

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Amendment and Compilation of Chapters 14-56 and 14-59
Hawaii Administrative Rules

(Date of Adoption)

1. Chapter 14-56, Hawaii Administrative Rules, entitled "General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 6

STATE OF HAWAII PTS DEFERRED COMPENSATION RETIREMENT
PLAN (FOR PART-TIME, TEMPORARY, SEASONAL/CASUAL
EMPLOYEES)

CHAPTER 56

GENERAL PROVISIONS

§14-56-1	Purpose
§14-56-2	Definitions
§14-56-3	Office of the board
§14-56-4	Appearances before the board
§14-56-5	Government records and information
§14-56-6	Plan document

§14-56-1 Purpose. (a) Chapter 88F [~~of the~~] , Hawaii Revised Statutes, authorizes the board of trustees of the State of Hawaii deferred compensation

plan to establish the State of Hawaii PTS deferred compensation retirement plan for part-time, temporary, seasonal/casual employees of the State and participating counties who are not eligible to participate in the State's ERS or deferred compensation plan under chapter 88E, Hawaii Revised Statutes.

(b) It is intended that this plan shall be an "eligible deferred compensation plan" under sections 457 and 3121 of the Code. It is also intended that each eligible employee of the State[7] or participating county, through his or her participation in this plan, shall be deemed to be a "member of a retirement system" of a state, political subdivision, or instrumentality under section 3121(b)(7)(F) of the Code and the regulations promulgated thereunder.

(c) Except as otherwise provided, participation in this plan shall be mandatory and the contribution under this plan shall be in lieu of contributing to social security (a medicare contribution shall still be required).

(d) Subtitle 6 of title 14, consisting of chapters 14-56 to 14-61, [~~Hawaii Administrative Rules,~~] is adopted by the board to implement the administration of the plan. [Eff 4/26/97; am and comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-2, 88F-3)

§14-56-2 Definitions. As used in this subtitle: "Amounts deferred" means compensation withheld under this plan and any interest income resulting from the investment of the compensation withheld.

"Beneficiary" means a person(s) designated by the participant, a participant's estate, or any person, whose rights under the plan are derived as a result of the participant's death.

"Board" means the board of trustees of the State of Hawaii deferred compensation plan created pursuant to section 88E-3, Hawaii Revised Statutes.

"Code" means the Internal Revenue Code of 1986, as amended.

"County" or "counties" means the city and county of Honolulu, the county of Hawaii, the county of Kauai, and county of Maui.

"Employer" means the State of Hawaii[~~7~~] which includes[~~, but is not limited to,~~] without limitation the judiciary, legislature, University of Hawaii, and department of education[~~-~~] , and participating counties.

"ERS" means the State of Hawaii employees' retirement system.

"Investment provider" means a person or company engaged by the board to provide the investment product(s) pursuant to section 88F-7, Hawaii Revised Statutes, and serve as the administrator of the plan pursuant to section 88F-3, Hawaii Revised Statutes.

"Normal retirement age" means age sixty-two.

~~["Part-time, temporary, seasonal/casual employee" or "employee" means any person employed by the State of Hawaii who is not eligible to participate in the state ERS, or who is not excluded under section 14-59-1 (e.g., employees working less than three months or thirty day emergency hires).]~~

"Participant" means any "employee" in the plan.

"Part-time, temporary, seasonal/casual employee" or "employee" means any person employed by the State of Hawaii or participating county who is not eligible to participate in the state ERS (e.g., employees working less than three months and thirty-day emergency hires), or who is not excluded under section 14-59-1.

"Plan" means the State of Hawaii PTS deferred compensation retirement plan for part-time, temporary, [~~or~~] and seasonal/casual employees [~~of the State~~].

"Plan year" means January 1 to December 31.

"Separation from service" shall have the same meaning as provided in section 402(d)(4)(A)(iii) of the Code, and shall include, but not be limited to, termination, retirement, or death. [Eff 4/26/97; am 8/4/01; am and comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-1 to 88F-3)

§14-56-3 Office of the board. (a) The office of the board is located at 235 S. Beretania Street, 14th Floor, Honolulu, Hawaii 96813.

