

CHAPTER 88
PENSION AND RETIREMENT SYSTEMS

Part I. General Provisions

A. Miscellaneous

Section

- 88-1 Restrictions
- 88-1.2 Civil unions
- 88-2 Minimum pension
- 88-3 Payment on death of pensioner
- 88-4 Medical aid, etc., when free
- 88-5 List of pensioners, who shall provide
- 88-6 Payment of refunds and retirement benefits
- 88-7 County pensioners; post retirement allowance
- 88-8 University of Hawaii optional retirement system
- 88-9 Employment of retirants

B. Pensioners' Bonus

- 88-11 Bonus; pensioners' special compensation; amounts available
- 88-12 Bonus; requirements, limitations
- 88-13 Bonus; retirants not eligible for
- 88-14 Bonus; authority to pay
- 88-15 Bonus; waiver by veteran
- 88-16 Bonus; appropriation
- 88-17 Bonus payment; limitation

Part II. Retirement for Public Officers and Employees

A. Definitions; Board of Trustees

- 88-21 Definitions
- 88-21.5 Compensation
- 88-22 System established; name
- 88-22.5 Federal tax qualification requirements
- 88-23 General administration of system vested in board
- 88-24 Composition of board
- 88-25 Vacancy
- 88-26 Expenses of trustees
- 88-27 Oath of trustees
- 88-27.5 Closed meetings of the board; authorized
- 88-28 Voting; rules
- 88-29 Officers, employees, legal adviser
- 88-29.5 Investment personnel
- 88-30 Actuary
- 88-31 Medical board
- 88-32 Repealed

88-33 Prohibited interest of trustees and employees of board

B. Membership; Service

- 88-41 Limitation of other statutes
- 88-42 Membership generally
- 88-42.5 Membership of employees holding more than one position, appointment, or office
- 88-42.6 Membership of elective officers
 - 88-43 Persons ineligible for membership
 - 88-44 Enrollment
 - 88-45 Employee contributions
- 88-45.4 Contributions for unpaid leaves of absence
- 88-45.5 Acceptance of rollovers and transfers from other plans
 - 88-46 Deducting employee contributions from salary and employer pick up of employee contributions
- 88-46.5 Repealed
- 88-46.6 Erroneous contributions from compensation of class C members; contributions from overpaid compensation
 - 88-47 Membership
 - 88-48 Deduction in class A member's account
 - 88-49 Employees paid partly from federal funds
 - 88-49.3 Employees paid from certain federal funds
 - 88-49.5 Certain employees subject to federal retirement system; election
 - 88-49.7 East-West center employees
 - 88-50 Computation of year of service
 - 88-50.5 Credit for mandatory maternity leave
 - 88-51 Membership service generally
 - 88-51.5 Repealed
 - 88-52 Service while a member of the legislature
 - 88-53 (Reserved)
 - 88-54 Service while legislative employee
 - 88-54.2 Session employees of the legislature; exempt from mandatory enrollment
 - 88-54.5 Service while a member of the board of trustees of the office of Hawaiian affairs
 - 88-55 Services of field civilian personnel of the Hawaii national guard
 - 88-56 Repealed
 - 88-57 Prior service generally
 - 88-58 Prior service credit while per diem employee
 - 88-59 Acquisition of membership service
 - 88-59.5 Previous membership service credit for legislative officers
 - 88-59.6 Repealed
 - 88-60 Members whose services are on loan to other governments

- 88-61 Termination of membership
- 88-62 Return to service of a former member
- 88-63 Credit for unused sick leave

C. Benefits

- 88-70 Third application for retirement; withdrawal prohibited and retirement mandatory
- 88-71 Credited service at retirement
- 88-72 Repealed
- 88-73 Service retirement
- 88-74 Allowance on service retirement
- 88-74.5 Finalizing of pensions
- 88-74.6 Unreduced allowance on service retirement; when applicable
- 88-74.7 Commencement of benefits on required beginning date
 - 88-75 Ordinary disability retirement
 - 88-76 Allowance on ordinary disability retirement
- 88-77, 78 Repealed
- 88-79 Service-connected disability retirement
- 88-80 Allowance on retirement for service-connected disability
- 88-81 Average final compensation
- 88-81.5 Federal tax limits on annual compensation
- 88-82 Petition for contested case hearing regarding disability retirement or accidental death benefits; attorney's fees and costs
- 88-83 Election of retirement allowance option
- 88-83.5 Benefit limitations
- 88-84 Ordinary death benefit
- 88-84.5 Federal limits on annual compensation for ordinary death benefit
- 88-85 Accidental death benefit
- 88-85.5 Applications for accidental death benefits; approval by the board
- 88-86 Repealed
- 88-87 Adjustment for deficiency in accumulated contributions
- 88-88 Adjustment of retirement allowances of retirants
- 88-89 Minimum amount
- 88-90 Post retirement allowances
- 88-90.5 Actuarial assumptions
- 88-91 Exemption from taxation and execution
- 88-92 Garnishment in certain cases; procedure
- 88-93 Named beneficiaries by members and by former employees; effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death
- 88-93.5 Distribution of property in a divorce action

- 88-94 Withholding of income taxes
- 88-95 Withholding of dues and insurance premiums
- 88-96 Rights of members separated from service
- 88-97 Return to service of a member who has vested benefit status
- 88-98 Return to service of a retirant
- 88-99 Moratorium on benefit enhancements
- 88-100 Payment by employers of costs associated with significant non-base pay increases

D. Administration; Financing

- 88-101 Payment of existing pensions
- 88-102 Classification of members
- 88-103 Records
- 88-103.5 Disclosure of information
- 88-103.7 Information from the State and counties
- 88-104 Actuarial data
- 88-105 Actuarial investigations, valuations
- 88-106 Correction of errors
- 88-106.5 Compromise and settlement
- 88-107 Interest
- 88-108 Cash for meeting disbursements
- 88-109 Funds of the system
- 88-110 Board; trustees of funds
- 88-111 Custodian of the funds
- 88-112 Annuity savings fund; annual statement
- 88-113 Payments from annuity savings fund
- 88-114 Pension accumulation fund
- 88-115, 115.5 Repealed
- 88-116 Expense fund
- 88-117, 118 Repealed
- 88-119 Investments
- 88-119.5 Investment guidelines
- 88-120 Service charges
- 88-121 Power to make agreements to protect securities on reorganization or otherwise
- 88-121.5 Power to enter into security loan agreements
- 88-122 Determination of employer normal cost and accrued liability contributions
- 88-123 Amount of annual contributions by the State and counties
- 88-124 Payment of state contributions to the system
- 88-125 Contributions by certain state agencies
- 88-126 Payment of county contributions to the system
- 88-127 Guaranty

E. Special Benefits for Members in Military Service

- 88-131 Definitions
- 88-132 Service credit; payment of contributions
- 88-132.5 Credit for military service
- 88-133 Benefits and conditions applicable to service member
- 88-134 Service retirement benefit
- 88-135 Ordinary disability retirement benefit
- 88-136 Accidental disability benefit
- 88-137 Ordinary death benefit
- 88-138 Accidental death benefit
- 88-139 Return of contributions
- 88-140 Duration of service member's status
- 88-141 Computation of compensation earned or earnable
- 88-142 Right of amendment or repeal reserved; retroactive effect

