

GOV. MSG. NO. 738

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

June 15, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 15, 2009, the following bill was signed into law:

SB876 SD2 HD2

A BILL FOR AN ACT  
RELATING TO THE EMPLOYEES' RETIREMENT  
SYSTEM.  
ACT 121 (09)

Sincerely,



LINDA LINGLE

---

---

## A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 88-75, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§88-75 Ordinary disability retirement.** (a) Upon  
4 application of a member in service or on leave without pay, or  
5 the person appointed by the family court as guardian of an  
6 incapacitated member, any member who has ten or more years of  
7 credited service shall be retired by the board of trustees on an  
8 ordinary disability retirement allowance if the medical board,  
9 after a medical examination of the member, certifies that:

10 (1) The member is mentally or physically incapacitated for  
11 the further performance of duty at the time of  
12 application;

13 (2) The incapacity is likely to be permanent; and

14 (3) The member should be retired.

15 (b) Upon approval by the board, the member shall be  
16 eligible to receive an ordinary disability retirement benefit no  
17 earlier than thirty days from the date the application was filed



1 or the date the member terminated service, whichever is later.  
2 Retirement shall be effective on the first day of a month,  
3 except for the month of December when retirement on the first or  
4 last day of the month shall be allowed. A member whose  
5 application for an ordinary disability retirement allowance is  
6 approved by the board while the member is still in service may  
7 terminate service and retire at any time following [~~such~~] the  
8 approval; provided that retirement shall become effective on the  
9 first day of the month following the month the applicant  
10 terminates employment or goes off the payroll, except for the  
11 month of December when retirement on the first or last day of  
12 the month shall be allowed."

13 SECTION 2. Section 88-82, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "~~§88-82 [Appeal of decision of medical board,]~~ Petition  
16 for contested case hearing regarding disability retirement or  
17 accidental death benefits; attorney's fees and costs

18 [~~reimbursable~~]. (a) A member or applicant who is not satisfied  
19 with the preliminary decision of the [~~medical~~] board to grant or  
20 deny an application for disability retirement benefits or  
21 accidental death benefits based on the certifications and  
22 findings of the medical board may [~~appeal the decision to~~] file



1 a petition for contested case hearing with the board [of  
2 ~~trustees]~~ within sixty days after receiving written notification  
3 of the preliminary decision of the [~~medical~~] board. [~~The right~~  
4 ~~of appeal to the board of trustees shall apply to all decisions~~  
5 ~~and recommendations which the medical board is authorized to~~  
6 ~~make.]~~

7 (b) If [~~, in the event of an appeal of a decision of the~~  
8 ~~medical board,]~~ the member or applicant is the prevailing party  
9 in the contested case, and disability retirement or accidental  
10 death benefits are awarded to [a] the member or applicant by the  
11 board [~~of trustees]~~ or court of the appropriate jurisdiction  
12 under section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c),  
13 [~~88-335, 88-337,]~~ 88-334, 88-336, or 88-339, the member or  
14 applicant shall be [~~reimbursed]~~ paid reasonable attorney's fees  
15 together with any costs payable by the system. [~~If an appeal is~~  
16 ~~had, the]~~ The attorney's fees [~~or~~] and costs shall be subject to  
17 the approval of the board [~~of trustees]~~ or approval by [~~the~~  
18 ~~appellate]~~ a court [~~deciding the appeal.]~~ of appropriate  
19 jurisdiction after evidence has been provided by the member or  
20 applicant regarding the reasonableness of the claimed attorney's  
21 fees and costs."



1 SECTION 3. Section 88-98, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§88-98 Return to service of a retirant. (a) Any  
4 retirant who returns to employment requiring active membership  
5 in the system shall be reenrolled as an active member of the  
6 system in the same class from which the retirant originally  
7 retired and the retirant's retirement allowance shall be  
8 suspended.

