

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

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

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended by:

1. Amending the definition of "elective officers, elective officials" to read as follows:

"Elective officers, elective officials": [elected officers of the State or any county including legislators and county councilmen.] any person elected to a public office, except as a delegate to a constitutional convention, member of the board of education or trustee of the office of Hawaiian affairs, in accordance with an election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office."

2. Deleting the definition "medical review board".

3. Amending the definition of "retirement allowance" to read as follows:

"Retirement allowance": the benefit payable for life [to which a member is entitled upon his retirement.] as originally computed and paid a member at the point of his retirement in accordance with the mode of retirement selected by him, exclusive of any bonus or bonuses."

4. Adding a new definition to be appropriately inserted and to read as follows:

"Sewer worker": an employee of any county who is employed in any of the following classifications: (1) sewer maintenance helper, (2) sewer maintenance repairer, (3) sewer maintenance supervisor I and II, (4) gas detector, (5) gas detector helper, (6) gas detector supervisor, (7) cesspool worker, (8) cesspool pumping equipment operator I; (9) cesspool equipment operator II; (10) cesspool pumping supervisor, or in any combination of these classifications."

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by:

1. Amending section 88-23 to read as follows:

**"§88-23 General administration of system vested in board.** The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this part are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by [section] sections 26-8[,] and 26-35."

2. Amending section 88-24 to read as follows:

**"§88-24 Composition of board.** The board of trustees shall consist of seven members as follows:

- (1) The director of finance of the State, ex officio;
- (2) Three members of the system, two of whom shall be general employees and one of whom shall be a teacher, to be elected by the members of the system under the rules and regulations adopted by the board governing the election to serve for terms of six years each, one of the terms to expire on January 1 of each even-numbered year;
- (3) Three citizens of the State who are not employees, one of whom shall be a responsible officer of a bank authorized to do business within the State, or a person of similar experience, to be appointed by the governor with

the advice and consent of the senate to serve for a term of six years each, one of the terms to expire January 1 of each odd-numbered year.

Each trustee shall serve until his successor is elected or appointed, as the case may be, and qualified. For the purposes of this section, the term "general employees" includes police officers and firefighters."

3. Repealing section 88-32.

4. Amending section 88-45 to read as follows:

"**§88-45 Employee contributions.** After June 30, 1965, the normal contribution by each member to the annuity savings fund shall be six per cent of his compensation, provided that after June 30, 1967, all [firemen] firefighters and [policemen] police officer shall contribute ten and four-tenths per cent of their compensation; and provided that after [the actual transfer of all county jails pursuant to executive order of the governor,] June 30, 1977, all corrections officers shall contribute ten and four-tenths per cent of their compensation.

In addition to the foregoing, all members including [firemen] firefighters, [policemen] police officers, and corrections officers, shall contribute one and eight-tenths per cent of compensation to the post retirement fund."

5. Amending section 88-51 to read as follows:

"**§88-51 Membership service generally.** Membership service includes:

- (1) Service by an employee rendered since becoming a member;
- (2) Service rendered prior to becoming a member but (A) subsequent to January 1, 1926, by an employee of the State or (B) subsequent to January 1, 1928, by an employee of any county;
- (3) Service as an employee of the federal government where the function carried on by [said] the government has been transferred to the State or any county, or where the employee has been transferred to the federal government and subsequently retransferred to the State or any county;
- (4) Service rendered by an employee in the office of the delegate to Congress from Hawaii, or service rendered by an employee in the office of a representative or a senator to Congress from the State; provided that (A) the employee was a member of the system immediately preceding the time he renders such service; (B) the employee reenters the service of the State or county within one year after termination of such service; and (C) the employee has, to the satisfaction of the board of trustees, waived his right to any credit under the Civil Service Retirement Act (5 USCA 2251) based upon such service; provided[,] further[,] that credit for such service shall not exceed eight years;
- (5) Service as an employee of the Hawaii territorial guard;
- (6) Service while engaged in professional improvement pursuant to an approved leave of absence for such purpose, with or without pay;
- (7) Service between the years 1941 and 1947 with federal defense agencies, where the employee was employed by the government before the wartime service, went into defense work at the direction of his employer, and returned to government service at the end of the wartime service; provided that these circumstances shall be verified by evidence satisfactory to the board of trustees;
- (8) Service, not exceeding four years, in the military service of the United