Part III. Police Officers, Firefighters, and
Bandsmen Pension System

- 88-151 Application
- 88-152 Certain other employees included
- 88-153 Police officers, firefighters, and bandsmen pension system; trustees, powers
- 88-154 Officers of the board; duties
- 88-155 Medical board
- 88-156 Appropriations and expenditure
- 88-157 Use of donations, contributions, gifts, or bequests
- 88-158 Disability retirement benefits
- 88-159 Reexamination of disability beneficiary; hearing
- 88-160 Service retirement benefits
- 88-161 Dismissal after twenty years' service; pensions
- 88-162 Dismissal after ten years' service; pension
- 88-163 Death benefits: funeral expenses; payments to dependents
- 88-164 Benefits in lieu of other payments
- 88-165 Adjustments of pensions
- 88-166 Computation; service as police officer, firefighter, or bandsman
- 88-167 Computation; prior credits
- 88-168 Orders, discipline, medical examination, etc.
- 88-169 Payments of pensions; inalienable
- 88-170 Forfeiture of pension
- 88-171 Public hearings; notice

Part IV. Municipal and County Pension Systems

- 88-181 Pension boards created
- 88-182 Members: appointment, terms, removals
- 88-183 Qualifications
- 88-184 Expenses; appropriations

- 88-185 Assistants; county clerk, attorney, and treasurer
- 88-186 Meetings
- 88-187 Payment, conditions
- 88-188 Additional conditions
- 88-189 Widow's, widower's, and reciprocal beneficiary's pensions
- 88-190 Amount
- 88-191 Computation of service
- 88-192 Examination by physician
- 88-193 Compliance with law required

Part V. Other County Pensions

- 88-201 Pensions eligible
- 88-202 Restrictions as to personnel
- 88-203 Limitation of amount
- 88-204 County appropriations directed

Part VI. Federal Social Security for Public Employees

- 88-211 Definitions
- 88-212 Federal-state agreement
- 88-213 Division of retirement systems
- 88-214 Modifications to agreement
- 88-215 Contributions by state employees
- 88-216 Collection of contributions
- 88-217 Adjustments
- 88-218 Plans for coverage of employees of political subdivision
- 88-219 Referendum
- 88-220 Refusal or termination of plans
- 88-221 Payments by political subdivisions
- 88-222 Contributions by employees of political subdivisions
- 88-223 Delinquent payments
- 88-224 Contribution fund; established
- 88-225 Purpose of contribution fund
- 88-226 Payments to federal government
- 88-227 Custodian of fund
- 88-228 Appropriations to contribution fund
- 88-229 Rules and regulations
- 88-230 Studies and reports

Part VII. Retirement for Class C Public Officers and Employees

A. Applicability of Part II

- 88-251 Applicability

B. Definitions

88-261 Definitions

C. Membership, Credited Service

- 88-271 Election
- 88-272 Credited service
- 88-273 Break in service; reemployment

D. Eligibility; Benefits

- 88-281 Service retirement
- 88-282 Service retirement allowance
- 88-283 Election of retirement allowance option
- 88-284 Ordinary disability retirement
- 88-285 Service-connected disability retirement
- 88-286 Death benefit

Part VIII. Retirement for Class H Public Officers
and Employees

A. Applicability of Part II

- 88-301 Applicability

B. Definitions

- 88-311 Definitions

C. Membership, Credited Service

- 88-321 Election and membership
- 88-322 Conversion of previous credited service
- 88-323 Class H credited service
- 88-324 Acquisition of membership service
- 88-325 Employee contributions
- 88-326 Deducting employee contributions from salary
and employer pick up of employee contributions

D. Eligibility; Benefits

- 88-331 Service retirement
- 88-332 Service retirement allowance
- 88-333 Election of retirement allowance option
- 88-334 Ordinary disability retirement
- 88-335 Ordinary disability retirement allowance
- 88-336 Service-connected disability retirement
- 88-337 Service-connected disability retirement allowance
- 88-338 Ordinary death benefit
- 88-339 Accidental service-connected death benefit
- 88-340 Termination of membership
- 88-341 Rights of members separated from service
- 88-342 Return to service of a former member without vested
benefit status

88-343 Return to service of a former member who has vested
benefit status

88-344 Return to service of a retirant

Note

Investment reporting, etc. L 2007, c 192.
Reports to 2016-2020 legislature on state and county departments' and agencies' progress in complying with §88-103.7, as amended by L 2015, c 87, by July 1, 2020. L 2015, c 87, §2.

Attorney General Opinions

Death benefits upon an employee's demise do not accrue to hanai children. Att. Gen. Op. 93-1.

Case Notes

Court lacked subject matter jurisdiction over class action suit against system for alleged violations of chapter. 73 H. 9, 828 P.2d 260.

Plaintiff's claim that plaintiff had earned full-time membership credit in employees' retirement system as a result of plaintiff's service as a per diem district court judge, was at odds with specific mandates of this chapter, and to sustain it would lead to an unjust and unreasonable result. 75 H. 42, 856 P.2d 1227.

While the accrual and extent of an employee's benefits are governed by the applicable statutory provisions of this chapter, the duty of the employees' retirement system to pay accrued benefits is deemed to be contractual under article XVI, §2 of the Hawaii constitution; thus, a circuit court's jurisdiction under §661-1(1) over such claims is "founded upon contract", as well as statute and the circuit court did not err in rejecting defendant's contention that plaintiffs' claims were barred by sovereign immunity. 121 H. 462 (App.), 220 P.3d 1043.

Respondent employees' retirement system's (ERS) interpretation [that "compensation", is "pay or salary that is tied to services rendered and not reimbursement for employee expenses",] was not "palpably erroneous" given the ambiguity of the statutory language at issue and its subsequent history, the entire statutory scheme, and respondent ERS' long-standing interpretation and consistent practice to exclude car, uniform, and firearm allowances from its definition and calculation of "compensation", and was entitled to persuasive weight. 129 H. 107 (App.), 295 P.3d 977 (2013).

"PART I. GENERAL PROVISIONS

A. MISCELLANEOUS

§88-1 Restrictions. The provisions of this section shall be applicable to every pension and to every recipient or beneficiary thereof, granted or provided for by any special act of the legislature (other than benefits, or the recipients thereof, payable to beneficiaries or retirants of the employees' retirement system under parts II, VII, and VIII) whether the pension be payable by the State or by any county, or by any board, commission, bureau, department, or other agency thereof:

- (1) No recipient or beneficiary shall be permitted to draw any pension, or any portion thereof, in excess of \$50 per month, while the recipient or beneficiary is holding any salaried position or office in, under or by authority of the United States, the State, or any political subdivision thereof. This paragraph shall not apply to any recipient or beneficiary who is elected to the legislature or to the council of any county.
- (2) If the recipient or beneficiary is a surviving spouse or reciprocal beneficiary, the pension so granted shall cease when the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship.
- (3) Any pension payable to any minor shall cease when the minor reaches the age of eighteen years.
- (4) If any recipient or beneficiary of a pension, having a spouse or reciprocal beneficiary at the time the pension was first granted to the recipient or beneficiary dies, then the spouse or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried or not in a reciprocal beneficiary relationship, shall be paid sixty per cent of the amount of the pension payable to the beneficiary. [L 1933, c 157, §1; RL 1935, §7915; am L 1943, c 44, §1; RL 1945, §631; am L 1947, c 28, §1; RL 1955, §6-1; HRS §88-1; am L 1969, c 110, pt of §1; am L 1974, c 118, §1(1); gen ch 1985; am L 1997, c 383, §25; am L 2006, c 169, §2]

" **[§88-1.2] Civil unions.** For the purposes of this chapter, the terms "married", "marriage", "marital", "husband", "wife", or similar spousal terms shall include civil union partners and civil unions under chapter 572B, unless recognition of a civil union as a marriage conflicts with the requirements for the system to be a tax-qualified plan under section 401(a) of the Internal Revenue Code of 1986, as amended. [L 2013, c 123, §2]

" **§88-2 Minimum pension.** Every pension of less than \$50 per month payable under or pursuant to any law of the State by the State or by any county or independent public board or commission, other than benefits payable to members of the employees' retirement system or to the dependents or beneficiaries of members under parts II, VII, and VIII, shall be increased to \$50 per month, any provision in any other law to the contrary notwithstanding; provided that where the dependents of a deceased pensioner are receiving pensions by reason of the pensioner's death, the total only of all amounts paid to the dependents shall be so increased.

