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## A BILL FOR AN ACT

RELATING TO 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 order to maintain its tax-qualified status, the  
5 employees' retirement system must meet the Internal Revenue Code  
6 requirements applicable to it in form (i.e., the wording of the  
7 statutes and administrative rules) and in operation (i.e., how  
8 the statutes and administrative rules are applied). Although,  
9 in general, the rights and duties of members, retirants, and  
10 beneficiaries of the employees' retirement system are governed  
11 entirely by state law, where there are conflicts between state  
12 law and applicable federal law, the employees' retirement system  
13 must satisfy federal tax law or risk losing its tax-qualified  
14 status. Certain provisions of federal tax law applicable to the  
15 employees' retirement system allow only a "spouse" of a  
16 retirement system member or retirant to receive certain rights  
17 or benefits. The federal Defense of Marriage Act of 1996  
18 requires that when interpreting a federal law, rulings,



1 regulations and interpretations, such as the Internal Revenue  
2 Code and the regulations promulgated under the Internal Revenue  
3 Code, "the word 'spouse' refers only to a person of the opposite  
4 sex who is a husband or a wife." Therefore, the legislature  
5 finds that, in order to preserve the tax-qualified status of the  
6 employees' retirement system, certain rights otherwise available  
7 to a "spouse" under chapter 88, Hawaii Revised Statutes, and the  
8 rules adopted pursuant thereto, cannot be made available to  
9 partners to a civil union.

10 Any provision of this Act that limits the recognition of  
11 civil unions is intended only to preserve the tax-qualified  
12 status of the employees' retirement system. It is the  
13 legislature's intent that civil union partners shall continue to  
14 have all of the protections, obligations, rights, and  
15 responsibilities of spouses under the portions of chapter 88 not  
16 restricted by the Internal Revenue Code. No provision of this  
17 Act shall be interpreted to weaken or lessen any of the  
18 protections and rights conferred by chapter 572B, Hawaii Revised  
19 Statutes, for any other purpose under state law.

20 This Act also amends sections 88-22.5(a)(6) and 88-74.7,  
21 Hawaii Revised Statutes, to delete specific references to civil  
22 unions that are made superfluous by the provision of this Act



1 confirming that, for the purposes of chapter 88, Hawaii Revised  
2 Statutes, the terms "married", "marriage", "marital", "husband",  
3 "wife", or similar spousal terms shall include civil unions and  
4 civil union partners, unless to do so would jeopardize the tax-  
5 qualified status of the employees' retirement system.

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

9 "§88- Civil unions. For the purposes of this chapter,  
10 the terms "married", "marriage", "marital", "husband", "wife",  
11 or similar spousal terms shall include civil union partners and  
12 civil unions under chapter 572B, unless recognition of a civil  
13 union as a marriage conflicts with the requirements for the  
14 system to be a tax-qualified plan under section 401(a) of the  
15 Internal Revenue Code of 1986, as amended."

16 SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 **"§88-22.5 Federal tax qualification requirements. (a)**  
19 The system shall be administered in accordance with the  
20 requirements of section 401(a)(1), (2), (8), (9), (25), (31),  
21 and (37) of the Internal Revenue Code of 1986, as amended.



1 Without limiting the generality of the foregoing and  
2 notwithstanding any provision of chapter 88 to the contrary:

3 (1) Prior to the satisfaction of all liabilities with  
4 respect to members and their beneficiaries, no part of  
5 the corpus or income of the system shall be used for  
6 or diverted to purposes other than for the exclusive  
7 benefit of members and their beneficiaries. The  
8 payment of reasonable expenses from the expense fund  
9 for the administration of the system in accordance  
10 with section 88-116 shall be deemed to be for the  
11 benefit of members and their beneficiaries;

12 (2) Benefits forfeited by a member for any reason shall  
13 not be applied to increase the benefits a member or  
14 beneficiary would otherwise receive under the system;

15 (3) In accordance with section 88-74.7 and rules adopted  
16 by the board of trustees, the entire interest of a  
17 member shall be distributed or distribution shall  
18 begin no later than the member's "required beginning  
19 date", as defined in section 401(a)(9) of the Internal  
20 Revenue Code of 1986, as amended;

21 (4) In accordance with rules adopted by the board of  
22 trustees, a member or beneficiary may elect, at the



1 time and in the manner prescribed by the board of  
2 trustees, to have any portion of an "eligible rollover  
3 distribution" paid in a "direct rollover" to an  
4 "eligible retirement plan", as those terms are defined  
5 in section 401(a)(31) of the Internal Revenue Code of  
6 1986, as amended;

7 (5) [~~In the event of~~] If the termination of or complete  
8 discontinuance of employer contributions to the system  
9 occurs, the rights of all members to benefits accrued  
10 as of the date of the termination or discontinuance,  
11 to the extent then funded, shall be nonforfeitable;  
12 and

13 (6) In the case of a member who dies while performing  
14 qualified military service, as defined in section  
15 414(u)(5) of the Internal Revenue Code, the survivors  
16 of the member shall be entitled to any additional  
17 benefits (other than benefit accruals relating to the  
18 period of qualified military service) provided under  
19 this chapter had the member resumed and then  
20 terminated employment on account of death; provided  
21 that this paragraph shall not limit the rights to  
22 which a member's designated beneficiary, spouse,



1            [~~civil union partner,~~] reciprocal beneficiary, or  
2            children are otherwise entitled by this chapter;  
3            provided further that the legislature finds that  
4            section 88-137 provides the benefits required by this  
5            paragraph.

