

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

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . RETIREMENT FOR CLASS H PUBLIC OFFICERS
AND EMPLOYEES**

A. Applicability of Part II

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

- (1) Subpart A;
- (2) Subpart B, except sections 88-45, 88-46, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 to 88-76, 88-79, 88-80, 88-83, 88-84, 88-85, 88-88, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D; and
- (5) Subpart E.

B. Definitions

§88-B Definitions. 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:

“Actuarial cost” means the actuarial present value, at the date of valuation, of the increase in the retirement allowance that would be attributable to the years of service being converted to class H credited service. The actuarial present value shall be based on rates and tables recommended by the actuary and adopted by the board.

“Board” means the board of trustees of the employees' retirement system established pursuant to sections 82-83 and 88-24.

“Class A credited service” means credited service as a class A member, excluding any service converted to class H credited service pursuant to section 88-D(b).

“Class B credited service” means credited service as a class B member, excluding any service converted to class H credited service pursuant to section 88-D(b).

“Class C credited service” means credited service as a class C member, excluding any service converted to class H credited service pursuant to section 88-D(a).

“Class H credited service” means credited service as a class H member, including service described in section 88-E.

“Hypothetical account balance” means the sum of:

- (1) One and one-half times the sum of:
 - (A) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-G; and
 - (B) Accumulated interest at the regular interest rate on the employee contributions; and
- (2) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to

purchase service, and accumulated interest on the employee contributions at the regular interest rate.

C. Membership, Credited Service

§88-C Election and membership. (a) Any member, except for members described in subsection (c), who is in service on June 30, 2006, or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b), may elect to become a class H member effective July 1, 2006, or upon return to service, by filing an election form with the system in accordance with this section. The election shall be made prior to April 1, 2006, by members in service on February 28, 2006. The election shall be made by members entering or returning to service after February 28, 2006, within thirty days of entering or returning to service. The election shall be irrevocable.

(b) Notwithstanding any other law to the contrary, after June 30, 2006:

- (1) A class C member who returns to service and who does not return to service as a class A or a class B member shall become a class H member upon return to service; and
- (2) A class A or a class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b) and who does not return to service as a class A or class B member, shall become a class H member upon return to service. The system shall return to the member the member's accumulated contributions and the member's credited service as a class A or B member shall be converted to class C credited service.

(c) The following members may not elect to become a class H member under subsection (a):

- (1) Judges, elected officials, and legislative officers;
- (2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators;
- (3) Police officers and firefighters;
- (4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
- (5) Former class A, B, or C retirees.

§88-D Conversion of previous credited service. (a) Class C members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-C(a), shall have the option to convert some or all of their class C credited service to class H credited service by paying the full actuarial cost of the conversion as of June 30, 2006, in the manner provided in subsection (e). The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit which a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim as of June 30, 2006.

(b) All class A and class B credited service of class A or class B members who make the election to become class H members pursuant to section 88-C(a) shall be converted to class H credited service. The cost of the conversion of class A or class B credited service shall be the member's accumulated contributions as of the date of conversion. Class A and class B members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-C(a)

shall have the option to convert some or all of their class C credited service to class H credited service by paying, in the manner provided in subsection (e), the full actuarial cost of the conversion as of June 30, 2006. The option to convert class C credited service to class H credited service shall not apply:

- (1) To forfeited credit for previous service not restored as of June 30, 2006; or
- (2) To membership service credit which a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006, which the member has failed to claim as of June 30, 2006.

(c) The election to convert class C credited service to class H credited service shall be made by filing a form with the system within one hundred eighty days after publication of the notice required by subsection (f). The board may, by action taken at a meeting held pursuant to chapter 92, extend the deadline for making the election.

(d) Forfeited credit for service as a class A or B member not restored as of the date a class A or B member becomes a class H member and forfeited credit for service as a class C member shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the return to membership.

(e) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to subsections (a) or (b) to be paid by the member in any one of the following methods at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-H. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or
- (2) By lump sum payment.

If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked. 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 the member's accumulated contributions.

(f) The option to convert class C credited service to class H credited service pursuant to this section shall be applicable only to the extent that such conversion may be achieved without affecting the eligibility of the system as a qualified plan under section 401(a) of the federal Internal Revenue Code of 1986, as amended, or the eligibility of the employer pick up under section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended. If the trustees determine that the conditions of the foregoing sentence are satisfied, the system shall publish a statewide notice that class H members who are eligible to convert class C credited service to class H credited service under this section, subject to the provisions of this section, may convert class C credited service to class H credited service.

§88-E Class H credited service. Class H credited service includes:

- (1) Service by an employee rendered since becoming a class H member;
- (2) Service credited under part II as a class A member or a class B member and converted to class H credited service pursuant to section 88-D(b);
- (3) Service credited under part VII as a class C member and converted to class H credited service pursuant to section 88-D(a);
- (4) Service in the armed forces as provided by subpart E of part II;
- (5) Mandatory maternity leave as provided in part II; and
- (6) Unused sick leave as provided in section 88-63; provided that any additional service credit shall not be used in determining eligibility for retirement or for any other purpose as a class H member.

