

ACT 41

S.B. NO. 3004

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 to be appropriately designated and to read as follows:

**“§88- Information from the State and counties.** To fulfill its responsibilities under this chapter, 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. The system may specify the format in which the information shall be furnished. Without limitation of the foregoing, the system may require that information be furnished in electronic format and that information with respect to payroll and personnel transactions:

- (1) Allocate payments, including bonuses, salary adjustments, payments for compensatory time, and workers' compensation, to monthly or other periods as requested by the system; and
- (2) Specify the purpose or nature of the payment.”

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

**“§88-6 Payment of refunds and retirement benefits.** (a) Notwithstanding any other provision of this chapter:

- (1) All retirees and beneficiaries of the state retirement system or county pension funds shall be paid semimonthly; and effective January 1, 2003, all retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and

- (2) Any ~~[retiree]~~ retirant or beneficiary whose benefit commences after June 30, 2001, shall designate a financial institution account into which the system shall be authorized to deposit their retirement benefit. This method of payment may be waived by the system if another method is determined to be more appropriate.

(b) Any member, former employee, retirant, or beneficiary to whom accumulated contributions or a hypothetical account balance, as defined in section 88-311, is payable after June 30, 2008, shall, if the payment will be greater than \$250 and the member, former employee, retirant, or beneficiary does not elect to rollover the payment into an eligible retirement plan, designate a financial institution account into which the system shall be authorized to deposit the payment. This method of payment may be waived by the system if another method is determined to be more appropriate.”

SECTION 3. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of “beneficiary” and “service” to read as follows:

““Beneficiary”: the recipient of any benefit from the system or, as ~~[the]~~ context may indicate, the person or persons designated by a member, ~~former member, or retirant, or as provided by law~~ to receive the benefits payable in the event of the member’s, ~~former member’s, or retirant’s~~ death.

“Service”: service as an employee paid by the State or county, and also: service during the period of a leave of absence or exchange if the individual is paid by the State or county during the period of the leave of absence or exchange ~~[or if the individual is not paid by the State or county during the period of the leave of absence but]; and service during the period of an unpaid leave of absence or exchange if the individual is engaged in the performance of a governmental function or [on] if the unpaid leave of absence is an approved leave of absence for professional improvement [with or]; provided that, for the period of the leave of absence or exchange without pay [and], the individual makes the same contribution to the system as the individual would have made if the individual had not been on [such] the leave of absence. Cafeteria managers and cafeteria workers shall be considered as paid by the State, regardless of the source of funds from which they are paid.”~~

SECTION 4. Section 88-45.5, Hawaii Revised Statutes, is amended to read as follows:

~~“[§88-45.5] Acceptance of rollovers and transfers from other plans. [Subject to rules adopted by the board of trustees, the system shall] The system may accept an eligible rollover distribution or a direct transfer of funds from [another qualified plan];~~

- (1) A tax-qualified retirement plan described in Section 401(a) of the Internal Revenue Code of 1986, as amended;
- (2) An annuity plan described in Section 403(a) of the Internal Revenue Code of 1986, as amended;
- (3) An annuity contract described in Section 403(b) of the Internal Revenue Code of 1986, as amended;
- (4) An individual retirement account described in Section 408(a) of the Internal Revenue Code of 1986, as amended;
- (5) An individual retirement annuity described in Section 408(b) of the Internal Revenue Code of 1986, as amended; or
- (6) An eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code of 1986, as amended, that is established and maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

in payment of all or a portion of any deposit a member is permitted to make with the system for credit for service, including the conversion of class C credited service to class H credited service. ~~[The] Any~~ rules adopted by the board ~~[of trustees]~~ pursuant to this section shall condition the acceptance of a rollover or transfer from another plan on the receipt from the other plan of information necessary to enable the system to determine the eligibility of any transferred funds for tax-free rollover treatment or ~~[either] tax-free transfer~~ treatment under federal income tax law.”

SECTION 5. Section 88-83.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Notwithstanding any other law to the contrary, the benefits payable to all employees who first become members on or after January 1, 1990, shall be subject to the limitations set forth in ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended~~[-]~~, applicable to governmental plans. The dollar limit in Section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, shall be adjusted automatically under Section 415(d) of the Internal Revenue Code of 1986, as amended, effective January 1 of each year, as published in the Internal Revenue Bulletin. The automatic adjustment shall apply to members, former employees, retirants, and beneficiaries.”

