

JAN 26 2009

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. Section 88-75, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§88-75 Ordinary disability retirement.** (a) Upon
4 application of a member in service or on leave without pay, or
5 the person appointed by the family court as guardian of an
6 incapacitated member, any member who has ten or more years of
7 credited service shall be retired by the board of trustees on an
8 ordinary disability retirement allowance if the medical board,
9 after a medical examination of the member, certifies that:

10 (1) The member is mentally or physically incapacitated for
11 the further performance of duty at the time of
12 application;

13 (2) The incapacity is likely to be permanent; and

14 (3) The member should be retired.

15 (b) Upon approval by the board, the member shall be
16 eligible to receive an ordinary disability retirement benefit no
17 earlier than thirty days from the date the application was filed

1 or the date the member terminated service, whichever is later.
2 Retirement shall be effective on the first day of a month,
3 except for the month of December when retirement on the first or
4 last day of the month shall be allowed. A member whose
5 application for an ordinary disability retirement allowance is
6 approved by the board while the member is still in service may
7 terminate service and retire at any time following such
8 approval; provided that retirement shall become effective on the
9 first day of the month following the month the applicant
10 terminates employment or goes off the payroll, except for the
11 month of December when retirement on the first or last day of
12 the month shall be allowed."

13 SECTION 2. Section 88-82, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~§88-82 [Appeal of decision of medical board,]~~ Petition
16 for contested case hearing regarding disability retirement or
17 accidental death benefits; attorney's fees and costs
18 [reimbursable]. (a) A member or applicant who is not satisfied
19 with the preliminary decision of the ~~[medical]~~ board to grant or
20 deny an application for disability retirement benefits or
21 accidental death benefits based on the certifications and
22 findings of the medical board may ~~[appeal the decision to]~~ file

1 a petition for contested case hearing with the board [of
2 ~~trustees]~~ within sixty days after receiving written notification
3 of the preliminary decision of the [~~medical~~] board. [~~The right~~
4 ~~of appeal to the board of trustees shall apply to all decisions~~
5 ~~and recommendations which the medical board is authorized to~~
6 ~~make.~~]

7 (b) If [~~, in the event of an appeal of a decision of the~~
8 ~~medical board,~~] the member or applicant is the prevailing party
9 in the contested case, and disability retirement benefits or
10 accidental death benefits are awarded to [a] the member or
11 applicant by the board [~~of trustees]~~ or court of the appropriate
12 jurisdiction under section 88-75, 88-79, 88-85, 88-284, 88-285,
13 88-286(c), [~~88-335, 88-337,~~] 88-334, 88-336, or 88-339, the
14 member or applicant shall be [~~reimbursed]~~ paid reasonable
15 attorney's fees together with any costs payable by the system.
16 [~~If an appeal is had, the]~~ The attorney's fees [~~or~~] and costs
17 shall be subject to the approval of the board [~~of trustees]~~ or
18 by [~~the appellate]~~ a court [~~deciding the appeal.~~] of appropriate
19 jurisdiction after evidence has been provided by the member or
20 applicant regarding the reasonableness of the claimed attorneys'
21 fees and costs."

1 SECTION 3. Section 88-98, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-98 Return to service of a retirant.** (a) Any
4 retirant who returns to employment requiring active membership
5 in the system shall be reenrolled as an active member of the
6 system in the same class from which the retirant originally
7 retired and the retirant's retirement allowance shall be
8 suspended.

9 (1) If the retirant returns to service before July 1,
10 1998, and again retires, the retirant's retirement
11 allowance shall consist of:

12 (A) For members with fewer than three years of
13 credited service during the member's period of
14 reemployment, the allowance to which the member
15 was entitled under the retirement allowance
16 option selected when the member previously
17 retired and which was suspended; plus, for the
18 period of service during the member's
19 reemployment, the allowance to which the member
20 is entitled for that service based on the
21 retirement allowance option initially selected
22 and computed for the member's age, average final

1 compensation, and other factors in accordance
2 with the benefit formula under section 88-74 in
3 existence at the time of the member's latest
4 retirement; or

5 (B) For members with three or more years of credited
6 service during the member's period of
7 reemployment, the allowance computed as if the
8 member were retiring for the first time; provided
9 that in no event shall the allowance be less than
10 the amount determined in accordance with
11 subparagraph (A); and

12 (2) If the retirant returns to service after June 30,
13 1998, and again retires, the retirant's retirement
14 allowance shall be computed in accordance with
15 paragraph (1)(A), regardless of the number of years of
16 service in the reemployment period.

