

S .B. NO. 1035

JAN 24 2013

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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 receipt by the employees' retirement system of  
15 the favorable determination letter on amendments to chapter 88,  
16 Hawaii Revised Statutes, to meet certain vesting rules that were  
17 applicable to tax qualified plans prior to the enactment of the

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

7 The favorable determination letter was also conditioned  
8 upon the adoption of amendments to section 88-83.5, Hawaii  
9 Revised Statutes, to comply with final regulations under section  
10 415 of the Internal Revenue Code.

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

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

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

21 "**§88-73 Service retirement.** (a) Any member who:

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- 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  
23 credited service as a judge after June 30, 2012, and has at

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

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

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

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

19 (f) A member's right to the member's accrued retirement  
20 benefit is non-forfeitable upon the attainment of normal  
21 retirement age and the completion of the requisite years of  
22 credited service. For this purpose, "normal retirement age" is  
23 age sixty-five. For class A and B members who became members

1 before July 1, 2012, the requisite years of credited service is  
2 five years. For class A and B members who became members after  
3 June 30, 2012, the requisite years of credited service is ten  
4 years."

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

7 "§88-83.5 Benefit limitations. (a) Notwithstanding any  
8 other law to the contrary, the benefits payable to all employees  
9 who first become members on or after January 1, 1990, shall be  
10 subject to the limitations set forth in section 415 of the  
11 Internal Revenue Code of 1986, as amended, applicable to  
12 governmental plans. The dollar limit in section 415(b)(1)(A) of  
13 the Internal Revenue Code of 1986, as amended, shall be adjusted  
14 automatically under section 415(d) of the Internal Revenue Code  
15 of 1986, as amended, effective January 1 of each year, as  
16 published in the Internal Revenue Bulletin. The automatic  
17 adjustment shall apply to members, former employees[7] with  
18 vested benefit status, and retirants[7, and beneficiaries]. To  
19 the extent the "applicable interest rate," as defined in section  
20 417(e)(3) of the Internal Revenue Code of 1986, as amended, is  
21 used in computing the limitations under section 415 of the  
22 Internal Revenue Code of 1986, as amended, the stability period  
23 shall be one calendar year beginning January 1, and the look-

1 back month shall be the fourth full calendar month preceding the  
2 first day of the stability period (September).

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

6 (1) The dollar limit in section 415(b)(1)(A) of the  
7 Internal Revenue Code of 1986, as amended, shall be  
8 applied to the member's annual benefit as of the  
9 member's "annuity starting date," as defined in  
10 section 417(f)(2) of the Internal Revenue Code of  
11 1986, as amended, without regard to any automatic  
12 cost-of-living increases.

13 (2) In no event may the member's annual benefit exceed the  
14 dollar limit applicable at the member's "annuity  
15 starting date," as defined in section 417(f)(2) of the  
16 Internal Revenue Code of 1986, as amended, as  
17 increased in subsequent years pursuant to section  
18 415(d) of the Internal Revenue Code of 1986, as  
19 amended.

20 ~~[-b-]~~ (c) Notwithstanding any other law to the contrary, the  
21 benefits payable to all employees who first became members  
22 before January 1, 1990, shall be subject to the greater of the

1 following limitations as provided in section 415(b)(10) of the  
2 Internal Revenue Code of 1986, as amended:

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

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

- 12 (1) All retirants and beneficiaries of the system whose  
13 pension has been limited by section 415 of the  
14 Internal Revenue Code shall receive a monthly benefit  
15 from the plan established pursuant to this subsection  
16 that is equal to the difference between the retirement  
17 benefit otherwise payable and the retirement benefit  
18 payable because of section 415 of the Internal Revenue  
19 Code of 1986, as amended;  
20 (2) Participation in the plan shall be determined for each  
21 plan year and shall cease whenever the retirement  
22 benefit is not limited by section 415 of the Internal  
23 Revenue Code of 1986, as amended;

- 1           (3) The plan shall be funded on a plan-year-to-plan-year  
2           basis and shall not be used to pay any benefits  
3           payable in future years. Upon the recommendation of  
4           the system's actuary, the required contribution amount  
5           shall be determined by the board and deposited in a  
6           separate fund from an allocation of employer  
7           contribution amounts pursuant to this chapter;
- 8           (4) The board shall administer the plan and may make  
9           modifications to the benefits payable as may be  
10          necessary to maintain the qualified status of the plan  
11          under section 415(m) of the Internal Revenue Code of  
12          1986, as amended."

