

ACT 215

H.B. NO. 1291

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 to part II a new section to be appropriately designated and to read as follows:

“§88- Erroneous contributions from compensation of class C members; contributions from overpaid compensation. Regular interest shall be credited to a class C member on any deductions erroneously made from the compensation of the member and paid into the annuity savings fund. The interest shall continue until the earlier of:

- (1) Refund of the deductions to the member; or
- (2) Return of the deductions to the member's employer.

The foregoing shall not require the payment of interest on deductions made from any amounts that exceed the compensation to which a member is entitled.”

SECTION 2. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of “child or children” to read as follows:

““Child or children”:

- (1) A natural child of a member;

- (2) A legally adopted child of a member; or
- (3) A ~~[foster-child or]~~ stepchild of a member:
 - (A) Who lives with a member in a regular parent-child relationship; and
 - (B) For whom the member has become the child's legal guardian or has been awarded legal and physical custody of the child pursuant to a valid court order."

SECTION 3. Section 88-29, Hawaii Revised Statutes, is amended to read as follows:

"§88-29 Officers, employees, legal adviser. The board ~~[of trustees]~~ shall elect from its membership a chairperson, and by a majority vote of all its members, shall appoint an administrator and a chief investment officer who shall be exempt from chapter 76 and serve under and at the pleasure of the board. ~~[Effective July 1, 1992, the salary]~~ Effective July 1, 2007, the salaries of the administrator and chief investment officer shall be set by the board[; provided that the salary shall be set at not more than the salary of the governor as established under section 26-51]. The board shall engage actuarial and other services as shall be required to transact the business of the system. The compensation for all services engaged by the board, and all other expenses of the board necessary for the operation of the system, shall be paid at rates and in amounts the board shall approve.

The attorney general or an appointed representative may serve as legal adviser to the board ~~[of trustees]~~ or the board ~~[of trustees]~~ may select its own legal counsel."

SECTION 4. Section 88-51, Hawaii Revised Statutes, is amended to read as follows:

"§88-51 Membership service generally. Membership service includes:

- (1) Service by an employee rendered since becoming a member;
- (2) Service rendered prior to becoming a member but~~[;]~~¹ subsequent to:
 - (A) ~~[subsequent to]~~ January 1, 1926, by an employee of the State;² or
 - (B) ~~[subsequent to]~~ January 1, 1928, by an employee of any county;
- (3) Service as an employee of the federal government where the function carried on by the federal government has been transferred to the State or any county, or where the employee has been transferred to the federal government and subsequently retransferred to the State or any county;
- (4) Service rendered by an employee in the office of the delegate to Congress from Hawaii, or service rendered by an employee in the office of a representative or a senator to Congress from the State; provided that:
 - (A) ~~[the]~~ The employee was a member of the system immediately preceding the time the employee renders ~~[such]~~ the service;
 - (B) ~~[the]~~ The employee reenters the service of the State or county within one year after termination of ~~[such]~~ the service; and
 - (C) ~~[the]~~ The employee has, to the satisfaction of the board ~~[of trustees]~~, waived the employee's right to any credit under the Civil Service Retirement Act (5 U.S.C.A. ~~[2251-]~~ Sections 8301 to 8351), as amended, or the Federal Employees Retirement System Act (5 U.S.C.A. Sections 8401 to 8479), as amended, based upon ~~[such]~~ the service;

provided further that credit for ~~[such]~~ this service shall not exceed eight years;

