

S.B. NO. 1038

JAN 24 2013

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,

S.B. NO. 1038

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 promulgated 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 reference to civil
22 unions that are made superfluous by the provision of this Act
23 confirming that, for the purposes of chapter 88, Hawaii Revised

S.B. NO. 1038

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

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

8 "§88- Civil unions. For the purposes of this chapter,
9 the terms "married", "marriage", "marital", "husband", "wife",
10 or similar spousal terms shall include civil union partners and
11 civil unions under chapter 572B, unless recognition of a civil
12 union as marriage conflicts with the requirements for the system
13 to be a tax-qualified plan under section 401(a) of the Internal
14 Revenue Code of 1986, as amended."

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

17 **"§88-22.5 Federal tax qualification requirements. (a)**
18 The system shall be administered in accordance with the
19 requirements of section 401(a)(1), (2), (8), (9), (25), (31),
20 and (37) of the Internal Revenue Code of 1986, as amended.
21 Without limiting the generality of the foregoing and
22 notwithstanding any provision of chapter 88 to the contrary:

S.B. NO. 1038

- 1 (1) Prior to the satisfaction of all liabilities with
2 respect to members and their beneficiaries, no part of
3 the corpus or income of the system shall be used for
4 or diverted to purposes other than for the exclusive
5 benefit of members and their beneficiaries. The
6 payment of reasonable expenses from the expense fund
7 for the administration of the system in accordance
8 with section 88-116 shall be deemed to be for the
9 benefit of members and their beneficiaries;
- 10 (2) Benefits forfeited by a member for any reason shall
11 not be applied to increase the benefits a member or
12 beneficiary would otherwise receive under the system;
- 13 (3) In accordance with section 88-74.7 and rules adopted
14 by the board of trustees, the entire interest of a
15 member shall be distributed or distribution shall
16 begin no later than the member's "required beginning
17 date", as defined in section 401(a)(9) of the Internal
18 Revenue Code of 1986, as amended;
- 19 (4) In accordance with rules adopted by the board of
20 trustees, a member or beneficiary may elect, at the
21 time and in the manner prescribed by the board of
22 trustees, to have any portion of an "eligible rollover
23 distribution" paid in a "direct rollover" to an

1 "eligible retirement plan", as those terms are defined
2 in section 401(a)(31) of the Internal Revenue Code of
3 1986, as amended;

4 (5) In the event of the termination of or complete
5 discontinuance of employer contributions to the
6 system, the rights of all members to benefits accrued
7 as of the date of the termination or discontinuance,
8 to the extent then funded, shall be nonforfeitable;
9 and

10 (6) In the case of a member who dies while performing
11 qualified military service, as defined in section
12 414(u)(5) of the Internal Revenue Code, the survivors
13 of the member shall be entitled to any additional
14 benefits (other than benefit accruals relating to the
15 period of qualified military service) provided under
16 this chapter had the member resumed and then
17 terminated employment on account of death; provided
18 that this paragraph shall not limit the rights to
19 which a member's designated beneficiary, spouse,
20 [~~civil union partner,~~] reciprocal beneficiary, or
21 children are otherwise entitled by this chapter;
22 provided further that the legislature finds that

1 section 88-137 provides the benefits required by this
2 paragraph.

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

12 (c) Notwithstanding the provisions of sections 572B-9 and
13 572B-11, unless the civil union partners are "spouses" under
14 applicable federal law, civil union partners shall not be
15 entitled to the rights of spouses under this chapter where they
16 are not entitled to the rights of spouses under the Internal
17 Revenue Code."

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

21 "(e) If the system does not receive a written election
22 from the member or former member under section 88-83, 88-283, or
23 88-333, as applicable, prior to the later of the member's or

1 former member's required beginning date or sixty days following
2 the receipt by the member or former member of notice from the
3 system that the member or former member is required to make an
4 election, the following election shall be deemed to have been
5 made as of the member or former member's required beginning
6 date:

- 7 (1) If the member or former member is unmarried or has no
8 [~~civil union partner or~~] reciprocal beneficiary, the
9 member or former member shall be deemed to have
10 elected the maximum retirement allowance; or
- 11 (2) If the member or former member is married or has a
12 [~~civil union partner or~~] reciprocal beneficiary, the
13 member or former member shall be deemed to have
14 elected option 3 under section 88-83, or option A
15 under section 88-283, as applicable, and to have
16 designated the member's or former member's spouse [~~or~~
17 ~~civil union partner,~~] or reciprocal beneficiary as the
18 member's or former member's beneficiary;
- 19 provided that if the system receives the written election after
20 the member's or former member's required beginning date, but
21 within sixty days following receipt by the member or former
22 member of notice from the system that the member or former
23 member is required to make the election, the written election

1 shall apply, and the member's or former member's retirement
2 benefit shall be recomputed, based on the written election,
3 retroactive to the member or former member's required beginning
4 date. The amount of any underpayment resulting from recomputing
5 the benefit shall bear regular interest. If recomputing the
6 benefit results in an overpayment, payments shall be adjusted so
7 that the actuarial equivalent of the benefit to which the member
8 or former member was correctly entitled shall be paid.

