

ACT 183

S.B. NO. 2478

A Bill for an Act Relating to the Trustees of the Office of Hawaiian Affairs.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow the trustees of the office of Hawaiian affairs to participate in and receive the same benefits from the retirement benefits programs in which other elected salaried officials of the State participate.

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

“§88- Service while a member of the board of trustees of the office of Hawaiian affairs. Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees’ retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member upon the trustee’s election in accordance with section 88-43 by October 1, 2002;

- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, may become a member upon the trustee's election in accordance with section 88-43;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59 and 88-272; and
- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002."

SECTION 3. Section 10-9, Hawaii Revised Statutes, is amended to read as follows:

"§10-9 Salaries; benefit; expenses. Members of the board:

- (1) Shall receive an annual salary which shall be paid:
 - (A) Exclusively from revenue under section 10-13.5; and
 - (B) In equal amounts, beginning with the first pay period for state employees in November of the year the member of the board is elected.

Effective July 1, 1993, and until the salary commission makes recommendations for salary, the salary of the chairperson of the board shall be \$37,000 a year and the salary of other members of the board shall be \$32,000 a year. Any provision of law to the contrary notwithstanding, all members of the board shall be included in any benefit program generally applicable to officers and employees of the State [~~except for benefit programs relating to retirements~~];

- (2) Shall be allowed transportation fares between islands and abroad;
- (3) Shall be allowed personal expenses at the rates specified by section 78-15, while attending board meetings or while on official business as authorized by the chairperson, when those board meetings or official business shall require a member to leave the island upon which the member resides; and
- (4) Shall be allowed a protocol allowance to cover expenses incurred in the course of a member's duties and responsibilities."

SECTION 4. Section 87-5, Hawaii Revised Statutes, is amended to read as follows:

"§87-5 Reimbursement for state contributions. (a) All state and county agencies having control of special funds shall reimburse the State for contributions made by the State pursuant to section 87-4 on account of the employees in the agencies whose compensation is paid in whole or part from the special funds. All state and county agencies receiving federal funds, which may be expended for the purpose of absorbing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to section 87-4 on account of the employees in the agencies whose compensation is paid in whole or part from federal funds.

(b) The office of Hawaiian affairs shall reimburse the State for contributions made by the State pursuant to section 87-4.5, 87-4.6, or 87-6 on account of a former member of the board of trustees of the office of Hawaiian affairs who is a retired member of the employees' retirement system."

SECTION 5. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of "elective officer" or "elected official" and "employee" to read as follows:

"'Elective officer" or "elective official": any person elected to a public office or appointed to fill a vacancy of an elective office, except as a delegate to a constitutional convention[;] ~~or member of the board of education [or trustee of the office of Hawaiian affairs]~~, in accordance with an election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.

"Employee": any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, including the trustees of the office of Hawaiian affairs, legislative employees who are employed on a full-time basis during and between sessions, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88-49.7, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) Members of the legislature who do not elect to be members as provided in section 88-42;
- (3) Persons excluded by rules of the board pursuant to section 88-43.

An individual is an employee during the period of a leave of absence if the individual is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part."

SECTION 6. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be three classes of members in the system to be known as class A, class B, and class C, defined as follows:

- (1) Class A shall consist of members covered by section 88-74(3)[;] and (4), those members whose salaries are set forth in sections 26-52 and 26-53, and their county counterparts, managing directors or administrative assistant to the mayor, and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive director of the labor and industrial relations appeals board, the executive director of the Hawaii labor relations board, investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, public safety investigations staff investigators, and those members in service prior to July 1, 1984, including those who are on approved leave of absence, who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:
 - (A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;

- (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and
- (C) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership;
- (2) Class B shall consist of all members who are not class A or class C members; and
- (3) Except for members described in ~~[section 88-47(a)]~~ paragraph (1), class C shall consist of all employees in positions covered by Title II of the Social Security Act who:
 - (A) First enter service after June 30, 1984;
 - (B) Reenter service after June 30, 1984, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class C member as provided in part VII; or
 - (D) Are former class C retirants who return to service requiring the retirant's active membership."