§88-F Acquisition of membership service. (a) Under rules as the board may adopt, any class H member may file with the system a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member last becoming a member which is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and, except as provided in subsection (d) or with respect to forfeited service to which subsection (c) is applicable, for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

Upon timely filing of the statement by the member, the system shall verify the service claimed and determine the service credit allowable.

(b) The statement shall be filed no later than the later of the following:

- (1) One year following the date the member becomes eligible to claim the prior service credit or membership service credit;
- (2) June 30, 2007, if the member was in service on June 30, 2006; or
- (3) One year from the date the member first returns to service after June 30, 2006, if the member was not in service on June 30, 2006.

(c) Except as otherwise provided in subsection (d), verified membership service, other than forfeited class A, class B, class C, or class H credited service, shall be paid for in any one of the following methods, at the member's option:

- (1) By deductions from the member's compensation pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-H. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:
 - (A) Deductions from the member's compensation of twice the contribution rate provided for in section 88-G over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
 - (B) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-G over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
- (2) By lump sum payment of contributions computed at the contribution rate provided for in section 88-G applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable.

The deductions from compensation shall commence, and the lump sum payment shall be made, not later than ninety days from the date the system notifies the member of the amount of service credit allowable. 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 the member's accumulated contributions.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection.

(d) Verified membership credit for which a former class C member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim prior to the date specified in section 88-D(a) and (b), shall be credited at no cost as class C credited service.

(e) Forfeited class A, class B, or class C credited service shall not be acquired as class H credited service. Forfeited class A, class B, or class C credited service shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the later of conversion to class H membership or the return to membership as a class H member. Forfeited class H membership service shall not be restored.

§88-G Employee contributions. Each class H member shall contribute six per cent of the member's compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who is a class H member shall contribute nine and seventy-five one-hundredths per cent of the member's compensation to the annuity savings fund for service in that capacity.

§88-H Deducting employee contributions from salary and employer pick up of employee contributions. (a) The head of each state department and the finance director of each county shall deduct from the compensation of each class H member on each and every payroll under their respective jurisdictions, the percentage of compensation of each member as provided under section 88-G.

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 semi-monthly or at other times as may be agreed upon by the board. The amounts deducted shall be paid into the annuity savings fund and shall be credited to the individual account 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.

(b) The State and each county, pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, shall pick up and pay the contributions that would otherwise be payable by each class H member, including contributions designated by the member relating to the conversion or acquisition of membership service as provided under sections 88-D(e) and 88-F, from compensation paid after December 31, 1987. The contributions so picked up shall be treated as employer contributions for the purpose of determining the amount of federal income tax to withhold from each class H member's compensation. The member shall complete a payroll authorization form before the period in which the contributions are earned and service is acquired, converted, or credited. With respect to service to be acquired or converted, the form shall be a binding irrevocable payroll deduction authorization in which the member acknowledges that the system will not accept direct payment from the member while the form is in effect.

(c) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each class H member's compensation equal to the amount of the member's contributions picked up by the employer; provided that the deduction shall not reduce the member's compensation for the purpose of computing benefits under this chapter.

(d) Member contributions picked up by the employer shall be transmitted to the system in accordance with subsection (a). Such contributions shall be credited to a separate account within each member's individual account in the annuity savings fund so that the amount contributed by the member before January 1, 1988, may be distinguished from the member contributions picked up by the employer. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

D. Eligibility; Benefits

§88-I Service retirement. (a) A class H member who has five years of credited service and has attained age sixty-two, or a class H 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) A class H member who has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service.

(c) A class H 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) If a class H member has at least twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(e) A class H member may retire upon the written application to the system, specifying the desired date of retirement, which shall be not 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.

§88-J Service retirement allowance. Upon retirement from service, a class H member shall receive a retirement allowance as follows:

- (1) If the member has met the requirements in section 88-I(a), (b), or (d), a maximum retirement allowance of two per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-I(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-two at retirement.

§88-K Retirement allowance options. (a) Upon retirement:

- (1) Any class H member may elect to receive the maximum retirement allowance to which the member is entitled, computed in accordance with the provisions described under section 88-J, 88-M, or 88-O, and if the member elects to receive the maximum retirement allowance, in the event of the member's death, there shall be paid to the member's beneficiary, or otherwise to the member's estate, the difference between the balance of the member's accumulated contributions at the time of the member's retirement and the retirement allowance paid or payable to the member prior to death; or
- (2) In lieu of the maximum allowance to which the member is entitled, computed in accordance with the provisions described under section 88-J, 88-M, or 88-O, the member may elect to receive the member's retirement allowance under any one of the optional plans described in section 88-83, which shall be actuarially equivalent to the maximum allowance.