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

15          "**§88-281 Service retirement.** (a) A member who has ten  
16          years of credited service and has attained age sixty-two, or a  
17          member with thirty years credited service who has attained the  
18          age of fifty-five, shall become eligible to receive a retirement  
19          allowance after the member has terminated service.

20          (b) If a member has at least twenty-five years of credited  
21          service as a sewer worker or as a water safety officer of which  
22          the last five or more years prior to retirement is credited in  
23          such a capacity, then the sewer worker or water safety officer



1 shall be eligible to receive a retirement benefit unreduced for  
2 age after the member has terminated service.

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

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

11 (e) If a member has at least thirty years of credited  
12 service through June 30, 2003; twenty-nine years of credited  
13 service on or after July 1, 2004; twenty-eight years of credited  
14 service on or after July 1, 2005; twenty-seven years of credited  
15 service on or after July 1, 2006; twenty-six years of credited  
16 service on or after July 1, 2007; and twenty-five years of  
17 credited service on or after July 1, 2008, as an emergency  
18 medical technician, of which the last five or more years prior  
19 to retirement is credited service in that capacity, the  
20 emergency medical technician shall be eligible to receive a  
21 retirement benefit unreduced for age after the member has  
22 terminated service.

1 (f) A member may retire upon the written application to  
2 the board, specifying the desired date of retirement, which  
3 shall be not less than thirty days nor more than one hundred  
4 fifty days subsequent to the date of filing. Retirement shall  
5 be effective on the first day of a month, except for the month  
6 of December when retirement on the first or last day of the  
7 month shall be allowed.

8 (g) A member's right to the member's accrued retirement  
9 benefit is non-forfeitable upon the attainment of normal  
10 retirement age and the completion of ten years of credited  
11 service. For this purpose, "normal retirement age" is age  
12 sixty-five."

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

15 "**§88-331 Service retirement.** (a) A class H member who:

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

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

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

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

7 shall become eligible to receive a retirement allowance after  
8 the member has terminated service.

9           (b) A class H member who became a member before July 1,  
10 2012, and has at least twenty-five years of credited service as  
11 a sewer worker or water safety officer, of which the last five  
12 or more years prior to retirement is credited service in that  
13 capacity, shall become eligible to receive a retirement  
14 allowance unreduced for age after the member has terminated  
15 service. A class H member who becomes a member after June 30,  
16 2012, and has at least twenty-five years of credited service as  
17 a sewer worker or water safety officer, of which the last five  
18 or more years prior to retirement is credited service in that  
19 capacity, and has attained age fifty-five shall become eligible  
20 to receive a retirement allowance unreduced for age after the  
21 member has terminated service.

22           (c) A class H member who has twenty years of credited  
23 service and has attained age fifty-five shall be eligible to

1 receive an early retirement allowance reduced for age after the  
2 member has terminated service.

3 (d) If a class H member, who became a member before July  
4 1, 2012, has at least twenty-eight years of credited service on  
5 or after July 1, 2005; twenty-seven years of credited service on  
6 or after July 1, 2006; twenty-six years of credited service on  
7 or after July 1, 2007; and twenty-five years of credited service  
8 on or after July 1, 2008, as an emergency medical technician, of  
9 which the last five or more years prior to retirement is  
10 credited service in that capacity, the member shall be eligible  
11 to receive a retirement benefit unreduced for age after the  
12 member has terminated service. If a class H member, who becomes  
13 a member after June 30, 2012, has at least twenty-five years of  
14 credited service as an emergency medical technician, of which  
15 the last five or more years prior to retirement is credited  
16 service in that capacity, and has attained age fifty-five, the  
17 member shall be eligible to receive a retirement benefit  
18 unreduced for age after the member has terminated service.