- (5) Service as an employee of the Hawaii territorial guard;
- (6) Service while engaged in professional improvement pursuant to an approved leave of absence for ~~[such]~~ that purpose, with or without pay;
- (7) Service between the years 1941 and 1947 with federal defense agencies, where the employee was employed by the government before the wartime service, went into defense work at the direction of the employee's employer, and returned to government service at the end of the wartime service; provided that these circumstances shall be verified by evidence satisfactory to the board ~~[of trustees]~~;
- (8) Service, not exceeding four years, in the military service of the United States during the period 1941-1949 rendered by an employee who was employed by the Territory or county prior to the employee's induction into the military and who subsequently returned to employment of the Territory or county following the employee's discharge;
- (9) Service rendered prior to becoming a member as a full-time employee at the Leahi Hospital or Pahala Hospital, now known as Ka'u ~~[General]~~ Hospital, Puunene Hospital, Waimea Hospital, Waimea, Kauai, Haliimaile Dispensary, and Paia Hospital and Pioneer Mill Hospital;
- (10) Service rendered prior to becoming a member as a full-time sheriff or deputy sheriff in the office of the sheriff;
- (11) The period of time when a member was absent from work because of injuries incurred within the scope of the member's employment and who has received workers' compensation benefits prior to July 1, 1967;
- (12) Service rendered as an employee of the legislature during any legislative session;
- (13) Service as a school cafeteria manager or worker if paid by the State regardless of the source of funds from which paid; provided that twelve months' service shall be credited for the time ~~[such a person]~~ the cafeteria manager or worker was working on a ~~[nine-month]~~ nine-month, ten-month, or eleven-month schedule during a school year; and
- (14) Service rendered as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through June 30, 2002.

Membership service shall only be credited for any period for which the member makes the ~~[required]~~ contributions to the system~~[-]~~ if required by parts II, VII, and VIII of this chapter."

SECTION 5. Section 88-59.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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(a), ~~[88-74(4)]~~ 88-74(a)(3), 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 membership service credit and purchases that 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 6. Section 88-62, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If a former member who has less than five years of credited service and who has been out of service for a period of four full calendar years or more after the year in which the former member left service, or if a former member who withdrew the former member’s accumulated contributions returns to service, the former member shall become a member in the same manner and under the same conditions as anyone first entering service; however, the former member may obtain membership service credit in the manner provided by applicable law for credited service that was forfeited by the member upon termination of the member’s previous membership. If the member did not withdraw the former member’s accumulated contributions prior to the former member’s return to service, the accumulated contributions shall be returned to the member as part of the process of enrolling the member in the system if the member’s accumulated contributions are \$1,000 or less at the time of distribution. If the accumulated contributions for the service the member had when the member previously terminated employment are greater than \$1,000 and the member does not make written application, prior to or contemporaneously with the member’s return to service, for return of the accumulated contributions, the member may not withdraw the member’s accumulated contributions, except as provided by section 88-96 or 88-341, until the member retires or attains age sixty-two. The member shall not be entitled to service credit by reason of the system’s retention of the member’s accumulated contributions for the service the member had when the member previously terminated employment.

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 88-59 or any other section in [this] part[-] II, VII, or VIII.

(b) If a former member with less than five years of credited service and who did not withdraw [his] the former member’s accumulated contributions returns to service within four full calendar years after the year in which [he] the former member left service, [he] the former member shall again become a member in the same manner and under the same conditions as anyone first entering service, except that [he] the member shall be credited with service credit for the service [he] the member had when [he] the member terminated employment and [his]:

- (1) If the member returns to service as a class A or class B member, the member’s new and previous accumulated contributions shall be combined[-]; or
- (2) If the member returns to service after June 30, 2006, as a class H member, section 88-321(b) shall apply.”

SECTION 7. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“§88-74 Allowance on service retirement. (a) 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;] for age as provided in subsection (b);
- (3) (2) 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;] for age as provided in subsection (b); or
 - (C) For a judge with other credited service, as provided in [paragraphs] paragraph (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;] for age as provided in subsection (b); or
 - (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph [(4)-] (3).

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[-] upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. 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)] (3) 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;]~~ for age as provided in subsection (b); 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;]~~ for age as provided in subsection (b).

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~~[-]~~ upon the member's retirement or paid to the member's designated beneficiary upon the member's death while in service or while on authorized leave without pay. 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)-]~~ (2).

(b) Except as provided in subsection (a), if a member has not attained age fifty-five at the date of retirement, the member's retirement allowance shall be reduced, for each month the member's age at the date of retirement is below age fifty-five, as follows:

- (1) 0.4166 per cent for each month below age fifty-five and above age forty-nine and eleven months; plus
- (2) 0.3333 per cent for each month below age fifty and above age forty-four and eleven months; plus
- (3) 0.2500 per cent for each month below age forty-five and above age thirty-nine and eleven months; plus
- (4) 0.1666 per cent for each month below age forty;

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 these capacities."