To receive benefits, the beneficiary shall have been designated by the member in the form and manner prescribed by the board.

(b) If a class H member dies after the date of the filing of the member's written application to retire but prior to the retirement date designated by the member, the designated beneficiary, or otherwise the personal representative of the member's estate, if the member was eligible to retire on the date of the member's death, may elect to receive either the death benefit under section 88-P or the allowance under the option selected by the member that would have been payable had the member retired. The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death.

(c) If a retirant dies within one year after the date of retirement, the retirant's beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the member, or the benefits that would have been paid under section 88-P had the retirant died immediately prior to retirement, less any payments received by the retirant.

(d) Any election of a mode of retirement allowance shall be irrevocable.

(e) No election under this section shall take effect unless:

- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and
 - (C) Is determined adequate by rules adopted by the board in accordance with chapter 91;
- (2) The member selects option 2 or option 3 under section 88-83 and designates the spouse or reciprocal beneficiary as the beneficiary; or
- (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary, or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by board rules adopted in accordance with chapter 91.

Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary. The system shall not be liable for any false statements made by the member.

(f) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:

- (1) The terms and conditions of the various benefit options;
- (2) The rights of the member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and
- (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.

§88-L Ordinary disability retirement. (a) Upon application of a class H 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 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.

(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 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.

§88-M Ordinary disability retirement allowance. Upon retirement for ordinary disability, a class H member shall receive an ordinary disability retirement allowance equal to the higher of either:

- (1) Two per cent of the average final compensation multiplied by the number of years of class H credited service unreduced for age, plus one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service unreduced for age; or
- (2) Twenty-five per cent of the member's average final compensation.

§88-N Service connected disability retirement. (a) Upon application of a class H member, or the person appointed by the family court as guardian of an incapacitated member, any class H 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 for service-connected disability; provided that:

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the system 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 system 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 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 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 sewer worker's part, and as a result of the inherent occupational hazard of exposure to the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that the 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 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 may determine whether 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 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.

§88-O Service connected disability retirement allowance. Upon retirement for service-connected disability, a class H member shall receive the amount of the member's accumulated contributions and a retirement allowance of thirty-five per cent of the member's average final compensation.

§88-P Ordinary death benefit. (a) Upon receipt by the board of proper proof of a class H member's death occurring in service or while on authorized leave

without pay and if no pension is payable under section 88-Q, there shall be paid to the member's designated beneficiary an ordinary death benefit as follows:

- (1) If the member had less than five years of credited service at the time of death, the member's accumulated contributions shall be paid to the member's designated beneficiary;
 - (2) If the member had five or more years of credited service at the time of death, an amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary;
 - (3) If the member had ten or more years of credited service at the time of death, 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 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-M; or
 - (4) If the member was eligible for service retirement at the time of death, 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 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.
- (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, the death benefit in the case of ordinary death shall be payable:
- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a);
 - (2) To the deceased member's dependent child, or children under age eighteen if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under paragraph (1) or (2) of subsection (a); or
 - (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary or dependent child or children, a benefit as specified under paragraph (1) or (2) of subsection (a).
- (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.

§88-Q Accidental service connected death benefit. (a) Upon the receipt by the board of trustees, of proper proof of a class H member's death, 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 proof 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 benefit payable under section 88-P, 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;
- (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 that age, divided in a 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 that 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.

(b) 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 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 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 the sewer worker shall have passed a physical examination on entry into service or subsequent to entry, which examination failed to reveal any evidence of the condition.

(c) Benefits payable under subsection (a) shall continue through the end of the month in which the payee ceases to be eligible for the benefit.

§88-R Termination of membership. Except as otherwise provided by section 88-S, any class H member absent from service for four calendar years following the calendar year in which the member's employment terminated shall cease to be a member. Any class H member who withdraws the member's contributions, becomes a retirant, or dies, shall cease to be a member as of the date of withdrawal, retirement, or death.

§88-S Rights of members separated from service. (a) Any class H member who ceases to be an employee and who has fewer than five years of credited service shall, upon application to the board, be paid all of the former employee's accumulated contributions and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that any such individual shall not be paid the individual's accumulated contributions if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for return of accumulated contributions is received by the board the individual has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are withdrawn; provided that the former employee's membership shall not continue after the fourth full year follow-

ing the calendar year in which the individual's employment terminates. If the former employee does not become an employee again and has not withdrawn the former employee's accumulated contributions, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.

(b) Any class H member having five or more years of credited service who ceases to be an employee, upon application to the board, shall be paid an amount equal to the former employee's hypothetical account balance and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that any such individual shall not be paid the individual's hypothetical account balance if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for payment of the individual's hypothetical account balance is received by the board, the individual has become an employee again.

If the contributions are not withdrawn by the former employee after the individual's employment terminates, the former employee shall have vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's separation from service, payable in accordance with this chapter.

