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## A BILL FOR AN ACT

RELATING TO THE OFFICE OF HAWAIIAN AFFAIRS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 87A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "**§87A-    Applicability; office of Hawaiian affairs**  
5 **employees hired after December 31, 2013.** (a) Effective January  
6 1, 2014, except as provided in subsection (b), this chapter  
7 shall not apply to any officer or employee of the office of  
8 Hawaiian affairs whose salary is paid in whole or in part from  
9 funds derived from the public land trust described in section  
10 10-3.

11           (b) Any officer or employee described in subsection (a)  
12 who is a member under this chapter on December 31, 2013, shall  
13 remain a member of the system unless the employee elects in  
14 writing on a form prescribed by the board to terminate the  
15 employee's membership. An election shall not be effective  
16 unless filed on or before June 30, 2014. Any officer or  
17 employee who elects to terminate the officer or employee's



1 membership in accordance with this section shall be paid all of  
2 the officer or employee's accumulated contributions."

3 SECTION 2. Section 10-12, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§10-12 Assistant; staff.** (a) The administrator may  
6 employ and retain such officers and employees as may be  
7 necessary to carry out the functions of the office. Such  
8 officers and employees may be hired without regard to chapter  
9 76, and shall serve at the pleasure of the administrator.  
10 Officers and employees of the office of Hawaiian affairs shall  
11 be included in any benefit program generally applicable to  
12 officers and employees of the State[-]; provided that officers  
13 or employees whose salary is paid in whole or in part from funds  
14 derived from the public land trust described in section 10-3  
15 shall be excluded from benefit programs as provided by law.

16 (b) All officers and employees of the office of Hawaiian  
17 affairs, regardless of whether their salaries are paid for by  
18 funds derived from the public land trust described in section  
19 10-3 or through any other funding source shall be treated as  
20 employees of a state agency for the purposes of chapter 92F."

21 SECTION 3. Section 78-30, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           " ~~§~~78-30 ~~§~~ Cafeteria plans. (a) Each chief executive  
2 may establish a wage and salary reduction benefit program which  
3 qualifies as a cafeteria plan within the meaning of section 125  
4 of the Internal Revenue Code of 1986, as amended. The cafeteria  
5 plan shall allow eligible employees to elect to reduce their  
6 pretax compensation in return for payment by the jurisdiction of  
7 the expenses of eligible benefits.

8           (b) In addition to any other powers and duties authorized  
9 by law, each chief executive may enter into all contracts  
10 necessary to establish, administer, or maintain the cafeteria  
11 plans.

12           (c) The contributions, interest earned, and forfeited  
13 participant balances may be held in trust outside of the  
14 jurisdiction's treasury for the benefit of the participants and  
15 the plan. The funds in trust shall not be subject to the  
16 jurisdiction's general creditors. Interest earned or forfeited  
17 participant balances may be used to defray participant fees and  
18 other administrative costs.

19           (d) Effective January 1, 2014, any provision of law to the  
20 contrary notwithstanding, any officer or employee of the office  
21 of Hawaiian affairs whose salary is paid in whole or in part  
22 from funds derived from the public land trust described in



1 section 10-3, shall not be entitled to participate in any  
2 cafeteria plan established pursuant to this section except as  
3 provided in this section.

4 Any officer or employee described in this subsection who is  
5 a participant in a cafeteria plan under this section on December  
6 31, 2013, shall remain a participant in the plan unless the  
7 officer or employee elects in writing on a form prescribed by  
8 the director to terminate the officer or employee's  
9 participation. An election shall not be effective unless filed  
10 on or before June 30, 2014. Any officer or employee who elects  
11 to terminate the officer or employee's membership in accordance  
12 with this section shall be paid, as applicable, all of the  
13 officer or employee's accumulated contributions, interest  
14 earned, and participant balances."

15 SECTION 4. Section 88-21, Hawaii Revised Statutes, is  
16 amended by amending the definition of "employee" to read as  
17 follows:

18 "Employee": any employee or officer of the State or any  
19 county, including inspectors, principals, teachers and special  
20 teachers, regularly employed in the public schools, cafeteria  
21 managers and cafeteria workers, apprentices and on-the-job  
22 trainees whether or not supported in whole or in part by any



1 federal grants, members of the legislature and other elective  
2 officers, [~~including the trustees of the office of Hawaiian~~  
3 ~~affairs,~~] year-round legislative employees who are employed on a  
4 full-time basis, probationary and provisional employees, any  
5 employee of the educational nonprofit public corporation as  
6 provided in section 88-49.7, per diem employees and others who  
7 are made eligible by reason of their employment to membership in  
8 the system by or pursuant to any other provision of law, but  
9 excluding:

- 10 (1) Per diem employees who elect to withdraw or not to  
11 become members as provided in section 88-42;
- 12 (2) Elective officers who do not elect to be members as  
13 provided in section 88-42.6;
- 14 (3) Session employees of the legislature employed after  
15 October 31, 2006, in accordance with section 88-54.2;  
16 [~~and~~]
- 17 (4) Persons excluded by rules of the board pursuant to  
18 section 88-43 [~~-~~]; and
- 19 (5) Officers or employees of the office of Hawaiian  
20 affairs whose salary is paid in whole or in part from  
21 funds derived from the public land trust described in  
22 section 10-3.



