
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
9 system~~[,]~~ occurs, the rights of all members to
10 benefits accrued as of the date of the termination or
11 discontinuance, to the extent then funded, shall be
12 nonforfeitable; 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 sections 572B-9 and 572B-11, unless
16 the civil union partners are "spouses" under applicable federal
17 law, civil union partners shall not be entitled to the rights of
18 spouses under this chapter where they are not entitled to the
19 rights of spouses under the Internal Revenue Code."

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



1 "(e) If the system does not receive a written election
2 from the member or former member under section 88-83, 88-283, or
3 88-333, as applicable, prior to the later of the member's or
4 former member's required beginning date or sixty days following
5 the receipt by the member or former member of notice from the
6 system that the member or former member is required to make an
7 election, the following election shall be deemed to have been
8 made as of the member or former member's required beginning
9 date:

- 10 (1) If the member or former member is unmarried or has no
11 ~~[civil union partner or]~~ reciprocal beneficiary, the
12 member or former member shall be deemed to have
13 elected the maximum retirement allowance; or
- 14 (2) If the member or former member is married or has a
15 ~~[civil union partner or]~~ reciprocal beneficiary, the
16 member or former member shall be deemed to have
17 elected option 3 under section 88-83, or option A
18 under section 88-283, as applicable, and to have
19 designated the member's or former member's spouse~~[~~
20 ~~civil union partner,~~] or reciprocal beneficiary as the
21 member's or former member's beneficiary;



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

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

18 (1) If the member or former member was married or had a
19 [~~civil union partner or~~] reciprocal beneficiary at the
20 time the member or former member last provided
21 information to the system about the member's or former
22 member's marital [~~civil union~~] or reciprocal



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

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

20 (g) The presumptions in subsection (f) shall cease to
21 apply when the member or former member provides the system with
22 current information as to the member's or former member's



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



1 equivalent of the benefit to which the member or former member
2 was correctly entitled shall be paid."

3 SECTION 5. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon approval.



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 the retirement system law to civil unions. (SD1)

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