

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

HAWAII RETIREMENT
SAVINGS BOARD

Co-Chairs
Jade T. Butay
Luis Salaveria

Members
Jessie Keola Dean
Barbara Krieg
Andrew Nomura
Brian Taniguchi
Karen Yasukawa
Senator Sharon Moriwaki
Rep Andrew Takuya

HAWAII RETIREMENT SAVINGS PROGRAM BOARD MEETING

MINUTES

December 15, 2023
2:30 p.m.

MEMBER ATTENDEES

Bill Kunstman, Department of Labor and Industrial Relations (DLIR), Director's Designee, Co-Chair
Luis Salaveria, Co-Chair, Department of Budget & Finance (B&F)
Jessie Keola Dean, Member
Barbara Krieg, Member
Andrew Nomura, Member
Karen Yasukawa, Member
Senator Sharon Moriwaki, Member
Andrew Takuya Garrett

Others in attendance

Nancy L. Bernal, DLIR (Secretary)
David Rodriguez, DLIR (Legislative Coordinator)
Michael Moriyama, Department of the Attorney General
Keali'i Lopez, AARP Hawaii

I. Call Meeting to Order

Co-Chair Kunstman called the meeting to order at 2:30 p.m.

II. Approval of the Minutes of the June 27, 2023 Meeting

Co-Chair Kunstman inquired if there were any corrections to the minutes of June 27, 2023, meeting which has been distributed. Hearing none, the minutes were approved.

III. Public Comment Period

No public comments were provided.

IV. Executive Session (Closed to the public)

Member Krieg moved to convene into executive session, seconded by Member Dean, and with all members present voting in the affirmative, the board approved convening in executive session to consider the hire, evaluation, dismissal, or discipline of an officer or employee, where consideration of matters affecting privacy will be involved, pursuant to

Section 92-5(a)(2), Hawaii Revised Statutes (HRS)) for the hiring of the Executive Director pursuant to section 389-3(f), HRS.

The meeting recessed at 2:38 p.m.

Co-Chair Kunstman called the meeting back to order at 3:16 p.m. and announced that the board met in executive session to discuss the hiring of the executive director.

V. Hiring of the Executive Director

Co-Chair Kunstman reviewed a previous board discussion entailing the board's decision to approve the Co-Chair's selection of an executive director candidate pursuant to section 389-3(f), HRS. Co-Chair Kunstman outlined the recruitment and selection process including the formation of a selection panel consisting of Mr. Thomas Williams of the Employees Retirement System, Leila Shar of the DLIR's Workforce Development Division and formerly the Administrative Services Officer for the department, and Co-Chair Kunstman. The position was posted at DHRD's recruitment website and on the DLIR's job listing site on July 18, 2023, as well as at national retirement association's organizations' websites.

The selection panel received eight applications and after an initial screening selected three for virtual interview by mid September. The selection panel decided to break the selection process into two rounds: 1. virtual interviews, and 2. in-person interviews with the panel as well as the Directors of B&F and DLIR. The virtual interview were conducted in the last week of October and two of the candidates were chosen for in-person interviews. The airfare, hotel and a per diem were paid for each candidate for the in-person interviews. Co-Chair stated that an offer for selection was on the table for a candidate and the panel expected an answer by December 18.

Co-Chair Kunstman asked if the board members had any questions or comments regarding the selection process and also solicited public testimony and input regarding the selection process: none was offered.

VI. Delegation of Authority to Exercise Powers and Duties

A. Approval to Delegate Authority to the Executive Director to Exercise the Powers and Duties of the Hawaii Retirement Savings Board under Section 389-4, HRS, Pursuant to Section 389-3(f), HRS

Co-Chair Kunstman cited section 389-4 and 389-3(f), HRS, as the statutory basis for the board to delegate authority to an executive director. This delegation can be made to a position and not just to a person. Co-Chair Kunstman posed the question to the board as to whether they wanted to delegate the authority of the board to perform the board functions to an executive director. Member Krieg stated that section 389-4 comprised a broad range of duties and responsibilities and maybe the board should review the list and come prepared to a subsequent meeting to have a discussion to delineate which items the board would like to delegate and which ones should remain at the board level.

Board member Dean suggested that it is unlikely the board would want to delegate all of the powers and duties in section 389-4 and it would be helpful to have a recommendation as to what the board should do in specifying which items to delegate or not. Board member Krieg suggested that maybe there's a core portion related to operations that might be delegated to the executive director to ensure the program can move forward with operations. Deputy AG Moriyama stated that the board should consider why the executive director position exists—to perform some of the functions of the board or otherwise the board needs to carry out all of the functions listed in the

statute. Deputy AG Moriyama suggested that the board would probably like to hand off the day to day operations to the executive director while setting the policies. He further stated that any specific duty or power delegated to the executive director could also be circumscribed or limited.

Member Moriwaki commented on the difficulties inherent in establishing a new board and outlined that ideally the executive director and staff would provide research and options for the board to consider in setting forth the policies. Member Taniguchi agreed and affirmed that without the executive director promulgating rules and suggestions for the board's consideration its difficult to ascertain the powers and duties the board should retain and those that should be delegated. Co-Chair Kunstman said the discussion underscores the need for an executive director and in the development and operation of the program some of the issues will come to light and perhaps the board should err on the side of conservatism and not delegate broadly.

Member Garrett asked if the relationship between the executive director and the board was discussed with the candidates and if the panel outlined the degree of autonomy a candidate might expect? Co-Chair Kunstman shared that the panel made it clear to the candidates that the executive director reports to the board.

Member Dean asked if other board examples of delegations could be provided to the board. Co-Chair Kunstman said yes samples of delegations from other similar boards could be provided and review and discussion of delegations would be added to an agenda to a future board meeting.

