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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. In 2009, the employees' retirement system applied to  
5 the Internal Revenue Service for a determination that the  
6 employees' retirement system's "plan document" (i.e., the  
7 wording of the statutes, administrative rules, and board of  
8 trustee actions that govern the employees' retirement system)  
9 meets the federal tax qualification requirements in section  
10 401(a) of the Internal Revenue Code that are applicable to  
11 pension plans sponsored by state and local governments. The  
12 employees' retirement system received a favorable determination  
13 letter on March 21, 2012. The Internal Revenue Service  
14 conditioned the favorable determination letter on amendments  
15 made to chapter 88, Hawaii Revised Statutes, to meet certain  
16 vesting rules that were applicable to tax qualified plans prior  
17 to the enactment of the federal Employee Retirement Income



1 Security Act on September 2, 1974. Those vesting rules require  
2 that a member's right to the member's accrued retirement benefit  
3 be non-forfeitable upon the attainment of normal retirement age,  
4 the completion of any required years of service, and any other  
5 reasonable requirements set forth in the plan.

6 The favorable determination letter was also conditioned  
7 upon the adoption of amendments to section 88-83.5, Hawaii  
8 Revised Statutes, to comply with final regulations under section  
9 415 of the Internal Revenue Code.

10 The specific statutory amendments upon which the favorable  
11 determination letter was conditioned were approved by the  
12 Internal Revenue Service as part of its determination process.

13 The legislature finds that, to maintain the federal tax  
14 qualification of the employees' retirement system, chapter 88,  
15 Hawaii Revised Statutes, should be amended to incorporate the  
16 amendments approved by the Internal Revenue Service as part of  
17 its determination process.

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

20 "**§88-73 Service retirement.** (a) Any member who:



- 1 (1) Became a member before July 1, 2012, and has at least  
2 five years of credited service and has attained age  
3 fifty-five;
- 4 (2) Became a member before July 1, 2012, and has at least  
5 twenty-five years of credited service;
- 6 (3) Has at least ten years of credited service, which  
7 includes service as a judge before July 1, 1999, an  
8 elective officer, or a legislative officer;
- 9 (4) Becomes a member after June 30, 2012, and has at least  
10 ten years of credited service and has attained age  
11 sixty; or
- 12 (5) Becomes a member after June 30, 2012, and has at least  
13 twenty-five years of credited service and has attained  
14 age fifty-five,

15 shall become eligible to receive a retirement allowance after  
16 the member has terminated service.

17 (b) Any member who first earned credited service as a  
18 judge after June 30, 1999, but before July 1, 2012, and who has  
19 at least five years of credited service and has attained age  
20 fifty-five or has at least twenty-five years of credited service  
21 shall become eligible to receive a retirement allowance after  
22 the member has terminated service. Any member who first earned



1 credited service as a judge after June 30, 2012, and has at  
2 least ten years of credited service and has attained age sixty  
3 or has at least twenty-five years of credited service and has  
4 attained age fifty-five shall be eligible to receive a  
5 retirement allowance after the member has terminated service.

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

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

15 (e) In the case of a class A or B member who also has  
16 prior credited service under part VII or part VIII, total  
17 credited service as a class A, class B, class C, and class H  
18 member shall be used to determine the eligibility for retirement  
19 allowance.

20 (f) A member's right to the member's accrued retirement  
21 benefit is non-forfeitable upon the attainment of normal



1 retirement age and the completion of the requisite years of  
2 credited service.

3 For the purpose of this subsection:

4 "Normal retirement age" means age sixty-five.

5 "Requisite years of credited service" means five years for  
6 class A and B members who became members before July 1, 2012,  
7 and ten years for class A and B members who became members after  
8 June 30, 2012."

9 SECTION 3. Section 88-83.5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§88-83.5 Benefit limitations.** (a) Notwithstanding any  
12 other law to the contrary, the benefits payable to all employees  
13 who first become members on or after January 1, 1990, shall be  
14 subject to the limitations set forth in section 415 of the  
15 Internal Revenue Code of 1986, as amended, applicable to  
16 governmental plans. The dollar limit in section 415(b)(1)(A) of  
17 the Internal Revenue Code of 1986, as amended, shall be adjusted  
18 automatically under section 415(d) of the Internal Revenue Code  
19 of 1986, as amended, effective January 1 of each year, as  
20 published in the Internal Revenue Bulletin. The automatic  
21 adjustment shall apply to members, former employees[7] with  
22 vested benefit status, and retirants[7, and beneficiaries]. To