(b) The office of the board shall be open from 7:45 a.m. to 4:30 p.m. of each weekday unless otherwise provided by statute or executive order. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §§78-1.6, 88F-3)

§14-56-4 Appearances before the board. A party to a proceeding before the board may appear in person or may be represented by or with counsel or other person chosen as a representative. The board at any time may require evidence of authority and qualification to act in a representative capacity. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-56-5 Government records and information. (a) The term "government record" as used in this chapter, shall be as defined in section 92F-3, Hawaii Revised Statutes.

(b) All government records shall be available for inspection in the office of the board during established office hours, in accordance with chapter 92F, Hawaii Revised Statutes.

(c) The cost of printing or reproducing a government record shall be as specified in section 92-21, Hawaii Revised Statutes. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-3, 91-2, 92-21, 92F-11)

§14-56-6 Plan document. The plan document, approved by the board on March 6, 2001, is hereby incorporated by reference into these rules. Should the plan document conflict with chapter 88F or the Code, chapter 88F or the Code shall prevail." [Eff 4/26/97; am 8/4/01; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

2. Chapter 14-59, Hawaii Administrative Rules, entitled "Plan Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 6

STATE OF HAWAII PTS DEFERRED COMPENSATION RETIREMENT
PLAN (FOR PART-TIME, TEMPORARY, SEASONAL/CASUAL
EMPLOYEES)

CHAPTER 59

PLAN PROVISIONS

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SUBCHAPTER 1

ENROLLMENT

§14-59-1 Eligibility requirements. (a) Only part-time, temporary, and seasonal/casual employees as defined in section 14-56-2 may defer compensation under this plan.

(b) Employees excluded under this plan are those employees who are: members of the State of Hawaii ERS; mandatorily excluded from social security coverage under the Social Security Act, as amended; excluded by written agreement with the Social Security Administration under section 218 of the Social Security Act, as amended; excluded under the Code; or excluded under any other state or federal law. These excluded employees include[7] but are not limited to[7] the following:

- (1) Substitute teachers in the department of education;
- (2) Students regularly attending classes in the educational institutions in which they are working;

- (3) Employees hired temporarily to handle disaster emergencies, such as fires, floods, storms, earthquakes, hurricanes, etc.;
- (4) Election officials and workers who are paid less than the threshold amount mandated by law (i.e., [~~one thousand one hundred dollars~~] \$1,100 in calendar year 2001);
- (5) Persons hired through programs to relieve unemployment, such as services of welfare recipients performed in return for assistance payments because the primary intent of [~~such~~] the programs is to provide assistance to the needy;
- (6) Persons who are members of the ERS of the State of Hawaii, and are receiving benefits from the ERS or who are eligible to retire under ERS guidelines without early retirement penalties;
- (7) Patients or inmates working in a hospital, home, or other institution;
- (8) Nonresident aliens holding F-1, J-1, M-1, or Q-1 visas;
- (9) Persons who are in multiple positions with the State[~~7~~] or participating county, at least one of which makes the employee a member of the State ERS and that membership meets the minimum level of benefits required under section 3121 of the Code and the regulations thereunder;
- (10) Graduate assistants who are full-time or part-time students and whose research or classes are related to their masters or doctorate degree;
- (11) Student nurses whose services are performed in a hospital or training school when enrolled and regularly attending classes;
- (12) Independent contractors; and
- (13) Other employee groups that are or become excluded due to state or federal laws or regulations or other referendums or agreements. [Eff 4/26/97; am 8/4/01; am and

comp] (Auth: HRS §88F-3)
(Imp: HRS §§88F-1, 88F-3)

§14-59-2 Mandatory enrollment. Enrollment in the plan shall be mandatory for all eligible employees. Participation in [~~this~~] the plan shall be deemed a condition of employment and continued employment. [Eff 4/26/97; am and comp]
(Auth: HRS §88F-3) (Imp: HRS §§88F-2, 88F-3)