VII. FY2024 Budget
A. FY 2023-24 Fiscal Report

Co-Chair Kunstman noted that the board had previously approved of the department spending up to \$10,000 on behalf of the program and that to date only the expenses involved in the panel's in-person interview with two candidates was charged to the board. Co-Chair Kunstman referred to the handout in the board packet that outlines the expenses that include airfare, hotel and per diem for the two candidates. He also noted that there's also legal charges involved from the Department of the Attorney General but those are not available for the current fiscal year yet, the FY23-24 legal charges were from before the board had an appropriation and therefore were covered by the DLIR.

Board member Krieg asked if it was usual and customary for the programs to pay for legal services provided by the Attorneys General. Co-Chair Kunstman said all DLIR programs are charged for services provided from the Department of the Attorney General.

Co-Chair Kunstman stated that to date the charges totaled \$3,105.41.

B. FY 2024-25 Supplemental Budget Report
i. Positions and Funding
ii. Feasibility Study Status

Co-Chair Kunstman referred to the board packet and handout with the budget worksheets and noted that current fiscal year was the first of the biennium and that the department had not asked for any additional funding or adjustments for the upcoming Governor's Supplemental Executive Budget request. Therefore, all budget items remain the same as provide for in the current budget with the exception of increased costs

allocated to salaries pursuant to the applicable collective bargaining agreements and policies. He also noted that the feasibility study remains in the current fiscal year's budget and that there may be a potential for that line item to lapse and the board should consider whether to request moving that to the second year of the biennium.

C. Authorization and Approval for the Department of Labor and Industrial Relations (DLIR) to Expend Program Funds to Initiate and Administer the Hawaii Retirement Savings Program

Co-Chair Kunstman noted the Co-Chair does not have a recommendation but raised the issue for the board's consideration and that there was likely \$5,000 to \$6,000 remaining in the original \$10,000 authorization. He noted that this item was related to the previous items involving the delegation of board powers and duties to an executive director as well as the hiring of the executive director. Member Krieg asked if the finances were okay at this time and Co-Chair Kunstman replied that he believed so. Co-Chair Kunstman noted that this item was generated for the agenda previously and in preparation for the possible hiring of an executive director and therefore it could be postponed at this time and discussed further at a future meeting.

VIII. Hiring

A. Discussion and Approval of the Position Description for the Program Specialist

Co-Chair Kunstman stated that the department had developed a position description per the suggestion of Co-Chair Salaveria so that the board would have the option of hiring a temporary staff to help with the board's operations if there were no executive director as well as for the executive director to bring someone on quickly. The description is tailored to the position but also flexible and would be relatively easy for the executive director to amend before or after hiring a temporary or permanent candidate.

Co-Chair Kunstman said the question before the board is whether to approve the position description. A roll call vote was conducted with all members present voting in the affirmative and the motion carried. Co-Chair Kunstman remarked that the position description being approved that there may be an agenda item for a future meeting for hiring a temporary program specialist depending on how the hiring process goes for the executive director.

IX. Announcements

Co-Chair Kunstman solicited announcements from the board and the meeting participants. Member Taniguchi shared he had concerns about the current statute, specifically the opt in provision. Member Yasukawa remarked that a change in the statute to opt out was necessary for the program. Co-Chair Kunstman stated that he and Deputy Moriyama had conversations on the topic and that there was specific guidance from the Office of Information Practices on the Sunshine law and boards and commissions including testimony. Outside of the board convening a duly noticed meeting with an agenda item and examining a specific proposal and voting, the board may be limited in formally providing testimony.

Co-Chair Kunstman said the department could provide testimony supporting the intent of a change in the statute if a bill was introduced in the legislature, without an executive director it is difficult to have the board deliberate and provide testimony. Board member Krieg remarked that during her tenure on the EUTF board that board faced the same issues and that it was the delegation to the executive director of the EUTF that facilitated the EUTF providing testimony on legislative proposals. Co-Chair Kunstman

solicited public comment and participant Lopez stated that ideally the legislature would be furnished with data and an analysis from a feasibility study that would likely indicate that the feasibility of the program with an opt in provision would be limited. Co-Chair Kunstman indicated that it might be prudent to schedule a board meeting after the conclusion of bill introduction for the purpose of the board formally approving provisions contained in specific legislative proposals as well as delegating to one of the Co-Chairs to submit testimony on behalf of the board. Board member Krieg suggested putting specific legislative proposals on all board agendas for meetings occurring during sessions of the legislature.

a. Next Meeting to be Determined

X. Adjournment

There being no further business, Co-Chair Kunstman adjourned the meeting at 4:05p.m.

DRAFT

QUICK REVIEW: Sunshine Law Options to Address State Legislative Issues and Measures (Revised August 2022)

Sunshine Law boards that track legislation and submit testimony on legislative issues or measures are faced with the annual question: how can they keep up with the legislative calendar and submit testimony on a timely basis while still following the Sunshine Law? The State Office of Information Practices has prepared this Quick Review to provide several options. This Quick Review was written to address issues boards commonly have in tracking bills and testifying during the Hawaii State Legislature's regular session, but most of the options discussed could be adapted for use with other legislative bodies such as the federal Congress or a county council.

When dealing with legislative matters when legislative committees often give less than six days' notice of their hearings, one major hurdle that boards face is the Sunshine Law's six-day notice requirement before conducting a meeting to discuss a legislative measure. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the six-day notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position before the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law. HRS § 92-2.5. These permitted interactions are not considered to be "meetings" of a board or subcommittee subject to the Sunshine Law's six-day advance notice requirements. HRS §92-2.5(i). Note, however, that the Sunshine Law does not allow permitted interactions to "be used to circumvent the spirit or requirements" of the law and thus permitted interactions generally cannot be mixed and matched or used serially because the resulting communication would go beyond the limits of any one permitted interaction. For instance, if four of nine board members are assigned to a permitted interaction group on a bill, the law would not allow one of those members to also talk about the same bill to a member who was not part of the group under the two-person permitted interaction, because doing so would mean the bill was serially discussed by a total of five members, more than allowed by either of those permitted interactions.