The council of each county, and each independent board or commission affected, shall appropriate the funds necessary to pay the increases hereby allowed of pensions payable by their respective counties, boards and commissions. Sufficient funds to cover these increases hereby allowed of pensions payable by the State are hereby appropriated from the general revenues of the State not otherwise appropriated, and the state comptroller shall issue warrants to pay these increases. [L 1943, c 143, §1, 2; RL 1945, §6191; am L 1949, c 250, §1; RL 1955, §6-3; am L 1957, c 152, §1; HRS §88-2; am L 1969, c 110, pt of §1 and c 127, §31; gen ch 1985; am L 2006, c 169, §3]

" **§88-3 Payment on death of pensioner.** Whenever any person receiving a pension from the State or from any county thereof dies, the amount next payable shall be prorated from the last payment date up to and including the date of death, and the prorated amount shall be paid to the person who may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with payment of the pension, or if no such designation has been made and filed, the prorated amount shall be paid to the personal representative of the estate of the pensioner; provided that:

- (1) Effective January 1, 2003, whenever a person receiving a pension from the system dies, the full monthly pension for the month in which the pensioner died, less any portion of the pension paid to the pensioner, shall be payable to the person who may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with the payment of the pension, or if no such designation has been made and filed, the prorated amount shall be paid to the personal representative of the estate of the pensioner; and

- (2) Effective July 1, 2003, whenever a person receiving a pension from the system dies, the full monthly pension for the month in which the pensioner died shall be payable to the pensioner. [L 1931, c 172, §1; RL 1935, §7917; am L 1941, c 178, §1; RL 1945, §633; RL 1955, §6-2; HRS §88-3; am L 1969, c 110, pt of §1; am L 1976, c 200, pt of §1; gen ch 1985; am L 2002, c 128, §1; am L 2003, c 118, §1]

Case Notes

Statute has no application to controversy over money due pensioner accruing prior to last payment date preceding death. 34 H. 667.

" **§88-4 Medical aid, etc., when free.** Every recipient of any retirement allowance or pension payable by the State or by any county or by any other governmental body or agency created by or under the laws of the State who is actually and solely dependent upon the recipient's retirement allowance or pension for the recipient's maintenance and support or whose total income in whatever form or from whatever source received, including but not limited to, the recipient's retirement allowance or pension and any income of the recipient's spouse or reciprocal beneficiary is less than \$2,400 a year shall, for the recipient and the recipient's spouse or reciprocal beneficiary, be entitled to free medical treatment from any government physician employed by the State or any county and to free hospitalization at any state hospital or at a hospital where county patients are treated at county expense in the county wherein the recipient resides.

Whenever a retirant or pensioner having a spouse or reciprocal beneficiary dies, then the spouse or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried and does not enter into a reciprocal beneficiary relationship, shall be eligible for benefits under this section. [L 1937, c 90, §1; RL 1945, §634; RL 1955, §6-4; am L 1964, c 64, §2; am L 1965, c 260, §1; HRS §88-4; am L 1969, c 110, pt of §1; gen ch 1985; am L 1997, c 383, §26]

" **§88-5 List of pensioners, who shall provide.** The proper department of each county shall determine who is entitled to benefits under section 88-4 and shall provide to any government physician employed by the State or any county, and any county hospital or a hospital where county patients are treated at county expense in the county wherein the pensioner or

beneficiary resides, a current list of pensioners and their [spouses] or reciprocal beneficiaries who are entitled to benefits under section 88-4. Upon request, the state retirement system shall provide to the proper departments of each county such information as may be required to administer section 88-4. [L 1965, c 260, §2; Supp, §6-4.1; HRS §88-5; am L 1969, c 110, pt of §1; am L 1997, c 383, §27]

" **§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; provided that:

(A) All retirees and beneficiaries of the state retirement system who either retire or become beneficiaries after January 1, 2003, shall be paid monthly; and

(B) Effective July 1, 2011, all retirees and beneficiaries of the state retirement system shall be paid monthly; provided that this subparagraph shall not apply to any retiree or beneficiary who:

(i) Became a retiree or beneficiary prior to January 1, 2003;

(ii) Is eighty years of age or older on January 1, 2011; and

(iii) Receives \$800 or less of pension benefits each month; and

(2) Any retiree or beneficiary of the state retirement system 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; and effective April 1, 2011, all retirees and beneficiaries of the state retirement system shall designate a financial institution account into which the system shall be authorized to deposit their state retirement system benefits. This method of payment may be waived by the system.

(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. [L 1967, c 98, §1; HRS §88-6; am L 1969, c 110, pt of §1; am L 2001, c 102, §1; am L 2002, c 128, §2; am L 2008, c 41, §2; am L 2010, c 94, §1]

" **§88-7 County pensioners; post retirement allowance.** Any other provision of this chapter to the contrary notwithstanding, the council of each county, and each independent board or commission affected, shall appropriate the funds necessary to pay the post retirement allowance payable by their respective counties, boards, and commissions in accordance with section 88-90. [L 1973, c 168, §1]

" **§88-8 University of Hawaii optional retirement system.**
(a) Notwithstanding any other law to the contrary, the board of regents may establish without regard to the public notice or public hearing requirements of chapter 91, a retirement system separate from the state employees' retirement system to provide retirement allowances and other benefits for University of Hawaii employees who are:

- (1) Members of bargaining unit (7); or
- (2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89.

(b) The general administration and the responsibility for the proper operation of the optional retirement system of the University of Hawaii shall be vested in the board of regents. The board of regents may manage the optional retirement system within the University of Hawaii or contract for the management of the optional retirement system.

(c) The board of regents may establish vesting periods for the members of the optional retirement system of the University of Hawaii that are different from those established in this chapter.

(d) The board of regents may establish retirement allowances and other benefits for the optional retirement system of the University of Hawaii.

(e) The employer's share of the cost of the optional retirement plan of the optional retirement system of the University of Hawaii shall not exceed the equivalent amount for any other group covered by this chapter.

(f) Any member of the state employees' retirement system when the optional retirement system of the University of Hawaii is established who is also:

- (1) A member of bargaining unit (7); or

(2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89, shall remain a member of the state employees' retirement system unless the person elects in writing on a form prescribed by the board of regents to terminate the person's membership. The form shall be submitted to the state employees' retirement system no later than ninety days after the establishment of the optional retirement system of the University of Hawaii.

(g) Any person hired after the establishment of the optional retirement system of the University of Hawaii who is:

(1) A member of bargaining unit (7); or

(2) Other employees of the University of Hawaii or the community college system who are excluded from bargaining unit (7) pursuant to chapter 89, shall elect to be a member of the state employees' retirement system or the optional retirement system of the University of Hawaii. Upon an election the person may not transfer from one system to the other.

(h) Notwithstanding any other law to the contrary, retirement benefits for the optional retirement system of the University of Hawaii shall be a subject of collective bargaining negotiations for bargaining unit (7). [L 1998, c 115, §3; am L 2004, c 180, §§1, 3]

" **§88-9 Employment of retirants.** (a) A retirant may not be employed by the State or by any county unless the retirant is reenrolled in the system pursuant to this chapter, or unless the employment, without reenrollment, is authorized by this section. A retirant whose employment without reenrollment in the system is authorized by this section shall acquire no service credit or retirement rights under this chapter with respect to the employment and shall not be considered to be in service for purposes of this chapter.