17 (b) Any retirant who received the special retirement
18 incentive benefit under Act 253, Session Laws of Hawaii 2000, as
19 amended by Act 131, Session Laws of Hawaii 2002, and is
20 reemployed by the State or a county in any capacity shall:

21 (1) Have the retirant's retirement allowance suspended;

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1 (2) Forfeit the special retirement incentive benefit and
2 any related benefit provided by this chapter; and

3 (3) Be subject to the age and service requirements under
4 section 88-73 when the member again retires.

5 (c) If a retirant's maximum retirement allowance upon the
6 retirant's initial retirement was subject to the limits on
7 maximum retirement allowance under section 88-74:

8 (1) The limit shall apply to the computation of the
9 retirant's maximum retirement allowance for the
10 retirant's period of service during the retirant's
11 reemployment, so that the sum of:

12 (A) The per cent by which the retirant's average
13 final compensation for the retirant's years of
14 service prior to the retirant's initial
15 retirement is multiplied to determine the
16 retirant's maximum retirement allowance upon the
17 retirant's initial retirement; and

18 (B) The per cent by which the retirant's average
19 final compensation for any period of reemployment
20 after the retirant's initial retirement is
21 multiplied to determine the retirant's maximum

1 retirement allowance for the period of
2 reemployment,
3 shall not exceed the limit, under section 88-74, on
4 the per cent by which the retirant's average final
5 compensation may be multiplied for the purpose of
6 determining the retirant's maximum retirement
7 allowance. For example, if a retirant's maximum
8 retirement allowance upon the retirant's initial
9 retirement was limited by section 88-74 to eighty per
10 cent of the retirant's average final compensation, and
11 the retirant retired with a maximum allowance equal to
12 seventy per cent of the retirant's average final
13 compensation, the retirant's maximum allowance for the
14 retirant's period of reemployment may not exceed ten
15 per cent of the retirant's average final compensation
16 for the retirant's period of reemployment; and
17 (2) If the retirant's maximum retirement allowance upon
18 the retirant's initial retirement was equal to or
19 greater than the applicable limit under section 88-74,
20 the retirant shall not earn service credit or earn any
21 additional retirement allowance during the retirant's

1 period of reemployment, and the reemployed retirant
2 shall not make any contributions under section 88-45.

3 ~~(e)~~ (d) If a retirant's designation of beneficiary was
4 irrevocable upon the retirant's initial retirement, the retirant
5 may not change the retirant's designated beneficiary when the
6 retirant returns to service or when the former retirant again
7 retires.

8 ~~(d)~~ (e) A retirant who returns to service shall not be
9 considered to be "in service", for the purposes of section
10 88-75, 88-79, 88-84, or 88-85, or any other provision of this
11 chapter providing for benefits arising out of the disability or
12 death of a member. A retirant who returns to service and dies
13 during the period of reemployment shall be considered to have
14 retired again effective as of the first day of the month
15 following the month in which the death occurs, except for death
16 during the month of December when the effective date of
17 retirement may be the last day of the month.

18 ~~(e)~~ (f) The board shall adopt any rules as may be
19 required to administer this section."

20 SECTION 4. Section 88-273, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) Any class C member who terminates service prior to
2 accumulating ten years of credited service, excluding unused
3 sick leave, shall cease to be a member and shall forfeit all
4 credited service; provided that:

5 (1) If the former class C member becomes a member again
6 within one [~~calendar~~] full year [~~from the date of~~
7 ~~termination,~~] following the calendar year in which the
8 member's employment terminated, all service credit for
9 previous service shall be restored. If the former
10 class C member becomes a member again more than one
11 [~~calendar~~] full year [~~after the date of termination,~~]
12 following the calendar year in which the member's
13 employment terminated, one month of service credit for
14 previous service shall be restored for each month of
15 service rendered following the return to membership.

16 (2) If the former class C member becomes a class A, class
17 B, or class H member within one [~~calendar~~] full year
18 [~~from the date of termination,~~] following the calendar
19 year in which the member's employment terminated, all
20 class C service credit for previous service shall be
21 restored. If the former class C member becomes a
22 class A, class B, or class H member more than one

1 ~~[calendar]~~ full year ~~[after the date of termination,]~~
2 following the calendar year in which the member's
3 employment terminated, one month of class C service
4 credit for previous service shall be restored for each
5 month of service rendered following the return to
6 membership.

7 Subject to the provisions of sections 88-322 and 88-324, the
8 service credit restored pursuant to this subsection shall be
9 class C service credit."

