

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 88-75, Hawaii Revised Statutes, is amended to read as follows:

“**§88-75 Ordinary disability retirement.** Upon [the] application of a member in service or on leave without pay, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has [had] ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board after a medical examination of the 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.

Retirement shall become effective upon the date specified by the board, which [date] shall be no earlier than thirty days after the date [of filing of] the application[.] is filed.”

SECTION 2. Section 88-77, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon application of a member, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has been permanently incapacitated as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the board of trustees for service-connected total disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for gainful employment and that the member's incapacity is likely to be permanent.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining total disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 3. Section 88-79, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Upon application of a member, or [of the head of the member's department,] the person appointed by the family court as guardian of an incapacitated member, any member who has been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, through no wilful negligence on the member's part, may be retired by the board of trustees for service-connected occupational disability provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the board a copy of the employer's report of the accident submitted to the director of labor and industrial relations;
- (2) An application for retirement is filed with the board within two years of the date of the accident, or the date upon which workers' compensation benefits cease, whichever is later;
- (3) Certification is made by the head of the agency in which the member is employed, stating the time, place, and conditions of the service performed by the member resulting in the member's disability and that the disability was not the result of wilful negligence on the part of the member; and
- (4) The medical board certifies that the member is incapacitated for the further performance of duty[,] and that the member's incapacity is likely to be permanent.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition."

SECTION 4. Section 88-84, Hawaii Revised Statutes, is amended to read as follows:

“**§88-84 Ordinary death benefit.** (a) Upon receipt of proper proof of a member’s death occurring in service[,] or while on authorized leave without pay, there shall be paid to the member’s designated beneficiary an ordinary death benefit consisting of:

- (1) The member’s accumulated contributions and, if no pension is payable under section 88-85, [in addition thereto] an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member’s death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member’s accumulated contributions shall not be less than one hundred per cent of the compensation; or
- (2) If the member had ten or more years of credited service [but was ineligible for service retirement] at the time of death in service, and the death occurred after June 30, 1988, the member’s designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable [to the beneficiary] as if the member had retired the day prior to death under option 3 of section 88-83 and computed on the basis of section 88-76; or
- (3) If the member was eligible for service retirement at the time of death in service, the member’s designated beneficiary may elect to receive in lieu of any other [payments] payment provided in this section, the allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83.

(b) If the member’s designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse¹ [an allowance payable under option 3 of section 88-83 if the member had at least ten years of credited service but was ineligible for service retirement at the time of the² death in service, which allowance shall be computed on the basis of section 88-76; or if the member was eligible for service retirement at the time of death in service, the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option 2 of section 88-83; or] a benefit as specified under subsection (a)(1)[;], (2), or (3);
- (2) To the deceased member’s dependent child, or children under age eighteen if there is no surviving spouse, an equally divided benefit as specified under subsection (a)(1); or
- (3) To the deceased member’s estate, if there is no surviving spouse or dependent child or children, a benefit as specified under subsection (a)(1).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.”

SECTION 5. Section 88-261, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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] while in service[,] or on authorized leave without pay.”

SECTION 6. Section 88-284, Hawaii Revised Statutes, is amended to read as follows:

“§~~[[88-284]]~~ **Ordinary disability[,] retirement.** (a) Upon [the] application of a member in service or on leave without pay, or [of the head of the member’s department,] the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board, after a medical examination of [such] the 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,] board, which [date] shall be [not] no earlier than thirty days after the date [of filing of] the application[,] is filed.

(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.”

SECTION 7. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

“§~~88-286~~ **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 or on authorized leave without pay after accumulating ten years of credited service[,] or an accidental death.

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

- (1) For the surviving spouse, an allowance equal to one-half of the member’s accrued normal retirement allowance unreduced for age, payable [to the surviving spouse] until remarriage[:] as if the member had retired the day prior to death; [or if the member was eligible for retirement at the time of the member’s death in service, and death occurred after June 30, 1990, the surviving spouse may elect the allowance that would have been payable if the member had retired the day prior to death and had elected to receive a retirement allowance under option B and computed on the basis of section 88-283;
- (2) If there is a surviving spouse,] and for each dependent child [under age eighteen shall receive] 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; [and] or

- (2) For the surviving spouse, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired the day prior to death and had elected to receive a retirement allowance under option B of section 88-283; and
- (3) If there is no surviving spouse, each dependent child [under age eighteen] shall receive 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.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(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 thirty per cent of the member's average final compensation, payable until remarriage;
- (2) If there is a surviving spouse, each dependent child under eighteen shall receive 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 under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen; and

- (3) If there is no surviving spouse, each dependent child under eighteen shall receive 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 under this paragraph shall be payable to each dependent child until the dependent child attains age eighteen."

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

Notes

1. Prior to amendment “,” appeared here.
2. So in original.