

ACT 58

H.B. NO. 631

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 section to part II, subpart C, to be appropriately designated and to read as follows:

“§88- Federal limits on annual compensation for ordinary death benefit. (a) Commencing July 1, 1996, compensation used to determine the benefit payable under section 88-84(a)(1) shall be subject to the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended; provided that there shall be paid to the beneficiary of any member:

- (1) Who dies while in service or on authorized leave without pay after June 30, 2004, and before July 1, 2006; and
- (2) Whose compensation earned during the year immediately preceding the member's death exceeds the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended,

a nontax-qualified benefit equal to the difference between the benefit that would have been payable under section 88-84(a)(1) without applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to compensation earned prior to July 1, 2005, and the benefit that is payable under section 88-84(a)(1) applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to the compensation earned during the year immediately preceding the member's death.

(b) The nontax-qualified benefit provided by subsection (a) shall be administered by the board of trustees; provided that:

- (1) State members shall be paid by the respective department or agency that employs the member pursuant to assessments made and received by the system; and
 - (2) County members shall be paid by the respective counties pursuant to assessments made and received by the system.
- (c) Section 88-91 shall apply to the nontax-qualified benefit.”

SECTION 2. Section 88-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Board”: the board of trustees of the employees' retirement system established pursuant to sections 88-23 and 88-24.”

SECTION 3. Section 88-23, Hawaii Revised Statutes, is amended to read as follows:

“§88-23 General administration of system vested in board. The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this part and ~~[part]~~ parts VII [of this chapter] and VIII are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by sections 26-8 and 26-35. To fulfill its responsibilities, the system may require any department or agency of the State or counties to furnish information to the system to carry out the purposes of this chapter.”

SECTION 4. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be four classes of members in the system to be known as class A, class B, class C, and class H, defined as follows:

- (1) Class A shall consist of:
 - (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;
 - (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, 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 an administrative [assistants] assistant to the mayor [and], other county department heads, [including] and agency heads appointed and subject to removal 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;
 - (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:
 - (A) Police officers and firefighters, including former retirants who return to service in such capacity;

- (B) All employees, including former retirants, who were members on 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."

SECTION 5. Section 88-59, Hawaii Revised Statutes, is amended to read as follows:

“§88-59 Acquisition of membership service. Under rules as the board of trustees may adopt, any member may file with the board a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member's last becoming a member [~~which~~] that is not credited to the member, for which the member claims prior service credit, and also a statement of [~~such~~] the services for which the member claims membership service credit and 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.

After the filing of the statement, the board shall verify the service claimed and determine the service credit allowable. Verified prior service shall be credited [~~and verified~~]. Verified membership service shall be paid for 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 88-46. 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 member may elect to have:
 - (A) Deductions from the member's compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable 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 88-45 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 88-45 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; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under paragraph (1).

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.

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 as described in this section.

The contribution rates under section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed that was rendered prior to July 1, 1961.

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

SECTION 6. Section 88-59.5, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"[~~H~~]¹88-59.5[~~] PriorPrevious membership service credit[.] for legislative officers. (a) Any member who on July 1, 1991, was serving or previously served as an assistant clerk or assistant sergeant at arms of either house of the legislature and becomes eligible for retirement benefits as a class A member as provided under sections [~~88-73(1), 88-74(3),~~] 88-73(a), 88-74(4), and 88-76 shall be entitled to full service credit as a class A member for any eligible service prior to July 1, 1991; provided that:~~

- (1) The member claims those years as [~~prior~~] membership service credit and purchases that [~~prior~~] membership service credit in accordance with section 88-59; and
- (2) Notwithstanding any other law to the contrary:
 - (A) If the member was a class A member of the system and elected to become a class C member pursuant to section 88-271, the member repurchases all the years of service as a class C member in accordance with the procedures under section 88-59 to regain standing as a contributory member; and
 - (B) A class C member shall be credited for service as an assistant clerk or assistant sergeant at arms under section 88-59 in a lump sum nonrefundable payment and receive retirement benefits as provided in this section."