SECTION 8. Section 88-74.6, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~88-74.6~~(1)~~] Unreduced allowance on service retirement; when applicable. In addition to those positions identified in section ~~[88-74(1),]~~ 88-74(b) and notwithstanding any law in this part that requires a member to attain age fifty-five to qualify for an unreduced service retirement allowance, if the 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, then upon retirement and irrespective of age, that member's service retirement allowance shall not be reduced for actuarial purposes."

SECTION 9. 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 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),]~~ 88-74(a)(2)

or (3), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member's average final compensation."

SECTION 10. Section 88-79, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) In the case of an accident occurring after July 1, 1963, the employer shall file with the ~~[board]~~ 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 ~~[board]~~ 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 at the time of application and that the member's incapacity is likely to be permanent."

SECTION 11. Section 88-81, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Average final compensation is the average annual compensation pay or salary upon which a member has made contributions as required by ~~[sections 88-45 and 88-46.]~~ parts II, VII, and VIII of this chapter."

SECTION 12. Section 88-81.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Effective July 1, 1996, compensation used to determine "average final compensation" under section 88-81 and employee contributions picked up by the employer under section 88-46~~[;]~~ or 88-326, shall be subject to the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended."

SECTION 13. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

"§88-83 Election of retirement allowance option. (a) 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]~~ retirant's death, there shall be paid to the ~~[member's]~~ retirant's designated beneficiary, or otherwise to the [member's] retirant's estate[;] the difference between ~~[the]~~;

- (1) The balance of the member's accumulated contributions at the time of the member's retirement; and [the]

- (2) The retirement allowance and, if the retirant retired after November 30, 2004, the post retirement allowances paid or payable to the [member] retirant 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. Upon the death of the retirant, there shall be paid to the retirant's designated beneficiary, otherwise to the retirant's estate: any balance remaining in the initial insurance reserve, after deducting the retirement allowance and, if the retirant retired after November 30, 2004, the post retirement allowances 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, if the beneficiary is a natural person, 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. If the beneficiary of the retirant who:

- (1) Retired after November 30, 2004, and

- (2) Dies after June 30, 2007,

elects to receive the allowance in lieu of the lump sum balance, there shall also be payable to the beneficiary an additional allowance calculated and payable in the same manner as a post retirement allowance under section 88-90. The additional allowance shall be based on the original amount of the allowance in lieu of the lump sum balance, and shall commence on the first day of July following the calendar year in which payment of the allowance in lieu of the lump sum balance is effective.

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 designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, if the retirant's designated 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 designated 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] retirant is entitled. Only one beneficiary shall be designated under this option. The beneficiary designated under this option shall be a natural person, and benefits under this option shall only be paid to a natural person.

Option 3: The member may elect to receive a lesser retirement allowance during the member's lifetime and have one-half of the allowance, including fifty per cent of all cumulative post retirement allowances, if applicable, continued after the member's death to the member's beneficiary designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, if the retirant's designated 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 designated 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] retirant is entitled. Only one beneficiary shall be designated under this option. The beneficiary designated under this option shall be a natural person, and benefits under this option shall only be paid to a natural person.

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 retirement allowance option.

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

(b) In the event of the death of a member after the date of the filing of the member's written application to retire^[5] but prior to the retirement date designated by the member, and, if the member was eligible to retire on the date of the member's death, the member's designated beneficiary, or otherwise the personal representative of the member's estate, may elect to receive either the death [benefits] benefit under section 88-84 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 the 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. If death benefits are payable under section 88-85, the death benefits shall be in lieu of any benefits payable pursuant to this section.

(c) No election by a member 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]~~ adopted by the board ~~[pursuant to]~~ in accordance with chapter 91;
- (2) The member selects option 2 or option 3 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]~~ 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 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 to the system by the member or by the member's employer.

