

ACT 109

S.B. NO. 687

A Bill for an Act Relating to Leaves of Absence.

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

PART I

SECTION 1. The purpose of this Act is to amend section 78-23, Hawaii Revised Statutes (HRS), and to add a new chapter to Title 7, HRS, authorizing jurisdictions to establish and implement a special pay plan for eligible employees of the respective jurisdictions that will not enhance or diminish existing benefits. Participation in the plan shall be mandatory for all employees covered by a collective bargaining agreement; provided that participation shall be in accordance with chapter 89, HRS. Participation in the plan for employees not subject to a collective bargaining agreement who are employed in a jurisdiction that elects to establish a special pay plan shall be mandatory. A special pay plan is a governmental retirement plan that meets the requirements of sections 401(a) and 414(d) of the Internal Revenue Code, and may be a qualified pick-up plan under section 414(h)(2) of the Internal Revenue Code.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to Title 7 to be appropriately designated and to read as follows:

**“CHAPTER
TAX DEFERRED COMPENSATION PLANS
FOR PUBLIC EMPLOYEES**

§ -1 **Definitions.** As used in this chapter, unless the context clearly indicates otherwise:

“Employee” shall have the same meaning as defined in section 76-11.

“Jurisdiction” shall have the same meaning as defined in section 76-11.

“Special pay plan” means a governmental retirement plan that meets the requirements of sections 401(a) and 414(d) of the Internal Revenue Code, and which may be a qualified pick-up plan under section 414(h)(2) of the Internal Revenue Code.

§ -2 **Special pay plan; authority established; participation.** (a) Each jurisdiction may establish a special pay plan for its employees.

(b) Eligibility and participation in a special pay plan shall be determined by each jurisdiction; provided that the plan shall be:

- (1) In accordance with chapter 89, for employees subject to a collective bargaining agreement; and
- (2) Mandatory for employees not subject to a collective bargaining agreement employed in a jurisdiction that has elected to establish a special pay plan.

§ -3 Special pay plans; implementation. (a) All accumulated vacation allowance of an employee who separates from service in a jurisdiction that has established a special pay plan shall be paid to the special pay plan.

(b) The employer shall pick-up any mandatory employee contribution of accumulated vacation allowance to the special pay plan within the meaning of section 414(h)(2) of the Internal Revenue Code.

(c) No employee shall have the option of receiving their accumulated vacation allowance in cash in lieu of having a contribution made to the special pay plan by their employer.

(d) The employer shall reimburse employees under the age of fifty-five who elect a withdrawal their entire account balance from the special pay plan within sixty days from the date that the employee separated from service, an amount equal to the difference between the FICA and medicare tax savings to the employee, and any early withdrawal penalty imposed by the Internal Revenue Service.

§ -4 Administration of a special pay plan. (a) Each jurisdiction that establishes a special pay plan shall be responsible for the administration of the plan.

(b) Each jurisdiction, individually or jointly with other jurisdictions, may contract the services of a special pay plan provider to administer the respective jurisdiction or jurisdictions' special pay plan. Each jurisdiction may adopt rules in accordance with chapter 91, and federal and state law, to effectuate the administration of the special pay plan.

§ -5 Costs of a special pay plan. Costs associated with the implementation and administration of a special pay plan established pursuant to this chapter shall be borne by the selected plan provider."

SECTION 3. Section 78-23, Hawaii Revised Statutes, is amended to read as follows:

"[§78-23] Leaves of absence. (a) Employees shall be eligible for vacation leave, sick leave, and other leaves of absence, with or without pay, as negotiated under chapter 89 or adjusted under chapter 89C, as applicable.

(b) When an employee is transferred from one department to another within the same jurisdiction or to another jurisdiction within the State, the employee shall be given credit for the vacation earned or accumulated in the department from which the employee transferred, and the director of finance of the State or the equivalent officers of the several jurisdictions shall make the appropriate transfer of funds to implement the employee transfer. Moneys received from any such transfer of funds by a state agency financed by the general fund of the State shall be deposited with the director of finance of the State to the credit of the general fund of the State; provided that, when an employee is transferred from one department to another within the same jurisdiction, the transfer of funds shall not be made if the employee's salary is paid from the same fund. Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled at the time the allowance is granted.

