

## ACT 108

S.B. NO. 1841-84

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 88-23, Hawaii Revised Statutes, is amended 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 and part VII of this chapter are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by sections 26-8 and 26-35.”

SECTION 2. Section 88-31, Hawaii Revised Statutes, is amended to read as follows:

**“§88-31 Medical board.** The board of trustees shall designate a medical board to be composed of three physicians not eligible to participate in the system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under this part[,] and part VII of this chapter, shall investigate all essential statements and certificates by or on behalf of a member in connection with application for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all the matters referred to it.”

SECTION 3. Section 88-41, Hawaii Revised Statutes, is amended to read as follows:

**“§88-41 Limitation of other statutes.** No other provision in any other statute which provides wholly or partly at the expense of the State or any county for pensions or retirement benefits for employees of the State or of any county, their surviving spouses or other dependents shall apply to members, retirants, or beneficiaries of the system established by this part[,] and part VII of this chapter, their surviving spouses or other dependents, except such benefits as may be provided under Title II of the Social Security Act.”

SECTION 4. Section 88-45, Hawaii Revised Statutes, is amended to read as follows:

“§88-45 **Employee contributions.** After June 30, 1965, the normal contribution by each class A and class B member to the annuity savings fund shall be six per cent of his compensation[.]; provided that after:

- (1) June 30, 1967, all firefighters [and], police officers, and investigators of the department of the prosecuting attorney shall contribute ten and four-tenths per cent of their compensation; [and provided that after]
- (2) June 30, 1977, all corrections officers shall contribute ten and four-tenths per cent of their compensation[.]; and
- (3) June 16, 1981, investigators of the department of the attorney general shall contribute ten and four-tenths per cent of their compensation.

In addition to the foregoing, all class A and class B members including firefighters, police officers, [and] corrections officers, and investigators of the departments of the prosecuting attorney and of the attorney general shall contribute one and eight-tenths per cent of compensation to the post retirement fund.”

SECTION 5. Section 88-46, Hawaii Revised Statutes, is amended to read as follows:

“§88-46 **Deducting employee contributions from salary.** The head of each [State] state department and the finance director of each county shall cause to be deducted from the salary of each class A or class B member on each and every payroll under his jurisdiction for each and every payroll period, the percentage of compensation of each member as provided under section 88-45. The total amount of deductions made from the salaries of employees and a record of the amount deducted from each member’s compensation shall be transmitted to the system monthly or at such other times as may be agreed upon by the board of trustees. The amounts so deducted shall be paid into the annuity savings fund and the post retirement fund and shall be credited to the individual accounts of the member from whose compensation the deductions were made. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.”

SECTION 6. Section 88-47, Hawaii Revised Statutes, is amended to read as follows:

“§88-47 **Membership**[; class A members and class B members]. There shall be [two] three classes of members in the system to be known as class A members [and], class B members, and class C members, defined as follows:

- (1) Class A members shall consist of members covered by section 88-74(3), and those members in service prior to July 1, 1984 including those who are on approved leave of absence, who are covered by

[the provisions of] Title II of the [Federal] Social Security Act on account of service creditable under this part. These members shall consist of:

- (A) [all] All employees who enter the membership of the system after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended; and
- (B) All employees who were members of the system on July 1, 1957, who elected to be covered by the Social Security Act.
- (2) Class B members shall consist of all [other] members in the system[.] who are not class A or class C members.
- (3) Except for members covered by section 88-74(3), class C members shall consist of all employees in positions covered by Title II of the Social Security Act who:
  - (A) First enter service after June 30, 1984;
  - (B) Reenter service after June 30, 1984 without vested benefit status as provided in section 88-96(b); or
  - (C) Make the election to become a class C member as provided in part VII of this chapter.
- (4) None of the provisions of this part shall apply to class C members except as specifically provided in part VII of this chapter."

SECTION 7. Section 88-103, Hawaii Revised Statutes, is amended to read as follows:

**"§88-103 Records.** (a) The board of trustees shall keep a record of all its proceedings which record shall be open to public inspection. It shall publish annually a report showing in detail: (1) the fiscal transactions of the system for the year ending the preceding June 30, (2) the amount of the accumulated cash and securities of the system, and (3) [of] an actuarial valuation of the assets and liabilities of the system. The board shall submit the report to the governor and shall furnish copies thereof to the heads of the various departments of the State and county for their use and the use of the members employed therein.

