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# 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 by [~~the appellate~~] a  
18 court [~~deciding the appeal.~~] of appropriate jurisdiction after  
19 evidence has been provided by the member or applicant regarding  
20 the reasonableness of the claimed attorney's fees and costs."

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

1           **"§88-98 Return to service of a retirant.** (a) Any  
2 retirant who returns to employment requiring active membership  
3 in the system shall be reenrolled as an active member of the  
4 system in the same class from which the retirant originally  
5 retired and the retirant's retirement allowance shall be  
6 suspended.

7           (1) If the retirant returns to service before July 1,  
8 1998, and again retires, the retirant's retirement  
9 allowance shall consist of:

10           (A) For members with fewer than three years of  
11 credited service during the member's period of  
12 reemployment, the allowance to which the member  
13 was entitled under the retirement allowance  
14 option selected when the member previously  
15 retired and which was suspended; plus, for the  
16 period of service during the member's  
17 reemployment, the allowance to which the member  
18 is entitled for that service based on the  
19 retirement allowance option initially selected  
20 and computed for the member's age, average final  
21 compensation, and other factors in accordance  
22 with the benefit formula under section 88-74 in

1                   existence at the time of the member's latest  
2                   retirement; or

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

10                  (2) If the retirant returns to service after June 30,  
11                   1998, and again retires, the retirant's retirement  
12                   allowance shall be computed in accordance with  
13                   paragraph (1) (A), regardless of the number of years of  
14                   service in the reemployment period.

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

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

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

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

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

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

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

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

1           shall not exceed the limit, under section 88-74, on  
2           the per cent by which the retirant's average final  
3           compensation may be multiplied for the purpose of  
4           determining the retirant's maximum retirement  
5           allowance. For example, if a retirant's maximum  
6           retirement allowance upon the retirant's initial  
7           retirement was limited by section 88-74 to eighty per  
8           cent of the retirant's average final compensation, and  
9           the retirant retired with a maximum allowance equal to  
10           seventy per cent of the retirant's average final  
11           compensation, the retirant's maximum allowance for the  
12           retirant's period of reemployment may not exceed ten  
13           per cent of the retirant's average final compensation  
14           for the retirant's period of reemployment; and  
15           (2) If the retirant's maximum retirement allowance upon  
16           the retirant's initial retirement was equal to or  
17           greater than the applicable limit under section 88-74,  
18           the retirant shall not earn service credit or earn any  
19           additional retirement allowance during the retirant's  
20           period of reemployment, and the reemployed retirant  
21           shall not make any contributions under section 88-45.

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

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

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

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

20        "(a) Any class C member who terminates service prior to  
21 accumulating ten years of credited service, excluding unused



1 sick leave, shall cease to be a member and shall forfeit all  
2 credited service; provided that:

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

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

1           following the calendar year in which the member's  
2           employment terminated, one month of class C service  
3           credit for previous service shall be restored for each  
4           month of service rendered following the return to  
5           membership.

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

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

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

1 terminates employment or goes off the payroll, except for the  
2 month of December when retirement on the first or last day of  
3 the month shall be allowed."

4 SECTION 6. Section 88-334, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6 "(b) Upon approval by the board, the member shall be  
7 eligible to receive an ordinary disability retirement benefit no  
8 earlier than thirty days from the date the application was filed  
9 or the date the member terminated service, whichever is later.  
10 Retirement shall be effective on the first day of a month,  
11 except for the month of December when retirement on the first or  
12 last day of the month shall be allowed. A member whose  
13 application for an ordinary disability retirement allowance is  
14 approved by the board while the member is still in service may  
15 terminate service and retire at any time following the approval;  
16 provided that retirement shall become effective on the first day  
17 of the month following the month the applicant terminates  
18 employment or goes off the payroll, except for the month of  
19 December when retirement on the first or last day of the month  
20 shall be allowed."

21 SECTION 7. Statutory material to be repealed is bracketed  
22 and stricken. New statutory material is underscored.

**1** SECTION 8. This Act shall take effect on July 1, 2009.

**Report Title:**

Employees' Retirement System; Ordinary Disability Retirement;  
Reemployed Retirants

**Description:**

Clarifies retirement date for ordinary disability retirement, payment of attorney's fees and costs in disability retirement and accidental death cases, forfeiture date for noncontributory service credit, and benefits for reemployed retirants. Provides for calculation of retirement allowance for certain retirants who have returned to service. (SD2)