

"[CHAPTER 88E]
DEFERRED COMPENSATION PLAN

Section

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Attorney General Opinions

Hawaii Public Procurement Code did not apply to board of trustees' current administrator and investment-product-provider contracts because they were entered into before Code's July 1, 1994 effective date. The Code would apply to contracts entered into after that date if "public funds" are used to fund them. Att. Gen. Op. 94-4.

" **[\$88E-1] Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

"County" means the counties of Hawaii, Kauai and Maui, and the city and county of Honolulu.

"Employee" means a person who is eligible to participate in the employees' retirement system of the State of Hawaii as defined in section 88-21.

"State" means the State of Hawaii. [L Sp 1981 1st, c 7, pt of §1]

Revision Note

Numeric designations deleted and definitions rearranged.

" **[\$88E-2] State deferred compensation plan.** The State may establish a deferred compensation plan in accordance with section 457 of the Internal Revenue Code of 1954, as amended, for the benefit of employees to defer a portion of their compensation to a future period of time. Participation in the plan shall be by written agreement between the employee and the State. The county may enter into a formal agreement with the State to extend the plan to employees of the county; provided that the agreement designates one of the county's agencies to locally coordinate the plan. Participation in the plan by a county employee shall be by written agreement between the employee and the county. An employee may authorize deductions to be made from the employee's wages for the purpose of participation in the plan. [L Sp 1981 1st, c 7, pt of §1]

" **§88E-3 Board of trustees.** (a) The authority to establish the plan and implement this chapter is vested in the board of trustees. The board shall be placed within the department of human resources development for administrative purposes.

(b) The board shall adopt such rules to carry out this chapter in accordance with chapter 91; provided that rules necessary for the plan to be in compliance with federal laws or regulations may be adopted without regard to chapter 91. The

board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board. [L Sp 1981 1st, c 7, pt of §1; am L 1994, c 56, §21; am L 2000, c 253, §126]

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" **§88E-4 Composition of the board of trustees.** The board of trustees shall consist of seven members as follows:

- (1) The director of human resources development of the State or a designated representative, ex officio;
- (2) The director of finance of the State or a designated representative, ex officio; and
- (3) Five other persons, who shall be public employees and represent employee interests. [L Sp 1981 1st, c 7, pt of §1; am L 1988, c 287, §2; am L 1994, c 56, §21; am L 2010, c 65, §1]

" **§88E-5 Appointment and terms.** Except for the directors of human resources development and finance, the members of the board shall be nominated and, by and with the advice and consent of the senate, appointed by the governor and shall serve terms of four years each; provided that of the trustees first appointed upon establishment of the board one shall be appointed for one year, one shall be appointed for two years, one shall be appointed for three years, and two shall be appointed for four years.

A vacancy on the board shall be filled by appointment of the governor. The person appointed to fill a vacancy shall serve for the remainder of the unexpired term. If by the end of a term a trustee is not reappointed or a successor is not appointed, the trustee shall serve until the trustee's successor is appointed.

Membership on the board shall not be deemed incompatible with the holding of any other public employment. [L Sp 1981 1st, c 7, pt of §1; gen ch 1985; am L 1994, c 56, §21]

" **[§88E-6] Compensation and expenses.** Each trustee shall serve without compensation but shall be reimbursed from the fund for any necessary expense incurred in the performance of the trustee's duties. [L Sp 1981 1st, c 7, pt of §1; gen ch 1985]

" **[§88E-7] Legal advisor.** The attorney general shall be the legal advisor of the board. [L Sp 1981 1st, c 7, pt of §1]

" **§88E-8 Deferred funds.** Sums deferred under the plan, as well as property and rights purchased with such amounts and income attributable to such amounts, shall be held in trust outside the state treasury in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries. [L Sp 1981 1st, c 7, pt of §1; am L 1997, c 171, §1; am L 2000, c 253, §127]

" **§88E-9 Investments.** (a) The board may create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred and for the administration of the plan.

(b) Participating employees shall invest their deferred compensation in the investment products permitted under the plan; provided that the investment products shall be provided by companies that are licensed to provide investment products and transact business in the State.

(c) The investment products may include annuities, life insurance, savings accounts, mutual funds, or other types of investment products that are commonly offered in the securities industry or other deferred compensation plans and are determined by the board to be reasonably prudent investment products.

(d) The investment products shall have been reviewed and selected by the board after a competitive bidding process based on the specifications and considerations deemed appropriate by the board.

(e) The investments and investment products shall not be construed to be a prohibited use of general assets of the State.

(f) Nothing in this chapter shall be construed to permit any type of investment prohibited by law. [L Sp 1981 1st, c 7, pt of §1; am L 2008, c 92, §2]

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into after that date if "public funds" are used to fund them.
Att. Gen. Op. 94-4.

" **§88E-10 REPEALED.** L 2000, c 253, §137.

" **[§88E-11] Limitation on liability.** The State or county shall not be liable for the sums deferred or the results of any investment product. [L Sp 1981 1st, c 7, pt of §1]

" **[§88E-12] Deferred amounts as compensation.** Any compensation deferred pursuant to a plan established under this chapter shall be deemed regular compensation for the purpose of computing contributions or benefits under existing retirement, pension, or social security systems applicable to participating employees but shall not be included in the computation of federal income taxes withheld on behalf of any participating employee. [L Sp 1981 1st, c 7, pt of §1]

" **[§88E-13] Costs of the plan.** Costs for implementing and administering the plan shall be borne by the plan and its participants, except for incidental expenses, such as, the cost of payroll deductions and the routine processing of forms. [L Sp 1981 1st, c 7, pt of §1]

" **[§88E-14] County deferred compensation plans.** The counties may establish deferred compensation plans for their respective employees. A plan so established need not be subject to the other provisions of this chapter, but shall be in compliance with applicable federal laws and regulations. [L Sp 1981 1st, c 7, pt of §1]

" **[§88E-15] Existing deferred compensation plans.** This chapter shall not affect any existing deferred compensation plan established under section 457 of the Internal Revenue Code, as amended. [L Sp 1981 1st, c 7, pt of §1]