(b) Any retirant employed in violation of this section shall:

(1) Reimburse the system for any retirement allowance or other benefit received from the system during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum;

(2) Pay the system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and

- (3) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the retirant is determined by the executive director to be at fault.
- (c) Any employer that employs a retirant in violation of this section shall:
 - (1) Pay to the system an amount of money equal to the employer contributions that would otherwise have been paid for the period or periods of employment in violation of this section, plus interest thereon at the rate of eight per cent per annum; and
 - (2) Contribute toward reimbursement of the system for administrative expenses incurred in responding to the situation, to the extent that the employer is determined by the executive director to be at fault.
- (d) A retirant may be employed without reenrollment in the system and suffer no loss or interruption of benefits provided by the system or under chapter 87A if the retirant is employed:
 - (1) As an elective officer pursuant to section 88-42.6(c) or as a member of the legislature pursuant to section 88-73(d);
 - (2) As a juror or precinct official;
 - (3) As a part-time or temporary employee excluded from membership in the system pursuant to section 88-43, as a session employee excluded from membership in the system pursuant to section 88-54.2, as the president and chief executive officer of the Hawaii tourism authority excluded from membership in the system pursuant to section 201B-2, or as any other employee expressly excluded by law from membership in the system; provided that:
 - (A) The retirant was not employed by the State or a county during the six calendar months prior to the first day of reemployment; and
 - (B) No agreement was entered into between the State or a county and the retirant, prior to the retirement of the retirant, for the return to work by the retirant after retirement;
 - (4) In a position identified by the appropriate jurisdiction as a labor shortage or difficult-to-fill position; provided that:
 - (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
 - (B) No agreement was entered into between the State or a county and the retirant, prior to the

- retirement of the retirant, for the return to work by the retirant after retirement; and
- (C) Each employer shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability; or
- (5) As a teacher or an administrator in a teacher shortage area identified by the department of education or in a charter school or as a mentor for new classroom teachers; provided that:
- (A) The retirant was not employed by the State or a county during the twelve calendar months prior to the first day of reemployment;
 - (B) No agreement was entered into between the State or a county and the retirant prior to the retirement of the retirant, for the return to work by the retirant after retirement; and
 - (C) The department of education or charter school shall contribute to the pension accumulation fund the required percentage of the rehired retirant's compensation to amortize the system's unfunded actuarial accrued liability.

(e) This section does not waive any provision of chapter 76 or 89 that may be applicable to a position for which a retirant is employed pursuant to this section.

(f) No later than twenty days prior to the convening of each regular legislative session, the director of human resources of the appropriate state jurisdiction or the human resources management chief executive of each county shall submit an annual report to the legislature detailing the employment of retirants under paragraphs (4) and (5) of subsection (d), including the number and positions of retirants. [L 2010, c 179, §2; am L 2013, c 23, §2]

"B. PENSIONERS' BONUS

§88-11 Bonus; pensioners' special compensation; amounts available. Except as herein provided, every pension payable under the employees retirement system or payable pursuant to any law of the State, or by any county or independent public board or commission, shall be increased by a bonus for each month as follows:

- (1) Effective July 1, 1976, \$77.82 per month to those retirants and pensioners who had, before July 1, 1966, ten or more years of service; provided that any member who is retired because of physical or mental

disability due to any injury or disease incurred while in the performance of the member's duty as a public employee shall be entitled to receive the bonus payment without meeting the minimum service requirement;

- (2) Effective July 1, 1976, \$31.12 per month additional to the above bonus to those retirants or pensioners who retired before July 1, 1945;
- (3) Effective July 1, 1976, \$31.12 per month additional to the above bonus or bonuses to those retirants or pensioners who have had twenty-one or more years of service;
- (4) Effective July 1, 1976, if the pension as increased by the bonus or bonuses does not equal \$202.32 per month, the bonus shall be further increased by such sum, not in excess of \$31.12, as will bring the total of the pension and bonus to \$202.32 per month; provided that where the dependents of a deceased pensioner are receiving pension by reasons of the pensioner's death, the total only of all amounts paid to the dependents shall be so increased, and the increase herein shall be shared by them in proportion to the respective amount of pension receivable by them exclusive of this increase;
- (5) In the case of any retirement allowance for service commencing after June 30, 1965, pursuant to paragraph (1) or (3) of section 88-74, the only bonus payable shall be in the amount by which the benefit payable under the paragraphs is less than the bonus as set forth above; provided that in no case shall a person who retires after June 30, 1965, receive less under the service and ordinary disability retirement system benefits, plus the bonus payable under this section than the person would have received if paragraph (5) had not been enacted;
- (6) Any provisions of this section to the contrary notwithstanding, there shall be paid to every person who on June 30, 1965, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
 - (A) On January 1, 1966, seven and one-half per cent of the retirement allowance or pension;
 - (B) On July 1, 1969, an additional ten per cent of the retirement allowance or pension;

- (C) On July 1, 1970, an additional ten per cent of the retirement allowance or pension;
 - (D) On July 1, 1973, an additional five and one-half per cent of the retirement allowance or pension; and
 - (E) On July 1, 1976, an additional eight per cent of the retirement allowance or pension;
- (7) Any provision of this section to the contrary notwithstanding, there shall be paid to every person who retired between July 1, 1965, and June 30, 1970, and who, on June 30, 1974, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus which shall be paid in the following manner:
- (A) On July 1, 1974, five and one-half per cent of the retirement allowance or pension; and
 - (B) On July 1, 1976, an additional eight per cent of the retirement allowance or pension;
- (8) Any other provision to the contrary notwithstanding, effective July 1, 1980, there shall be paid to every person who retired prior to July 1, 1975, and who on June 30, 1980, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
- (A) \$4.50 a month for each year of the retirant's or pensioner's credited service, if the person retired prior to July 1, 1965;
 - (B) \$2.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1965, but prior to July 1, 1970; and
 - (C) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or

pensioners who have eight or less years of credited service;

- (9) Any other provision to the contrary notwithstanding, effective July 1, 1984, there shall be paid to every person who retired after June 30, 1970, but prior to July 1, 1979, and who on June 30, 1984, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
- (A) \$.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975; and
 - (B) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1975, but prior to July 1, 1979;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or pensioners who have eight or less years of credited service;

- (10) Any other provision to the contrary notwithstanding, effective July 1, 1988, there shall be paid to every person who retired prior to July 1, 1982, and who on June 30, 1988, was receiving a retirement allowance from the system or other pension payable under or pursuant to the law of the State or by any county or independent board or commission, a special cost of living bonus, which shall be paid in the following manner:
- (A) \$3.50 a month for each year of the retirant's or pensioner's credited service, if the person retired prior to July 1, 1965;
 - (B) \$2.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1965, but prior to July 1, 1970;
 - (C) \$1.50 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1970, but prior to July 1, 1975; and

(D) \$1.00 a month for each year of the retirant's or pensioner's credited service if the person retired after June 30, 1975, but prior to July 1, 1982;

provided that if the retirant or pensioner had retired, returned to service, and again retired, the person's latest retirement date shall be considered as the person's date of retirement; provided further that no special cost of living bonus as provided for in this paragraph shall be paid to those retirants or pensioners who have ten or less years of credited service;

(11) Any other provision to the contrary notwithstanding, effective July 1, 1990, and each July 1, thereafter until June 30, 1999, bonuses shall be paid to retirants and pensioners with ten or more years of service or to their beneficiaries who are receiving a monthly benefit from the system, in accordance with this paragraph; provided that the requirement of ten or more years of service shall not apply in the case of a person who retires with less than ten years of service because of a service connected disability; and provided further that if the retirant or pensioner is currently receiving a larger bonus than what would be payable under this paragraph the retirant or pensioner shall continue to receive the bonus amount received on June 30, 1990, until the retirant's or pensioner's bonus calculated under this paragraph exceeds the June 30, 1990, bonus amount at which time the difference between the June 30, 1990, bonus and the bonus calculated under this paragraph would be payable.