Among the various types of permitted interactions authorized under section 92-2.5, HRS, the most useful in developing or adopting positions on legislative measures are the four described in:

(1) **section 92-2.5(a)**, HRS, which allows two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought;

(2) **section 92-2.5(b)(2)**, HRS, which allows a board to create a permitted interaction group (“PIG”) with less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting;

(3) **section 92-2.5 (e)**, HRS, which allows less than a quorum of board members to attend a legislative hearing (or other “informational meeting”) and report their attendance at the next board meeting; and

(4) **section 92-2.5(h)**, HRS, allowing an unlimited number of board members to circulate draft State legislative testimony for members’ review, written comment, and approval, subject to various limitations.

Permitted interactions are discussed in greater detail in OIP’s three-part Quick Review series on “Who Board Members Can Talk To and When,” which may be viewed on OIP’s [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

Besides permitted interactions, other options for a board to address legislative matters are by delegation to staff, or through the special limited meeting provision for county councils, or at an emergency meeting of the board. What follows are the various options and practical considerations for a board to discuss and submit timely testimony on legislative issues or measures.

First Option: Delegation to Staff

At the outset of the legislative session, a board may file a notice of a public meeting with an agenda indicating that the board will consider the adoption of a position or the general policy direction it will take on specific legislative topics, subject matters and legislative measures, including the relevant bill numbers, if available, which the board desires to present in testimony during a legislative session. (A board may contact OIP’s Attorney of the Day to discuss whether the notice of an agenda item is legally sufficient.)

The board could then delegate to staff (e.g., executive director) the authority to track legislative measures and draft testimony in accordance with the positions and policy directives previously adopted by the board. The members of a board’s staff (assuming they are not board members) can freely discuss legislative measures the board is tracking among themselves without implicating the Sunshine Law or requiring a permitted interaction. Likewise, discussions involving staff and a single board member would not raise Sunshine Law concerns, unless the discussions comprise a serial communication between staff and individual board members to solicit a commitment to vote on a specific matter.

If the entire board wanted the opportunity to comment on and approve testimony drafted by staff, the board’s staff could then circulate draft testimony to all board members for their review and written comment and approval under section 92-2.5(h),

HRS, (discussed as the fifth option) so long as (1) the legislative deadline was too soon to allow the board to notice a meeting and (2) the board posts all drafts and communications about the testimony within 48 hours on the board's website or an appropriate state or county website. Alternatively, the staff could submit the testimony without further review or approval by the board, or after running it by one member, such as the board chair. Throughout the legislative session, the board's staff could also report on legislative measures and testimony at board or committee meetings conducted pursuant to the Sunshine Law, at which time the entire board or committee could discuss and deliberate on the measures.

Second Option: Delegation to Two Board Members

A board could delegate to two board members the authority to prepare and submit legislative testimony, talk to legislators, and attend legislative hearings, all in accordance with the position or policy direction the board had previously adopted. Under the permitted interaction authorized in section 92-2.5(a), HRS, two board members may discuss between themselves official board business, including legislative measures of interest to the board, provided that no commitment by the board members to vote on board business is made or sought and the two members do not constitute a quorum of the board.

The two board members working on a legislative issue or measure can provide reports at any meeting of the board when the issue is on the agenda. Moreover, different combinations of members may be assigned to work on different legislative issues or measures. However, the two board members assigned to a legislative measure or issue must be careful to avoid involving additional members in discussions of that matter outside a board meeting because these discussions could constitute a serial discussion among three or more members in violation of the Sunshine Law.

Discussions by all members may take place at duly noticed board meetings. The full board can continue to oversee the implementation of the general policy direction by the two board members and address any new issues that arise during the legislative session at its regularly scheduled meetings. If necessary, the full board may also hold emergency meetings, as described in the sixth option below.

Third Option: Permitted Interaction Group under Section 92-2.5(b)(2), HRS

Some boards may prefer to have more than two members involved in legislative matters. If so, a board may consider the establishment of a PIG under section 92-2.5(b)(2), HRS, which could consist of more than two members, so long as it is less than a quorum of the board.

Initially, the board should adopt its position or establish policy directives at a public meeting duly noticed under the Sunshine Law. The agenda item in the public meeting notice would describe the specific topic, subject matter, or legislative measure,

including any bill number, if known, that the board desires to adopt a position on or to set a policy directive in response to any legislative measure the board anticipates could be discussed during a legislative session. An additional agenda item for the public meeting should describe the PIG to be established under section 92-2.5(b)(2), HRS, including the assignment of specific board members to the PIG and the establishment of the scope of each member's authority to present, discuss, or negotiate any position that the board had previously adopted.

A legislative PIG established under section 92-2.5(b)(2), HRS, and acting within the scope of each member's previously defined authority, would not be subject to the investigative PIG's requirements under section 92-2.5(b)(1), HRS, to initially report its findings at a public meeting before the full board could discuss or act on the report at a subsequent meeting. Nor would a legislative PIG established under section 92-2.5(b)(2), HRS, be subject to the reporting requirements of section 92-2.5(e), HRS, for attending informational meetings described in the fourth option below.