(c) In case of the death after the termination of service of any former class H member who has not withdrawn the member's contributions, there shall be paid to the former member's estate or to such person as the former member has nominated by written designation duly executed and filed with the board if either:

- (1) The former member had less than five years of credited service at the time of death, the former member's accumulated contributions; or
- (2) The former member had five or more years of credited service at the time of death, the former member's hypothetical account balance.

§88-T Return to service of a former member without vested benefit status. (a) When a former class H member who does not have vested benefit status returns to service, the former member shall become a member in the same manner and under the same conditions as anyone first entering service and, except as provided in subsection (b), to be eligible for any benefit, the member shall fulfill the membership service requirements for the benefit through membership service after again becoming a member in addition to meeting any other eligibility requirement established for the benefit; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-F or any other section in this part.

(b) When a former class H member who does not have vested benefit status but who did not withdraw the former member's accumulated contributions returns to service, the member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined.

§88-U Return to service of a former member who has vested benefit status. If a former class H member who has a vested benefit status as provided in section 88-S(b) returns to service before the former member's retirement, the former member shall again become a member and shall contribute for membership service as provided by the law in effect during the member's reenrolled period of membership, and the former member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined.

§88-V Return to service of a retireant. (a) Any retireant who retired under the provisions of part VIII of this chapter and returns to service requiring membership in the system as a class H member shall be reenrolled as an active member, and the retireant's retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class H member in existence at the time of the member's final retirement.

(b) Any retireant who retired under part VIII and returns to service requiring membership in the system as a class A or class B member shall be reenrolled as an active member, and the retireant's retirement allowance shall be suspended. At such time as the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the mode of retirement selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the mode of retirement initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class A or class B member in existence at the time of the member's final retirement.

(c) Any retireant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retireant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and
- (3) Be subject to the age and service requirements under section 88-I when the member again retires.

The board shall adopt such rules as may be required to administer the purposes of this section."

SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended by adding to subpart B of part II a new section to be appropriately designated and to read as follows:

"§88-Z Acceptance of rollovers and transfers from other plans. Subject to rules adopted by the board of trustees, the system shall accept an eligible rollover distribution or a direct transfer of funds from another qualified plan in payment of all or a portion of any deposit a member is permitted to make with the system for credit for service, including the conversion of class C credited service to class H credited service. The rules adopted by the board of trustees shall condition the acceptance of a rollover or transfer from another plan on the receipt from the other plan of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law."

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]~~ parts VII and VIII 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 88-46.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon approval of the member’s election, all rights as a class A or class H member shall be extinguished and the member shall:

- (1) Become a class C member;
- (2) Be refunded the member’s contributions; and
- (3) Not be required to make any further contributions.”

SECTION 5. Section 88-47, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Class A shall consist of ~~[members covered by section 88-74(3) and (4), those members whose salaries are set forth in sections 26-52 and 26-53, and their county counterparts, managing directors or administrative assistant to the mayor, and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive director of the labor and industrial relations appeals board, the executive director of the Hawaii labor relations board, investigators];~~
 - (A) Judges, elected officials, and legislative officers;
 - (B) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators[; and those];
 - (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, [who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:
 - [(A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;
 - (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and] not making the election to become a class C member as provided in part VII or to become a class H member as provided in part VIII;
 - (D) The following members in service prior to July 1, 2006, including those who are on approved leave of absence, not making the election to become a class H member as provided in part VIII:

members whose salaries are set forth in sections 26-52 and 26-53 and their county counterparts, managing directors or administrative assistants to the mayor and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive officer of the labor and industrial relations appeals board, and the executive officer of the Hawaii labor relations board;

- ~~[(C)]~~ (E) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership; and
- (F) All former class B retirants who return to employment requiring the retirant's active membership, except for:
 - (i) Former retirants who return in the positions of police officer or firefighter;
 - (ii) Former retirants who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (iii) Former retirants who were in positions to which coverage under Title II of the Social Security Act was not extended who entered membership after June 30, 1957, but before January 1, 2004;
- (2) Class B shall consist of ~~[the following members]:~~
 - (A) Police officers and firefighters[; and], including former retirants who return to service in such capacity;
 - (B) ~~[Employees]~~ All employees, including former retirants, who were members on [June 30,] July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (C) All employees, including former retirants, in positions to which coverage under Title II of the Social Security Act is not extended, who enter membership after June 30, 1957, but before January 1, 2004, not making the election to become a class H member as provided in part VIII;
- (3) Except for members described in paragraphs (1) and (2), class C shall consist of all employees, not making the election to become a class H member as provided in part VIII, who:
 - (A) First enter service after June 30, 1984[;], but before July 1, 2006;
 - (B) Reenter service after June 30, 1984, but before July 1, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class C member as provided in part VII; or
 - (D) Are former class C retirants who return to service requiring the retirant's active membership[-]; and
- (4) Except for members described in paragraphs (1) and (2), class H shall consist of all employees who:
 - (A) First enter service after June 30, 2006;
 - (B) Reenter service after June 30, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class H member as provided in part VIII; or
 - (D) Are former class H retirants who return to service requiring the retirant's active membership.