The bonus amounts payable under this paragraph shall be based on years of retirement and shall be a cumulative amount to include all previous bonuses and shall not exceed:

(A) \$1.25 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of five years by July 1 in the year in which the bonus is effective;

(B) \$2.50 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of ten years by July 1 in the year in which the bonus is effective;

(C) \$4.50 for each year of the retirant's or pensioner's credited service if the retirant or

pensioner has been retired a minimum of fifteen years by July 1 in the year in which the bonus is effective;

- (D) \$6.00 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of twenty years by July 1 in the year in which the bonus is effective;
- (E) \$8.75 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of twenty-five years by July 1 in the year in which the bonus is effective;
- (F) \$10.50 for each year of the retirant's or pensioner's credited service if the retirant or pensioner has been retired a minimum of thirty years by July 1 in the year in which the bonus is effective;
- (G) Any provision to the contrary notwithstanding, any retirant or pensioner with ten or more years of service who on July 1 of the year in which the bonus is being calculated has been retired a minimum of twenty years and whose current bonus amount exceeds the maximum specified in this paragraph shall nevertheless receive a pension increase of \$1.25 for each year of credited service.

For the purposes of this paragraph, if the retirant or pensioner had retired, returned to service, and again retired, the latest retirement date shall be considered as the date of retirement; and

- (12) Notwithstanding any other provision to the contrary, in fiscal year 2002-2003, each state and county retiree who is seventy years of age and older with at least twenty years of credited service as of June 30, 2002, shall receive a one time, lump sum bonus of \$200. Any lump sum bonus paid pursuant to this paragraph shall not be construed to increase a retirant's basic monthly pension accumulation or any other post retirement benefit provided under this chapter. [L 1961, c 175, pt of §12; am L 1962, c 29, §2; am L 1965, c 222, §18; Supp, §6-250; HRS §88-11; am L 1969, c 110, pt of §1 and c 127, §30; am L 1974, c 220, §1; am L 1976, c 139, §1; am L 1980, c 299, §1; am L 1984, c 270, §1; gen ch 1985; am L 1988, c 176, §1; am L 1990, c 339, §§2, 5; am L 1993, c 98, §1; am

L 1994, c 275, §1; am L 1997, c 327, §1; am L 2002, c 233, §2]

Attorney General Opinions

Section applies also to beneficiary. Does not provide bonus payment to beneficiary who is not a dependent of deceased pensioner. Bonus to dependent beneficiary terminates upon dependent beneficiary's becoming eligible for social security benefits. Att. Gen. Op. 64-50.

" **§88-12 Bonus; requirements, limitations.** No retirement allowance or pension payable under the employees' retirement system shall be increased by any bonus for any retirant or beneficiary unless the person for whose service the pension is payable has had sufficient service to qualify for the minimum service retirement allowance except as provided in [paragraph] (1) of section 88-11; provided that this provision shall not operate to increase the pension of any person who was receiving a pensioner's bonus on July 1, 1951, without having met the minimum service requirements but such person shall continue to receive the pension the person was receiving on June 30, 1955. [L 1961, c 175, pt of §12; Supp, §6-251; HRS §88-12; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-13 Bonus; retirants not eligible for.** No bonus shall be paid to any person who retires on or after July 1, 1957, and who will receive or who is receiving social security benefits when said benefits are based in whole or in part upon contributions made by the State or any of its political subdivisions. [L 1961, c 175, pt of §12; Supp, §6-252; HRS §88-13; am L 1969, c 110, pt of §1]

Attorney General Opinions

Mere opportunity to secure social security benefits in the future is not ground for disqualification. Words "upon his retirement" mean "at any time during his retirement". Att. Gen. Op. 64-27.

" **§88-14 Bonus; authority to pay.** The board of trustees of the employees' retirement system shall pay the bonus to pensioners under the system, except those pensioners under the system who are retired employees of the respective counties; the

comptroller shall pay the bonus to all state pensioners who are not under the system; and the appropriate officer of each county and each independent board or commission hereby affected, shall pay the bonus granted to pensioners whose pensions are payable by the respective counties, boards, and commissions.

The appropriate officer of each county upon certification to the council by the employees' retirement system of the amounts necessary to meet payments of the bonus to pensioners of the system who are retired employees of the respective counties, shall also remit the amounts to the system. Remittances shall be made not later than December 31 of each year and shall be sufficient for twelve months' payments to the pensioners certified to the council. [L 1961, c 175, pt of §12; am L 1963, c 114, §1; Supp, §6-253; HRS §88-14; am L 1969, c 110, pt of §1; am L 1974, c 220, §2]

" **§88-15 Bonus; waiver by veteran.** Any veteran who may qualify for a nonservice-connected pension through the veterans administration may waive any portion or all of the benefits that the veteran may receive under sections 88-11 to 88-16. [L 1961, c 175, pt of §12; Supp, §6-254; HRS §88-15; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-16 Bonus; appropriation.** Sufficient funds shall be appropriated to the employees' retirement system from the general revenues of the State not otherwise appropriated, to pay the bonus to all pensioners under the system except those pensioners who are retired employees of the respective counties. Sufficient funds shall be appropriated to the state department or agency hereby affected from the general revenues of the State not otherwise appropriated, to pay the bonus to those state pensioners not under the system. The council of each county, and each independent board or commission affected shall appropriate the funds to pay the bonus to pensioners whose pensions are payable by their respective counties, boards, and commissions as well as to pensioners of the employees' retirement system who are retired employees of their respective counties. [L 1961, c 175, pt of §13; am L 1963, c 114, §1; Supp, pt of §6-255; pt of HRS §88-16; am L 1969, c 110, pt of §1; am L 1974, c 220, §3]

" **§88-17 Bonus payment; limitation.** No bonus shall be payable to any person retiring after June 30, 1971; provided that this limitation shall not apply to bonus payments for

retired patient employees receiving a pension under chapter 326. Such patient employees including those who retired after June 30, 1971, and prior to July 1, 1976, may continue to receive bonus payments authorized under section 88-11. [L 1961, c 175, pt of §13; Supp, pt of §6-255; pt of HRS §88-16; am L 1969, c 110, pt of §1; am L 1976, c 139, §2]

"PART II. RETIREMENT FOR PUBLIC OFFICERS AND EMPLOYEES

A. DEFINITIONS; BOARD OF TRUSTEES

§88-21 Definitions. The following words and phrases as used in this part, unless a different meaning is plainly required by the context, shall have the following meanings:

"Accidental death": death that is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by wilful negligence on the part of the member.

"Accumulated contributions": the sum of all the amounts paid by, or deducted from the compensation of, a member and credited to the member's individual account in the annuity savings fund together with regular interest thereon.

"Active member": a member who is an employee.

"Actuarial equivalent": a benefit of equal value to the accumulated contributions, annuity, pension or retirement allowance, when computed upon the basis of the actuarial tables and other assumptions approved by the board of trustees from time to time and specified in writing.

"Annuity": benefit payments for life derived from the accumulated contributions of a member.

