

Honolulu, Hawaii

MAR 22 2013

RE: H.B. No. 808

H.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 808, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT
SYSTEM,"

begs leave to report as follows:

The purpose and intent of this measure is to preserve the
tax-qualified status of the Employees' Retirement System by
providing that civil union partners are not entitled to spousal
rights under the Employees' Retirement System where application of
those spousal rights to civil union partners conflicts with the
Internal Revenue Code.

Your Committee received testimony in support of this measure
from the Board of Trustees of the Employees' Retirement System.

Your Committee finds that the Employees' Retirement System
(ERS) is a tax-exempt, qualified retirement plan under section
401(a) of the Internal Revenue Code. If the ERS should lose its
tax-exempt status, the federal tax consequences would be extremely
harmful to its members, as contributions received from employee
members would no longer have favorable pre-tax treatment and would
instead be entirely subject to federal income tax at the time of
contribution. In addition, all members would be taxed on the
value of their total accrued retirement benefits at the time they
vest rather than when they receive their retirement benefits.

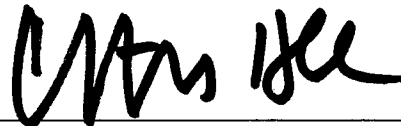


In order to maintain its tax-qualified status, the ERS must meet the applicable Internal Revenue Code requirements in form and in operation. Although, in general, the rights and duties of members, retirees, and beneficiaries of the ERS are governed entirely by state law, where there are conflicts between state law and applicable federal law, the ERS must satisfy federal tax law or risk losing its tax-qualified status.

Certain provisions of federal tax law applicable to the ERS allow only a "spouse" of a retirement system member or retiree to receive certain rights or benefits. The federal Defense of Marriage Act of 1996 requires that when interpreting federal law, rules, regulations, and interpretations, such as the Internal Revenue Code and the regulations adopted 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 measure provides that civil union partners who are not spouses under federal law are not entitled to the benefits of spouses under chapter 88, Hawaii Revised Statutes, where the Internal Revenue Code governs the rights of spouses. However, civil union partners would still have the rights provided to spouses under the portions of chapter 88, Hawaii Revised Statutes, that are not restricted by the Internal Revenue Code.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 808, H.D. 1, and recommends that it pass Second Reading and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



