  
3        88-73(d);
- 4        (2) As a juror or precinct official;
- 5        (3) As a part-time or temporary employee excluded from  
6        membership in the system pursuant to section 88-43, as  
7        a session employee excluded from membership in the  
8        system pursuant to section 88-54.2, as the president  
9        and chief executive officer of the Hawaii tourism  
10       authority excluded from membership in the system  
11       pursuant to section 201B-2, or as any other employee  
12       expressly excluded by law from membership in the  
13       system; provided that:
- 14       (A) The retirant was not employed by the State or a  
15       county during the six calendar months prior to  
16       the first day of reemployment; and
- 17       (B) No agreement was entered into between the State  
18       or a county and the retirant, prior to the  
19       retirement of the retirant, for the return to  
20       work by the retirant after retirement;



- 1       (4) In a position identified by the appropriate  
2       jurisdiction as a labor shortage or difficult-to-fill  
3       position; provided that:
- 4       (A) The retirant was not employed by the State or a  
5       county during the twelve calendar months prior to  
6       the first day of reemployment;
- 7       (B) No agreement was entered into between the State  
8       or a county and the retirant, prior to the  
9       retirement of the retirant, for the return to  
10       work by the retirant after retirement; and
- 11       (C) Each employer shall contribute to the pension  
12       accumulation fund the required percentage of the  
13       rehired retirant's compensation to amortize the  
14       system's unfunded actuarial accrued liability; or
- 15       (5) As a teacher or an administrator in a teacher shortage  
16       area identified by the department of education or in a  
17       charter school or as a mentor for new classroom  
18       teachers; provided that:
- 19       (A) The retirant was not employed by the State or a  
20       county during the twelve calendar months prior to  
21       the first day of reemployment;



1           (B) No agreement was entered into between the State  
2           or a county and the retirant prior to the  
3           retirement of the retirant, for the return to  
4           work by the retirant after retirement; and

5           (C) The department of education or charter school  
6           shall contribute to the pension accumulation fund  
7           the required percentage of the rehired retirant's  
8           compensation to amortize the system's unfunded  
9           actuarial accrued liability.

10          (e) This section does not waive any provision of chapter  
11          76 or 89 that may be applicable to a position for which a  
12          retirant is employed pursuant to this section.

13          (f) No later than twenty days prior to the convening of  
14          each regular legislative session, the director of human  
15          resources of the appropriate state jurisdiction or the human  
16          resources management chief executive of each county shall submit  
17          an annual report to the legislature detailing the employment of  
18          retirants under paragraphs (4) and (5) of subsection (d),  
19          including the number and positions of retirants."

20          SECTION 3. Act 286, Session Laws of Hawaii 2006, and Act  
21          156, Session Laws of Hawaii 2008, are repealed.



- 1 SECTION 4. New statutory material is underscored.
- 2 SECTION 5. This Act shall take effect on January 1, 2011.



**Report Title:**

Employees' Retirement System; Reemployment of Retirants

**Description:**

Establishes conditions for reemployment of a retirant in certain positions without reenrollment in the Employment Retirement System (ERS) or loss or interruption of retirant benefits. Requires reimbursement of retirement allowances or other benefits received during the reemployment, and payment of contributions that should have been paid during the reemployment, for retirants reemployed in violation of the conditions for reemployment. Effective January 1, 2011.  
(HB2533 CD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