"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": the average annual compensation as described in section 88-81, which becomes part of the formula for the computation of a retirement allowance.

"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.

"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.

"Board": the board of trustees of the employees' retirement system established pursuant to sections 88-23 and 88-24.

"Child or children":

- (1) A natural child of a member;
- (2) A legally adopted child of a member; or
- (3) A 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.

"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.

"Corrections officers": all regularly employed personnel who are designated as adult corrections officers pursuant to the classification of positions under chapter 76.

"County": the counties of Hawaii, Honolulu, Kauai and Maui, including their respective boards of water supply and other quasi-independent boards, commissions and agencies.

"Credited service": prior service plus membership service.

"Elective officer" or "elective official": any person elected to a public office or appointed to fill a vacancy of an

elective office, except as a delegate to a constitutional convention, in accordance with an election duly held in the State or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.

"Emergency medical technician" means a person regularly employed by the city and county of Honolulu's emergency services department whose principal duty is to provide emergency medical services and who is licensed to provide emergency medical services.

"Employee": any employee or officer of the State or any county, including inspectors, principals, teachers and special teachers, regularly employed in the public schools, cafeteria managers and cafeteria workers, apprentices and on-the-job trainees whether or not supported in whole or in part by any federal grants, members of the legislature and other elective officers, including the trustees of the office of Hawaiian affairs, year-round legislative employees who are employed on a full-time basis, probationary and provisional employees, any employee of the educational nonprofit public corporation as provided in section 88-49.7, per diem employees and others who are made eligible by reason of their employment to membership in the system by or pursuant to any other provision of law, but excluding:

- (1) Per diem employees who elect to withdraw or not to become members as provided in section 88-42;
- (2) Elective officers who do not elect to be members as provided in section 88-42.6;
- (3) Session employees of the legislature employed after October 31, 2006, in accordance with section 88-54.2; and
- (4) Persons excluded by rules of the board pursuant to section 88-43.

An individual is an employee during the period of a leave of absence if the individual is in service, as defined in this part, during the period of the leave of absence and the board shall determine who are employees within the meaning of this part.

"Firefighters": all regularly employed members of the State, including employees of the department of transportation who were assigned firefighting duties at state airports prior to June 3, 1978, or of the fire departments of the counties, whose principal duties are to prevent and fight fires.

"Judge": a justice of the supreme court, a judge of the intermediate appellate court, a judge of the circuit court, a judge of the district court, or a district family court judge of this State.

"Legislative officer" means a chief clerk, an assistant chief clerk, a sergeant at arms, or an assistant sergeant at arms of either house of the legislature.

"Medical board": the board of physicians provided for in section 88-31.

"Member": any person included in the membership of the system.

"Membership service": all service rendered by a member for which the member had made the required contributions to the system.

"Narcotics enforcement investigators": those officers or employees with police powers as defined by chapter 329 who actively enforce narcotics or related statutory provisions on a full-time basis.

"Ordinary death": death that is not accidental and that occurs while in service or on authorized leave without pay.

"Pensions": benefit payment for life derived from money provided by the State or county, as the case may be.

"Per diem worker": a person employed and compensated on an hourly or daily basis.

"Police officers": all duly commissioned members of the police department of the several counties whose principal duties are law enforcement and who are paid on a monthly salary basis, including without limiting the generality of the foregoing, all police matrons and guards who work under the jurisdiction of such departments.

"Prior service": service rendered by a member to the State, territory or county or predecessor government prior to the establishment of the system or, as specifically provided in this part, prior to the admission of certain groups or classes of employees into the system membership.

"Public safety investigations staff investigators": those employees in the investigations staff office of the department of public safety who have been conferred police powers by the director of public safety in accordance with section 353C-4 and are in the positions of investigator I to VII.

"Regular interest":

- (1) For a member who became a member before July 1, 2011, interest at four and one-half per cent a year, compounded annually; and
- (2) For a member who becomes a member after June 30, 2011, interest at two per cent a year, compounded annually.

"Retirant": a member who has retired and becomes a beneficiary of the system.

"Retirement allowance": the benefit payable for life as originally computed and paid a member at the point of the member's retirement in accordance with the retirement allowance

option selected by the member, exclusive of any bonus or bonuses.

"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; 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 if the unpaid leave of absence is an approved leave of absence for professional improvement; provided that, for the period of the leave of absence or exchange without pay, the individual makes the same contribution to the system as the individual would have made if the individual had not been on 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.

"Service retirement": retirement of a member for age or length of service.

"Sewer worker" means an employee of any county who is employed in any of the following classifications or classifications performing substantially the same work under classification titles not listed in this definition:

- (1) Sewer maintenance helper or wastewater collection system helper;
- (2) Sewer maintenance repairer or wastewater collection system repairer;
- (3) Sewer maintenance working supervisor;
- (4) Sewer maintenance supervisor I or II or wastewater collection system supervisor I or II;
- (5) Wastewater collection system inspection supervisor;
- (6) Wastewater collection system district supervisor;
- (7) Wastewater collection system field services supervisor;
- (8) Gas detector;
- (9) Gas detector helper;
- (10) Gas detection supervisor;
- (11) Cesspool worker;
- (12) Cesspool pumping equipment operator I or II;
- (13) Cesspool pumping supervisor; or

in any combination of these classifications.

"System": the employees' retirement system of the State of Hawaii.

"Water safety officer": any regularly employed member of any county of the State whose principal duty is to stand guard over the beaches of the State and counties to ensure the safety of individuals thereon.

"Year round school employee": any teacher, school administrator, school health aide, educational assistant, school security attendant, or other salaried ten-month department of education employee working in a public school operating under a single-track restructured instructional schedule. [L 1925, c 55, §1; am imp L 1927, c 251, especially §§1, 2, 5; am L 1929, c 96, §19; RL 1935, §7920; am imp L 1937, c 235; RL 1945, §701; am L 1945, c 73, §1(a); am L 1947, c 85, §1(a); am L 1951, c 110, §1(a); am L 1953, c 37, §1(a), (b); am L 1955, c 141, §1(a), (b); RL 1955, §6-20; am L 1957, c 43, §1, c 143, §1, and c 231, §1(a); am L 1959, c 60, §1; am L 1961, c 181, §1; am imp L 1963, c 127, §20; am L 1965, c 222, §§1, 2; am L 1967, c 98, §2, c 130, §1, and c 176, §1; HRS §88-21; am L 1969, c 110, pt of §1; am L 1972, c 36, §1; am L 1973, c 179, §26; am L 1975, c 82, §19(a); am L 1977, c 191, §2; am L 1978, c 193, §1; am L 1979, c 111, §8; am L 1982, c 165, §1; gen ch 1985; am L 1987, c 299, §1; am L 1988, c 242, §2; am L 1989, c 339, §1 and c 343, §1; am L 1993, c 357, §1(1); am L 1994, c 108, §2 and c 196, §2; am L 1997, c 374, §1; am L 2002, c 183, §5; am L 2003, c 199, §2; am L 2004, c 182, §3; am L 2005, c 58, §2; am L 2006, c 169, §§1, 4; am L 2007, c 2, §2 and c 215, §2; am L 2008, c 41, §3 and c 47, §3; am L 2010, c 197, §2; am L 2011, c 5, §12 and c 163, §18; am L 2012, c 153, §6]

Note

L 2011, c 163, §20 provides:

"SECTION 20. Commencing on January 1, 2020, the board of trustees of the employees' retirement system shall conduct a study to determine whether the percentage of regular interest, as defined under section 88-21, Hawaii Revised Statutes, is appropriate. The board shall compare that percentage against the guaranteed percentage of interest paid by other investment or saving vehicles during the fiscal year 2019-2020. The board shall submit a report of the study to the legislature that shall include a recommendation on whether the percentage of "regular interest" should be changed or remain the same. The board shall submit the report not less than twenty days prior to the convening of the regular session of 2021."