(b) None of the provisions of this part shall apply to class C members except as specifically provided in part VII. None of the provisions of this part shall apply to class H members except as specifically provided in part VIII.”

SECTION 6. Section 88-50.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§88-50.5]]~~ **Credit for mandatory maternity leave.** Any member of the system who was required to take mandatory maternity leave prior to July 1, 1973, may be credited up to four years of membership service credit for mandatory maternity leave; provided that the maximum credit for each pregnancy shall be limited to twelve months.

A member’s maternity leave shall be considered service in the member’s occupation at the time the leave was taken and may be credited in accordance with ~~[section]~~ sections 88-59 [e], 88-272[-], and 88-F.

Any retirant, who returns to employment and is reenrolled as a member of the system and who has at least three years of credited service in the system during the period of reemployment, may be credited with membership service credit for maternity leave as provided in this section.”

SECTION 7. Section 88-54.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§88-54.5]]~~ **Service while a member of the board of trustees of the office of Hawaiian affairs.** Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees’ retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member upon the trustee’s election in accordance with section 88-43 by October 1, 2002;
- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, may become a member upon the trustee’s election in accordance with section 88-43;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member’s class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59 ~~[and]~~, 88-272[;], and 88-F; and
- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002.”

SECTION 8. Section 88-55, Hawaii Revised Statutes, is amended 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]~~ sections 88-59[;], and 88-F; 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.”

SECTION 9. Section 88-73, Hawaii Revised Statutes, is amended to read as follows:

“**§88-73 Service retirement.** (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, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, 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; 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.]~~

~~[(e)]~~ (d) 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.

~~[(f)]~~ (e) 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 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 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. Upon leaving active service, the elective officer or judge shall receive the retirement allowance provided for in section 88-74, together with the post retirement allowances provided for in section 88-90, effective on the first day of a month except the month of December when retirement benefits shall be effective on the first or last day of the month. 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.

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

SECTION 10. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of the member’s credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class C member[;], plus a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class H member; provided that:
 - (A) 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, police officer, or an investigator of the department of the prosecuting attorney;
 - (B) After June 30, 1977, 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;
 - (C) After June 16, 1981, 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 an investigator of the department of the attorney general;
 - (D) After June 30, 1989, 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 narcotics enforcement investigator;
 - (E) After December 31, 1993, 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 water safety officer;
 - (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator; and
 - (G) After June 30, 2002, if the member has at least ten years of credited service as a firefighter, and is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer’s physician, and continues employment in a class A or B position other than a firefighter;

then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member’s average final compensation. The maximum retirement allowance for those members shall not exceed eighty

per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member 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 reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
 - (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
 - (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4).

No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or

- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
- (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
 - (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
 - (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
 - (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
 - (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
 - (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section 88-81(e)(4) shall be multiplied by two per cent~~;~~ for credited service earned as a class A or class H member, two and one-half per cent~~;~~ for credited service earned as a class B member, and one and one-quarter per cent~~;~~ as applicable to the for credited service earned as a class [A, B, or] C member~~;~~ respectively. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(e)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of

the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3).”

SECTION 11. Section 88-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If, in the event of an appeal of a decision of the medical board, retirement benefits are awarded to a member by the board of trustees or court of the appropriate jurisdiction under section 88-75, 88-79, 88-85, 88-284, [Ø] 88-285, 88-286(c), 88-M, 88-O, or 88-Q, the member shall be reimbursed reasonable attorney’s fees together with any costs payable by the system. If an appeal is had, the attorney’s fees or costs shall be subject to the approval of the board of trustees or by the appellate court deciding the appeal.”

SECTION 12. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

“**§88-83 Election of mode of retirement allowance.** (a) Maximum allowance: Upon retirement, any member may elect to receive the maximum retirement allowance to which the member is entitled computed in accordance with section 88-74, 88-76, or 88-80 and in the event of the member’s death, there shall be paid to the member’s beneficiary, otherwise to the member’s estate, the difference between the balance of the member’s accumulated contributions at the time of the member’s retirement and the retirement allowance paid or payable to the member prior to death.

In lieu of this maximum allowance, the member may elect to receive the member’s retirement allowance under any one of the optional plans described below, which shall be actuarially equivalent to the maximum allowance.

Option 1: The member may elect to receive a lesser retirement allowance during the member’s lifetime. At the member’s retirement, there shall be established an amount of initial insurance that shall be computed on the basis of actuarial factors adopted by the board of trustees. Upon the death of the retirant, any balance remaining in the initial insurance reserve, after deducting the retirement allowance paid to the retirant prior to death, shall be paid to the retirant’s beneficiary, otherwise to the retirant’s estate. In lieu of the lump sum balance, the beneficiary may elect to receive an allowance for life based on the value of the balance; provided that the allowance is not less than \$100 per month.