(f) In the event of the death of the retirant within one year after the date of retirement, the retirant's designated beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the retirant, or the [benefits as] benefit that would have been paid under section 88-84 had the retirant died immediately prior to retirement, less any payments [which the retirant] received[-] by the retirant; provided that the designated beneficiary may not elect to receive benefits under option 2 of this section if the retirant would not have been permitted by applicable law or by the rules of the board to name the designated beneficiary as beneficiary under option 2.

(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.

(h) Upon a member's retirement:

- (1) The member's election of a retirement allowance option shall be irrevocable; and
- (2) The member's designation of a beneficiary shall be irrevocable if the retirement allowance option elected by the member is:
 - (A) Option 2 or 3;
 - (B) An option that includes option 2 or 3 in combination with some other form of benefit payment; or
 - (C) Any other option for which the actuarial equivalent of the option to the maximum retirement allowance is determined at the time of the member's retirement based in whole or in part on the age of the member's designated beneficiary.

(i) A claim under this section by a retirant's or member's beneficiary for benefits upon the death of a retirant or member shall be filed no later than three years from the date of the retirant's or member's death.'

SECTION 14. Section 88-84, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt by the system of proper proof of a member's death occurring in service or while on authorized leave without pay, there shall be paid to the member's designated beneficiary an ordinary death benefit consisting of:

- (1) The member's accumulated contributions and, if no pension is payable under section 88-85, an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member's death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member's accumulated contributions shall not be less than one hundred per cent of the compensation;
- (2) If the member had ten or more years of credited service at the time of death in service, and the death occurred after June 30, 1988, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section ~~[88-76;]~~ 88-74, unreduced for age; or
- (3) If the member was eligible for service retirement at the time of death in service, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired 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~~[-]~~ and computed on the basis of section 88-74."

SECTION 15. Section 88-90.5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§88-90.5~~] Actuarial assumptions. (a) Notwithstanding any provision in ~~[chapter 88]~~ this chapter to the contrary, the board ~~[of trustees]~~ may approve the effect of the post retirement allowance under section 88-90, or of any other mandatory fixed scheduled increase in the benefits payable under part II, VII, or VIII, as an actuarial assumption for the purpose of determining the value of the options available under sections 88-83, 88-283, and 88-333.

(b) Subject to the recommendation of the actuary appointed under section 88-29, the board may adopt, by motion at any duly noticed meeting of the board, actuarial tables, factors, and assumptions for the purposes of parts II, VII, and VIII. The tables, factors, and assumptions that are used to compute benefits shall be in writing and certified by the administrator."

SECTION 16. Section 88-93, Hawaii Revised Statutes, is amended to read as follows:

“~~§88-93 Named beneficiaries by members and by former employees; [with vested benefit status;]~~ effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death. (a) All written designations of beneficiaries for members and for former employees ~~[with vested benefit status]~~ shall become null and void when:

- (1) The beneficiary predeceases the member or former employee;

- (2) The member or former employee is divorced from the beneficiary;
- (3) The member or former employee is unmarried, and subsequently marries; or
- (4) The member or former employee enters into or terminates a reciprocal beneficiary relationship.

Any of the above events shall operate as a complete revocation of the designation and, except as provided in sections 88-84(b) and [88-333(b);] 88-338(b) all benefits payable by reason of the death of the member or former employee shall be payable to the member's or former employee's estate unless, after the death, divorce or marriage, or entry into or termination of reciprocal beneficiary relationship, the member or former employee makes other provision in a written designation duly executed and filed with the board.

(b) Subsection (a) shall not apply to active members who are former retirants who have returned to service. The beneficiaries of retirants who return to service may not be changed except to the extent provided under the retirement allowance option selected by the former retirant when the former retirant first retired."

SECTION 17. Section 88-98, Hawaii Revised Statutes, is amended to read as follows:

"§88-98 Return to service of a retirant. (a) Any retirant who returns to employment requiring active membership in the system shall be reenrolled as an active member of the system in the same class from which the retirant originally retired and the retirant's retirement allowance shall be suspended.