§14-59-3 Enrollment form. All eligible employees shall be automatically enrolled. An enrollment form shall be completed by the participant, to be forwarded to the investment provider. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-4 Designation of beneficiary. A participant shall designate in writing a beneficiary or beneficiaries, who shall receive the participant's benefits in the event of the participant's death. [~~In the event~~] If a beneficiary has not been designated, the designated beneficiary is no longer living, or the designated beneficiary is unable to be located, amounts deferred or remaining amounts deferred shall be payable in the following order:

- (1) The surviving spouse;
- (2) If there is no surviving spouse, then natural or adopted children, in equal shares;
- (3) If there are no natural or adopted children, then the parents, in equal shares;
- (4) If there are no parents, then brothers and sisters, in equal shares;
- (5) If there are no brothers or sisters, then stepchildren, in equal shares; and
- (6) If there are no stepchildren, then the participant's estate. [Eff 4/26/97; am 8/4/01; am and comp] (Auth:

HRS §88F-3) (Imp: HRS §88F-3)

§14-59-5 Changes to enrollment form. (a) It shall be the responsibility of the participant to notify the investment provider in writing of any change in an entry on the enrollment form.

(b) If a change would be inconsistent with the plan or this chapter, the investment provider shall promptly notify the participant in writing that the change cannot be made and the reason why it cannot be made. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-6 Effective date of enrollment. The effective date of enrollment shall be the effective date of the plan or date of hire of the participant, whichever is later. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 2

DEFERRALS

§14-59-7 Deferrals allowed; commencement. (a) Only compensation from an employer which has not yet been paid shall be deferred under the plan.

(b) Deferrals shall commence with the first paycheck following the effective date of enrollment. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-2, 88F-3)

§14-59-8 Amount deferred; limitations. (a) The amount deferred shall be as specified in chapter 88F, Hawaii Revised Statutes, and the plan document.

(b) The maximum amount that may be deferred for each taxable year by the participant shall be as specified in the Code and the plan document.

(c) There shall be no employer contribution.
[Eff 4/26/97; am and comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-2, 88F-3)

§14-59-9 Responsibilities regarding maximum amounts and coordination with other plans. (a) An employee who participates in another section 457, section 403(b) tax sheltered annuity, section 401(k), or section 402(h)(1)(B), or other deferred compensation plan under the Code shall be responsible for adjusting the amount deferred in that other plan, to assure the maximum allowable amount that can be deferred is not exceeded.

(b) The maximum amount that may be deferred for each taxable year by the participant shall be as specified in the Code and in the plan document.

(c) A participant shall be responsible for any tax consequences which may arise as a result of deferrals under the plan which exceed the maximum amount allowable under section 14-59-8.

(d) Any violation of the limit set forth in this chapter on the part of the individual shall in no way adversely affect the status of this plan as an "eligible deferred compensation plan" under section 457(b) of the Code. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-10 Deferrals held for exclusive benefit of participants. (a) All assets of the plan, including amounts deferred under the plan by a participant and income attributable to the investment of the amounts deferred, shall be held in trust in accordance with section 457 of the Code for the exclusive benefit of participants and their beneficiaries, until paid or otherwise made available to the participant or beneficiary under this plan.

(b) A participant's rights to the amounts deferred shall be limited to those provided in the plan and this chapter. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-3, 88F-6)

SUBCHAPTER 3

VESTING

§14-59-11 Vesting of participant's account. Participants shall have a one hundred per cent nonforfeitable right to all amounts deferred. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 4

INVESTMENTS

§14-59-12 Investment of deferred amounts. (a) The board is authorized to determine the type of investment product(s) for the plan. However, the investment product shall guarantee a full return of principal. The board may add or eliminate an investment product or company under the plan. The board may also direct that additional investments shall not be made in a particular investment product or company under the plan.

