

JAN 25 2010

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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 tax-qualified retirement plan  
3 under section 401(a) of the Internal Revenue Code of 1986, as  
4 amended (Code). Generally, the Code prohibits distribution of  
5 retirement benefits prior to an employee's "retirement." If a  
6 retiree is reemployed, without a bona fide separation from  
7 service, the retiree may not be considered to be retired for  
8 purposes of the Code. The legislature finds that chapter 88,  
9 Hawaii Revised Statutes, should be amended to clarify the  
10 circumstances under which an employees' retirement system  
11 retirant may be reemployed without the suspension of the  
12 retirant's benefits and to provide remedies for the employees'  
13 retirement system if a retirant is reemployed in violation of  
14 chapter 88 and the Code.

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

1        "§88-    Employment of retirants.    (a)    A retirant may not  
2 be employed by the State or by any county unless the retirant is  
3 reenrolled in the system pursuant to this chapter, or unless the  
4 employment, without reenrollment, is authorized by this section.  
5 A retirant whose employment without reenrollment in the system  
6 is authorized by this section shall acquire no service credit or  
7 retirement rights under this chapter with respect to the  
8 employment.    A retirant whose employment without reenrollment in  
9 the system is authorized by this section shall not be considered  
10 to be in service for purposes of this chapter.

11        (b)    Any retirant employed in violation of this section  
12 shall:

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

18        (2)    Pay the system an amount of money equal to the  
19 employee contributions that would otherwise have been  
20 paid during the period or periods of employment in  
21 violation of this section, plus interest thereon at  
22 the rate of eight per cent per annum; and

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

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

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

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

16       (d) A retirant may be employed without reenrollment in the  
17 system or loss or interruption of benefits provided by the  
18 system or under chapter 87A as follows:

19       (1) As an elective officer pursuant to section 88-42.6(c)  
20           or as a member of the legislature pursuant to section  
21           88-73(d);

22       (2) As a juror or precinct official;

1       (3) As a part-time or temporary employee excluded from  
2       membership in the system pursuant to section 88-43, as  
3       a session employee excluded from membership in the  
4       system pursuant to section 88-54.2, as the executive  
5       director or sports coordinator of the Hawaii tourism  
6       authority excluded from membership in the system  
7       pursuant to section 201B-2, or as any other employee  
8       expressly excluded by law from membership in the  
9       system; provided that:

10       (A) The retirant was not employed by the State or a  
11       county during the six calendar months prior to  
12       the first day of reemployment; and

13       (B) No agreement was entered into between the State  
14       or a county and the retirant, prior to the  
15       retirement of the retirant, for the return to  
16       work by the retirant after retirement;

17       (4) In a position identified by the appropriate  
18       jurisdiction as a labor shortage or difficult-to-fill  
19       position; provided that:

20       (A) The retirant was not employed by the State or a  
21       county during the twelve calendar months prior to  
22       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) Each employer shall contribute to the pension  
6                           accumulation fund the required percentage of the  
7                           rehired retirant's compensation to amortize the  
8                           system's unfunded actuarial accrued liability; or

9           (5) As a teacher or an administrator in a teacher shortage  
10                           area identified by the department of education or in a  
11                           charter school or as a mentor for new classroom  
12                           teachers; provided that:

13           (A) The retirant was not employed by the State or a  
14                           county during the twelve calendar months prior to  
15                           the first day of reemployment;

16           (B) No agreement was entered into between the State  
17                           or a county and the retirant prior to the  
18                           retirement of the retirant, for the return to  
19                           work by the retirant after retirement; and

20           (C) The department of education or charter school  
21                           shall contribute to the pension accumulation fund  
22                           the required percentage of the rehired retirant's

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1                   compensation to amortize the system's unfunded  
2                   actuarial accrued liability.

3           (e) This section does not waive any provision of chapter  
4   76 or 89 that may be applicable to a position for which a  
5   retirant is employed pursuant to this section.

6           (f) No later than twenty days prior to the convening of  
7   each regular legislative session, the director of human  
8   resources of the appropriate state jurisdiction or the human  
9   resources management chief executive of a county shall submit an  
10   annual report to the legislature detailing the employment of  
11   retirants under paragraphs (4) and (5) of subsection (d),  
12   including the number and positions of retirants."

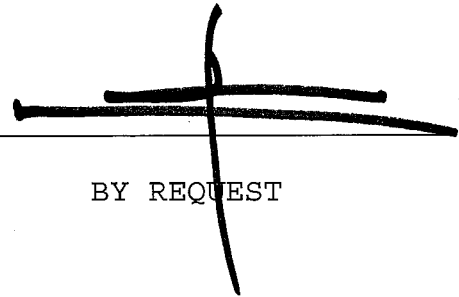
13           SECTION 3. Act 286, Session Laws of Hawaii 2006, and Act  
14   156, Session Laws of Hawaii 2008, are repealed.

15           SECTION 4. New statutory material is underscored.

16           SECTION 5. This Act shall take effect on January 1, 2011.

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INTRODUCED BY: \_\_\_\_\_



BY REQUEST

**Report Title:**

Employees' Retirement System; Reemployment of Retirants

**Description:**

Establishes the conditions under which state and county retirees may be reemployed while still receiving employees' retirement system benefits; and requires reimbursement of retirement allowances and payment of contributions for retirees reemployed in violation of the conditions for reemployment.

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

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

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to clarify the circumstances under which a retirant of the Employees' Retirement System of the State of Hawaii (ERS) may be reemployed by the State or a county without suspension of the retirant's ERS benefits and to provide remedies for the ERS if a retirant is reemployed in violation of the provisions of chapter 88 and the Internal Revenue Code.

MEANS: Add a new section to chapter 88, Hawaii Revised Statutes, and repeal Act 286, Session Laws of Hawaii 2006, and Act 156, Session Laws of Hawaii 2008.

JUSTIFICATION: The ERS is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Generally, the Code prohibits distribution of retirement benefits prior to an employee's "retirement." If a retiree is reemployed, without a bona fide separation from service, the retiree may not be considered to be retired for purposes of the Code. Act 286, Session Laws of Hawaii 2006, and Act 156, Session Laws of Hawaii 2008, establish the conditions under which certain ERS retirants may be reemployed without suspension of the retirant's ERS benefits; however, there are no adequate remedies expressly available to the ERS if a State or county employs a retirant in violation of the provisions of the acts, chapter 88, or the Code.

This bill will provide a more comprehensive structure for the reemployment of retirants without suspension of ERS benefits and will



provide the ERS with remedies if its provisions are violated.

Impact on the public: None.

Impact on the department and other agencies:  
The amendment will help to maintain the status of the ERS as a tax-qualified retirement plan.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: All state and county public employers.

EFFECTIVE DATE: January 1, 2011.