Option 2: The member may elect to receive a lesser retirement allowance during the member’s lifetime and have those allowances, including cumulative post retirement[-] allowances, if applicable, continued after the member’s death to the member’s beneficiary during the lifetime of the person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant[-]; provided that for members retiring after November 30, 2004, in the event that the retirant’s beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant’s beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the member is entitled.

Option 3: The member may elect to receive a lesser retirement allowance during the member’s lifetime and have one-half of such allowance, including fifty per cent of all cumulative post retirement allowances, if applicable, continued after the member’s death to the member’s beneficiary during the lifetime of that person.

In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant[-]; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the member is entitled.

Option 4: The member may elect to receive a lesser retirement allowance during the member's lifetime and provide some other benefit to the member's beneficiary in accordance with the member's own specification; provided that this election shall be certified by the actuary to be the actuarial equivalent of the member's retirement allowance and shall be approved by the board.

Option 5: The member may elect to receive the balance of the member's accumulated contributions at the time of retirement in a lump sum and, during the member's lifetime, a retirement allowance equal to the maximum retirement allowance reduced by the actuarial equivalent of these contributions. Upon the death of the retirant, all further payments shall cease. Only a member retiring from service having at least ten years of credited service or for disability may elect this mode of retirement.

To receive benefits, the beneficiary must have been designated by the member in the form and manner prescribed by the board.

~~[In the event of the death of the retirant within one year after the date of retirement, the retirant's beneficiary may elect to receive either the death benefits under the mode of retirement selected, or in lieu thereof, such benefits as would have been paid had the retirant died immediately prior to retirement, less any payments that the retirant received.]~~

Any election of a mode of retirement allowance shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).

~~(b) [Section 88-84 to the contrary notwithstanding, in] 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 retirement date designated by the member, the designated beneficiary[-, otherwise the personal representative of the member's estate, shall], if the member was eligible to retire on the date of the members' death, may elect to receive either death benefits under section 88-84 or the allowance under the option selected by the member that 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]. The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-85 who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-85, the designated beneficiary may receive benefits pursuant to an election made under this section pending disposition of the claim for benefits under section 88-85.~~

(c) No election under this section shall take effect unless:

- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and

- (C) Is determined adequate by rules established by the board pursuant to chapter 91; or
- (2) The member selects option 2 or option 3 [~~option A or option B~~] and designates the spouse or reciprocal beneficiary as the beneficiary; or
- (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system will rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.
- (d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:
 - (1) The terms and conditions of the various benefit options;
 - (2) The rights of [{}the{}] member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and
 - (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.
- (e) The system shall not be liable for any false statements made by the member.

(f) In the event of the death of the retirant within one year after the date of retirement, the retirant's beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the retirant, or such benefits as would have been paid under section 88-84 had the retirant died immediately prior to retirement, less any payments which the retirant received.

(g) The increase in the retirant's benefit under options 2, 3, and, if applicable, 4 upon the death of the retirant's designated beneficiary shall be effective the first day of the month following the date of death of the designated beneficiary. The retirant shall notify the system in writing and provide a certified copy of the beneficiary's death certificate. The system shall make retroactive benefit payments to the retirant, not to exceed six months from the date the written notification and the certified copy of the death certificate are received by the system. The retroactive payments shall be without interest."

SECTION 13. Section 88-85, Hawaii Revised Statutes, is amended to read as follows:

"§88-85 Accidental death benefit. (a) 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,~~] benefit payable under section 88-84, 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;
- (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.

(b) 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.

(c) Benefits payable under subsection (a) shall continue through the end of the month in which the payee ceases to be eligible for the benefit."

SECTION 14. Section 88-85.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) An application for service-connected accidental death benefits may be filed with the board system by or on behalf of the claimant as specified in sections 88-85, ~~[and] 88-286[-], and 88-Q~~. The application shall be filed no later than two years from the date of receipt of the written notification from the system."

2. By amending subsection (d) to read:

"(d) Upon approval, benefits shall be paid effective the date the claim was filed with the system, in accordance with sections 88-85, ~~[and] 88-286[-], and 88-Q~~."

SECTION 15. Section 88-96, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(a) Any member who ceases to be an employee and who has fewer than five years of credited service shall, upon application to the board of trustees, be paid all of the member’s accumulated contributions and the member’s membership shall thereupon terminate~~[-, provided that interest shall not be credited to an individual’s account nor shall the membership continue after the fourth full year following the calendar year in which the member’s employment terminates, after which time the system, as soon thereafter as possible, shall return the member’s contributions];~~ provided that any such member shall not be paid the member’s accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board of trustees, the member has become an employee again.