Fourth Option: Permitted Interaction for Informational Meeting or Presentation

Section 92-2.5(e), HRS, allows two or more members of a board, but less than a quorum, to attend and participate in discussion at an informational meeting or presentation on matters relating to official board business, including meetings of another entity or a legislative hearing. The meeting or presentation, however, must not be specifically and exclusively organized for or directed toward board members, and a commitment by board members relating to a vote on a matter cannot be made or sought. At the next duly noticed board meeting, the board members must report their attendance at the informational meeting or presentation and the matters relating to official board business that were discussed during the meeting or presentation.

Under this permitted interaction, it would not be necessary for the full board to have previously created a PIG under section 92-2.5(b), HRS, or to have established a position or policy on a legislative measure or issue.

Fifth Option: Permitted Interaction for Board to Draft and Approve Testimony

If a board has no staff or if its members wish to take a more active role in legislative matters, then a board's own members may prepare and submit any legislative testimony in accordance with the position or policy direction the board had previously adopted. When a legislative deadline is too soon to allow the board to hold a meeting to approve testimony, any number of board members may circulate draft testimony for approval, so long as all drafts and comments are in writing and are posted within 48 hours of the statement's circulation to the board, on the board's website or an appropriate state or county website, pursuant to the legislative permitted interaction found at section 92-2.5(h), HRS.

This testimony permitted interaction, however, may be of limited benefit to boards because it would foreclose the use of other permitted interactions. To comply with specific statutory requirements and to avoid creating a serial use of permitted interactions, the testimony permitted interaction could not be readily used in combination with other permitted interactions, such as a general delegation of legislative authority to two members under section 92-2.5(a), HRS, or to a permitted interaction group (PIG) under section 92-2.5(b)(2), HRS. While these latter two permitted interactions allow in-person or phone communications between board members, the legislative permitted interaction requires all communications to be in writing and posted on the board's website. Additionally, the two other permitted interactions allow only a limited number of board members to communicate with each other, but the testimony permitted interaction allows communication among all board members.

Given these inherent conflicts between the requirements of different permitted interactions, a board that wants its board members to not just prepare and submit testimony but also talk about legislative issues generally outside a meeting, including attending hearings and meeting with legislators, will be better served by delegating the authority to pursue the board's previously adopted legislative positions to a subset of members acting under another permitted interaction, rather than drafting and approving testimony as a board under the testimony permitted interaction of section 92-2.5(h), HRS. Alternatively, the board could delegate that authority to staff as discussed in option one while retaining the option to have the board's members review and approve the testimony drafted by staff under this permitted interaction.

Sixth Option: Limited Meeting by County Council as Guests of Another Group

Any number of county councilmembers may attend a limited meeting that is open to the public, as guests of a board or community group holding its own meeting, provided that the following requirements of section 92-3.1(b), HRS, are met:

(1) six days' advance notice of the limited meeting must be provided to indicate whose board or community group the council is attending, but no agenda is necessary as it is not the council's own meeting;

(2) if the other board or community group is subject to the Sunshine Law, then that board or group must still meet the Sunshine Law's notice requirements;

(3) no more than one limited meeting per month may be held by the County Council involving the same board or community group;

(4) no limited meetings may be held outside the State; and

(5) the limited meeting shall not be used to circumvent the purpose of the Sunshine Law.

Additional requirements under section 92-3.1(c), HRS, for limited meetings apply, such as prior OIP approval and videotaping of the limited meeting, as well as the general meeting requirements, such as keeping minutes.

This option would allow more than a quorum of a county council to meet with constituents or community groups regarding their legislative concerns, but would not be a preferred way for the council itself to address legislative matters. If a quorum or more of a board wanted to attend a specific legislative hearing together, however, this form of limited meeting would be the only option for doing so, other than noticing the hearing as a regular board meeting.

Seventh Option: Emergency Meeting

If an unanticipated legislative issue or measure arises that requires the full board's action, an emergency meeting could be noticed under section 92-8(b), HRS, but this would not be a preferred option. An emergency meeting requires the board to meet the following conditions:

- (1) The board must state in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary, and must obtain the Attorney General's concurrence.
- (2) Two-thirds of all members to which the board is entitled must agree that the conditions necessary for an emergency meeting exists.
- (3) Although six days' advance notice is not required, the written finding that an unanticipated event has occurred and that an emergency meeting is necessary, and an emergency meeting agenda, must be electronically posted in the same way as for a regular meeting notice and agenda, and copies provided to the office of the Lt. Governor or appropriate county clerk's office and made available in the board's office.
- (4) Persons requesting notification of board meetings on a regular basis must be contacted by postal mail, email, or telephone as soon as practicable.
- (5) The board's action must be limited to only action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7, HRS.

Because of the additional requirements for noticing an emergency meeting, as well as the logistical challenges of frequently gathering a quorum of a board's membership on short notice, this option is not one that would be used on a regular basis to deal with legislative issues or measures.

In closing, there are various options available to a Sunshine Law board to deal with legislative matters in a timely fashion. For additional guidance, please feel free to contact OIP's Attorney of the Day at 586-1400 or oiip@hawaii.gov.

HB2197 HD1



Measure Title: RELATING TO HAWAII RETIREMENT SAVINGS ACT.