States during the period 1941-1949 rendered by an employee who was employed by the Territory or county prior to his induction into the military and who subsequently followed his discharge;

- (9) Service rendered prior to becoming a member as a full-time employee at the Leahi Hospital or Pahala Hospital, now known as Ka'u General Hospital, Puunene Hospital, Waimea Hospital, Waimea, Kauai, Haliimaile Dispensary, and Paia Hospital and Pioneer Mill Hospital;
- (10) Service rendered prior to becoming a member as a full-time sheriff or deputy sheriff in the office of the sheriff[.];
- (11) The period of time when a member was absent from work because of injuries incurred within the scope of his employment and who has received workers' compensation benefits prior to July 1, 1967;
- (12) Service rendered as an employee of the legislature during any legislative session;
- (13) Service as a school cafeteria manager or worker if paid by the State regardless of the source of funds from which paid; provided that twelve months' service shall be credited for the time such a person was working on a nine-month schedule during a school year.

Membership service shall only be credited for any period for which the member makes the required contributions to the system."

6. Repealing section 88-51.5.

7. Amending section 88-54 to read as follows:

**"§88-54 Service while legislative employee.** Any member who takes a leave of absence to be employed by the legislature during any legislative session shall be entitled to all benefits and required to make all employee contributions under the system for the period during which such employee worked for the legislature[.]; provided that the contributions shall be made on the same basis as would have been required had the employee not been on leave of absence.

[Any employee who, prior to his becoming a member, was employed as an employee of the legislature during any legislative session shall be entitled to membership service for the period of such employment by applying and paying therefor as required by section 88-59 for the acquisition of membership service.]"

8. Amending section 88-55 to read as follows:

**"§88-55 Services of field civilian personnel of the Hawaii national guard.** Civilian field personnel of the Hawaii national guard are entitled to membership credit for all service performed by them in such capacity since August 1, 1946, upon making application therefor and complying with section 88-59, provided that by federal law or regulation a payroll deduction has been made for the contribution required to be made into the system by the employee.

Any of the foregoing to the contrary notwithstanding, any civilian field personnel of the Hawaii national guard who elected to become, and who became, a member of the federal retirement system after December 31, 1968 shall not be entitled to membership credit for the period of time the individual was a member of the federal retirement system, nor shall the individual be entitled to any previous membership service credit for any period of service between August 1, 1946 and December 31, 1968 if the individual is entitled to a benefit under the federal retirement system for such period of service."

9. Repealing section 88-56.

10. Adding a new section to be appropriately designated and to read as follows:

**“§88- Membership of employees holding more than one position, appointment or office.** The membership of any employee holding more than one full-time position, appointment, office, or any combination thereof shall be limited to the position, appointment, or office of the employee's option; provided that the employment in the position, appointment, or office shall meet the minimum membership eligibility requirements as provided in this part. Any contributions made based on the compensation, pay, or salary of the employee's position, appointment, or office other than that on which the employee's membership is based shall be returned to the employee.

The foregoing shall not apply to any employee holding two part-time positions of the same class if each position meets the minimum eligibility requirements for membership and the sum total of the compensation, pay, or salary received for both positions does not exceed the higher of the full-time compensation, pay, or salary for either position.”

11. Amending section 88-58 to read as follows:

**“§88-58 Prior service credit while per diem employee.** [Employees in per diem positions, employees who formerly filled per diem positions, and former employees who] Under such rules as are adopted by board of trustees, all members who formerly filled per diem positions after December 31, 1927[,] in the various counties as road maintenance workers, shall be allowed full prior service credit in the system for their per diem service.”

12. Amending section 88-59 to read as follows:

**“§88-59 Acquisition of credit for previous service.** Under such rules and regulations as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to his last becoming a member which is not otherwise credited to him, for which he claims prior service credit, and also a statement of such services for which he claims membership service credit and for which he agrees to have additional deductions made from his compensation or to make a lump sum payment as hereinafter described.

