

ACT 123

H.B. NO. 808

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. In order to maintain its tax-qualified status, the employees' retirement system must meet the Internal Revenue Code requirements applicable to it in form (i.e., the wording of the statutes and administrative rules) and in operation (i.e., how the statutes and administrative rules are applied). Although, in general, the rights and duties of members, retirants, and beneficiaries of the employees' retirement system are governed entirely by state law, where there are conflicts between state law and applicable federal law, the employees' retirement system must satisfy federal tax law or risk losing its tax-qualified status. Certain provisions of federal tax law applicable to the employees' retirement system allow only a "spouse" of a retirement system member or retirant to receive certain rights or benefits. The federal Defense of Marriage Act of 1996 requires that when interpreting a federal law, rulings, regulations and interpretations, such as the Internal Revenue Code and the regulations promulgated under the Internal Revenue Code, "the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." Therefore, the legislature finds that, in order to preserve the tax-qualified status of the employees'

retirement system, certain rights otherwise available to a “spouse” under chapter 88, Hawaii Revised Statutes, and the rules adopted pursuant thereto, cannot be made available to partners to a civil union.

Any provision of this Act that limits the recognition of civil unions is intended only to preserve the tax-qualified status of the employees’ retirement system. It is the legislature’s intent that civil union partners shall continue to have all of the protections, obligations, rights, and responsibilities of spouses under the portions of chapter 88 not restricted by the Internal Revenue Code. No provision of this Act shall be interpreted to weaken or lessen any of the protections and rights conferred by chapter 572B, Hawaii Revised Statutes, for any other purpose under state law.

This Act also amends sections 88-22.5(a)(6) and 88-74.7, Hawaii Revised Statutes, to delete specific references to civil unions that are made superfluous by the provision of this Act confirming that, for the purposes of chapter 88, Hawaii Revised Statutes, the terms “married”, “marriage”, “marital”, “husband”, “wife”, or similar spousal terms shall include civil unions and civil union partners, unless to do so would jeopardize the tax-qualified status of the employees’ retirement system.

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

“§88- Civil unions. For the purposes of this chapter, the terms “married”, “marriage”, “marital”, “husband”, “wife”, or similar spousal terms shall include civil union partners and civil unions under chapter 572B, unless recognition of a civil union as a marriage conflicts with the requirements for the system to be a tax-qualified plan under section 401(a) of the Internal Revenue Code of 1986, as amended.”

SECTION 3. Section 88-22.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-22.5 Federal tax qualification requirements. (a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), (31), and (37) of the Internal Revenue Code of 1986, as amended. Without limiting the generality of the foregoing and notwithstanding any provision of chapter 88 to the contrary:

- (1) Prior to the satisfaction of all liabilities with respect to members and their beneficiaries, no part of the corpus or income of the system shall be used for or diverted to purposes other than for the exclusive benefit of members and their beneficiaries. The payment of reasonable expenses from the expense fund for the administration of the system in accordance with section 88-116 shall be deemed to be for the benefit of members and their beneficiaries;
- (2) Benefits forfeited by a member for any reason shall not be applied to increase the benefits a member or beneficiary would otherwise receive under the system;
- (3) In accordance with section 88-74.7 and rules adopted by the board of trustees, the entire interest of a member shall be distributed or distribution shall begin no later than the member’s “required beginning date”, as defined in section 401(a)(9) of the Internal Revenue Code of 1986, as amended;
- (4) In accordance with rules adopted by the board of trustees, a member or beneficiary may elect, at the time and in the manner prescribed

by the board of trustees, to have any portion of an “eligible rollover distribution” paid in a “direct rollover” to an “eligible retirement plan”, as those terms are defined in section 401(a)(31) of the Internal Revenue Code of 1986, as amended;

- (5) ~~[In the event of]~~ If the termination of or complete discontinuance of employer contributions to the system~~;~~ occurs, the rights of all members to benefits accrued as of the date of the termination or discontinuance, to the extent then funded, shall be nonforfeitable; and
- (6) In the case of a member who dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under this chapter had the member resumed and then terminated employment on account of death; provided that this paragraph shall not limit the rights to which a member’s designated beneficiary, spouse, ~~[civil union partner]~~ reciprocal beneficiary, or children are otherwise entitled by this chapter; provided further that the legislature finds that section 88-137 provides the benefits required by this paragraph.

