

**ACT 128**

S.B. NO. 2715

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 88-3, Hawaii Revised Statutes, is amended to read as follows:

**“§88-3 Payment on death of pensioner.** Whenever any person receiving a pension from the State or from any county thereof dies, the amount next payable shall be prorated from the last payment date up to and including the date of death[-], and effective January 1, 2003, whenever a person receiving a pension from the state

retirement system dies, the full monthly pension shall be payable for the month in which the pensioner is deceased. The sum [so prorate] shall be paid to such person as may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with payment of the pension, or, if no such designation has been made and filed, then the amount so due shall be paid to the personal representative of the estate of the pensioner."

SECTION 2. Section 88-6, Hawaii Revised Statutes, is amended to read as follows:

**"§88-6 Payment of retirement benefits.** Notwithstanding any other provision of this chapter:

- (1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly; and effective January 1, 2003, all retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and
- (2) Any retiree or beneficiary whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their [semimonthly] retirement benefit. This method of payment may be waived by the system if another method is determined to be more appropriate."

SECTION 3. 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. To fulfill its responsibilities, the system may require any department or agency of the State or counties to furnish information to the system to carry out the purposes of this chapter."

SECTION 4. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

**"§88-73 Service retirement.** [~~Retirement of a member on a service retirement allowance shall be made by the board of trustees or its designee as follows:~~

~~(1) (a) Any member who has at least five years of credited service and who has attained age fifty-five or any member who has at least twenty-five years of credited service or any member who has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer, [may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired. In the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement;] shall become eligible to receive a retirement allowance after the member has terminated service.~~

~~[(2)] (b) Any member who first earned credited service as a judge after June 30, 1999, [may retire upon written application to the board specifying on what date, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, the member desires to be retired; provided that the member] and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service[-] shall become eligible to receive a retirement allowance after the member has terminated service.~~

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(d) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance payable under the option selected by the member [which would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement]; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit, if any, no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month.

~~[(3)] (e) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position[;].~~

(4) (f) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge [elected] makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member's average final compensation, shall be used as the [effective date of retirement; provided that the] date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service; provided further that upon leaving active service the elective officer or judge shall receive the retirement allowance effective on the first day of a month following the member's termination, provided for in section 88-74, together with the post retirement allowances provided for in section 88-90[-, which post]. Post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day[- and].

~~[(5)] (g) In the case of a class A or B member who also has prior credited service under part VII, total credited service as a class A, class B, and class C member shall be used to determine the eligibility for retirement allowance."~~

SECTION 5. Section 88-75, Hawaii Revised Statutes, is amended to read as follows:

**"§88-75 Ordinary disability retirement.** Upon application of a member in service or on leave without pay, or 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 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.

Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall become effective [upon the date specified by the board, which shall be no earlier than thirty days after the date the application is filed.] on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 6. Section 88-79, Hawaii Revised Statutes, is amended to read as follows:

**“§88-79 Service-connected disability retirement.** (a) Upon application of a member, or 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 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.

(c) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or to the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability or was receiving vocational rehabilitation services occasioned by the disability.

(d) The board ~~[shall have the power to]~~ may determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) The certification made by the head of the agency in which the member is employed; or
- (2) A finding to this effect by the medical board.

(e) Upon approval by the board, the member shall be eligible to receive a service-connected disability retirement benefit after the member has terminated service. Retirement shall become effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed."

SECTION 7. Section 88-81, Hawaii Revised Statutes, is amended to read as follows:

**“§88-81 Average final compensation.** (a) Average final compensation is ~~[(1) for employees who have become members prior to January 1, 1971,]~~ the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46 ~~[, (A) during]~~.

(b) The average final compensation of members retiring prior to January 1, 2003, shall be calculated as follows:

- (1) For employees who become members prior to January 1, 1971:
  - (A) During the member's five highest paid years of credited service, ~~[(B) at the option of the member, during the member's three highest paid years of credited service; provided that no payment of salary in lieu of vacation shall be included in the computation, or (C) if]~~ including vacation pay, or the three highest paid years of credited service excluding vacation pay, whichever is greater;  
or
  - (B) If the member has less than three years of credited service, [then] during the member's actual years of credited service[; or (2) for].
- (2) For employees who become members on or after January 1, 1971:
  - (A) During the member's three highest paid years of credited service, excluding vacation pay; or
  - (B) If the member has less than three years of credited service, during the member's actual years of credited service.