Attorney General Opinions

Constitutional under Article XVI, section 2 and Article I, section 5 of the State Constitution. Att. Gen. Op. 87-4.

Case Notes

Mentioned: 74 H. 181, 840 P.2d 367.

" **§88-21.5 Compensation.** (a) For a member who became a member before July 1, 2012, unless a different meaning is plainly required by context, as used in this part, "compensation" means:

- (1) Normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;
- (2) Overtime, differentials, and supplementary payments;
- (3) Bonuses and lump sum salary supplements; and
- (4) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.

Bonuses and lump sum salary supplements shall be deemed earned when payable; provided that bonuses or lump sum salary supplements in excess of one-twelfth of compensation for the twelve months prior to the month in which the bonus or lump sum salary supplement is payable, exclusive of overtime, bonuses, and lump sum salary supplements, shall be deemed earned:

- (1) During the period agreed-upon by the employer and employee, but in any event over a period of not less than twelve months; or
- (2) In the absence of an agreement between the employer and the employee, over the twelve months prior to the date on which the bonus or lump sum salary supplement is payable.

(b) For a member who becomes a member after June 30, 2012, unless a different meaning is plainly required by context, "compensation" as used in this part:

- (1) Means:
 - (A) The normal periodic payments of money for service, the right to which accrues on an hourly, daily, monthly, or annual basis;
 - (B) Shortage differentials;
 - (C) Elective salary reduction contributions under sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended; and
 - (D) Twelve-month differentials for employees of the department of education; and
- (2) Shall not include any other additional or extra payments to an employee or officer, including overtime, supplementary payments, bonuses, lump sum salary supplements, allowances, or differentials, including differentials for stand-by duty, temporary unusual work hazards, compression differentials, or

temporary differentials, except for those expressly authorized pursuant to subsection (b)(1)(B), (b)(1)(C), and (b)(1)(D). [L 2004, c 182, §2; am L 2012, c 152, §1]

Case Notes

This section did not undermine employees' retirement system's (ERS) interpretation [of "compensation"]; nothing in the legislative history indicates the legislature intended to alter the content of "compensation" by adding [the definition of "compensation" in this section], and according to ERS administrator, ERS' internal working definition of what was included in compensation remained unchanged. Rather, this section was added to satisfy the Internal Revenue Code of 1982's requirement that a member's benefit be "definitely determinable". 129 H. 107 (App.), 295 P.3d 977 (2013).

" **§88-22 System established; name.** There shall be a retirement system for the purpose of providing retirement allowances and other benefits for employees. It shall have the powers and privileges of a corporation and shall be known as the "Employees' Retirement System of the State of Hawaii" and by that name may sue or be sued, transact all of its business, invest all of its funds, and hold all of its cash and securities and other property. [L 1925, c 55, §2; am imp L 1927, c 251, §§1, 2, 5; RL 1935, §7921; am L 1935, c 48, §3; RL 1945, §702; RL 1955, §6-21; HRS §88-22; am L 1969, c 110, pt of §1]

Case Notes

Where no showing that board's failure to authorize and pursue appeal would precipitate crisis in system's operations or jeopardize system's corporate existence, system's purported administrator could not initiate appeal on system's behalf under exception to general rule that only corporation's board possesses authority to control corporation's litigation. 87 H. 152, 952 P.2d 1215.

Mentioned: 74 H. 181, 840 P.2d 367.

" **§88-22.5 Federal tax qualification requirements.** (a) The system shall be administered in accordance with the requirements of section 401(a)(1), (2), (8), (9), (25), (31), and (37) of the Internal Revenue Code of 1986, as amended. Without limiting the

generality of the foregoing and notwithstanding any provision of chapter 88 to the contrary:

- (1) Prior to the satisfaction of all liabilities with respect to members and their beneficiaries, no part of the corpus or income of the system shall be used for or diverted to purposes other than for the exclusive benefit of members and their beneficiaries. The payment of reasonable expenses from the expense fund for the administration of the system in accordance with section 88-116 shall be deemed to be for the benefit of members and their beneficiaries;
- (2) Benefits forfeited by a member for any reason shall not be applied to increase the benefits a member or beneficiary would otherwise receive under the system;
- (3) In accordance with section 88-74.7 and rules adopted by the board of trustees, the entire interest of a member shall be distributed or distribution shall begin no later than the member's "required beginning date", as defined in section 401(a)(9) of the Internal Revenue Code of 1986, as amended;
- (4) In accordance with rules adopted by the board of trustees, a member or beneficiary may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution" paid in a "direct rollover" to an "eligible retirement plan", as those terms are defined in section 401(a)(31) of the Internal Revenue Code of 1986, as amended;
- (5) If the termination of or complete discontinuance of employer contributions to the system occurs, the rights of all members to benefits accrued as of the date of the termination or discontinuance, to the extent then funded, shall be nonforfeitable; and
- (6) In the case of a member who dies while performing qualified military service, as defined in section 414(u)(5) of the Internal Revenue Code, the survivors of the member shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under this chapter had the member resumed and then terminated employment on account of death; provided that this paragraph shall not limit the rights to which a member's designated beneficiary, spouse, reciprocal beneficiary, or children are otherwise entitled by this chapter; provided further that the legislature finds that section 88-137 provides the benefits required by this paragraph.

(b) The board of trustees shall adopt rules necessary for the purposes of this section. Rules adopted for the purposes of this section shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91; provided that the rules shall be adopted at a public meeting subject to the requirements of part I of chapter 92 and a copy of the proposed rules shall be available for public inspection at the office of the system at least six calendar days before the meeting.

(c) Notwithstanding sections 572B-9 and 572B-11, unless the civil union partners are "spouses" under applicable federal law, civil union partners shall not be entitled to the rights of spouses under this chapter where they are not entitled to the rights of spouses under the Internal Revenue Code. [L 2004, c 182, §1; am L 2011, c 96, §3; am L 2013, c 123, §3]

" **§88-23 General administration of system vested in board.** The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this part and parts VII and VIII are vested in a board of trustees; subject, however, to the area of administrative control vested in the department of budget and finance by sections 26-8 and 26-35. To fulfill its responsibilities, 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. [L 1925, c 55, §5(1); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-60; HRS §88-23; am L 1969, c 110, pt of §1; am L 1982, c 165, §2(1); am L 1984, c 108, §1; am L 2002, c 128, §3; am L 2005, c 58, §3]

Case Notes

Powers and duties of board are functionally equivalent to those of board of directors of a private corporation and limited only by "the areas of administrative control" reserved to the department of budget and finance by §§26-8 and 26-35. 87 H. 152, 952 P.2d 1215.

Where no showing that board's failure to authorize and pursue appeal would precipitate crisis in system's operations or jeopardize system's corporate existence, system's purported administrator could not initiate appeal on system's behalf under exception to general rule that only corporation's board possesses authority to control corporation's litigation. 87 H. 152, 952 P.2d 1215.

Without express authorization of employees' retirement system board, attorney general lacked power to file appeal on board's behalf from circuit court's final order; where attorney general perceived conflict of interest with board, attorney general was ethically obligated to recommend retention of other counsel to represent board and take other appropriate action. 87 H. 152, 952 P.2d 1215.