Report Title: Hawai'i Retirement Savings Act; Hawai'i Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-Out Option

Description: Clarifies the definition of "covered employer" under the Hawai'i Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawai'i Retirement Savings Program unless the employee chooses to opt out. Effective 7/1/3000. (HD1)

Companion: [SB2553](#)

Package: None

Current Referral: LGO, FIN

Introducer(s): GARRETT, AMATO, BELATTI, CHUN, COCHRAN, GATES, HOLT, HUSSEY-BURDICK, ICHIYAMA, KAHALOA, KAPELA, KILA, MARTEN, MATAYOSHI, MIYAKE, NISHIMOTO, PERRUSO, POEPOE, TAKENOUCI, TAM

<u>Sort by Date</u>	Status Text
2/6/2024	H Passed Second Reading as amended in HD 1 and referred to the committee(s) on FIN with none voting aye with reservations; none voting no (0) and Representative(s) Kapela, Nakashima, Ward excused (3).
2/6/2024	H Reported from LGO (Stand. Com. Rep. No. 104-24) as amended in HD 1, recommending passage on Second Reading and referral to FIN.
2/1/2024	H The committee on LGO recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 5 Ayes: Representative(s) Matayoshi, Garrett, Kapela, Martinez, Tam; Ayes with reservations: none; Noes: none; and 2 Excused: Representative(s) Sayama, Alcos.
1/29/2024	H Bill scheduled to be heard by LGO on Thursday, 02-01-24 9:00AM in House conference room 309 VIA VIDEOCONFERENCE.
1/26/2024	H Referred to LGO, FIN, referral sheet 3
1/24/2024	H Introduced and Pass First Reading.
1/22/2024	H Pending introduction.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

A BILL FOR AN ACT

RELATING TO HAWAII RETIREMENT SAVINGS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to:

- 2 (1) Amend and align provisions of the Hawaii Retirement
3 Savings Program, the state-facilitated payroll-
4 deduction retirement savings plan for private sector
5 employees in Hawaii who do not have access to
6 employer-sponsored retirement plans, to require
7 automatic enrollment unless the employee opts out; and
8 (2) Clarify the definition of "covered employer" in the
9 Hawaii Retirement Savings Act.

10 SECTION 2. Section 389-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "covered employer" to read
12 as follows:

13 ""Covered employer" means any person who is in business in
14 the State and has one or more individuals in employment.

15 "Covered employer" does not include:

- 16 (1) The United States;
17 (2) The State or any of its political subdivisions; or



1 (3) A person that has [~~been maintaining~~] offered or
2 maintained for some or all employees at any time
3 during the preceding two years a retirement plan that
4 is tax-qualified under or is described in and
5 satisfies the requirements of section 401(a), 401(k),
6 403(a), 403(b), 408(k), or 408(p) of the Internal
7 Revenue Code."

8 SECTION 3. Section 389-4, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) The board shall have powers and duties in accordance
11 with law to:

- 12 (1) Establish, implement, and maintain the program;
- 13 (2) Cause the program and arrangements and accounts
14 established under the program to be designed,
15 established, and operated:
 - 16 (A) In accordance with best practices for retirement
17 savings vehicles;
 - 18 (B) To encourage participation, saving, sound
19 investment practices, and appropriate selection
20 of default investments;



- 1 (C) To maximize simplicity and ease of administration
- 2 for employers;
- 3 (D) To minimize costs, including by collective
- 4 investment and other measures to achieve
- 5 economies of scale and other efficiencies in
- 6 program design and administration;
- 7 (E) To promote portability of benefits; and
- 8 (F) To avoid preemption of the program by federal
- 9 law;
- 10 (3) Arrange for collective, common, and pooled investment
- 11 of assets of the program;
- 12 (4) Determine the eligibility of an employer, employee, or
- 13 other individual to participate in the program;
- 14 (5) Ensure the program's compliance with all applicable
- 15 laws and regulations;
- 16 (6) Establish procedures for the timely and fair
- 17 resolution of participant and other disputes related
- 18 to accounts or program operation;
- 19 (7) Develop and implement:



- 1 (A) An investment policy that defines the program's
- 2 investment objectives and that is consistent with
- 3 the objectives of the program; and
- 4 (B) Other policies and procedures consistent with
- 5 those investment objectives;
- 6 (8) Cause expenses incurred to initiate, implement,
- 7 maintain, and administer the program to be paid from
- 8 the program and other available sources;
- 9 (9) Establish and collect application, account, and
- 10 administrative fees;
- 11 (10) Accept grants, gifts, donations, legislative
- 12 appropriations, loans, and other moneys from the
- 13 State, any unit of federal, state, or local
- 14 government, or any other person to defray the costs of
- 15 administering and operating the program;
- 16 (11) Enter into contracts pursuant to chapter 103D for
- 17 services that the board deems necessary to carry out
- 18 the purposes of this chapter, including:
- 19 (A) Services of private and public financial
- 20 institutions, depositories, consultants,
- 21 actuaries, counsel, auditors, investment



1 advisors, investment administrators, investment
2 management firms, other investment firms, third-
3 party administrators, other professionals and
4 service providers;
5 (B) Research, technical, financial, administrative,
6 and other services; and
7 (C) Services of other state agencies to assist the
8 board in the exercise of its powers and duties;
9 (12) Develop and implement an outreach plan to gain input
10 and disseminate information regarding the program and
11 retirement savings in general;
12 (13) Cause moneys to be held and invested and reinvested
13 under the program;
14 (14) Ensure that all contributions to individual retirement
15 accounts under the program may be used only to:
16 (A) Pay benefits to participants under the program;
17 (B) Pay the cost of administering the program; and
18 (C) Make investments for the benefit of the program;
19 provided that no assets of the program shall be
20 transferred to the general fund of the State or
21 to any other fund of the State or otherwise



- 1 encumbered or used for any purpose other than
2 those specified in this paragraph;
- 3 (15) Provide for the payment of costs of administration and
4 operation of the program;
- 5 (16) Evaluate the need for and, if the board deems
6 necessary, procure:
- 7 (A) Insurance against any and all loss in connection
8 with the property, assets, or activities of the
9 program; and
- 10 (B) Pooled private insurance;
- 11 (17) Indemnify, including procurement of insurance if and
12 as needed for this purpose, each board member from
13 personal loss or liability resulting from the member's
14 action or inaction as a board member;
- 15 (18) Collaborate with and evaluate the role of financial
16 advisors or other financial professionals, including
17 in assisting and providing guidance for covered
18 employees; [~~and~~]
- 19 (19) Reimburse, when appropriate, the general fund of the
20 State of Hawaii for the initial expenses incurred for



1 initiating, implementing, maintaining, and
 2 administering the program; and
 3 (20) Take any other action the board deems reasonably
 4 necessary to carry out the purpose of this chapter.