9 (1) If the retirant returns to service before July 1,  
10 1998, and again retires, the retirant's retirement  
11 allowance shall consist of:

12 (A) For members with fewer than three years of  
13 credited service during the member's period of  
14 reemployment, the allowance to which the member  
15 was entitled under the retirement allowance  
16 option selected when the member previously  
17 retired and which was suspended; plus, for the  
18 period of service during the member's  
19 reemployment, the allowance to which the member  
20 is entitled for that service based on the  
21 retirement allowance option initially selected  
22 and computed for the member's age, average final

1 compensation, and other factors in accordance  
2 with the benefit formula under section 88-74 in  
3 existence at the time of the member's latest  
4 retirement; or

5 (B) For members with three or more years of credited  
6 service during the member's period of  
7 reemployment, the allowance computed as if the  
8 member were retiring for the first time; provided  
9 that in no event shall the allowance be less than  
10 the amount determined in accordance with  
11 subparagraph (A); and

12 (2) If the retirant returns to service after June 30,  
13 1998, and again retires, the retirant's retirement  
14 allowance shall be computed in accordance with  
15 paragraph (1)(A), regardless of the number of years of  
16 service in the reemployment period.

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

21 (1) Have the retirant's retirement allowance suspended;

1 (2) Forfeit the special retirement incentive benefit and  
2 any related benefit provided by this chapter; and

3 (3) Be subject to the age and service requirements under  
4 section 88-73 when the member again retires.

5 (c) If a retirant's maximum retirement allowance upon the  
6 retirant's initial retirement was subject to the limits on  
7 maximum retirement allowance under section 88-74:

8 (1) The limit shall apply to the computation of the  
9 retirant's maximum retirement allowance for the  
10 retirant's period of service during the retirant's  
11 reemployment, so that the sum of:

12 (A) The per cent by which the retirant's average  
13 final compensation for the retirant's years of  
14 service prior to the retirant's initial  
15 retirement is multiplied to determine the  
16 retirant's maximum retirement allowance upon the  
17 retirant's initial retirement; and

18 (B) The per cent by which the retirant's average  
19 final compensation for any period of reemployment  
20 after the retirant's initial retirement is  
21 multiplied to determine the retirant's maximum



1           retirement allowance for the period of  
2           reemployment,  
3           shall not exceed the limit, under section 88-74, on  
4           the per cent by which the retirant's average final  
5           compensation may be multiplied for the purpose of  
6           determining the retirant's maximum retirement  
7           allowance. For example, if a retirant's maximum  
8           retirement allowance upon the retirant's initial  
9           retirement was limited by section 88-74 to eighty per  
10           cent of the retirant's average final compensation, and  
11           the retirant retired with a maximum allowance equal to  
12           seventy per cent of the retirant's average final  
13           compensation, the retirant's maximum allowance for the  
14           retirant's period of reemployment may not exceed ten  
15           per cent of the retirant's average final compensation  
16           for the retirant's period of reemployment; and  
17       (2) If the retirant's maximum retirement allowance upon  
18           the retirant's initial retirement was equal to or  
19           greater than the applicable limit under section 88-74,  
20           the retirant shall not earn service credit or earn any  
21           additional retirement allowance during the retirant's





1           period of reemployment, and the reemployed retirant  
2           shall not make any contributions under section 88-45.

3           ~~[(e)]~~ (d) If a retirant's designation of beneficiary was  
4 irrevocable upon the retirant's initial retirement, the retirant  
5 may not change the retirant's designated beneficiary when the  
6 retirant returns to service or when the former retirant again  
7 retires.

8           ~~[(d)]~~ (e) A retirant who returns to service shall not be  
9 considered to be "in service," ~~[-]~~ for the purposes of section  
10 88-75, 88-79, 88-84, or 88-85, or any other provision of this  
11 chapter providing for benefits arising out of the disability or  
12 death of a member. A retirant who returns to service and dies  
13 during the period of reemployment shall be considered to have  
14 retired again effective as of the first day of the month  
15 following the month in which the death occurs, except for death  
16 during the month of December when the effective date of  
17 retirement may be the last day of the month.

18           ~~[(e)]~~ (f) The board shall adopt any rules as may be  
19 required to administer this section."