SECTION 7. Section 88-51, Hawaii Revised Statutes, is amended to read as follows:

“§88-51 Membership service generally. Membership service includes:

- (1) Service by an employee rendered since becoming a member;
- (2) Service rendered prior to becoming a member but (A) subsequent to January 1, 1926, by an employee of the State or (B) subsequent to January 1, 1928, by an employee of any county;
- (3) Service as an employee of the federal government where the function carried on by the government has been transferred to the State or any county, or where the employee has been transferred to the federal government and subsequently retransferred to the State or any county;
- (4) Service rendered by an employee in the office of the delegate to Congress from Hawaii, or service rendered by an employee in the office of a representative or a senator to Congress from the State; provided that (A) the employee was a member of the system immediately preceding the time the employee renders such service; (B) the employee reenters the service of the State or county within one year after termination of such service; and (C) the employee has, to the satisfaction of the board of trustees, waived the employee's right to any credit under the Civil Service Retirement Act (5 U.S.C.A. 2251) based upon such service; provided further that credit for such service shall not exceed eight years;
- (5) Service as an employee of the Hawaii territorial guard;
- (6) Service while engaged in professional improvement pursuant to an approved leave of absence for such purpose, with or without pay;
- (7) Service between the years 1941 and 1947 with federal defense agencies, where the employee was employed by the government before the wartime service, went into defense work at the direction of the employee's employer, and returned to government service at the end of the wartime service; provided that these circumstances shall be verified by evidence satisfactory to the board of trustees;
- (8) Service, not exceeding four years, in the military service of the United States during the period 1941-1949 rendered by an employee who was employed by the Territory or county prior to the employee's induction into the military and who subsequently returned to employment of the Territory or county following the employee's discharge;

- (9) Service rendered prior to becoming a member as a full-time employee at the Leahi Hospital or Pahala Hospital, now known as Ka‘u General Hospital, Puunene Hospital, Waimea Hospital, Waimea, Kauai, Haliimaile Dispensary, and Paia Hospital and Pioneer Mill Hospital;
- (10) Service rendered prior to becoming a member as a full-time sheriff or deputy sheriff in the office of the sheriff;
- (11) The period of time when a member was absent from work because of injuries incurred within the scope of the member’s employment and who has received workers’ compensation benefits prior to July 1, 1967;
- (12) Service rendered as an employee of the legislature during any legislative session;
- (13) Service as a school cafeteria manager or worker if paid by the State regardless of the source of funds from which paid; provided that twelve months’ service shall be credited for the time such a person was working on a nine-month schedule during a school year[-]; and
- (14) Service rendered as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through June 30, 2002.

Membership service shall only be credited for any period for which the member makes the required contributions to the system.”

SECTION 8. Section 88-125, Hawaii Revised Statutes, is amended to read as follows:

“**§88-125 Contributions by certain state agencies.** (a) Each of the departments and agencies hereinafter described and the office of Hawaiian affairs shall reimburse the State for the respective amounts payable by the State to cover the liability of the State to the various funds of the system on account of the employees in such departments and agencies[-] and the trustees of the office of Hawaiian affairs. This provision shall apply to any department or agency of the State which is authorized by law to fix, regulate and collect rents, rates, fees or charges of any nature. The provisions herein shall not apply as to rental units receiving federal subsidies until approval has been obtained from the appropriate federal agency.

(b) Whenever any department or agency of the State receives federal-aid funds which may be expended for the purpose of covering the liability of the State to the various funds of the system, the department or agency shall set aside a portion of these funds sufficient to cover the amount of the State’s liability to the various funds of the system on account of the employees in the department or agency whose compensation is paid in whole or part from federal funds.

(c) The amount payable by each department or agency of the State, or the office of Hawaiian affairs, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, or trustees of the office of Hawaiian affairs, who are members of the system in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, or any department or agency having control of its own funds shall, upon information furnished by the department of budget and finance, issue a warrant for the proper amount to the system, charging the same to the appropriate fund. The system shall place all such sums to the credit of the State as part payment of the State’s contributions to the various funds of the system.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved June 25, 2002.)

Note

1. Edited pursuant to HRS §23G-16.5.