(c) Upon discharge, an employee shall be entitled to all of the employee's accumulated vacation allowance plus the employee's current accrued vacation

allowance to and including the date of discharge, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee's pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee's lifetime in a verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee's services as a public employee, or, failing the designation, to the employee's estate.

(d) Whenever an employee is to be discharged, voluntarily or involuntarily, the employee, at the option of the appointing authority, may be discharged and paid forthwith, in lieu of the employee's vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed during the vacation period if the employee were permitted to take the employee's vacation in the normal manner, and in such case the employee's position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the discharge. For an employee hired after June 30, 1997, who is to be discharged, voluntarily or involuntarily, the amount of compensation to be paid in lieu of vacation allowance under this section shall be computed using the rate of pay and amount of accumulated and accrued vacation on the date the employee is discharged. Prompt notice upon such forms and in such manner as may be required shall be given by the department head of any action taken under this provision.

(e) Payments of vacation allowance paid pursuant to subsections (c) or (d) shall be subject to the provisions of chapter _____."

PART II

SECTION 4. The legislature finds that the tragic events of September 11, 2001, have increased security concerns both nationally and locally. Homeland security on both the national and state levels has meant an increase in the activation and visibility of the national guard, particularly at vital state facilities.

In Hawaii, the need has never been stronger for the protection of important state facilities, including the State's airports and the Hawaii convention center. Despite the enormous risks involved, the legislature finds that the Hawaii national guard has met this challenge with resolve and determination.

The legislature finds, however, that a law that was passed in the regular session of 2000, prior to the events of September 11, 2001, threatens to reduce both the recruitment and retention of national guard members in Hawaii, as well as other military reserve components, at the very time when their services are needed more than ever to assist in state security efforts.

In particular, Act 253, Session Laws of Hawaii 2000, which reformed the civil service system, repealed chapter 79, Hawaii Revised Statutes, relating to leaves of absence. Chapter 79, Hawaii Revised Statutes, among other things, provided for military leave with pay for members of the Hawaii national guard and the military reserves.

This repeal will require people to go on military duty only by using their vacation time or by taking a leave of absence without pay. The legislature finds that the repeal of the sections of chapter 79, Hawaii Revised Statutes, relating to military leave with pay will have a serious negative impact on the recruitment and retention of public employees, and the legislature is especially concerned about the impact of this repeal on the Hawaii national guard.

Accordingly, the purpose of this part is to reenact those portions of chapter 79, Hawaii Revised Statutes, that provided military leave with pay for state and county employees who are members of the Hawaii national guard and the military reserves.

SECTION 5. Chapter 78, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§78- Pay of officers and employees on active military service. (a) All officers and employees of the State and the several counties who are appointed for at least six months of service shall be entitled, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawaii national guard or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, to receive pay as provided by law. During the absence of the officer or employee, while in the performance of ordered military or naval duty as a member of the national guard, air national guard, naval militia, or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, the officer or employee shall receive the officer’s or employee’s salary or compensation as such officer or employee, but only for a period not exceeding fifteen working days in any calendar year.

(b) Notwithstanding subsection (a), if the officer or employee is called to active duty or otherwise required to report for camp training or field maneuvers by official military orders a second time within a calendar year, the officer or employee may elect to use the fifteen working days of the succeeding calendar year to which the officer or employee is entitled for such purposes within the current calendar year; provided that the officer’s or employee’s entitlement to fifteen working days under this section for the succeeding calendar year shall be canceled and the officer or employee shall so agree in writing.

§78- Nonforfeiture for absence. Every officer and employee of the State and the several counties who is a member of the Hawaii national guard or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, shall be entitled to be absent from the officer’s or employee’s duties or service while engaged in the performance of ordered military or naval duty and while going to and returning from such duty.

No officer or employee shall be subjected, directly or indirectly, by reason of the absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment.”

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon approval; provided that part I shall not take effect until December 31, 2004, and provided further that part II shall take effect retroactively to June 30, 2000.

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.