2. By amending subsection (c) to read:

“(c) The system shall establish a benefit restoration plan for the payment of retirement benefits as permitted under ~~[section]~~ Section 415(m) of the Internal Revenue Code of 1986, as amended, as follows:

- (1) All ~~[retired members]~~ retirants and beneficiaries of the system whose pension has been limited by ~~[section]~~ Section 415 of the Internal Revenue Code shall receive a monthly benefit from the plan established pursuant to this subsection that is equal to the difference between the retirement benefit otherwise payable and the retirement benefit payable because of ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended;
- (2) Participation in the plan shall be determined for each plan year and shall cease whenever the retirement benefit is not limited by ~~[section]~~ Section 415 of the Internal Revenue Code of 1986, as amended;
- (3) The plan shall be funded on a plan-year-to-plan-year basis and shall not be used to pay any benefits payable in future years. Upon the recommendation of the system’s actuary, the required contribution amount shall be determined by the board ~~[of trustees]~~ and deposited in a separate fund from an allocation of employer contribution amounts pursuant to this chapter;
- (4) The board ~~[of trustee]~~ shall administer the plan and may make modifications to the benefits payable as may be necessary to maintain the qualified status of the plan under ~~[section]~~ Section 415(m) of the Internal Revenue Code of 1986, as amended.”

SECTION 6. Section 88-141, Hawaii Revised Statutes, is amended to read as follows:

“§88-141 Computation of compensation earned or earnable. In any case where it shall become necessary, for the purposes of sections 88-131 to 88-142, to determine the compensation or average compensation of a member of the system during any period of the member’s service in the armed forces, or during any period ~~[(not exceeding ninety days)]~~ immediately thereafter while the member was not an employee as defined in section 88-21, the member’s rate of compensation during

~~[any such]~~ the period shall, for the purposes of sections 88-131 to 88-142, be deemed to have been that which the member ~~[was receiving as such an employee immediately prior to the inception of]~~ would have received but for the member's service in the armed forces ~~[without any of the additional increments for length of service provided for by any classification or other law]."~~

SECTION 7. Section 88-286, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The surviving spouse or reciprocal beneficiary and children under the age of eighteen of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either ~~[an]~~:

- (1) An ordinary death ~~[while in service or on authorized leave without pay]~~ after accumulating ten years of credited service and the member dies:
  - (A) While in service; or ~~[an]~~
  - (B) While on authorized leave without pay;

or
- (2) An accidental death."

SECTION 8. Section 88-321, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any member, except for a member described in subsection (c), who is in service on June 30, 2006, ~~[or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b);]~~ may elect to become a class H member effective July 1, 2006, ~~[or upon return to service;]~~ by filing an election form with the system in accordance with this section. The election shall be made prior to April 1, 2006, by members in service on February 28, 2006; provided that any member in service on February 28, 2006, who is absent from the ~~[State]~~ state on that date while in the military service of the United States, shall have thirty days after the member returns to the member's regular employment with the State or a county to make the election. The election shall be made by members entering or returning to service from March 1, 2006, through June 30, 2006, within sixty days of entering or returning to service. ~~[The election shall be made by members entering or returning to service after June 30, 2006, within thirty days of entering or returning to service.]~~ The election shall be irrevocable.

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

- (1) A class C member who returns to service after June 30, 2006, and who does not return to service as a class A or a class B member shall become a class H member upon return to service; provided that, if the member is a former class A or class B member who received a refund of contributions picked up and paid by the member's employer pursuant to section 88-46(b), the member may not become a class H member and shall return to service as a class C member, unless the refund was made pursuant to section 88-96 or 88-271(b); ~~[and]~~
- (2) A class A or a class B member, who returns to service after June 30, 2006, but does not have vested benefit status as provided in section 88-96(b) and who does not return to service as a class A or class B member, shall become a class H member upon return to service and the member's credited service as a class A or B member shall be converted to class C credited service. The system shall return to the member the member's accumulated contributions if the member's accumulated contributions are \$1,000 or less at the time of distribution. If the member's accumulated contributions for the class A or B credited service that was converted to class C credited service are greater than \$1,000 and the member does not make written application, contemporaneously with

the member's return to service, for return of such contributions, the member, except as provided by section 88-341, may not withdraw the member's accumulated contributions for the class A or B credited service that was converted to class C credited service until the member retires or attains age sixty-two[-];

- (3) A class A member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member; and
- (4) A class B member who returns to service after June 30, 2008, with vested benefit status and who does not return to service as a class B member shall return to service as a class A member."

SECTION 9. Section 88-322, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) By ~~after-tax~~ 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 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."

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 11. This Act shall take effect on July 1, 2008; provided that section 1 shall take effect on July 1, 2010.

(Approved April 29, 2008.)

**Note**

1. Edited pursuant to HRS §23G-16.5.