The former employee’s membership shall not continue after the fourth full year following the calendar year in which the individual’s employment terminates. The system, as soon as possible after termination of a former employee’s membership, shall return to the former employee the former employee’s accumulated contributions. Regular interest shall be credited to the former employee’s account until the former employee’s accumulated contributions are returned to the former employee.”

SECTION 16. Section 88-132.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59 ~~[and]~~, 88-272~~[-]~~, and 88-F.

(g) A ~~[contributory]~~ member’s active military service shall be considered service in the member’s occupation at the time that service is credited ~~[and]~~. A class A or class B member’s active military service shall be purchased at the rate specified in section 88-45~~[-]~~ and the retirement allowance provided by that service shall be calculated as provided in section 88-74. A class C member’s active military service shall be credited at no cost upon certification by the system and the retirement allowance provided by that service shall be calculated as provided in section 88-282. A class H member’s active military service shall be purchased at the rate specified in section 88-G, and the retirement allowance provided by that service shall be calculated as provided in section 88-J.”

SECTION 17. Section 88-134, Hawaii Revised Statutes, is amended to read as follows:

“**§88-134 Service retirement benefit.** If a service member has terminated the service member’s service with the armed forces and otherwise complies with the requirements of ~~[section]~~ sections 88-73, 88-281, or 88-I, as applicable, the service member shall be entitled to a service retirement benefit to be computed as provided in ~~[section]~~ sections 88-74, 88-282, or 88-J, as applicable, including and taking into consideration the service credit preserved and allowed to the service member by the Servicemen’s Act.”

SECTION 18. Section 88-135, Hawaii Revised Statutes, is amended to read as follows:

“§88-135 Ordinary disability retirement benefit. If a service member terminates the service member’s service in the armed forces and complies with and fulfills the requirements of ~~[section]~~ sections 88-75, 88-284, or 88-L, as applicable, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen’s Act, the service member shall be entitled to the ordinary disability retirement benefit prescribed in the applicable section ~~[88-75]~~, computed as provided in ~~[section]~~ sections 88-76, 88-284, or 88-M, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen’s Act.”

SECTION 19. Section 88-136, Hawaii Revised Statutes, is amended to read as follows:

“§88-136 Accidental disability benefit. Any member who has been incapacitated for duty by accident, act of war, or otherwise, occurring while the member is not in the service of the State or any county, shall not by reason of such incapacity be entitled to the accidental disability benefit provided for by ~~[section]~~ sections 88-79, 88-285, or 88-N, but in such event if the member can qualify for an ordinary disability retirement benefit as hereinabove provided, the member shall receive the ordinary disability retirement benefit.”

SECTION 20. Section 88-137, Hawaii Revised Statutes, is amended to read as follows:

“§88-137 Ordinary death benefit. If any service member dies, the ordinary death benefit provided in ~~[section]~~ sections 88-84, 88-286(b), and 88-P shall be paid to the service member’s estate or the service member’s designated beneficiary.”

SECTION 21. Section 88-138, Hawaii Revised Statutes, is amended to read as follows:

“§88-138 Accidental death benefit. The estate or designated beneficiary of a service member who dies by accident, act of war, or other cause, occurring while the service member is not in the service of the State or any county, shall not be entitled to the accidental death benefit provided by ~~[section]~~ sections 88-85[;], 88-286(c), and 88-Q; however, the estate or the beneficiary shall be entitled to the ordinary death benefit as provided in section 88-137.”

SECTION 22. Section 88-139, Hawaii Revised Statutes, is amended to read as follows:

“§88-139 Return of contributions. Any service member may resign from the system at any time, if the service member so chooses, and upon such resignation the service member shall be entitled to the return of the service member’s accumulated contributions as provided in ~~[section]~~ sections 88-96[-] and 88-S, including any amount to the service member’s credit in the annuity savings fund which shall have been contributed by the State or any county under the Servicemen’s Act, but the service member shall cease to be entitled to any of the benefits of the Servicemen’s Act or of sections 88-131 to 88-142, except the return of accumulated contributions, upon the effective date of the service member’s resignation.”

SECTION 23. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

“§88-251 **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 88-261;
- (2) Subpart B, except sections 88-45, 88-46, ~~[88-48, and]~~ 88-52 ~~[to]~~, 88-59, 88-59.5, 88-59.6, 88-61, 88-62~~[-]~~, and 88-Z;
- (3) Subpart C, except sections 88-71 to 88-76, 88-79, 88-80, ~~[88-81,]~~ 88-83, 88-84 to 88-85, 88-87 to 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E~~[-, except sections 88-134 to 88-139].~~”

SECTION 24. Section 88-271, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any class A or class H member who elects and is approved to withdraw the member’s contributions may become a class C member in accordance with section 88-46.5. Upon approval of the election:

- (1) All rights as a class A or class H member shall be extinguished;
- (2) The member’s accumulated contributions shall be refunded; and
- (3) The member shall not be required to make further contributions to the system.