(b) The board shall include in its annual report submitted prior to January 1 of each odd-numbered year:

(1) a comparison of the investment performance of the system with the investment performances of the public employees' retirement systems of other jurisdictions which have authority to make investments substantially similar to the investment authorized under section 88-119, and (2) a comparison of the funded ratio on June 30 of the preceding year with the funded ratios of the public employees' retirement systems of other jurisdictions."

SECTION 8. Chapter 88, Hawaii Revised Statutes, is amended by adding a new Part VII to be appropriately designated and to read as follows:

**“PART VII. RETIREMENT FOR CLASS C PUBLIC  
OFFICERS AND EMPLOYEES  
A. APPLICABILITY OF PART II**

**§88- Applicability.** The following provisions of part II of this chapter shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88- ;
- (2) Subpart B, except sections 88-45, 88-46, 88-48, and 88-52 to 88-62;
- (3) Subpart C, except sections 88-71 to 88-78, 88-80, 88-81, 88-83 to 88-89, 88-96, and 88-97;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E, except sections 88-134 to 88-139.

**B. DEFINITIONS**

**§88- Definitions.** (a) The following words and phrases as used in this part shall have the same meanings as defined in section 88-21, unless a different meaning is plainly required by the context: “accumulated contributions”; “actuarial equivalent”; “average final compensation”; “beneficiary”; “county”; “employee”; “medical board”; “retirant”; “retirement allowance”; “service”; and “system”.

(b) The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

“Accidental death”: death which is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by recklessness on the part of the member.

“Board”: the board of trustees of the employees’ retirement system established by section 88-24.

“Member”: a class C member as described in section 88-47.

“Ordinary death”: death which is not accidental and which occurs during service.

**C. MEMBERSHIP, CREDITED SERVICE**

**§88- Election.** (a) Any class A or class B member who:

- (1) Is in service on June 30, 1984, or who returns to service after June 30, 1984, and has vested benefit status as provided in section 88-96(b); and

- (2) Is in a position covered by Title II of the Social Security Act, may elect to become a class C member effective January 1, 1985, or upon return to service, by filing an election form with the board.

The election shall be made prior to December 1, 1984, or within thirty days of return to service and shall be irrevocable. A class A or class B member who makes such an election shall be refunded all accumulated and post retirement contributions and shall not be required to make further contributions upon becoming a class C member. The refund shall be made by March 31, 1985, or within ninety days after return to service. Upon the effective date of the election, all rights as a class A or class B member shall be extinguished.

(b) A class A or class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b), shall become a class C member upon return to service and shall be refunded all accumulated and post retirement contributions.

(c) The board shall provide information explaining the effects of the election described in subsection (a).

**§88- Credited service.** Credited service includes:

- (1) Service by an employee rendered since becoming a member;
- (2) Service credited under part II of this chapter as a class A or class B member for members who make the election described in section 88- (a);
- (3) Service for members who return to service in the manner described in section 88- (b);
- (4) Service rendered prior to becoming a class C member in any of the categories described in section 88-51 which is not included in any of the above; provided that such service shall be credited by purchase at any time after January 1, 1985, and after completing five years of service as a class C member, in the following manner:
  - (A) If the member had withdrawn the member's accumulated and post retirement contributions, by paying to the system in a nonrefundable lump sum an amount equal to eight per cent interest compounded annually on any accumulated and post retirement contributions previously withdrawn, for the period from the date of withdrawal to the date of purchase; or
  - (B) If the member has not made contributions to the system with respect to the previous service, by paying to the system in a nonrefundable lump sum an amount equal to eight per cent interest compounded annually multiplied by the product of seven and eight-tenths per cent of the member's current annual salary at the time of purchase, for the period from the date the employee contribution should have been made to the date of purchase;

- (5) Service in the armed forces as provided by subpart E of part II of this chapter; and
- (6) Unused sick leave as provided in section 88-63; provided that any such additional service credit shall not be used in determining eligibility for retirement or for any other purpose as a class C member.

**§88- Break in service; reemployment.** (a) Any class C member who terminates service prior to accumulating ten years of credited service, excluding unused sick leave, shall cease to be a member and shall forfeit all credited service subject to subsections (b) and (c).

(b) If the former class C member becomes a member again within one calendar year from the date of termination, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one calendar year after the date of termination, one year of service credit for previous service shall be restored for each year of service rendered following return to membership.