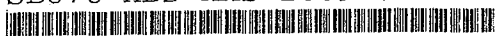
20           SECTION 4. Section 88-273, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Any class C member who terminates service prior to  
2 accumulating ten years of credited service, excluding unused  
3 sick leave, shall cease to be a member and shall forfeit all  
4 credited service; provided that:

5           (1) If the former class C member becomes a member again  
6 within one [~~calendar~~] full year [~~from the date of~~  
7 ~~termination,~~] following the calendar year in which the  
8 member's employment terminated, all service credit for  
9 previous service shall be restored. If the former  
10 class C member becomes a member again more than one  
11 [~~calendar~~] full year [~~after the date of termination,~~]  
12 following the calendar year in which the member's  
13 employment terminated, one month of service credit for  
14 previous service shall be restored for each month of  
15 service rendered following the return to  
16 membership[~~-~~]; and

17           (2) If the former class C member becomes a class A, class  
18 B, or class H member within one [~~calendar~~] full year  
19 [~~from the date of termination,~~] following the calendar  
20 year in which the member's employment terminated, all  
21 class C service credit for previous service shall be  
22 restored. If the former class C member becomes a



1 class A, class B, or class H member more than one  
2 [~~calendar~~] full year [~~after the date of termination,~~]  
3 following the calendar year in which the member's  
4 employment terminated, one month of class C service  
5 credit for previous service shall be restored for each  
6 month of service rendered following the return to  
7 membership.

8 Subject to the provisions of sections 88-322 and 88-324, the  
9 service credit restored pursuant to this subsection shall be  
10 class C service credit."

11 SECTION 5. Section 88-284, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) Upon approval by the board, the member shall be  
14 eligible to receive an ordinary disability retirement benefit no  
15 earlier than thirty days from the date the application was filed  
16 or the date the member terminated service, whichever is later.  
17 Retirement shall be effective on the first day of a month,  
18 except for the month of December when retirement on the first or  
19 last day of the month shall be allowed. A member whose  
20 application for an ordinary disability retirement allowance is  
21 approved by the board while the member is still in service may  
22 terminate service and retire at any time following [~~such~~] the



1 approval; provided that retirement shall become effective on the  
2 first day of the month following the month the applicant  
3 terminates employment or goes off the payroll, except for the  
4 month of December when retirement on the first or last day of  
5 the month shall be allowed."

6 SECTION 6. Section 88-322, Hawaii Revised Statutes, is  
7 amended as follows:

8 1. By amending subsections (a) and (b) to read:

9 "(a) Class C members who are in service on June 30, 2006,  
10 and make the election to become class H members pursuant to  
11 section 88-321(a), shall have the option to convert some or all  
12 of their class C credited service, as of June 30, 2006, to class  
13 H credited service by paying the full actuarial cost of the  
14 conversion as of [~~June 30, 2006,~~] December 31, 2008, in the  
15 manner provided in subsection (d). The option to convert class  
16 C credited service to class H credited service shall also apply:

- 17 (1) To forfeited credit for previous service that a member  
18 is eligible to have restored as of June 30, 2006; and  
19 (2) To membership service credit that a member is eligible  
20 to claim under section 88-272(4) to (6) as of June 30,  
21 2006;



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

4 (b) All class A and class B credited service of class A or  
5 class B members who make the election to become class H members  
6 pursuant to section 88-321(a) shall be converted to class H  
7 credited service. The cost of the conversion of class A or  
8 class B credited service shall be the member's accumulated  
9 contributions as of the date of conversion. Verified membership  
10 service credit paid for pursuant to section 88-59 under an  
11 irrevocable payroll authorization entered into prior to July 1,  
12 2006, shall be credited as class H credited service. Class A  
13 and class B members who are in service on June 30, 2006, and  
14 make the election to become class H members pursuant to section  
15 88-321(a) shall have the option to convert some or all of their  
16 class C credited service, as of June 30, 2006, to class H  
17 credited service by paying, in the manner provided in subsection  
18 (d), the full actuarial cost of the conversion as of [~~the last~~  
19 ~~day of the sixth calendar month preceding the date of the notice~~  
20 ~~described in subsection (e).~~] December 31, 2008. The option to  
21 convert class C credited service to class H credited service  
22 shall also apply:



1 (1) To forfeited credit for previous service that a member  
2 is eligible to have restored as of June 30, 2006; and

3 (2) To membership service credit that a member is eligible  
4 to claim under section 88-272(4) to (6) as of June 30,  
5 2006;

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

9 2. By amending subsection (d) to read:

