

ACT 40

H.B. NO. 2311

A Bill for an Act Relating to the Employees' Retirement System.

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

SECTION 1. 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 (Code). Section 414(h)(2) of the Code provides for favorable tax treatment for employee contributions "picked up" (made by the employer on behalf of the employee) to a tax-qualified retirement plan established by a state or county or by an agency or instrumentality of a state or county. However, the tax-qualified status of a government retirement plan may be jeopardized:

- (1) If the plan allows members to receive a refund of the contributions made under section 414(h)(2) of the Code while the member is employed by the government; or
- (2) If a member who received a refund of contributions made under section 414(h)(2) of the Code while the member was still employed by the government is allowed to have additional contributions made on behalf of the member under section 414(h)(2).

The purpose of this Act is to repeal the portions of chapter 88, Hawaii Revised Statutes, that allow members of the employees' retirement system:

- (1) To receive a refund of contributions made under section 414(h)(2) of the Code while the member is still employed by the State or a county; or
- (2) Who received a refund of contributions made under section 414(h)(2) of the Code while still employed by the State or a county to have additional contributions made on behalf of the member under section 414(h)(2).

SECTION 2. Section 88-271, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

~~“(d) [Any class A or class H member who elects and is approved to withdraw the member’s contributions may become a class C member in accordance with section 88-46.5. Upon approval of the election:~~

- ~~(1) All rights as a class A or class H member shall be extinguished;~~
- ~~(2) The member’s accumulated contributions shall be refunded; and~~
- ~~(3) The member shall not be required to make further contributions to the system.~~

This election shall be irrevocable.] The election by any class A or class B member to become a class C member pursuant to section 88-46.5 in the form in which it existed at any time prior to July 1, 2006, shall be irrevocable upon refund of the member’s accumulated contributions.

(e) The system shall provide information explaining the effects of any election made under subsection (a)[,] or (c)[, or (d)].”

SECTION 3. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) The following members may not elect to become a class H member under subsection (a):~~

- ~~(1) Judges, elected officials, and legislative officers;~~
- ~~(2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, prosecuting attorney investigators not making the election under section 88-271, corrections officers not making the election under section 88-271, and public safety investigations staff investigators;~~
- ~~(3) Police officers and firefighters;~~
- ~~(4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act; [and]~~
- ~~(5) Former class A, B, or C retirants[-]; and~~
- (6) Any former class A or class B member who received a refund of contributions picked up and paid by the member’s employer pursuant to section 88-46(b), unless the refund was made pursuant to section 88-96 or 88-271(b), including any class C member whose contributions were refunded to the member pursuant to section 88-46.5 in the form in which it existed at any time prior to July 1, 2006.”

SECTION 4. Section 88-46.5, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2006, except that sections 2 and 3 shall take effect retroactive to July 1, 2004.

(Approved April 27, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.