After the filing of the statement, the board shall verify the service therein claimed and determine the service credit allowable therefor. Verified prior service shall be credited forthwith. Verified membership service shall be paid for by the member in any one of the following methods, at his option:

- (1) By deductions from his compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable; or
- (2) By deductions from his compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable; or
- (3) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to his monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable[.]; provided that after the

effective date of this Act, this method shall not be available to any new member with less than five years of membership service exclusive of any previous service acquired under the provisions of paragraphs (1) and (2).

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member's individual account and become part of his accumulated contributions.

Membership service credit in addition to any other service credited to the member shall be allowed the member for the period for which the deductions from compensation or lump sum payment have been made as hereinabove described.

No post retirement contributions shall be required for any service being claimed which is prior to July 1, 1961.

Any member of the legislature who reenrolls as an active member in accordance with section 88-62 and who desires to obtain membership service for a period of service as a member of the legislature during which he received a retirement allowance shall, in addition to complying with the provisions of this section, refund while a reenrolled active member the retirement allowance received during the period of a legislative service."

13. Amending section 88-62 to read as follows:

**"§88-62 Return to service of a former member.** (a) If a former member who has less than five years of credited service and who has been out of service for a period of four full calendar years or more after the year in which he left service, or if a former member who withdrew his accumulated contributions returns to service, he shall become a member in the same manner and under the same conditions as anyone first entering service; however, he may obtain membership service credit for his former credited service as provided in section 88-59. If such member did not withdraw his accumulated contributions prior to his return to service, such contributions shall be returned to him as part of the process of enrolling him in the system.

In order to be eligible for any benefit, he must fulfill the membership service requirements for such benefit through membership service after again becoming a member in addition to meeting any other eligibility requirement established for such benefit[.]; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-59 or any other section in this part.

(b) If a former member who did not withdraw his accumulated contributions returns to service within four full calendar years after the year in which he left service, he shall again become a member in the same manner and under the same conditions as anyone first entering service, except that he shall be credited with service credit for the service he had when he terminated employment and his new and previous accumulated contributions shall be combined.

(c) If a former member with five or more years of credited service who did not withdraw his contributions returns to service, his status shall be in accordance with the provisions described in section 88-97."

14. Amending section 88-74 to read as follows:

**"§88-74 Allowance on service retirement.** Upon retirement for service, a member shall receive a retirement allowance as follows:

(1) If the member has attained the age of fifty-five, a retirement allowance of

one-fiftieth of the average final compensation of the member multiplied by the total number of years of his credited service; provided[,] that after June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter or a police officer; and provided that after June 30, 1977 [following the date of actual transfer of the county jails by executive order of the governor], if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer, then for each year of service as a firefighter, a police officer, or a corrections officer, the retirement allowance shall be two and one-half per cent of his average final compensation; provided further[,] that the maximum retirement allowance for such a member shall not exceed eighty per cent of his average final compensation. If the member has not attained the age of fifty-five, his retirement allowance shall be computed as though he had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no such reduction shall be made if the member has at least twenty-five years of credited service [of which the last five or more years prior to retirement is credited service] as a firefighter, police officer [or], corrections officer[,], or sewer worker of which the last five or more years prior to retirement is credited service in such capacities. [No such reduction shall be made if the member has at least twenty-five years of credited service of which the last five or more years prior to retirement is credited service in any of the following classifications: (A) sewer maintenance helper, (B) sewer maintenance repairer, (C) sewer maintenance supervisor I and II, (D) gas detector, (E) gas detector helper, (F) gas detector supervisor, (G) cesspool worker, (H) cesspool pumping equipment operator I, (I) cesspool pumping equipment operator II, and (J) cesspool pumping supervisor, or in any combination of these classifications.]

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for the refund thereof as permitted by section 88-72, he may accept such refund at time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1) [hereof], an annuity which is the actuarial equivalent of such additional contributions with regular interest.
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk and the sergeant at arms of both houses of the legislature, his retirement allowance shall be computed on the following basis:
  - (A) Irrespective of age, for each year of credited service as a judge, an elective officer, or the chief clerk and the sergeant at arms of both houses of the legislature, three and one-half per cent of his average final compensation in addition to an annuity which is the actuarial equivalent of his accumulated contributions allocable to the period of such service; and
  - (B) For all other credited service as provided in [subsections] paragraphs (1) and (2) [hereof]. No allowance shall exceed seventy-five

per cent of the average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraph (A) [of this subsection] and the portion of the accumulated contributions specified in [the same subsection] that subparagraph as may be in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this section, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of average final compensation."