(b) Amounts deferred under the plan shall be invested in the product(s) selected by the board. Contracts entered into between the board and the company(ies) selected by the board to offer the investment product(s) for the plan shall be binding upon the participants.

(c) Any action taken by the board regarding the investment of amounts deferred shall not be considered as guaranteeing any return on investment. [Eff

4/26/97; comp] (Auth: HRS §88F-3)
(Imp: HRS §§88F-3, 88F-7)

SUBCHAPTER 5

ACCOUNTS AND REPORTS

§14-59-13 Individual accounts. To facilitate orderly administration of the plan, the investment provider shall maintain a deferred compensation account for each participant on behalf of the board. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-14 Adjustments to accounts. Each participant's account shall be credited with the amount of compensation deferred and shall be further adjusted by any earnings resulting from investments made and any costs for implementing and administering the plan, as authorized by the board. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §§88F-3, 88F-11)

§14-59-15 Reports on accounts. The investment provider shall provide each participant with written reports at least once annually on the participant's deferred compensation account, and at the time a distribution is made, as authorized by the board. The written reports shall include, but not be limited to: the accumulated amounts of compensation which have been deferred and invested, any amounts credited to the participant's account by way of interest, dividends, or other proceeds flowing from the participant's accumulation, and the balance of the participant's account. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-16 Disclosure of information.

Information about a participant shall only be disclosed to the participant, a person authorized in writing by the participant, or those involved in the administration of the plan, unless otherwise authorized by law. [Eff 4/26/97; comp]
(Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 6

DISTRIBUTION OF BENEFITS FOR AMOUNTS LESS THAN OR
EQUAL TO THREE THOUSAND FIVE HUNDRED DOLLARS

§14-59-17 Earliest distribution. Benefits under the plan shall be paid or made available to the participant or his/her beneficiary no earlier than separation from service. A separation from service shall not be deemed to have occurred in situations where the employer knowingly intends to resume the employer-employee relationship or the employee is aware of being rehired with the State or participating county (e.g., thirty-day emergency hires). [Eff 4/26/97; am and comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-18 Separation from service; distribution request form; filing requirements; form and time of distribution. A participant shall notify the investment provider in writing on a form prescribed by the board when a separation from service occurs. A participant shall complete a distribution request form and any other documentation required by the board and investment provider. After verification of the separation from service, a lump sum distribution of amounts deferred shall be paid to the participant within sixty days, unless the participant elects a plan-to-plan transfer in accordance with section 14-

59-31. [Eff 4/26/97; comp] (Auth:
HRS §88F-3) (Imp: HRS §88F-3)

§14-59-19 No contributions for one year. If no contributions on behalf of a participant are received by the investment provider for a period of one year, the investment provider shall mail a written request to the last known address of the participant to ascertain whether a separation from service has occurred. The written request shall be mailed at least once each plan year, as determined by the board, unless the participant received a similar written request in a prior plan year. Upon the participant's submission of appropriate documentation and verification of a separation from service, the investment provider shall process a distribution within sixty days thereafter. [Eff 4/26/97; am 8/4/01; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-20 Distribution to beneficiary. Upon the death of a participant, the beneficiary shall notify the investment provider of the participant's death. After verification of the participant's death and completion of all documentation required by the board and the investment provider, a lump sum distribution of amounts deferred shall be paid to the beneficiary within sixty days. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-21 Withholding of taxes; income tax statement. All payments under the plan shall be subject to applicable tax withholding requirements. Upon distribution of amounts deferred, the investment provider shall withhold applicable federal and state taxes and shall provide the participant or beneficiary, as applicable, with the appropriate statement for income tax purposes. [Eff 4/26/97; comp]

] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-22 Mailing of payments. Distributions shall be mailed to the last home address on file with the investment provider, unless otherwise requested in writing by the participant or beneficiary. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 7