1 An individual is an employee during the period of a leave  
2 of absence if the individual is in service, as defined in this  
3 part, during the period of the leave of absence and the board  
4 shall determine who are employees within the meaning of this  
5 part."

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

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

21 (b) Effective January 1, 2014, except as provided in this  
22 subsection, this chapter shall not apply to any officer or



1 employee of the office of Hawaiian affairs whose salary is paid  
2 in whole or in part from funds derived from the public land  
3 trust described in section 10-3.

4 Any officer or employee as described in this subsection who  
5 is a member under this chapter on December 31, 2013, shall  
6 remain a member of the system unless the officer or employee  
7 elects in writing on a form prescribed by the board to terminate  
8 the officer or employee's membership. An election shall not be  
9 effective unless filed on or before June 30, 2014. Any officer  
10 or employee who elects to terminate the officer or employee's  
11 membership in accordance with this subsection shall be paid all  
12 of the officer or employee's accumulated contributions."

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

15 "**§88-54.5 Service while a member of the board of trustees**  
16 **of the office of Hawaiian affairs.** Notwithstanding any  
17 provisions of section 10-9 that may previously have precluded a  
18 member of the board of trustees of the office of Hawaiian  
19 affairs from participating as a member of the employees'  
20 retirement system:

21 (1) Any trustee of the office of Hawaiian affairs in  
22 service on July 1, 2002, may become a member in



1           accordance with section 88-43 by October 1, 2002;  
2           provided that no trustee elected or appointed after  
3           December 31, 2013, shall become a member;

4           (2) Any trustee of the office of Hawaiian affairs elected  
5           or appointed after July 1, 2002, shall become a member  
6           or elect to be excluded from membership in the system  
7           in accordance with section 88-42.6; provided that no  
8           trustee elected or appointed after December 31, 2013,  
9           shall become a member;

10          (3) Any service as a trustee of the office of Hawaiian  
11          affairs during the period of July 1, 1993, through  
12          July 1, 2002, if claimed by the member, shall be  
13          credited in the member's class at the time the service  
14          is acquired; provided that membership service shall be  
15          credited in accordance with sections 88-59, 88-272,  
16          and 88-324; and

17          (4) Any former trustee of the office of Hawaiian affairs  
18          who retired from service prior to July 1, 2002, shall  
19          not be entitled to claim membership service as a  
20          trustee during the period July 1, 1993, through June  
21          30, 2002."





1 SECTION 7. Section 88D-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employee" to read as  
3 follows:

4 "Employee" shall have the same meaning as defined in  
5 section 76-11[-]; provided that "employee" shall not include  
6 officers or employees of the office of Hawaiian affairs whose  
7 salary is paid in whole or in part from funds derived from the  
8 public land trust described in section 10-3."

9 SECTION 8. Section 88F-1, Hawaii Revised Statutes, is  
10 amended by amending the definition of "employee" to read as  
11 follows:

12 "Employee" means a part-time, temporary, seasonal or  
13 casual employee, as defined by rules of the board of trustees,  
14 who is not eligible to participate in the employees' retirement  
15 system of the State under chapter 88[-] except an officer or  
16 employee of the office of Hawaiian affairs whose salary is paid  
17 in whole or in part by funds derived from the public land trust  
18 described in section 10-3."

19 SECTION 9. Section 89C-1.5, Hawaii Revised Statutes, is  
20 amended by amending the definition of "appropriate authority" to  
21 read as follows:



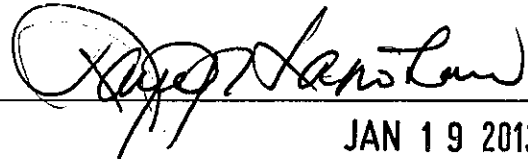
1            "Appropriate authority" means the legislature, the  
2 governor, the respective mayors, the chief justice of the  
3 supreme court, the board of education, the board of regents, the  
4 Hawaii health [systems] corporation board, the auditor, the  
5 ombudsman, and the director of the legislative reference bureau.  
6 These individuals or boards may make adjustments for their  
7 respective excluded employees[-]; provided that the legislature  
8 may make adjustments for the office of Hawaiian affairs."

9            SECTION 10. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11           SECTION 11. This Act shall take effect upon its approval.

12

INTRODUCED BY:



Kaye Hanson

JAN 19 2013



# H.B. NO. 638

**Report Title:**

Office of Hawaiian Affairs; Employee Benefits; Office of Information Practices

**Description:**

Repeals eligibility for ERS, EUTF, and cafeteria plan benefits for officers and employees of the Office of Hawaiian Affairs who are paid in whole or in part by funds derived from the public land trust described in section 10-3, HRS. States that all employees of the Office of Hawaiian Affairs shall be subject to chapter 92F, HRS.

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