15. Amending sections 88-96 and 88-97 to read as follows:

**"§88-96 Rights of members separated from service.** (a) Any member who ceases to be an employee and who has less than five years of credited service shall, upon [completion of such forms as are prescribed by] application to the board of trustees, be paid all his accumulated contributions and his membership shall thereupon terminate, provided that interest shall not be credited to an individual's account nor shall his membership continue after the fourth full year following the calendar year in which his employment terminates[,] after which time the system, as soon thereafter as possible, shall return the member's contributions.

(b) [Subsection (a) of this section notwithstanding, any] Any member having five or more years of credited service who ceases to be an employee [may establish a vested benefit status by completing within four calendar years following the calendar year in which his employment terminates, such forms as are prescribed by the board for this purpose.] shall, upon application to the board of trustees, be paid all of the member's contributions. If the contributions are not withdrawn by the member within four calendar years following the calendar year in which his employment terminates, the member shall be deemed to have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the member's separation from service, payable in accordance with the provisions thereto and the contributions shall not be withdrawn by the member thereafter.

[(c) Any member who establishes a vested benefit status shall be eligible for the service retirement benefit in effect at the time of his separation from service, payable in accordance with the provisions relating thereto.

(d)] (c) In case of the death of any former member after the termination of service, his accumulated contributions shall be payable to his estate or to such person as he has nominated by written designation duly executed and filed with the board.

[e] (d) After July 1, 1961, there shall be included in any payment of accumulated contributions made pursuant to this section, the sums contributed by the member to the post retirement fund.

**"§88-97 Return to service of a member who has vested benefit status.** If a former member who has [established] a vested benefit status as provided in section 88-96(b) returns to service before his retirement, he shall again become a member and shall contribute for membership service as provided by the law in effect during his [second] reenrolled period of membership. [In order to become eligible for any benefit in addition to his vested benefit, he must fulfill the membership service requirements for such benefit through membership service after again becoming a member in addition to meeting any other eligibility requirements established for

such benefit. The] Upon retirement, if the member has less than five years of credited service during the member's reenrollment period of membership, the benefit to which he has a vested right shall not be changed but whatever benefit accrued from his [second] reenrollment period of membership shall be added to his vested benefit to comprise his retirement allowance. If he again leaves service before retiring and does not withdraw his [accumulated] contributions, his vested benefit shall consist of the combined retirement allowance.

However, if the member, upon retirement has five or more years of credited service during the member's reenrolled period of membership, the member's benefit shall be the greater of the allowance computed in the manner described in the preceding paragraph or the benefit computed with the member's combined service included under the formula in effect at the time of retirement. If the member again leaves service before retiring and does not withdraw his contributions, the member's vested benefit shall be the greater of the benefits as calculated in this paragraph."

SECTION 3. The Hawaii Revised Statutes is amended by adding a new section to chapter 88 to read:

**"§88-119.5 Investment guidelines.** Notwithstanding any other law to the contrary, real estate loans and mortgages made pursuant to section 88-119(1)(D) and (E) shall be in accordance with conditions and restrictions set forth by the board of trustees; provided that the board shall review its policy on the conditions and restrictions from time to time and formulate, amend, or repeal the conditions and restrictions giving full consideration to the prevailing economic conditions in the real estate industry; provided further that for good cause shown, the board of trustees shall duly consider a member's application for waiver of any condition or restriction imposed by the board of trustees. The board of trustees shall liberally construe this section; provided that no exception shall be made which may substantially impair the fiscal integrity of the system's funds. The board of trustees shall, subject to chapter 91, adopt, amend, and repeal rules having the force of and effect of law to implement this section."

SECTION 4. All acts passed by the legislature during this Regular Session of 1982, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 5. Statutory material to be repealed is bracketed. New material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect on July 1, 1982.

(Approved June 5, 1982.)

#### Note

1. Edited pursuant to HRS §23G-16.5.