5 (b) The board may develop and disseminate information
 6 designed to educate covered employees about the impacts of
 7 ~~[opting in to]~~ the program on take-home pay, savings strategies,
 8 and the benefits of planning and saving for retirement to help
 9 covered employees in deciding whether to participate and at what
 10 level participation may be appropriate."

11 SECTION 4. Section 389-5, Hawaii Revised Statutes, is
 12 amended as follows:

13 1. By amending its title to read:

14 "~~[+]§389-5[+]~~ **Hawaii retirement savings program; due**
 15 **diligence; establishment; payroll deduction** ~~[upon election to~~
 16 ~~contribute]."~~

17 2. By amending subsections (d), (e), and (f) to read:

18 "(d) ~~[Any covered employee may elect to contribute a~~
 19 ~~portion of the employee's salary or wages to an individual~~
 20 ~~retirement account provided by the program through payroll~~
 21 ~~deduction.] Each covered employer shall enroll its covered~~



1 employees in the program and withhold payroll deduction
2 contributions from each covered employee's paycheck unless the
3 covered employee has elected not to contribute.

4 (e) Beginning on a date to be determined by the board
5 pursuant to subsection (a), a covered employer shall:

6 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~
7 ~~enroll~~] employees into the program after [~~providing~~]
8 the program administrator provides the [~~covered~~
9 ~~employee~~] employees with a written notice of the
10 [~~employee's~~] right of the employees to opt [~~in,~~] out;
11 and

12 (2) For any covered employee who [~~has opted in to~~] is
13 enrolled in to the program[+], a covered employer
14 shall:

- 15 (A) Withhold the covered employee's contribution
16 amount from the employee's salary or wages; and
- 17 (B) Transmit the covered employee's payroll deduction
18 contribution to the program on the earliest date
19 the amount withheld can reasonably be segregated
20 from the covered employer's assets, but no later
21 than the fifteenth day of the calendar month



1 following the month in which the covered
2 employee's contribution amounts are withheld.

3 (f) The program shall establish for each enrolled employee
4 a Roth IRA, into which the contributions deducted from ~~[an]~~ the
5 employee's payroll shall be deposited. The board may add an
6 option for all participants to affirmatively elect to contribute
7 to a traditional IRA in addition to or in lieu of a Roth IRA."

8 SECTION 5. Section 389-14, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Any covered employer who fails to enroll a covered
11 employee into the program in accordance with section 389-5(e)(1)
12 without equitable justification shall be liable:

13 (1) To the covered employee, in an amount equal to the
14 contribution amount that would have been made by the
15 employee into the program and interest at a rate of
16 six per cent per year on the contribution amount,
17 beginning from the date the contribution would have
18 been made into the account; provided that the sum of
19 the contribution amount and interest thereto shall be
20 transmitted by the covered employer to the program to
21 be paid into the covered employee's IRA; and



1 (2) A penalty of:

2 (A) \$25 for each month the covered employee was not
3 enrolled in the program; and

4 (B) \$50 for each month the covered employee continues
5 to be unenrolled in the program after the date on
6 which a penalty has been assessed with respect to
7 the covered employee who [~~had elected to~~
8 ~~participate~~] should have been enrolled in the
9 program."

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

12 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Hawaii Retirement Savings Act; Hawaii Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-Out Option

Description:

Clarifies the definition of "covered employer" under the Hawaii Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawaii Retirement Savings Program unless the employee chooses to opt out. Effective 7/1/3000. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



SB2553 SD1



Measure Title: RELATING TO HAWAII RETIREMENT SAVINGS ACT.

Report Title: Hawai'i Retirement Savings Act; Hawai'i Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-Out Option

Description: Clarifies the definition of "covered employer" under the Hawai'i Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawai'i Retirement Savings Program unless the employee chooses to opt out. (SD1)

Companion: [HB2197](#)

Package: None

Current Referral: LBT, WAM

Introducer(s): MORIWAKI, CHANG, DECOITE, FEVELLA, Kim, San Buenaventura

Sort by Date	Status Text
2/13/2024	S Reported from LBT (Stand. Com. Rep. No. 2266) with recommendation of passage on Second Reading, as amended (SD 1) and referral to WAM.
2/2/2024	S The committee(s) on LBT recommend(s) that the measure be PASSED, WITH AMENDMENTS. The votes in LBT were as follows: 5 Aye(s): Senator(s) Aquino, Moriwaki, Ihara, Fevella, Lee; Aye(s) with reservations: none ; 0 No(es): none; and 0 Excused: none.
1/30/2024	S The committee(s) on LBT has scheduled a public hearing on 02-02-24 3:10PM; CR 224 & Videoconference.
1/24/2024	S Referred to LBT, WAM.
1/22/2024	S Passed First Reading.
1/19/2024	S Introduced.

S = Senate | H = House | D = Data Systems | \$ = Appropriation measure | ConAm = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SB2553 SD1

A BILL FOR AN ACT

RELATING TO HAWAII RETIREMENT SAVINGS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to:

- 2 (1) Amend and align provision of the Hawaii Retirement
3 Savings Program, the state-facilitated payroll-
4 deduction retirement savings plan for private sector
5 employees in Hawaii who do not have access to
6 employer-sponsored retirement plans, to require
7 automatic enrollment unless the employee opts out; and
8 (2) Clarify the definition of "covered employer" in the
9 Hawaii Retirement Savings Act.