(c) Any retiree who returns to service requiring membership in the system shall be re-enrolled as an active member, and the retiree's retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class C member in existence at the time of the member's final retirement.

#### **D. ELIGIBILITY; BENEFITS**

**§88- Eligibility for retirement allowance.** (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service who has attained the age of fifty-five, shall become eligible to receive a normal retirement allowance after the member has terminated service.

(b) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance after the member has terminated service.

(c) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to apply for a normal retirement allowance payable beginning with the month when the member has attained age sixty-five.

(d) A member may retire upon the written application to the board specifying the desired date of retirement which shall be not less than thirty days nor more than ninety days subsequent to the date of filing. If the member dies after the date of filing the application to retire but prior to the effective date of retirement, the member's designated beneficiary may receive the member's retirement benefits which shall be computed as though the member died on the effective date of retirement under the mode of retirement selected.

**§88- Amount of allowance.** (a) The amount of the normal retirement allowance payable to a retired member shall be one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service.

(b) The amount of the early retirement allowance payable to a retired member shall be equal to the annual normal retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement.

**§88- Retirement allowance options.** A member may elect to have the member's normal or early retirement allowance paid under one of the following actuarially equivalent amounts:

- (1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of such allowance to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary.
- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary.
- (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years, the same allowance paid to the member's beneficiary designated by the member at the time of retirement, for the balance of the ten-year period.
- (4) Any election of a mode of retirement shall be irrevocable.

**§88- Ordinary disability.** (a) Upon the application of a member in service or on leave without pay or of the head of the member's department, any member who has ten or more years of credited service shall be retired by the board on an ordinary disability retirement allowance if the medical board, after a medical examination of such member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Retirement shall become effective upon the date specified by the member on the written application, which date shall be not earlier than thirty days after the date of filing of the application.

(c) A member who is determined to be permanently incapacitated for the further performance of duty pursuant to subsection (a) shall receive an ordinary disability retirement allowance equal to the member's accrued normal retirement allowance unreduced for age.

**§88- Service connected disability.** A member who would be eligible to receive a service connected disability retirement allowance pursuant to section 88-79 shall receive a retirement allowance equal to the member's accrued normal retirement allowance unreduced for age, but not less than fifteen per cent of average final compensation.

**§88- Death benefit.** (a) The surviving spouse and dependent child or children of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either an accidental death or an ordinary death while in service after accumulating ten years of credited service.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse, the amount of the death benefit shall be an allowance equal to one-half of the member's accrued normal retirement allowance unreduced for age, payable to the surviving spouse until remarriage.
- (2) If there is a surviving spouse, each dependent child under age eighteen shall receive as a death benefit an allowance equal to ten per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age.
- (3) If there is no surviving spouse, each dependent child under age eighteen shall receive as a death benefit an allowance equal to twenty per cent of the member's accrued normal retirement allowance unreduced for age, payable to each dependent child until the dependent child attains age eighteen; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age.

(c) In the case of accidental death, the death benefit shall be as follows:

- (1) For the surviving spouse, the amount of the death benefit shall be an allowance equal to the greater of:
  - (A) One-half of the member's accrued normal retirement allowance, unreduced for age; or



- (B) Fifteen per cent of the member's average final compensation, payable to the surviving spouse until remarriage.
- (2) If there is a surviving spouse, each dependent child under eighteen shall receive as a death benefit an allowance equal to the greater of:
  - (A) Ten per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed twenty per cent of the member's accrued normal retirement allowance unreduced for age; or
  - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed six per cent of the member's average final compensation.

The death benefit shall be payable to each dependent child until each dependent child attains age eighteen.

- (3) If there is no surviving spouse, each dependent child under eighteen shall receive as a death benefit an allowance equal to the greater of:
  - (A) Twenty per cent of the member's accrued normal retirement allowance, unreduced for age; provided that the aggregate death benefits for all the dependent children shall not exceed forty per cent of the member's accrued normal retirement allowance unreduced for age; or
  - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the dependent children shall not exceed twelve per cent of the member's average final compensation.

The death benefit shall be payable to each dependent child until each dependent child attains age eighteen.”

SECTION 9. Statutory material to be repealed is bracketed. New material, other than in part VII, chapter 88, Hawaii Revised Statutes, is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 18, 1984.)