

**ACT 153**

**H.B. NO. 2487**

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

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

**PART I**

**SECTION 1.** Section 88-74, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

“(f) If a member, who becomes a member after June 30, 2012, has attained age sixty, the member's maximum retirement allowance shall be one and three-fourths 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 class

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 one and three-fourths 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:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- ~~[(5) 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;~~
- ~~(6)~~ (5) 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 public safety investigations staff investigator;
- ~~[(7)~~ (6) If the member:
  - (A) Has at least ten years of credited service as a firefighter;
  - (B) Is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician; and
  - (C) Continues employment in a class A or class B position other than a firefighter; and
- ~~[(8)~~ (7) If the member:
  - (A) Has at least ten years of credited service as a police officer;
  - (B) Is deemed permanently medically disqualified due to a service related disability to be a police officer by the employer's physician; and
  - (C) Continues employment in a class A or class 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-fourth 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 sixty, the member's retirement allowance shall be computed as though the member had attained age sixty, reduced for age as provided in subsection (i)."

2. By amending subsection (i) to read:

"(i) Except as provided in subsections (f), (g), and (h), if a member, who becomes a member after June 30, 2012, has not attained age sixty 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 sixty, as follows:

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

provided that no reduction shall be made if the member has attained the age of fifty-five and 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, water safety officer, or emergency medical technician, of which the last five or more years prior to retirement is credited service in these capacities."

SECTION 2. Section 88-81, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

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

2. By amending subsection (f) to read:

"(f) If a member, who becomes a member after June 30, 2012, has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

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

SECTION 3. Section 88-335, Hawaii Revised Statutes, is amended to read as follows:

**"§88-335 Ordinary disability retirement allowance.** (a) Upon retirement for ordinary disability, a class H member who became a member before July 1, 2012, shall receive a maximum retirement allowance equal to the higher of either:

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

(2) Twenty-five per cent of the member's average final compensation.

(b) Upon retirement for ordinary disability, a class H member who becomes a member after June 30, 2012, shall receive a maximum retirement allowance equal to the higher of either:

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

(2) Twenty-five per cent of the member's average final compensation."

SECTION 4. 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]~~ The member's accumulated contributions shall be paid to the member's designated beneficiary[;] if:

(A) The member became a member before July 1, 2012, and had less than five years of credited service at the time of death; or

(B) The member became a member after June 30, 2012, and had less than ten years of credited service at the time of death;

(2) ~~[If the member had five or more years of credited service at the time of death, an]~~ An amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary[;] if:

(A) The member became a member before July 1, 2012, and had five or more years of credited service at the time of death; or

(B) The member became a member after June 30, 2012, and had ten or more years of credited service at the time of death;

(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 88-332, 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."

PART II

SECTION 5. 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- Payment by employers of costs associated with significant non-base pay increases.** (a) The contribution payable in each year to the pension accumulation fund by the State and each county shall include the actuarial present value, as determined by the system, of the excess maximum retirement allowance, payable over the employee’s or former employee’s actuarial life expectancy, resulting from significant non-base pay increases for each employee or former employee who became a member of the system prior to July 1, 2012. The additional contributions required by this section shall be payable as provided in subsection (e).

(b) The last employer of the employee or former employee shall pay the additional contributions required by this section.

(c) An excess maximum retirement allowance resulting from significant non-base pay increases occurs when:

- (1) The employee’s or former employee’s average non-base pay, divided by the employee’s or former employee’s average base pay, is greater than ten per cent; and
- (2) The employee’s or former employee’s average final compensation non-base pay ratio divided by the comparison period non-base pay ratio is greater than or equal to one-hundred twenty per cent.

(d) The amount of the “excess maximum retirement allowance resulting from significant non-base pay increases” is the amount by which an employee’s or former employee’s maximum retirement allowance exceeds what the employee’s or former employee’s maximum retirement allowance would be if the employee’s or former employee’s average final compensation was equal to the employee’s or former employee’s average base pay multiplied by the sum of one and the employee’s or former employee’s comparison period non-base pay ratio.

(e) The additional contributions required by this section shall be payable in a lump sum in the fiscal year following the fiscal year in which the employee or former employee retired; provided that, if the additional contributions required for the employees or former employees who retire in a fiscal year are greater than ten per cent of the employer’s contributions (excluding the additional contributions) to the pension accumulation fund for that fiscal year, the employer may pay the additional contributions over a period of three fiscal years in installments equal to no less than one-third of the original amount of the required additional contributions, plus interest on the unpaid balance, commencing on the first day of the fiscal year following the retirement of the employees or former employees, at an annual rate equal to the investment yield rate assumption for actuarial valuations of the system.”

SECTION 6. Section 88-21, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

“Average base pay” means the total base pay included in a member’s average final compensation, divided by the number of years used to determine average final compensation.

“Average final compensation non-base pay ratio” means the average non-base pay divided by the average base pay.

“Average non-base pay” means the total non-base pay included in a member’s average final compensation divided by the number of years used to determine the member’s average final compensation.

“Base pay” means the normal periodic payments of money for service, the right to which accrues on a regular basis in proportion to the service performed; recurring differentials; and elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.

“Comparison period” means those years in the ten years of credited service prior to termination of service that are not included in the period for determining a member’s average final compensation or, if the member has less than ten years of credited service prior to termination of service, the years of the member’s credited service that are not included in the determination of the member’s average final compensation.

“Comparison period average base pay” means the total base pay for the comparison period divided by the number of years in the comparison period.

“Comparison period average non-base pay” means the total non-base pay for the comparison period divided by the number of years in the comparison period.

“Comparison period non-base pay ratio” means the comparison period average non-base pay divided by the comparison period average base pay.”

### PART III

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect on July 1, 2012.

(Approved June 25, 2012.)

#### Note

1. Edited pursuant to HRS §23G-16.5.