10 SECTION 5. Section 88-284, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) Upon approval by the board, the member shall be
13 eligible to receive an ordinary disability retirement benefit no
14 earlier than thirty days from the date the application was filed
15 or the date the member terminated service, whichever is later.

16 Retirement shall be effective on the first day of a month,
17 except for the month of December when retirement on the first or
18 last day of the month shall be allowed. A member whose

19 application for an ordinary disability retirement allowance is
20 approved by the board while the member is still in service may
21 terminate service and retire at any time following such

22 approval; provided that retirement shall become effective on the

1 first day of the month following the month the applicant
2 terminates employment or goes off the payroll, except for the
3 month of December when retirement on the first or last day of
4 the month shall be allowed."

5 SECTION 6. Section 88-334, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) Upon approval by the board, the member shall be
8 eligible to receive an ordinary disability retirement benefit no
9 earlier than thirty days from the date the application was filed
10 or the date the member terminated service, whichever is later.
11 Retirement shall be effective on the first day of a month,
12 except for the month of December when retirement on the first or
13 last day of the month shall be allowed. A member whose
14 application for an ordinary disability retirement allowance is
15 approved by the board while the member is still in service may
16 terminate service and retire at any time following the approval;
17 provided that retirement shall become effective on the first day
18 of the month following the month the applicant terminates
19 employment or goes off the payroll, except for the month of
20 December when retirement on the first or last day of the month
21 shall be allowed."

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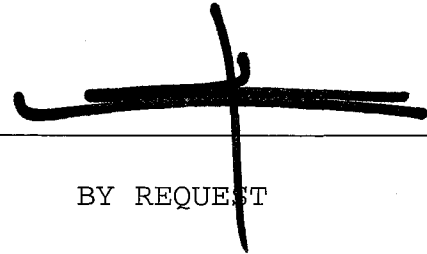
1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on July 1, 2009.

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INTRODUCED BY: _____

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6

BY REQUEST

Report Title:

Employees' Retirement System; Ordinary Disability Retirement;
Reemployed Retirants

Description:

Clarifies retirement date for ordinary disability retirement, payment of attorney's fees and costs in disability retirement and accidental death cases, forfeiture date for noncontributory service credit, and benefits for reemployed retirants.

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend chapter 88, Hawaii Revised Statutes, to clarify: retirement date for ordinary disability, payment of attorney's fees and costs in disability retirement and accidental death cases, forfeiture date for noncontributory service credit, and benefits for reemployed retirants; correct existing language; conform statutes to current practice; and streamline the administration of the Employees' Retirement System (ERS).

MEANS: Amend sections 88-75, 88-82, 88-98, 88-273(a), 88-284(b), and 88-334(b), Hawaii Revised Statutes.

JUSTIFICATION: In addition to various housekeeping amendments, this omnibus bill includes the following amendments:

- (1) Sections 88-75, 88-284(b), and 88-334(b): Clarifies that upon the approval of the ERS Board of Trustees, an ordinary disability retirement is effective on the first day of the month or December 31, and no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later.
- (2) Section 88-82: Clarifies that when applications for disability retirement or accidental death benefits are challenged, it is through a petition for contested case hearing, and not an "appeal" of a medical board decision. Also clarifies that survivors applying for accidental death benefits as well as ERS members applying for disability retirement can file such petitions and be awarded reasonable attorneys' fees and costs; and

eliminates the requirement that attorneys' fees and costs that are awarded can only be paid as a reimbursement of fees and costs paid by the applicant.

- (3) Section 88-98: Clarifies that the cap on the per cent by which average final compensation is multiplied to determine the maximum retirement allowance of certain members (police officers, firefighters, certain public safety officers, judges, and elective officials) applies to their "tack-on" retirement benefits if they return to work after retiring. Also clarifies that the ERS does not have to collect retirement contributions from these retirants if they return to work after reaching the cap on the per cent by which average final compensation is multiplied to determine their maximum retirement allowance.
- (4) Section 88-273(a): Clarifies that a member of the ERS's "noncontributory plan" who terminates service prior to accumulating ten years of credited service, and becomes a member of the ERS again by December 31 of the year following the calendar year of termination, will have the service credit that the member forfeited when the member terminated service restored upon the member's return to service.

Impact on the public: None.

Impact on the department and other agencies:
The amendments will streamline the administration of the ERS.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BUF-141.

OTHER AFFECTED

AGENCIES:

All state and county public employers.

EFFECTIVE DATE:

July 1, 2009.