1 the extent the applicable interest rate, as defined in section  
2 417(e)(3) of the Internal Revenue Code of 1986, as amended, is  
3 used in computing the limitations under section 415 of the  
4 Internal Revenue Code of 1986, as amended, the stability period  
5 for the purposes of applying section 1.417(e)-1(d)(4) of the  
6 United States Treasury Regulations shall be one calendar year  
7 beginning January 1, and the lookback month for the purposes of  
8 applying section 1.417(e)-1(d)(4) of the United States Treasury  
9 Regulations shall be the fourth full calendar month preceding  
10 the first day of the stability period (September).

11 (b) Effective January 1, 2009, the following rules shall  
12 apply for the purposes of applying the limitations in section  
13 415(b) of the Internal Revenue Code of 1986, as amended:

14 (1) The dollar limit in section 415(b)(1)(A) of the  
15 Internal Revenue Code of 1986, as amended, shall be  
16 applied to the member's annual benefit as of the  
17 member's annuity starting date, as defined in section  
18 417(f)(2) of the Internal Revenue Code of 1986, as  
19 amended, without regard to any automatic cost-of-  
20 living increases; and

21 (2) In no event may the member's annual benefit exceed the  
22 dollar limit applicable at the member's annuity



1 starting date, as defined in section 417(f)(2) of the  
2 Internal Revenue Code of 1986, as amended, as  
3 increased in subsequent years pursuant to section  
4 415(d) of the Internal Revenue Code of 1986, as  
5 amended.

6 [~~b~~] (c) Notwithstanding any other law to the contrary, the  
7 benefits payable to all employees who first became members  
8 before January 1, 1990, shall be subject to the greater of the  
9 following limitations as provided in section 415(b)(10) of the  
10 Internal Revenue Code of 1986, as amended:

- 11 (1) The limitations set forth in section 415 of the  
12 Internal Revenue Code of 1986, as amended; or
- 13 (2) The benefit of the member without regard to any  
14 benefit increases pursuant to an amendment adopted  
15 after October 14, 1987.

16 [~~e~~] (d) The system shall establish a benefit restoration  
17 plan for the payment of retirement benefits as permitted under  
18 section 415(m) of the Internal Revenue Code of 1986, as amended,  
19 as follows:

- 20 (1) All retirants and beneficiaries of the system whose  
21 pension has been limited by section 415 of the  
22 Internal Revenue Code shall receive a monthly benefit



1 from the plan established pursuant to this subsection  
2 that is equal to the difference between the retirement  
3 benefit otherwise payable and the retirement benefit  
4 payable because of section 415 of the Internal Revenue  
5 Code of 1986, as amended;

6 (2) Participation in the plan shall be determined for each  
7 plan year and shall cease whenever the retirement  
8 benefit is not limited by section 415 of the Internal  
9 Revenue Code of 1986, as amended;

10 (3) The plan shall be funded on a plan-year-to-plan-year  
11 basis and shall not be used to pay any benefits  
12 payable in future years. Upon the recommendation of  
13 the system's actuary, the required contribution amount  
14 shall be determined by the board and deposited in a  
15 separate fund from an allocation of employer  
16 contribution amounts pursuant to this chapter;

17 (4) The board shall administer the plan and may make  
18 modifications to the benefits payable as may be  
19 necessary to maintain the qualified status of the plan  
20 under section 415(m) of the Internal Revenue Code of  
21 1986, as amended."





1 SECTION 4. Section 88-281, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§88-281 Service retirement. (a) A member who has ten  
4 years of credited service and has attained age sixty-two, or a  
5 member with thirty years credited service who has attained the  
6 age of fifty-five, shall become eligible to receive a retirement  
7 allowance after the member has terminated service.

8 (b) If a member has at least twenty-five years of credited  
9 service as a sewer worker or as a water safety officer of which  
10 the last five or more years prior to retirement is credited in  
11 such a capacity, then the sewer worker or water safety officer  
12 shall be eligible to receive a retirement benefit unreduced for  
13 age after the member has terminated service.

14 (c) A member who has twenty years of credited service and  
15 has attained age fifty-five shall be eligible to receive an  
16 early retirement allowance reduced for age after the member has  
17 terminated service.

18 (d) A member who has ten years of credited service and  
19 terminates service prior to attaining age sixty-two shall have a  
20 vested right and shall be eligible to receive a retirement  
21 allowance when the member has attained age sixty-five.