- (1) If the retirant returns to service before July 1, 1998, and again retires, the retirant's retirement allowance shall consist of:
 - (A) For members with fewer than three years of credited service during the member's period of reemployment, the allowance to which the member was entitled under the retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula under section 88-74 in existence at the time of the member's latest retirement; or
 - (B) For members with three or more years of credited service during the member's period of reemployment, the allowance computed as if the member were retiring for the first time; provided that in no event shall the allowance be less than the amount determined in accordance with subparagraph (A); and
- (2) If the retirant returns to service after June 30, 1998, and again retires, the retirant's retirement allowance shall be computed in accordance with paragraph (1)(A), regardless of the number of years of service in the reemployment period.

(b) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, as amended by Act 131, Session Laws of Hawaii 2002, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by [chapter 88;] this chapter; and
- (3) Be subject to the age and service requirements under section 88-73 when the member again retires.

(c) If a retirant's designation of beneficiary was irrevocable upon the retirant's initial retirement, the retirant may not change the retirant's designated beneficiary when the retirant returns to service or when the former retirant again retires.

(d) A retirant who returns to service shall not be considered to be "in service", for the purposes of section 88-75, 88-79, 88-84, or 88-85, or any other provision of this chapter providing for benefits arising out of the disability or death of a member. A retirant who returns to service and dies during the period of reemployment shall be considered to have retired again effective as of the first day of the month following the month in which the death occurs, except for death during the month of December when the effective date of retirement may be the last day of the month.

~~[(d)]~~ (e) The board shall adopt any rules as may be required to administer [the purposes of] this section."

SECTION 18. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

"§88-251 Applicability. The following provisions of part II 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, 88-48, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, [88-79,] 88-80, 88-83, 88-84, 88-85, 88-87, 88-88, [88-89,] 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E."

SECTION 19. Section 88-273, Hawaii Revised Statutes, is amended to read as follows:

"§88-273 Break in service; reemployment. (a) Any class C member who terminates service prior to accumulating ten years of credited service, excluding unused sick leave, shall cease to be a member and shall forfeit all credited service; 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, 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, 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 88-322 and 88-324, 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, 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.

(c) Any retirant who retired under the provisions of ~~[part VII of this chapter]~~ this part and returns to service requiring active membership in the system as a class C member shall be reenrolled as an active member, and the retirant's retirement allowance shall be suspended. When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class C member under section 88-282 in existence at the time of the member's final retirement. ~~[If the member's designation of beneficiary was irrevocable upon the member's initial retirement, the member may not change the member's designated beneficiary when the member returns to service or when the member again retires.]~~

(d) Any retirant who retired under the provisions of [part VII] this part and returns to service requiring active membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant's retirement allowance shall be suspended. When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the retirement allowance option 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 under section 88-74 in existence at the time of the member's final retirement. ~~[If the member's designation of beneficiary was irrevocable upon the member's initial retirement, the member may not change the member designated beneficiary when the member returns to service or when the member again retires.]~~

(e) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, as amended by Act 131, Session Laws of Hawaii 2002, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any other related benefit provided by ~~[chapter 88:]~~ this chapter; and
- (3) Be subject to the age and service requirements under section 88-281 when the member again retires.

(f) If a retirant's designation of beneficiary was irrevocable upon the retirant's initial retirement, the retirant may not change the retirant's designated beneficiary when the retirant returns to service or when the former retirant again retires.

(g) A retirant who returns to service shall not be considered to be "in service", for the purposes of section 88-284, 88-285, or 88-286, or any other provision of this chapter providing for benefits arising out of the disability or death of a member. A retirant who returns to service and dies during the period of reemployment shall be considered to have retired again effective as of the first day of the month following the month in which the death occurs, except for death during the month of December when the effective date of retirement may be the last day of the month.

(h) The board shall adopt any rules as may be required to administer this section."