SECTION 7. 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 maximum 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;
 - (G) After June 30, 2002, if the member:
 - (i) Has at least ten years of credited service as a firefighter;
 - (ii) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer’s physician; and
 - (iii) Continues employment in a class A or B position other than a firefighter; and
 - (H) After June 30, 2004, if the member:
 - (i) Has at least ten years of credited service as a police officer;
 - (ii) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer’s physician; and
 - (iii) Continues employment in a class A or B position other than a police officer;

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 for credited service earned as a class C member. 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 8. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

“**§88-76 Allowance on ordinary disability retirement.** Upon retirement for ordinary disability, a member shall receive a maximum retirement allowance of one and three-fourths per cent of the member’s average final compensation for each full year of credited service; except that for each year of credited service as a judge, an elective officer, or a legislative officer, the member shall receive a maximum retirement allowance computed as provided in section 88-74(3) or (4), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member’s average final compensation.”

SECTION 9. Section 88-80, Hawaii Revised Statutes, is amended to read as follows:

“**§88-80 Allowance on retirement for service-connected disability.** Upon retirement for service-connected disability, a member shall receive the amount of the member’s accumulated contributions and a maximum retirement allowance [~~which~~] that shall consist of fifty per cent of the member’s average final compensation.”

SECTION 10. Section 88-85, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Benefits payable under subsection (a) shall continue through the end of the last month in which the payee [~~ceases to be~~] is eligible for the benefit.”

SECTION 11. Section 88-94, Hawaii Revised Statutes, is amended to read as follows:

“**§88-94 Withholding of income taxes.** [~~A retired member, if the retired member consents in writing, may have withheld from the retired member’s pension, annuity, or retirement allowance payment an equivalent percentage of such payment as will in the aggregate approximate such member’s federal income tax liability as would result from such pension, annuity, or retirement allowance within the meaning of the United States Internal Revenue Code;~~] Pension, annuity, and retirement allowance payments from the system shall be subject to income tax withholding requirements as set forth by the federal government; payment of [such] these taxes as withheld shall be the liability of the system. The board of trustees shall [promulgate] adopt rules [and regulations] to administer the purposes of this section.”

SECTION 12. Section 88-96, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any member having five or more years of credited service who ceases to be an employee [~~shall~~], upon application to the board of trustees, shall be paid all of the member’s accumulated 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.

If the contributions are not withdrawn by the member within four calendar years following the calendar year in which the member's employment terminates, the member shall ~~[be deemed to]~~ have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the member's ~~[separation from service,]~~ retirement, payable in accordance with ~~[the provisions thereto]~~ this chapter, and the contributions shall not be withdrawn by the member thereafter."

SECTION 13. Section 88-97, Hawaii Revised Statutes, is amended to read as follows:

"§88-97 Return to service of a member who has vested benefit status. If a former member who has a vested benefit status as provided in section 88-96(b) returns to service before ~~[his] the former member's~~ retirement, ~~[he] the former member~~ shall again become a member and shall contribute for membership service as provided by the law in effect during ~~[his] the member's~~ reenrolled period of membership. Upon retirement, ~~[if the member has less than five years of credited service during the member's reenrollment period of membership, the benefit to which he has a vested right shall not be changed but whatever benefit accrued from his reenrollment period of membership shall be added to his vested benefit to comprise his retirement allowance. If he again leaves service before retiring and does not withdraw his contributions, his vested benefit shall consist of the combined retirement allowance.~~

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

SECTION 14. Section 88-102, Hawaii Revised Statutes, is amended to read as follows:

"§88-102 Classification of members. The board of trustees shall classify each member in one of the following groups:

- (1) ~~[Group 1.]~~ General employees of the State~~;~~ and counties, including administrative, clerical, professional, and technical workers, mechanics, laborers, and all others not otherwise classified;
- (2) ~~[Group 2.]~~ Teachers, including all teachers regularly engaged in public education whose salaries are wholly or partly paid by the State~~;~~ and faculty members and instructors of the University of Hawaii; or
- ~~[(3) Group 3. General employees of the counties, including administrative, clerical, professional, and technical workers, mechanics, laborers, and all others not otherwise classified;~~
- (4) ~~Group 4.]~~ (3) Police officers in the employ of the counties and fire-fighters in the employ of the State or of the counties~~;~~

or in any other group ~~[which] that~~ may be recommended by the actuary on the basis of service and mortality experience and approved by the board, to cover any part of any group or groups previously created or any additional class of employees."