1 (e) If a member has at least thirty years of credited  
2 service through June 30, 2003; twenty-nine years of credited  
3 service on or after July 1, 2004; twenty-eight years of credited  
4 service on or after July 1, 2005; twenty-seven years of credited  
5 service on or after July 1, 2006; twenty-six years of credited  
6 service on or after July 1, 2007; and twenty-five years of  
7 credited service on or after July 1, 2008, as an emergency  
8 medical technician, of which the last five or more years prior  
9 to retirement is credited service in that capacity, the  
10 emergency medical technician shall be eligible to receive a  
11 retirement benefit unreduced for age after the member has  
12 terminated service.

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

20 (g) A member's right to the member's accrued retirement  
21 benefit is non-forfeitable upon the attainment of normal



1 retirement age and the completion of ten years of credited  
2 service.

3 For the purpose of this section, "normal retirement age"  
4 means age sixty-five."

5 SECTION 5. Section 88-331, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "**§88-331 Service retirement.** (a) A class H member who:

8 (1) Became a member before July 1, 2012, has at least five  
9 years of credited service, and has attained age sixty-  
10 two;

11 (2) Became a member before July 1, 2012, has at least  
12 thirty years of credited service, and has attained the  
13 age of fifty-five; or

14 (3) Becomes a member after June 30, 2012, has at least ten  
15 years of credited service, and has attained age sixty-  
16 five; or

17 (4) Becomes a member after June 30, 2012, has at least  
18 thirty years of credited service, and has attained age  
19 sixty,

20 shall become eligible to receive a retirement allowance after  
21 the member has terminated service.



1 (b) A class H member who became a member before July 1,  
2 2012, and has at least twenty-five years of credited service as  
3 a sewer worker or water safety officer, of which the last five  
4 or more years prior to retirement is credited service in that  
5 capacity, shall become eligible to receive a retirement  
6 allowance unreduced for age after the member has terminated  
7 service. A class H member who becomes a member after June 30,  
8 2012, and has at least twenty-five years of credited service as  
9 a sewer worker or water safety officer, of which the last five  
10 or more years prior to retirement is credited service in that  
11 capacity, and has attained age fifty-five shall become eligible  
12 to receive a retirement allowance unreduced for age after the  
13 member has terminated service.

14 (c) A class H member who has twenty years of credited  
15 service and has attained age fifty-five shall be eligible to  
16 receive an early retirement allowance reduced for age after the  
17 member has terminated service.

18 (d) If a class H member, who became a member before  
19 July 1, 2012, has at least twenty-eight years of credited  
20 service on or after July 1, 2005; twenty-seven years of credited  
21 service on or after July 1, 2006; twenty-six years of credited  
22 service on or after July 1, 2007; and twenty-five years of



1 credited service on or after July 1, 2008, as an emergency  
2 medical technician, of which the last five or more years prior  
3 to retirement is credited service in that capacity, the member  
4 shall be eligible to receive a retirement benefit unreduced for  
5 age after the member has terminated service. If a class H  
6 member, who becomes a member after June 30, 2012, has at least  
7 twenty-five years of credited service as an emergency medical  
8 technician, of which the last five or more years prior to  
9 retirement is credited service in that capacity, and has  
10 attained age fifty-five, the member shall be eligible to receive  
11 a retirement benefit unreduced for age after the member has  
12 terminated service.

13 (e) A class H member may retire upon the written  
14 application to the system, specifying the desired date of  
15 retirement, which shall be not less than thirty days nor more  
16 than one hundred fifty days subsequent to the date of filing.  
17 Retirement shall be effective on the first day of a month,  
18 except for the month of December when retirement on the first or  
19 last day of the month shall be allowed.

20 (f) A member's right to the member's accrued retirement  
21 benefit is non-forfeitable upon the attainment of normal



1 retirement age and the completion of the requisite years of  
2 credited service.

3 For the purpose of this subsection:

4 "Normal retirement age" means age sixty-five.

5 "Requisite years of credited service" means five years for  
6 class H members who became members before July 1, 2012, and ten  
7 years for class H members who became members after June 30,  
8 2012."

9 SECTION 6. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

Employees' Retirement System; Federal Tax Qualification

**Description:**

Amends the employees' retirement system laws to comply with Internal Revenue Code requirements and vesting rules in order to maintain the system's status as a tax-qualified retirement plan.  
(HB805 CD1)

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