SECTION 20. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

“§88-283 Election of retirement allowance option. (a) Upon retirement, any member may elect to receive the maximum retirement allowance to which the member is entitled, computed in accordance with section 88-282, 88-284, or 88-285, and, if the member elects to receive the maximum retirement allowance, the member’s beneficiary shall not be entitled to any benefit upon the member’s death, except as provided in subsection (g). In lieu of the maximum retirement allowance, 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[;]. If the beneficiary dies prior to the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, if the retirant’s designated 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 designated 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;
- (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[;]. If the beneficiary dies prior to the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, if the retirant’s designated 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 designated 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~~] upon the death of the retirant within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the [~~member’s~~] retirant’s designated beneficiary, or otherwise to the retirant’s estate for the balance of the ten-year period. If the retirant returns to service requiring active membership in the system and the retirant is reenrolled as an active member, running of the ten-year period will be suspended until the member again retires.

Only one beneficiary shall be designated under options A [~~and~~], B[~~;~~], and C. The beneficiary designated under option A or B shall be a natural person, and benefits under option A or B shall only be paid to a natural person. To receive benefits, the beneficiary shall have been designated by the member in the form and manner prescribed by the board.

(b) Upon a member’s retirement:

- (1) The member’s election of a retirement allowance option shall be irrevocable; and

(2) The member's designation of a beneficiary shall be irrevocable if the retirement allowance option elected by the member is option A or B.

(c) No election by a member 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]~~ adopted by the board ~~[pursuant to]~~ in accordance with chapter 91; ~~[or]~~

(2) The member selects 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]~~ 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.

(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 to the system by the member or by the member's employer.

(f) If a 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, and, if the member was eligible to retire on the date of the member's death, the member's designated beneficiary 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 the 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 made 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(e) while benefits are paid pursuant to an election made under this section.] If death benefits are payable under section 88-286(c), the death benefits shall be in lieu of any benefits payable pursuant to this section.

(g) If the retirant dies within one year after the date of retirement, the retirant's designated beneficiary may elect to receive either:

- (1) The death benefit under the retirement allowance 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.], less 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; provided that if the retirant would not have been permitted by applicable law or the rules of the board to name the designated beneficiary as beneficiary under option B, the designated beneficiary may elect to receive the death benefit under option A, less 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 A.

(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.

(i) A claim under this section by a retirant's or member's beneficiary for benefits upon the death of a retirant or member shall be filed no later than three years from the date of the retirant's or member's death."

SECTION 21. Section 88-301, Hawaii Revised Statutes, is amended to read as follows:

"§88-301 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, 88-48, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 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."

SECTION 22. Section 88-322, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsection (b) to read as follows:

“(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 (d), the full actuarial cost of the conversion as of [June 30, 2006,] the last day of the sixth calendar month preceding the date of the notice described in subsection (e). The option to convert class C credited service to class H credited service shall also apply:

- (1) To forfeited credit for previous service that a member is eligible to have restored as of June 30, 2006; and
- (2) To membership service credit that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006;

provided that the member shall claim the forfeited service credit and the membership service credit by the date established by the board at a meeting held pursuant to chapter 92.”

- (2) By amending subsection (f) to read as follows:

“(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,] the last day of the sixth calendar month preceding the date of the notice described in subsection (e), and on the member’s monthly base salary or monthly basic rate of pay as of [June 30, 2006,] the last day of the sixth calendar month preceding the date of the notice described in subsection (e), 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 23. Section 88-333, Hawaii Revised Statutes, is amended to read as follows:

“**§88-333 Election of retirement allowance option.** (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 88-332, 88-335, or 88-337, and if the member elects to receive the maximum retirement allowance, in the event of the [member’s] retirant’s death, there shall be paid to the [member’s] retirant’s designated beneficiary, or otherwise to the [member’s] the retirant’s estate, the difference between [the]:
 - (A) The balance of the member’s accumulated contributions at the time of the member’s retirement; and [the]
 - (B) The retirement allowance and the post retirement allowances paid or payable to the [member] retirant 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 88-332, 88-335, or 88-337, the member may elect to receive the member’s retirement allowance under any one of the options 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, and[,] if the member was eligible to retire on the date of the member's death, the member's designated beneficiary, or otherwise the personal representative of the member's estate, may elect to receive either the death benefit under section 88-338 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 the 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 88-339 who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-339, the designated beneficiary may receive benefits pursuant to an election made under this section pending disposition of the claim for benefits under section 88-339. If death benefits are payable under section 88-339, the death benefits shall be in lieu of any benefits payable pursuant to this section.