SECTION 15. Section 88-124, Hawaii Revised Statutes, is amended to read as follows:

“§88-124 [State appropriations for] Payment of state contributions to the system. [~~Before October 2 in every year, the board of trustees shall certify to the governor the appropriation necessary to pay to the various funds of the system the amounts payable by the State under this part for the fiscal year, beginning July 1 of the year next following, and items of appropriation providing such amounts shall be included in the general appropriation bill when it is presented to the legislature for final passage.~~

Commencing with the 2006 calendar year and every subsequent calendar year, the board of trustees by October 2 in every calendar year, shall certify to the governor the actual amount owed by the State under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by the State shall be used to offset any amounts owed by the State in the next fiscal year beginning July 1. Any additional contributions owed by the State for the just completed fiscal year ending June 30 shall be payable beginning July 1 of the fiscal year next following and shall be included in the general appropriation bill when it is presented to the legislature for final passage.] **(a) The State shall pay on a monthly basis to the various funds of the system the amounts payable by the State under this part. Payments shall be made within thirty days after the end of the month.**

(b) The system shall determine the actual amount owed by the State under this part for each fiscal quarter, commencing with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the State for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter. Any additional contributions owed by the State for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess contributions by the State may be used to offset amounts owed by the State for the next fiscal quarter.”

SECTION 16. Section 88-126, Hawaii Revised Statutes, is amended to read as follows:

“§88-126 [Certification and payment] Payment of county contributions to the system. [(a) The board of trustees shall certify annually to the councils of each county and to the director of finance of the State the amount due from each county on account of its employees who are members of the system. The council of each county shall include in its annual budget the amount certified to it by the board. The amount shall be paid by the county before October 1 and April 1 of each fiscal year.

(b)] **(a) Commencing with fiscal year 2005-2006, each of the counties shall make contributions in accordance with section 88-123. [In calendar year 2006 and every subsequent calendar year, the board of trustees by October 2, shall certify to the councils of each county and to the director of finance of the State the actual amount owed by each county under this part for the just completed fiscal year ending June 30. The actual amount owed for the just completed fiscal year shall be compared against actual amounts paid in the fiscal year, and any excess contributions by each of the counties shall be used to offset any amounts owed in the next fiscal year beginning July 1. Any additional contributions owed by each of the counties for the just completed fiscal year ending June 30 shall be payable by October 1 and April 1 of the fiscal year next following. The council of each county shall include in its annual budget the amount certified to it by the board.] The amounts payable under this part by each county on account of its employees who are members of the system shall be paid by the county as follows:**

- (1) Before October 31, 2005, for the period from July 1, 2005, through September 30, 2005; and**
- (2) Commencing October 1, 2005, each county shall pay on a monthly basis the amounts payable by the county under this part on account of**

its employees who are members of the system. Payments shall be made within thirty days after the end of the month.

(b) The system shall determine the actual amount owed by a county under this part for each fiscal quarter, beginning with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the county for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter. Any additional contributions owed by the county for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess contributions by the county may be used to offset amounts owed by the county for the next fiscal quarter.

(c) If the amount or any portion of the amounts owed is not paid by the county before ~~[October 1 and April 1 of each fiscal year.]~~ the dates specified in subsection (a), the director of finance shall retain out of the transient accommodations tax money collected ~~[for the year]~~ a sum equal to the amount or portion thereof not so paid. All the moneys retained and collected by the director of finance shall be deposited in the appropriate fund or funds of the system. The amount of any deficiency in meeting the obligations shall be added to the amount due from the county for the succeeding ~~[year.]~~ quarter.”

SECTION 17. 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, 88-45.5, 88-46, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62~~[-and 88-45.5];~~
- (3) Subpart C, except sections 88-71 to 88-76, 88-79, 88-80, 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.”

SECTION 18. Section 88-261, Hawaii Revised Statutes, is amended to read as follows:

“§88-261 Definitions. (a) The following words and phrases as used in this part shall have the same meanings as defined in section 88-21, unless a different meaning is plainly required by the context: “accumulated contributions”; “actuarial equivalent”; “average final compensation”; “beneficiary”; “board”; “county”; “employee”; “medical board”; “retirant”; “retirement allowance”; “service”; and “system”.

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

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

~~["Board": the board of trustees of the employees' retirement system established by section 88-24.]~~

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

“Ordinary death”: death ~~[which]~~ that is not accidental and ~~[which]~~ that occurs while in service or on authorized leave without pay.”