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

13 (1) If the member or former member was married or had a
14 [~~civil union partner or~~] reciprocal beneficiary at the
15 time the member or former member last provided
16 information to the system about the member's or former
17 member's marital [~~, civil union,~~] or reciprocal
18 beneficiary status, it shall be presumed that the
19 member or former member is still married to the same
20 spouse [~~, is in the same civil union partnership,~~] or
21 is in the same reciprocal beneficiary relationship.
22 If the system does not have information as to the age
23 of the spouse [~~, civil union partner,~~] or reciprocal

1 beneficiary, the spouse [~~, civil union partner,~~] or
2 reciprocal beneficiary shall be presumed to be forty
3 years younger than the member or former member for
4 purposes of computing the member's or former member's
5 benefit; and

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

14 (g) The presumptions in subsection (f) shall cease to
15 apply when the member or former member provides the system with
16 current information as to the member's or former member's
17 marital [~~, civil union,~~] or reciprocal beneficiary status and the
18 age of the member or former member's spouse [~~, civil union
19 partner,~~] or reciprocal beneficiary, if any, on the member's or
20 former member's required beginning date. The information shall
21 be provided in a form satisfactory to the system. At that time,
22 the member's or former member's retirement allowance shall be
23 recomputed, retroactive to the member's or former member's

S.B. NO. 1038

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

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 6. This Act shall take effect upon its approval.

21

22

INTRODUCED BY:



23

BY REQUEST

Report Title:

Employees' Retirement System; Civil Unions

Description:

Amends chapter 88, Hawaii Revised Statutes, to preserve the tax-qualified status of the Employees' Retirement System and to clarify the application of chapter 88 to civil unions.

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. 1038

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to provide that civil union partners are not entitled to the rights of "spouses" under chapter 88 where to do so would jeopardize the tax-qualified status of the Employees' Retirement System.

MEANS: Add a new section to chapter 88, Hawaii Revised Statutes, and amend sections 88-22.5 and 88-74.7(e)-(g), Hawaii Revised Statutes.

JUSTIFICATION: The Employees' Retirement System of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended. In order to maintain its tax-qualified status, the Employees' Retirement System must meet the Internal Revenue Code requirements applicable to it in form (i.e., the wording of the statutes and administrative rules) and in operation (i.e., how the statutes and administrative rules are applied). Although in general, the rights and duties of members, retirants, and beneficiaries of the Employees' Retirement System are governed entirely by state law, where there are conflicts between state law and applicable federal law, the Employees' Retirement System must satisfy federal tax law or risk losing its tax-qualified status. Certain provisions of federal tax law applicable to the Employees' Retirement System allow only a "spouse" of a retirement system member or retirant to receive certain rights or benefits. The federal Defense of Marriage Act of 1996 requires that, when interpreting a federal law, rulings, regulations and

interpretations, such as the Internal Revenue Code and the regulations promulgated under the Internal Revenue Code, "the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

This bill amends section 88-22.5 to provide that civil union partners who are not "spouses" under federal law are not entitled to the benefits of "spouses" under chapter 88 where the Internal Revenue Code governs the rights of spouses. At present, this amendment would affect three areas: the right to receive a monthly survivor benefit that is the same as the retirant if the retirant's civil union partner is the retirant's beneficiary and is more than a specified number of years younger than the retirant (the surviving civil union partner would still be able to receive other forms of survivor benefits and the benefits payable to the retirant and the retirant's survivor beneficiary would be the actuarial equivalent in all cases to the retirant's "maximum retirement allowance"); the right to defer death benefits; and preferential rollover rights under section 402(c)(9) of the Internal Revenue Code (non-spouse beneficiaries may make direct rollovers; however, their rollover options are more limited than the options available to spousal beneficiaries. Civil union partners would still have the rights accorded to spouses under the portions of chapter 88 that are not restricted by the Internal Revenue Code. These rights include the right to notification of a member's election of retirement benefit options under sections 88-83, 88-283, and 88-333 and death benefits under sections 88-84, 88-85, 88-137, 88-286, 88-338, and 88-339.

This bill also adds a new section confirming that, for the purposes of chapter 88, the terms "married," "marriage," "marital," "husband," "wife," or similar spousal terms shall include civil unions and civil union

partners, unless to do so would jeopardize the tax-qualified status of the Employees' Retirement System, and amends sections 88-22.5(a)(6) and 88-74.7 to delete specific reference to civil unions that are made superfluous by the new section.

Impact on the public: None.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BUF 141/Retirement.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.