(c) If a retirant dies within one year after the date of retirement, the retirant's designated beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the [member,] retirant or the benefits that would have been paid under section 88-338 had the retirant died immediately prior to retirement, less any payments received by the retirant[.]; provided that the designated beneficiary may not elect to receive benefits under option 2 of section 88-83 if the retirant would not have been permitted by applicable law or by the rules of the board to name the designated beneficiary as beneficiary under option 2.

(d) Upon a member's retirement:

- (1) The member's election of a retirement allowance option shall be irrevocable; and
- (2) The member's designation of a beneficiary shall be irrevocable if the retirement allowance option elected by the member is:
 - (A) Option 2 or 3 described in section 88-83;
 - (B) An option that includes option 2 or 3 in combination with some other form of benefit payment; or
 - (C) Any other option for which the actuarial equivalent of the option to the maximum retirement allowance is determined at the time of the member's retirement based in whole or in part on the age of the member's designated beneficiary.

(e) No election by a member 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 (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.

(g) The system shall not be liable for any false statements made to the system by the member or by the member's employer.

(h) The increase in the retirant's benefit under options 2, 3, and, if applicable, 4, described in section 88-83, 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.

(i) A claim under this section by a retirant's or member's beneficiary for benefits upon the death of a retirant or member shall be filed no later than three years from the date of the retirant's or member's death."

SECTION 24. Section 88-334, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon approval by the board, the member shall receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. [Retirement] A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following the approval; provided that retirement shall become effective on the first day of [a] the month[;] following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed."

SECTION 25. Section 88-336, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 at the time of application and that the member’s incapacity is likely to be permanent.”

SECTION 26. Section 88-338, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receipt by the system 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 88-339, 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 [88-335;] 88-332, unreduced for age; 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[.] and computed on the basis of section 88-332.”

SECTION 27. Section 88-342, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 88-324 or any other section in [this] part[.] II, VII, or VIII.”

SECTION 28. Section 88-344, Hawaii Revised Statutes, is amended to read as follows:

“**§88-344 Return to service of a retirant.** (a) Any retirant who retired under the provisions of [~~part VIII of this chapter~~] this part and returns to service requiring active membership in the system as a class H member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the retirement allowance option 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 retirement allowance option 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 under section 88-332 in existence at the time of the member’s final retirement.

(b) Any retirant who retired under [~~part VIII~~] the provisions of this part and returns to service requiring active membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the retirement allowance option 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 retirement allowance option 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 under section 88-74 in existence at the time of the member’s final retirement.

(c) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, as amended by Act 131, Session Laws of Hawaii 2002, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant’s retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by [~~chapter 88;~~] this chapter; and
- (3) Be subject to the age and service requirements under section 88-331 when the member again retires.

(d) If a retirant’s designation of beneficiary was irrevocable upon the retirant’s initial retirement, the retirant may not change the retirant’s designated

beneficiary when the retirant returns to service or when the former retirant again retires.

(e) A retirant who returns to service shall not be considered to be “in service”, for the purposes of section 88-334, 88-336, 88-338, or 88-339, or any other provision of this chapter providing for benefits arising out of the disability or death of a member. A retirant who returns to service and dies during the period of reemployment shall be considered to have retired again effective as of the first day of the month following the month in which the death occurs, except for death during the month of December when the effective date of retirement may be the last day of the month.

~~[(e)]~~ (f) The board shall adopt any rules as may be required to administer ~~[the purposes of]~~ this section.”

SECTION 29. Section 88-72, Hawaii Revised Statutes, is repealed.

SECTION 30. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 31. This Act shall take effect on July 1, 2007; provided that sections 11, 12, and 24 shall be effective retroactive to July 1, 2006.

(Approved June 27, 2007.)

Notes

1. So in original.
2. Semicolon should be underscored.
3. Edited pursuant to HRS §23G-16.5.