(c) The average final compensation of members retiring after December 31, 2002, shall be calculated as follows:

- (1) For employees who become [f]members[;] [on or after] prior to January 1, 1971[; the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46, (A) during]:

- (A) During the member's five highest paid calendar years of service including vacation pay, or the last sixty months of credited service including vacation pay, whichever is greater; or
- (B) During the member's three highest paid calendar years of [credited] service[; provided that no payment of salary in lieu of vacation shall be included in the computation, or (B)] excluding vacation pay, or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
- (C) During the member's actual years of credited service, if the member has less than three years of credited service[, then during the member's actual years of credited service.];
- (2) For employees who become members on or after January 1, 1971:
  - (A) During the member's three highest paid calendar years of service excluding vacation pay or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
  - (B) During the member's actual years of credited service, if the member has less than three years of credited service; and
- (3) If a member has credited service as a nine, ten, or eleven-month employee and is paid over twelve months,
  - (A) During the member's three highest paid school contract years of service; or
  - (B) During the member's actual years of credited service, if the member has less than three years of credited service.

[(b)] (d) In computing the compensation of a judge, the compensation paid to the judge by the United States as well as by the Territory shall be included.

[(e)] (e) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows: during a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and during a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session. For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during the member's term of office.

[(d)] (f) If a member has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the three highest paid years of credited service as an elective officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has less than three years of

credited service in that capacity, then the member's actual years of credited service."

SECTION 8. Section 88-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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, 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 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 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]~~ on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated 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 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.]~~ on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83."

SECTION 9. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

**"§88-85 Accidental death benefit.** Upon the receipt of proper proofs of a member's death by the board of trustees, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and if, upon the receipt of evidence or proofs that the death was 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 that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member, there shall be paid in lieu of the ordinary death benefits provided by the contributions of the State or county, effective on the first day of a month following the member's death, except for the

month of December when benefits shall be effective on the first or last day of the month, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship; [Ø]
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under such age, divided in such manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains such age; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no such nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

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 death 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 10. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

**“§88-281 Service retirement.** (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 retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer<sup>1</sup> of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

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

(d) 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 receive a retirement allowance when the member has attained age sixty-five.

(e) 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]~~ one hundred fifty 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 had died on the effective date of retirement under the mode of retirement selected.] Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(f) In the event of the death of a member after the date of the filing of the member's written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member's estate shall receive the allowance payable under the option selected by the member; provided that the member meets the eligibility requirements to retire on the member's date of death. The designated beneficiary shall be eligible for a retirement benefit no earlier than thirty days from the date the application was filed or the day following the member's date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month."

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

"(b) Upon approval by the board, the member shall receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall become effective [upon the date specified by the board, which shall be no earlier than thirty days after the date the application is filed.] on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed."

SECTION 12. Section 88-286, Hawaii Revised Statutes, is amended to read as follows:

**"§88-286 Death benefit.** (a) The surviving spouse or reciprocal beneficiary 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 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 or reciprocal beneficiary, an allowance equal to one-half of the member's accrued maximum retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship, as if the member had retired [the day prior to death;] on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed; and for each dependent child an allowance equal to ten per cent of the member's accrued maximum retirement allowance unreduced for age, payable 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 retirement allowance unreduced for age; or
- (2) For the surviving spouse or reciprocal beneficiary, 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] on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be

allowed and had elected to receive a retirement allowance under option B of section 88-283; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each dependent child shall receive an allowance equal to twenty per cent of the member's accrued maximum retirement allowance unreduced for age, payable on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, 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 maximum 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 effective on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage, marriage, or upon entry into a new reciprocal beneficiary relationship;
- (2) If there is a surviving spouse or reciprocal beneficiary, each dependent child under eighteen shall receive an allowance equal to the greater of:
  - (A) Ten per cent of the member's accrued maximum 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 maximum 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 or reciprocal beneficiary, each dependent child under age eighteen shall receive an allowance equal to the greater of:
- (A) Twenty per cent of the member's accrued maximum 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 maximum 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 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

## **ACT 128**

SECTION 14. This Act shall take effect on July 1, 2002.

(Approved May 31, 2002.)

### **Note**

1. Prior to amendment “;” appeared here.