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

14 (1) By after-tax deductions from the member's  
15 compensation. An irrevocable payroll authorization  
16 filed by the member for a period not to exceed one  
17 hundred twenty months shall remain in effect until the  
18 completion of the payroll payments or termination of  
19 employment, whichever is earlier. The amount of the  
20 deductions shall be in an amount sufficient to  
21 amortize the actuarial cost of the conversion,  
22 together with interest at the rate of eight per cent a



1 year, in level bi-monthly payments over the period  
2 specified in the irrevocable authorization. Service  
3 credited will be proportional on the basis of whole  
4 months. For example, a member electing to convert one  
5 hundred twenty months of service over sixty months and  
6 terminating after thirty and one-half months of  
7 deductions pursuant to this subsection, will have  
8 converted sixty months of class C service to class H  
9 service; or

10 (2) By lump sum payment.

11 ~~[If the deductions from compensation do not commence, or if~~  
12 ~~the lump sum payment is not paid to the system, within one~~  
13 ~~hundred eighty days after the deadline for making the election~~  
14 ~~to convert class C credited service to class H credited service,~~  
15 ~~the election shall be deemed revoked.]~~ The deductions from  
16 compensation or lump sum payment shall be paid to the system and  
17 shall be credited to the member's individual account and become  
18 part of the member's accumulated contributions. The deductions  
19 from compensation shall commence, and any lump sum payment shall  
20 be paid to the system, within one hundred eighty days after the  
21 deadline for making the election to convert class C credited  
22 service to class H credited service. If a member is absent from



1 the state while in the military service of the United States  
2 during the one hundred eighty-day period after the deadline for  
3 making the election, the deductions from the member's  
4 compensation shall commence, and any lump sum payment shall be  
5 made by the member, within one hundred eighty days after the  
6 member's return to the member's regular employment with the  
7 State or county; provided that any extension, pursuant to  
8 subsection (c), of the deadline for making the election to  
9 convert class C credited service to class H credited service  
10 shall not extend the time for the deductions from the member's  
11 compensation to commence or for the member to make any lump sum  
12 payment unless the extension pursuant to subsection (c) is  
13 applicable to all members eligible to make the election. A  
14 member's election to convert class C credited service to class H  
15 credited service shall be deemed revoked as to any service for  
16 which payments by deductions from compensation do not commence,  
17 or for which the lump sum payment is not made, within the time  
18 required by this subsection."

19 3. By amending subsection (f) to read:

20 "(f) The actuarial cost of converting a member's class C  
21 credited service to class H credited service under subsections  
22 (a) and (b) shall be based on the member's actual age in full





1 years as of [~~the last day of the sixth calendar month preceding~~  
2 ~~the date of the notice described in subsection (e),~~] December  
3 31, 2008, and on the member's monthly base salary or monthly  
4 basic rate of pay as of [~~the last day of the sixth calendar~~  
5 ~~month preceding the date of the notice described in subsection~~  
6 ~~(e),~~] December 31, 2008, exclusive of overtime, differentials,  
7 supplementary payments, bonuses, and salary supplements, but  
8 including elective salary reduction contributions under  
9 [~~sections~~] Sections 125, 403(b), and 457(b) of the Internal  
10 Revenue Code of 1986, as amended."

11 SECTION 7. Section 88-334, Hawaii Revised Statutes, is  
12 amended by amending subsection (b) to read as follows:

13 "(b) Upon approval by the board, the member shall be  
14 eligible to receive an ordinary disability retirement benefit no  
15 earlier than thirty days from the date the application was filed  
16 or the date the member terminated service, whichever is later.

17 Retirement shall be effective on the first day of a month,

18 except for the month of December when retirement on the first or  
19 last day of the month shall be allowed. A member whose

20 application for an ordinary disability retirement allowance is

21 approved by the board while the member is still in service may

22 terminate service and retire at any time following the approval;



1 provided that retirement shall become effective on the first day  
2 of the month following the month the applicant terminates  
3 employment or goes off the payroll, except for the month of  
4 December when retirement on the first or last day of the month  
5 shall be allowed."

6 SECTION 8. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 9. This Act shall take effect on July 1, 2009;  
9 provided that section 6 shall take effect retroactive to  
10 February 1, 2009.

APPROVED this 15 day of JUN, 2009



GOVERNOR OF THE STATE OF HAWAII