10 SECTION 2. Section 389-2, Hawaii Revised Statutes, is
11 amended by amending the definition of "covered employer" to read
12 as follows:

13 ""Covered employer" means any person who is in business in
14 the State and has one or more individuals in employment.

15 "Covered employer" does not include:

- 16 (1) The United States;
17 (2) The State or any of its political subdivisions; or



1 (3) A person that has [~~been maintaining~~] offered or
2 maintained for some or all employees at any time
3 during the preceding two years a retirement plan that
4 is tax-qualified under or is described in and
5 satisfies the requirements of section 401(a), 401(k),
6 403(a), 403(b), 408(k), or 408(p) of the Internal
7 Revenue Code."

8 SECTION 3. Section 389-4, Hawaii Revised Statutes, is
9 amended by amending subsections (a) and (b) to read as follows:

10 "(a) The board shall have powers and duties in accordance
11 with law to:

12 (1) Establish, implement, and maintain the program;

13 (2) Cause the program and arrangements and accounts
14 established under the program to be designed,
15 established, and operated:

16 (A) In accordance with best practices for retirement
17 savings vehicles;

18 (B) To encourage participation, saving, sound
19 investment practices, and appropriate selection
20 of default investments;



- 1 (C) To maximize simplicity and ease of administration
- 2 for employers;
- 3 (D) To minimize costs, including by collective
- 4 investment and other measures to achieve
- 5 economies of scale and other efficiencies in
- 6 program design and administration;
- 7 (E) To promote portability of benefits; and
- 8 (F) To avoid preemption of the program by federal
- 9 law;
- 10 (3) Arrange for collective, common, and pooled investment
- 11 of assets of the program;
- 12 (4) Determine the eligibility of an employer, employee, or
- 13 other individual to participate in the program;
- 14 (5) Ensure the program's compliance with all applicable
- 15 laws and regulations;
- 16 (6) Establish procedures for the timely and fair
- 17 resolution of participant and other disputes related
- 18 to accounts or program operation;
- 19 (7) Develop and implement:



- 1 (A) An investment policy that defines the program's
- 2 investment objectives and that is consistent with
- 3 the objectives of the program; and
- 4 (B) Other policies and procedures consistent with
- 5 those investment objectives;
- 6 (8) Cause expenses incurred to initiate, implement,
- 7 maintain, and administer the program to be paid from
- 8 the program and other available sources;
- 9 (9) Establish and collect application, account, and
- 10 administrative fees;
- 11 (10) Accept grants, gifts, donations, legislative
- 12 appropriations, loans, and other moneys from the
- 13 State, any unit of federal, state, or local
- 14 government, or any other person to defray the costs of
- 15 administering and operating the program;
- 16 (11) Enter into contracts pursuant to chapter 103D for
- 17 services that the board deems necessary to carry out
- 18 the purposes of this chapter, including:
- 19 (A) Services of private and public financial
- 20 institutions, depositories, consultants,
- 21 actuaries, counsel, auditors, investment



1 advisors, investment administrators, investment
2 management firms, other investment firms, third-
3 party administrators, other professionals and
4 service providers;

5 (B) Research, technical, financial, administrative,
6 and other services; and

7 (C) Services of other state agencies to assist the
8 board in the exercise of its powers and duties;

9 (12) Develop and implement an outreach plan to gain input
10 and disseminate information regarding the program and
11 retirement savings in general;

12 (13) Cause moneys to be held and invested and reinvested
13 under the program;

14 (14) Ensure that all contributions to individual retirement
15 accounts under the program may be used only to:

16 (A) Pay benefits to participants under the program;

17 (B) Pay the cost of administering the program; and

18 (C) Make investments for the benefit of the program;

19 provided that no assets of the program shall be
20 transferred to the general fund of the State or to any
21 other fund of the State or otherwise encumbered or



- 1 used for any purpose other than those specified in
2 this paragraph;
- 3 (15) Provide for the payment of costs of administration and
4 operation of the program;
- 5 (16) Evaluate the need for and, if the board deems
6 necessary, procure:
- 7 (A) Insurance against any and all loss in connection
8 with the property, assets, or activities of the
9 program; and
- 10 (B) Pooled private insurance;
- 11 (17) Indemnify, including procurement of insurance if and
12 as needed for this purpose, each board member from
13 personal loss or liability resulting from the member's
14 action or inaction as a board member;
- 15 (18) Collaborate with and evaluate the role of financial
16 advisors or other financial professionals, including
17 in assisting and providing guidance for covered
18 employees; [~~and~~]
- 19 (19) Reimburse, when appropriate, the general fund of the
20 State of Hawaii for the initial expenses incurred for



1 initiating, implementing, maintaining, and
2 administering the program; and

3 (20) Take any other action the board deems reasonably
4 necessary to carry out the purpose of this chapter.

5 (b) The board may develop and disseminate information
6 designed to educate covered employees about the impacts of
7 [~~opting in to~~] the program on take-home pay, savings strategies,
8 and the benefits of planning and saving for retirement to help
9 covered employees in deciding whether to participate and at what
10 level participation may be appropriate."

11 SECTION 4. Section 389-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~[§389-5]~~ **Hawaii retirement savings program; due**
14 **diligence; establishment; payroll deduction** [~~upon election to~~
15 ~~contribute~~]. (a) There is established within the department,
16 for administrative purposes only, a Hawaii retirement savings
17 program. The program shall be administered by the board, in
18 consultation with the department and the department of budget
19 and finance. The board may determine the time frame for
20 development and implementation of the program; provided that



1 prior to implementation of the program, the board shall meet the
2 requirements of subsections (b) and (c).