SECTION 19. Section 88-282, Hawaii Revised Statutes, is amended to read as follows:

“**§88-282 Service retirement allowance.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has met the requirements in section 88-281(a), (b), ~~(d), or (e)~~, a maximum retirement allowance of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service; or
- (2) If the member has met the requirements in section 88-281(c), an early retirement allowance equal to the maximum retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement.”

SECTION 20. 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 thirty-five per cent of the member’s average final compensation.”

SECTION 21. Section 88-286, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Benefits payable under this section shall continue through the end of the last month in which the payee ~~[ceases to be]~~ is eligible for the benefit.”

SECTION 22. Section 88-311, Hawaii Revised Statutes, is amended by repealing the definition of “board”.

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

SECTION 23. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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, prosecuting attorney investigators not making the election under section 88-271, corrections 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.”

SECTION 24. Section 88-322, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§88-322[H] 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 88-321(a), shall have the option to convert some or all

of their class C credited service, as of June 30, 2006, 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)]~~ (d). 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]~~ that 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]~~ by 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 88-321(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. Verified membership service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, shall be credited as class H credited service. 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 88-321(a) shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying, in the manner provided in subsection ~~[(e)]~~ (d), 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]~~ that 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]~~ by 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]~~ not later than one hundred eighty days after publication of the notice required by subsection ~~[(f)]~~ (e). 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)]~~ (d) The board may permit the cost of conversion of class C credited service to class H credited service pursuant to ~~[subsections]~~ subsection (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 88-326. 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)]~~ (e) 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]~~ the 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.

(f) The actuarial cost of converting a member's class C credited service to class H credited service under subsections (a) and (b) shall be based on the member's actual age in full years as of June 30, 2006, and on the member's monthly base salary or monthly basic rate of pay as of June 30, 2006, exclusive of overtime, differentials, supplementary payments, bonuses, and salary supplements, but including elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.

SECTION 25. Section 88-324, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§88-324[.]~~ **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]~~ that 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 service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, or to forfeited service to which subsection ~~[(e)]~~ (e) 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]~~ After the 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.~~

~~(e)]~~ (b) Except as otherwise provided in subsection (c), (d), or (e), 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 88-326. 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 88-325 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 88-325 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 88-325 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.

(c) Verified membership service for which a former class A or class B member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by June 30, 2006, 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 88-326. 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 applicable to the member under section 88-45 as of June 30, 2006, 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 applicable to the member under section 88-45 as of June 30, 2006, 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 applicable to the member under section 88-45 as of June 30, 2006, 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 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 prior service and verified membership [credit] service 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 88-322(a) and (b);] by June 30, 2006, shall be credited at no cost as class C credited service.

(e) [Forfeited class] Except as provided in subsection (f):

- (1) Class A, class B, or class C credited service shall not be acquired as class H credited service[. Forfeited class]; and
 (2) 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.

(f) Forfeited class A or class B credited service being acquired under an irrevocable payroll authorization entered into under section 88-59 prior to July 1, 2006, shall be credited as class H credited service."

SECTION 26. Section 88-332, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§88-332]]~~ **Service retirement allowance.** Upon retirement from service, a class H member shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(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 88-331(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.”

SECTION 27. Section 88-333, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(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 [(e)] (e) 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."

SECTION 28. Section 88-335, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§88-335]]~~ **Ordinary disability retirement allowance.** Upon retirement for ordinary disability, a class H member shall receive ~~[an ordinary disability]~~ a maximum 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."

SECTION 29. Section 88-337, Hawaii Revised Statutes, is amended to read as follows:

"~~[[§88-337]]~~ **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 maximum retirement allowance of thirty-five per cent of the member's average final compensation."

SECTION 30. Section 88-339, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

SECTION 31. Section 88-341, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(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]~~ the 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,]~~ retirement, payable in accordance with this chapter.

(c) In case of the death after the termination of service and prior to retirement 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]~~ the 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.''

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 33. This Act shall take effect on July 1, 2005; provided that section 1 shall take effect retroactive to July 1, 1996, and sections 3 and 19 shall take effect retroactive to July 1, 2004.

(Approved May 17, 2005.)

Notes

1. Prior to amendment “§” appeared here.
2. Edited pursuant to HRS §23G-16.5.