This election shall be irrevocable.”

SECTION 25. Section 88-273, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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; provided that:

- (1) 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 month of service credit for previous service shall be restored for each month of service rendered following the return to membership.
- (2) If the former class C member becomes a class A ~~[or]~~, class B, or class H member within one calendar year from the date of termination, all class C service credit for previous service shall be restored. If the former class C member becomes a class A ~~[or]~~, class B, or class H member more than one calendar year after the date of termination, one month of class C service credit for previous service shall be restored for each month of service rendered following the return to membership.

Subject to the provisions of sections 88-D and 88-F, the service credit restored pursuant to this subsection shall be class C service credit.

(b) Any class C member who terminates service with a vested right and who subsequently becomes a class A, class B, ~~[or]~~ class C, or class H member shall retain all service credit for previous service and shall be credited with additional service credit for service rendered following the return to membership.”

SECTION 26. 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 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) If a member has at least thirty years of credited service through June 30, 2003; twenty-nine years of credited service on or after July 1, 2004; twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the emergency medical technician shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(f) 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 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.

~~[(g) 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 27. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

“§88-283 Retirement allowance options. (a) In lieu of the maximum retirement allowance described in sections 88-282, 88-284, and 88-285, a member may elect to receive the member's retirement allowance under one of the options described below, which shall be actuarially equivalent to the maximum retirement allowance:

- (1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of the allowance, including fifty per cent of all cumulative post retirement allowances, to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allow-

ance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled;

- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; provided that for members retiring after November 30, 2004, in the event that the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled; or
 - (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary for the balance of the ten-year period.
- (b) Any election of a mode of retirement shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).
- (c) No election under this section shall take effect unless:
- (1) The spouse or reciprocal beneficiary of the member is furnished written notification that:
 - (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
 - (B) Provides information indicating the effect of the election; and
 - (C) Is determined adequate by rules established by the board pursuant to chapter 91; or
 - (2) The member selects [~~option 2 or option 3~~] option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or
 - (3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:
 - (A) There is no spouse or reciprocal beneficiary;
 - (B) The spouse or reciprocal beneficiary cannot be located;
 - (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or
 - (D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.
- (d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:
- (1) The terms and conditions of the various benefit options;
 - (2) The rights of [F]the[F] member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and

(3) The member's right to make, and the effect of, a revocation of an election of a benefit option.

(e) The system shall not be liable for any false statements made by the member.

(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 retirement date designated by the member, the designated beneficiary, if the member was eligible to retire on the date of the member's death, may elect to receive either:

- (1) An allowance that would have been payable if the member had retired and had elected to receive a retirement allowance under option B; or
- (2) The allowance under the option selected by the member which would have been payable had the member retired.

The effective date of the member's retirement shall be a first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-286(c) who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-286(c), the designated beneficiary may receive benefits pursuant to an election under this section pending disposition of the claim for benefits under section 88-286(c). No death benefits will be payable under section 88-286(c) while benefits are paid pursuant to an election made under this section.

(g) In the event of the death of the retirant within one year after the date of retirement, the retirant's beneficiary may elect to receive either:

- (1) The death benefit under the retirement option selected by the retirant; or
- (2) The death benefit under option B; provided that the difference between the benefit that the retirant received and the benefit that would have been payable to the retirant had the retirant elected to receive a retirement allowance under option B shall be returned to the system.

(h) The increase in the retirant's benefit under options A and B upon the death of the retirant's designated beneficiary shall be effective the first day of the month following the date of death of the designated beneficiary. The retirant shall notify the system in writing and provide a certified copy of the beneficiary's death certificate. The system shall make retroactive benefit payments to the retirant, not to exceed six months from the date the written notification and the certified copy of the death certificate are received by the system. The retroactive payments shall be without interest."

SECTION 28. Section 88-285, Hawaii Revised Statutes, is amended to read as follows:

“§88-285 Service connected disability retirement. A member who would be eligible to receive a service connected disability retirement allowance pursuant to section 88-79 shall receive a [maximum] retirement allowance of [~~one and one-fourth~~] thirty-five per cent of the member's average final compensation [~~multiplied by the number of years of credited service unreduced for age, but not less than fifteen per cent of average final compensation~~].”

SECTION 29. 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 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 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.

(d) Benefits payable under this section shall continue through the end of the month in which the payee ceases to be eligible for the benefit."

SECTION 30. There is appropriated out of the employees' retirement system's investment earnings the sum of \$1,580,000, or so much thereof as may be necessary for fiscal year 2004-2005 to carry out the purposes of this Act.

The sum appropriated shall be expended by the employees' retirement system for the purposes of this Act.

SECTION 31. In codifying this Act, the revisor of statutes shall substitute appropriate section numbers for section references used in this Act.

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 33. This Act shall take effect on July 1, 2004.

(Approved July 7, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.