3 (b) Prior to implementation of the program, the board may
4 conduct a detailed implementation and evaluation study and
5 perform other due diligence tasks to determine the feasibility
6 of the program parameters established by this chapter and the
7 resources and time needed to implement the program. Upon
8 completion of the study, the board shall report its findings and
9 recommendations, including any proposed legislation and funding
10 requirements, to the legislature.

11 (c) Upon submittal of its report to the legislature
12 pursuant to subsection (b) and prior to implementation of the
13 program, the board may determine the level of staffing necessary
14 to implement the program, develop an implementation strategy and
15 timetable, and conduct outreach efforts to potential covered
16 employers and covered employees.

17 (d) ~~[Any covered employee may elect to contribute a~~
18 ~~portion of the employee's salary or wages to an individual~~
19 ~~retirement account provided by the program through payroll~~
20 ~~deduction.] Each covered employer shall enroll its covered~~
21 employees in the program and withhold payroll deduction



1 contributions from each covered employee's paycheck unless the
2 covered employee has elected not to contribute.

3 (e) Beginning on a date to be determined by the board
4 pursuant to subsection (a), a covered employer shall:

5 (1) [~~Allow a~~] Automatically enroll covered [~~employee to~~
6 ~~enroll~~] employees into the program after [~~providing~~]
7 the program administrator provides the [~~covered~~]
8 [~~employee~~] employees with a written notice of the
9 [~~employee's~~] right of the employees to opt [~~in~~] out;

10 and

11 (2) For any covered employee who [~~has opted in to~~] is
12 enrolled into the program[~~+~~], a covered employer
13 shall:

14 (A) Withhold the covered employee's contribution
15 amount from the employee's salary or wages; and

16 (B) Transmit the covered employee's payroll deduction
17 contribution to the program on the earliest date
18 the amount withheld can reasonably be segregated
19 from the covered employer's assets, but no later
20 than the fifteenth day of the calendar month



1 following the month in which the covered
2 employee's contribution amounts are withheld.

3 (f) The program shall establish for each enrolled employee
4 a Roth IRA, into which the contributions deducted from [an] the
5 employee's payroll shall be deposited. The board may add an
6 option for all participants to affirmatively elect to contribute
7 to a traditional IRA in addition to or in lieu of a Roth IRA.

8 (g) The contributions to and earnings on the amounts
9 contributed to an employee's IRA under the program shall be
10 owned by the employee. The State and employers shall have no
11 proprietary interest in the contributions or earnings in an
12 employee's IRA.

13 (h) Covered employers shall not make contributions,
14 whether matching or not, to the program.

15 (i) The board may authorize matching contributions of up
16 to \$500 per participant account from the special fund for the
17 first 50,000 covered employees who participate in the program
18 for twelve consecutive months after initial enrollment."

19 SECTION 5. Section 389-14, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:



1 "(a) Any covered employer who fails to enroll a covered
2 employee into the program in accordance with section 389-5(e)(1)
3 without equitable justification shall be liable:

4 (1) To the covered employee, in an amount equal to the
5 contribution amount that would have been made by the
6 employee into the program and interest at a rate of
7 six per cent per year on the contribution amount,
8 beginning from the date the contribution would have
9 been made into the account; provided that the sum of
10 the contribution amount and interest thereto shall be
11 transmitted by the covered employer to the program to
12 be paid into the covered employee's IRA; and

13 (2) A penalty of:

14 (A) \$25 for each month the covered employee was not
15 enrolled in the program; and

16 (B) \$50 for each month the covered employee continues
17 to be unenrolled in the program after the date on
18 which a penalty has been assessed with respect to
19 the covered employee who [~~had elected to~~
20 ~~participate~~] should have been enrolled in the
21 program."



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

3 SECTION 7. This Act shall take effect upon its approval.



Report Title:

Hawaii Retirement Savings Act; Hawaii Retirement Savings Program; Covered Employer; Definition; Automatic Enrollment; Opt-Out Option

Description:

Clarifies the definition of "covered employer" under the Hawaii Retirement Savings Act. Requires covered employers to automatically enroll covered employees into the Hawaii Retirement Savings Program unless the employee chooses to opt out. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



GENERAL FUNDS

LBR: 902/AA
APPROPRIATION: G-24-192-L

TITLE: HI Retirement Savings
MONTH: July 2023 - Jan 2024

	REMAINING APPROPRIATION	12 MONTHS APPROPRIATION
Appropriation	\$ 1,199,000.00	\$ 1,248,772.00
Add (Deduct)		
Restrictions	-	(49,772.00)
Collective Bargaining	-	-
Total Allocation	\$ 1,199,000.00	\$ 1,199,000.00
	CURRENT MONTH	YEAR TO DATE
Personal Services		
Salaries	\$ -	\$ -
O/T, T/A	-	-
EEO	-	-
Vacation	-	-
Payroll Encumbrance	-	-
Sub-Total	\$ -	\$ -
Other Current Expenses		
Office Supplies	\$ -	\$ -
Dues/Subscription	-	-
Postage	-	-
Telephone	-	-
Parking	-	-
Services - HRSP	-	-
Travel - Intra State	-	-
Travel - Out of State	3,105.41	3,105.41
Equipment Rental	-	-
Repair/Maintenance	-	-
Services on Fee	-	-
Miscellaneous	-	-
Automobile Allowance	-	-
Equipment	-	-
Services - Printing	-	-
Services on Fee - Delivery	-	-
Sub-Total	\$ 3,105.41	\$ 3,105.41
Total Expenses	\$ 3,105.41	\$ 3,105.41
Remaining Appropriation	\$ 1,195,894.59	\$ 1,195,894.59