19 (e) A class H member may retire upon the written  
20 application to the system, specifying the desired date of  
21 retirement, which shall be not less than thirty days nor more  
22 than one hundred fifty days subsequent to the date of filing.  
23 Retirement shall be effective on the first day of a month,


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1 except for the month of December when retirement on the first or  
2 last day of the month shall be allowed.

3 (f) A member's right to the member's accrued retirement  
4 benefit is non-forfeitable upon the attainment of normal  
5 retirement age and the completion of the requisite years of  
6 credited service. For this purpose, "normal retirement age" is  
7 age sixty-five. For class H members who became members before  
8 July 1, 2012, the requisite years of credited service is five  
9 years. For class H members who became members after June 30,  
10 2012, the requisite years of credited service is ten years."

11 SECTION 6. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

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

14  
15 INTRODUCED BY: 

16 BY REQUEST

**Report Title:**

Employees' Retirement System; Federal Tax Qualification

**Description:**

Amends chapter 88, Hawaii Revised Statutes, to comply with Internal Revenue Code requirements and pre-ERISA vesting rules to maintain the Employees' Retirement System's status as a tax-qualified plan.

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

JUSTIFICATION SHEET

**SB. NO. 1035**

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO FEDERAL TAX QUALIFICATION OF THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to complete the favorable determination letter process with the Internal Revenue Service.

MEANS: Amend sections 88-73, 88-83.5, 88-281 and 88-331, Hawaii Revised Statutes.

JUSTIFICATION: The employees' retirement system of the State of Hawaii ("Employees' Retirement System") is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended ("Code"). In 2009, the plan was submitted to the Internal Revenue Service for a favorable determination that the language of the plan met the federal tax qualification requirements applicable to governmental plans sponsored by state and local governments. On March 21, 2012, the Internal Revenue Service issued a favorable determination letter approving the language of the plan based on the information provided in the determination letter process. The information provided in the determination letter process included two proposed amendments to chapter 88, Hawaii Revised Statutes. The two proposed amendments are described as follows:

As part of the initial determination letter application, the Employees' Retirement System proposed technical amendments to section 88-83.5, Hawaii Revised Statutes, to comply with final regulations under section 415 of the Internal Revenue Code, which were effective with respect to the Employees' Retirement System on January 1, 2009.

Generally, section 415 of the Internal Revenue Code provides a dollar limit on the annual benefit that may be paid to a member of the Employees' Retirement System. In calendar year 2012, the dollar limit is \$200,000 for a member commencing retirement benefits between ages 62 and 65. The dollar limit is adjusted (increased) as the cost of living increases. Subject to certain exceptions for police officers and firefighters, actuarial adjustments are required for members retiring prior to age 62. The Internal Revenue Service approved the proposed amendments to section 88-83.5, Hawaii Revised Statutes, as part of the determination letter process. The proposed amendments must be adopted to complete the determination letter process.

As part of the determination letter process, the Internal Revenue Service requested amendments to sections 88-73, 88-281, and 88-331, Hawaii Revised Statutes, to meet certain vesting rules that were applicable to tax-qualified retirement plans prior to the enactment of the federal Employee Retirement Income Security Act on September 2, 1974. Those vesting rules require that a member's right to the member's accrued retirement benefit be fully vested (i.e., non-forfeitable) upon the attainment of normal retirement age and the completion of any required years of service and any other reasonable requirements set forth in the plan. In response to the Internal Revenue Service's request for amendments, the Employees' Retirement System proposed amendments to sections 88-73, 88-281, and 88-331, Hawaii Revised Statutes, that were intended to meet the technical requirements of the Internal Revenue Service's request but not change in any way the benefits provided under chapter 88, Hawaii Revised Statutes. The Internal Revenue Service approved the amendments proposed by the Employees' Retirement System, and specifically conditioned the



favorable determination letter on the State's adoption of the proposed amendments. The proposed amendments must be adopted to complete the determination letter process.

Impact on the public: None.

Impact on the department and other agencies:  
None

GENERAL FUND: None.  
OTHER FUNDS: None.  
PPBS PROGRAM DESIGNATION: BUF 141.  
OTHER AFFECTED AGENCIES: None.  
EFFECTIVE DATE: Upon approval.