DISTRIBUTION OF BENEFITS FOR AMOUNTS GREATER THAN THREE THOUSAND FIVE HUNDRED DOLLARS

§14-59-23 Earliest distribution. Benefits under the plan shall be paid or made available to the participant or his/her beneficiary no earlier than separation from service. A separation from service shall not be deemed to have occurred in situations where the employer knowingly intends to resume the employer-employee relationship or the employee is aware of being rehired with the State or participating county (e.g., thirty-day emergency hires). [Eff 4/26/97; am and comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-24 Latest commencement of distribution. The payment to a participant of amounts deferred shall commence no later than the time specified in the Code and the plan document. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-25 Election of distribution. No later than thirty days after the close of the calendar year in which the participant separates from service, the

participant shall irrevocably elect a time of distribution which is not later than the latest period listed in section 14-59-24 and a form of distribution listed in section 14-59-26. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-26 Selection of payment options. A participant may elect to receive one of the following methods of distributions:

- (1) Lump sum; or
- (2) Substantially nonincreasing annual installments over a period not to exceed five years. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-27 Failure to select time or form of distribution. Participants who fail to elect a time or form of distribution within the time period noted in section 14-59-25, shall be deemed to have elected a lump sum distribution which shall be paid within sixty days after the close of the plan year in which the participant separates from service. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-28 Distribution to beneficiary. Upon the death of a participant, the beneficiary shall notify the investment provider of the participant's death. After verification of the participant's death and completion of all documentation required by the board and investment provider, a lump sum distribution of amounts deferred or remaining amounts deferred shall be paid to the beneficiary within sixty days. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-29 Withholding of taxes; income tax statement. All payments under the plan shall be subject to applicable tax withholding requirements. Upon distribution of amounts deferred, the investment provider shall withhold applicable federal and state taxes and shall provide the participant or beneficiary, as applicable, with the appropriate statement for income tax purposes. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-30 Mailing of payments. Distributions shall be mailed to the last home address on file with the investment provider, unless otherwise requested in writing by the participant or beneficiary. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 8

PLAN-TO-PLAN TRANSFERS

§14-59-31 Transfers to another eligible plan. Pursuant to section 457(e)(10) of the Code, when a participant separates from service or loses eligibility to participate in the plan, the participant may elect to transfer the amounts deferred into any other plan established under section 457 of the Code and which provides for plan-to-plan transfers. The participant shall notify the investment provider of the desire to exercise a plan-to-plan transfer after separation from service or loss of eligibility to participate in the plan. The participant shall also complete any documentation required by the investment provider. The transfer shall be made as soon as practicable thereafter. [Eff 4/26/97; am 8/4/01; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-32 Transfers from another eligible plan. This plan shall not accept the transfer of a participant's previously deferred amounts under another deferred compensation plan. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

SUBCHAPTER 9

BOARD REVIEW OF INVESTMENT PROVIDER'S ACTIONS

§14-59-33 Request for board review. (a) A board review may be requested by an employee regarding any action taken by the investment provider, as it applies to the employee, which the employee believes is inconsistent with the plan or this chapter. The employee shall make reasonable efforts to resolve the disagreement with the investment provider prior to requesting a board review.

(b) All requests for board review shall be in writing and shall state the efforts taken to resolve the disagreement with the investment provider, the specific reason why the action taken by the investment provider is inconsistent with the plan or this chapter, the action requested, and the reason why the requested action is proper.

(c) Requests for board review shall be filed within thirty days of the date of the action taken by the investment provider. [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS §88F-3)

§14-59-34 Disposition of request. An employee's request for a board review may be disposed of with or without an appearance before the board. The employee shall be promptly notified by the board in writing of the results of its review." [Eff 4/26/97; comp] (Auth: HRS §88F-3) (Imp: HRS

§88F-3)

3. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material except source notes and other notes, is underscored.

4. Additions to update source notes and other notes to reflect amendments to sections are not bracketed, struck through, or underscored.

5. These amendments to and compilation of chapters 14-56 and 14-59, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Director
Department of Human Resources
Development

APPROVED AS TO FORM:


Deputy Attorney General