6            (b) The board of trustees shall adopt rules necessary for  
7            the purposes of this section. Rules adopted for the purposes of  
8            this section shall be exempt from the public notice, public  
9            hearing, and gubernatorial approval requirements of chapter 91;  
10          provided that the rules shall be adopted at a public meeting  
11          subject to the requirements of part I of chapter 92 and a copy  
12          of the proposed rules shall be available for public inspection  
13          at the office of the system at least six calendar days before  
14          the meeting.

15          (c) Notwithstanding the provisions of sections 572B-9 and  
16          572B-11, unless the civil union partners are "spouses" under  
17          applicable federal law, civil union partners shall not be  
18          entitled to the rights of spouses under this chapter where they  
19          are not entitled to the rights of spouses under the Internal  
20          Revenue Code."



1 SECTION 4. Section 88-74.7, Hawaii Revised Statutes, is  
2 amended by amending subsections (e), (f), and (g) to read as  
3 follows:

4 "(e) If the system does not receive a written election  
5 from the member or former member under section 88-83, 88-283, or  
6 88-333, as applicable, prior to the later of the member's or  
7 former member's required beginning date or sixty days following  
8 the receipt by the member or former member of notice from the  
9 system that the member or former member is required to make an  
10 election, the following election shall be deemed to have been  
11 made as of the member or former member's required beginning  
12 date:

13 (1) If the member or former member is unmarried or has no  
14 [~~civil union partner or~~] reciprocal beneficiary, the  
15 member or former member shall be deemed to have  
16 elected the maximum retirement allowance; or

17 (2) If the member or former member is married or has a  
18 [~~civil union partner or~~] reciprocal beneficiary, the  
19 member or former member shall be deemed to have  
20 elected option 3 under section 88-83, or option A  
21 under section 88-283, as applicable, and to have  
22 designated the member's or former member's spouse[7



1           ~~civil union partner,~~] or reciprocal beneficiary as the  
2           member's or former member's beneficiary;  
3 provided that if the system receives the written election after  
4 the member's or former member's required beginning date, but  
5 within sixty days following receipt by the member or former  
6 member of notice from the system that the member or former  
7 member is required to make the election, the written election  
8 shall apply, and the member's or former member's retirement  
9 benefit shall be recomputed, based on the written election,  
10 retroactive to the member or former member's required beginning  
11 date. The amount of any underpayment resulting from recomputing  
12 the benefit shall bear regular interest. If recomputing the  
13 benefit results in an overpayment, payments shall be adjusted so  
14 that the actuarial equivalent of the benefit to which the member  
15 or former member was correctly entitled shall be paid.

16           (f) If the system does not have current information about  
17 the member's or former member's marital [~~, civil union,~~] or  
18 reciprocal beneficiary status at the time of a deemed election,  
19 the following presumptions shall apply:

20           (1) If the member or former member was married or had a  
21           ~~[civil union partner or]~~ reciprocal beneficiary at the  
22           time the member or former member last provided





1 information to the system about the member's or former  
2 member's marital [~~, civil union,~~] or reciprocal  
3 beneficiary status, it shall be presumed that the  
4 member or former member is still married to the same  
5 spouse [~~, is in the same civil union partnership,~~] or  
6 is in the same reciprocal beneficiary relationship.  
7 If the system does not have information as to the age  
8 of the spouse [~~, civil union partner,~~] or reciprocal  
9 beneficiary, the spouse [~~, civil union partner,~~] or  
10 reciprocal beneficiary shall be presumed to be forty  
11 years younger than the member or former member for  
12 purposes of computing the member's or former member's  
13 benefit; and

14 (2) If the member or former member was unmarried and did  
15 not have a [~~civil union partner or~~] reciprocal  
16 beneficiary at the time the member or former member  
17 last provided information to the system about the  
18 member or former member's marital status, it shall be  
19 presumed that the member or former member is married  
20 and that the spouse of the member or former member is  
21 forty years younger than the member or former member.



1 (g) The presumptions in subsection (f) shall cease to  
2 apply when the member or former member provides the system with  
3 current information as to the member's or former member's  
4 marital[, ~~civil union,~~] or reciprocal beneficiary status and the  
5 age of the member or former member's spouse[, ~~civil union~~  
6 ~~partner,~~] or reciprocal beneficiary, if any, on the member's or  
7 former member's required beginning date. The information shall  
8 be provided in a form satisfactory to the system. At that time,  
9 the member's or former member's retirement allowance shall be  
10 recomputed, retroactive to the member's or former member's  
11 required beginning date, based on the updated information;  
12 provided that, except as provided in subsection (e), the member  
13 or former member shall not be permitted to change the member's  
14 or former member's retirement allowance option election or  
15 beneficiary; provided further that the benefit being paid to any  
16 member or former member who, on the member's or former member's  
17 required beginning date, was unmarried and did not have a [~~civil~~  
18 ~~union partner or~~] reciprocal beneficiary, but who was deemed to  
19 elect option 3 or option A with an assumed spouse[, ~~civil union~~  
20 ~~partner,~~] or reciprocal beneficiary, shall be converted to the  
21 maximum retirement allowance retroactive to the member's or  
22 former member's required beginning date. The amount of any



1 underpayment resulting from recomputing the benefit shall bear  
2 regular interest. If recomputing the benefit results in an  
3 overpayment, payments shall be adjusted so that the actuarial  
4 equivalent of the benefit to which the member or former member  
5 was correctly entitled shall be paid."

6 SECTION 5. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 6. This Act shall take effect on July 1, 2030.



**Report Title:**

Employees' Retirement System; Civil Unions

**Description:**

Amends provisions governing the public employee pension and retirement system, to preserve the tax-qualified status of the Employees' Retirement System and to clarify the application of chapter 88 to civil unions. Effective July 1, 2030. (HB808 HD1)

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