(b) The board of trustees shall adopt rules necessary for the purposes of this section. Rules adopted for the purposes of this section shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the rules shall be adopted at a public meeting subject to the requirements of part I of chapter 92 and a copy of the proposed rules shall be available for public inspection at the office of the system at least six calendar days before the meeting.

(c) Notwithstanding sections 572B-9 and 572B-11, unless the civil union partners are “spouses” under applicable federal law, civil union partners shall not be entitled to the rights of spouses under this chapter where they are not entitled to the rights of spouses under the Internal Revenue Code.”

SECTION 4. Section 88-74.7, Hawaii Revised Statutes, is amended by amending subsections (e), (f), and (g) to read as follows:

“(e) If the system does not receive a written election from the member or former member under section 88-83, 88-283, or 88-333, as applicable, prior to the later of the member’s or former member’s required beginning date or sixty days following the receipt by the member or former member of notice from the system that the member or former member is required to make an election, the following election shall be deemed to have been made as of the member or former member’s required beginning date:

- (1) If the member or former member is unmarried or has no ~~[civil union partner or]~~ reciprocal beneficiary, the member or former member shall be deemed to have elected the maximum retirement allowance; or
- (2) If the member or former member is married or has a ~~[civil union partner or]~~ reciprocal beneficiary, the member or former member shall be deemed to have elected option 3 under section 88-83, or option A under section 88-283, as applicable, and to have designated the member’s or former member’s spouse~~;~~ ~~[civil union partner]~~ or reciprocal beneficiary as the member’s or former member’s beneficiary;

provided that if the system receives the written election after the member’s or former member’s required beginning date, but within sixty days following receipt

by the member or former member of notice from the system that the member or former member is required to make the election, the written election shall apply, and the member's or former member's retirement benefit shall be recomputed, based on the written election, retroactive to the member or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(f) If the system does not have current information about the member's or former member's marital~~[-civil union,]~~ or reciprocal beneficiary status at the time of a deemed election, the following presumptions shall apply:

- (1) If the member or former member was married or had a ~~[civil union partner or]~~ reciprocal beneficiary at the time the member or former member last provided information to the system about the member's or former member's marital~~[-civil union,]~~ or reciprocal beneficiary status, it shall be presumed that the member or former member is still married to the same spouse~~[-is in the same civil union partnership,]~~ or is in the same reciprocal beneficiary relationship. If the system does not have information as to the age of the spouse~~[-civil union partner,]~~ or reciprocal beneficiary, the spouse~~[-civil union partner,]~~ or reciprocal beneficiary shall be presumed to be forty years younger than the member or former member for purposes of computing the member's or former member's benefit; and
- (2) If the member or former member was unmarried and did not have a ~~[civil union partner or]~~ reciprocal beneficiary at the time the member or former member last provided information to the system about the member or former member's marital status, it shall be presumed that the member or former member is married and that the spouse of the member or former member is forty years younger than the member or former member.

(g) The presumptions in subsection (f) shall cease to apply when the member or former member provides the system with current information as to the member's or former member's marital~~[-civil union,]~~ or reciprocal beneficiary status and the age of the member or former member's spouse~~[-civil union partner,]~~ or reciprocal beneficiary, if any, on the member's or former member's required beginning date. The information shall be provided in a form satisfactory to the system. At that time, the member's or former member's retirement allowance shall be recomputed, retroactive to the member's or former member's required beginning date, based on the updated information; provided that, except as provided in subsection (e), the member or former member shall not be permitted to change the member's or former member's retirement allowance option election or beneficiary; provided further that the benefit being paid to any member or former member who, on the member's or former member's required beginning date, was unmarried and did not have a ~~[civil union partner or]~~ reciprocal beneficiary, but who was deemed to elect option 3 or option A with an assumed spouse~~[-civil union partner,]~~ or reciprocal beneficiary, shall be converted to the maximum retirement allowance retroactive to the member's or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid."

ACT 123

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

SECTION 6. This Act shall take effect upon approval.

(Approved June 14, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.