" **§88-24 Composition of board.** The board of trustees shall consist of eight members as follows:

- (1) The director of finance of the State, ex officio;
- (2) Four members of the system, two of whom shall be general employees, one of whom shall be a teacher, and one of whom shall be a retirant to be elected by the members and retirants of the system under rules adopted by the board governing the election to serve for terms of six years each, one of the terms to expire on January 1 of each even-numbered year; provided that, if after the close of filing of petitions for candidacy, a member is unopposed for election to a trustee position, the member shall be deemed and declared to be duly and legally elected to the position of trustee without an election; and
- (3) Three citizens of the State who are not employees, two of whom shall have at least three years of experience providing financial services, including investments, to public, corporate, or private institutional clients, to be appointed by the governor, with the advice and consent of the senate, to serve for a term of six years each, one of the terms to expire January 1 of each odd-numbered year.

Each trustee shall serve until the trustee's successor is elected or appointed, as the case may be, and qualified. For the purpose of this section, the term "general employees" includes police officers and firefighters. [L 1925, c 55, §5(2); RL 1935, pt of §7924; RL 1945, pt of §707; am L 1947, c 85, §1(b); am L 1951, c 93, §1; RL 1955, §6-61; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §88-24; am L 1969, c 110, pt of §1; am L 1978, c 83, §1; am L 1982, c 165, §2(2); gen ch 1985; am L 1990, c 142, §1; am L 1993, c 349, §1; am L 2012, c 72, §1]

Cross References

Gubernatorial appointments, see §26-34.

Attorney General Opinions

Trustee holding over will be a de jure, not merely a de facto, officer. Att. Gen. Op. 73-7.

" **§88-25 Vacancy.** If a vacancy occurs in the office of trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled, except in the case of the trustees elected by the members, in which case the vacancy may be filled for the unexpired term by the appointment of a member by the remaining trustees of the board of trustees. [L 1925, c 55, §5(3); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-62; HRS §88-25; am L 1969, c 110, pt of §1]

" **§88-26 Expenses of trustees.** The trustees shall serve without compensation but they shall be reimbursed from the expense fund for all necessary expenses and for any loss of salary or wages they may suffer through serving the board of trustees. [L 1925, c 55, §5(4); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-63; HRS §88-26; am L 1969, c 110, pt of §1]

Case Notes

Mentioned: 74 H. 181, 840 P.2d 367.

" **§88-27 Oath of trustees.** Each trustee shall, within ten days after the trustee's appointment or election, take an oath of office that, so far as it devolves upon the trustee, the trustee will diligently and honestly administer the affairs of the board of trustees, and that the trustee will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the system. The oath shall be subscribed to by the member making it and certified by the officer before whom it is taken and shall be immediately filed in the office of the lieutenant governor. [L 1925, c 55, §5(5); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-64; am L Sp 1959 2d, c 1, §9; HRS §88-27; am L 1969, c 110, pt of §1; gen ch 1985]

Case Notes

Employees' retirement system (ERS) board of trustee's contention that no statute in chapter 88 provides that ERS owes a duty to individual members to provide individual notice and

counseling, particularly absent a request for information was incorrect where, reading §88-127 and this section in para materia, the ERS board is charged with the duty to diligently and honestly administer all funds held in trust for the exclusive use and benefit of the system and for the members of the system. 108 H. 338, 120 P.3d 237.

" **[§88-27.5] Closed meetings of the board; authorized.** (a) The board may hold a meeting closed to the public in accordance with the procedures for holding an executive session meeting pursuant to section 92-4 for the following purposes:

- (1) To conduct discussions or deliberations relating to, or to make a decision upon, investments or prospective investments by the system that require the consideration of information or records that are exempt from disclosure under chapter 92F, including without limitation information and records that are proprietary information or confidential business information;
- (2) To conduct discussions and deliberations or to make decisions relating to procurements that are exempt from chapter 103D to the same extent that the discussion, deliberation, and decision would be required to be conducted or made confidentially if the procurement were subject to chapter 103D; and
- (3) To deliberate concerning the authority of persons designated by the board to negotiate investments or the sale of property held by or for the benefit of the system, or during the conduct of such negotiations.

(b) The purposes for which the board may hold a meeting closed to the public pursuant to this section are in addition to the purposes described in section 92-5(a) or any other applicable exemption from part I of chapter 92. [L 2015, c 88, §1]

" **§88-28 Voting; rules.** Each trustee shall be entitled to one vote on the board of trustees. Five concurring votes shall be necessary for a decision by the trustees at any meeting of the board.

Subject to the limitations of this part, the board, from time to time, shall establish rules for the administration of the funds of the system and for the transaction of its business. [L 1925, c 55, §5(6), (7); RL 1935, pt of §7924; RL 1945, pt of §707; am L 1951, c 93, §3; RL 1955, §6-65; HRS §88-28; am L 1969, c 110, pt of §1; am L 1993, c 349, §2]

Attorney General Opinions

An action of the board requires at least four concurring votes, and in the absence of such concurrence the action would be considered lost. Att. Gen. Op. 80-1.

Case Notes

Board's four-to-four tie vote did not constitute a "decision by the trustees"; the tie vote neither authorized nor affirmatively disavowed appeal. 87 H. 152, 952 P.2d 1215.

" **§88-29 Officers, employees, legal adviser.** The board shall elect from its membership a chairperson, and by a majority vote of all its members, shall appoint an executive director 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, 2007, the salaries of the executive director and chief investment officer shall be set by the board. 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 or the board may select its own legal counsel. [L 1925, c 55, §5(8), (11); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-66; HRS §88-29; am L 1969, c 110, pt of §1; am L 1990, c 142, §2; am L 1992, c 39, §1; am L 1999, c 167, §1; am L 2000, c 253, §150; am L 2003, c 118, §2; am L 2007, c 215, §3; am L 2013, c 23, §3]

" **[§88-29.5] Investment personnel.** The board may, through its executive director, appoint one or more investment officers, under the direction of the chief investment officer, prescribing their duties and qualifications and fixing their salaries, who shall be exempt from chapter 76. [L 2013, c 23, §1]

" **§88-30 Actuary.** The actuary shall be the technical adviser of the board of trustees on the matters regarding the operation of the funds of the system and shall perform such other duties as are required in connection therewith. [L 1925, c 55, §5(13); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-70; HRS §88-30; am L 1969, c 110, pt of §1]

" **§88-31 Medical board.** The board shall designate a medical board to be composed of three physicians not eligible to participate in the system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under this part and parts VII and VIII of this chapter, shall investigate all essential statements and certificates by or on behalf of a member in connection with application for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all the matters referred to it. [L 1925, c 55, §5(12); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-68; HRS §88-31; am L 1969, c 110, pt of §1; am L 1984, c 108, §2; am L 2006, c 169, §5]

Attorney General Opinions

Board of trustees, after hearing on appeal from medical board's decision, may overrule any decision or recommendation which the medical board is authorized to make. Att. Gen. Op. 81-8.

" **§88-32 REPEALED.** L 1982, c 165, §2(3).

" **§88-33 Prohibited interest of trustees and employees of board.** Except as herein provided, no trustee and no employee of the board of trustees shall have any direct interest in the gains or profits of any investment made by the board, nor as such receive any pay or emolument for the trustee's and employee's services. No trustee or employee of the board shall, directly or indirectly, for oneself or as an agent in any manner use the moneys of the system, except to make such current and necessary payments as are authorized by the board; nor shall any trustee or employee of the board become an indorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; RL 1945, §711, subs 4; RL 1955, §6-80; HRS §88-32; am L 1969, c 110, pt of §1; gen ch 1985]

Attorney General Opinions

Participation by two trustees in disposition of loan application held to be in conflict of interest. Att. Gen. Op. 64-25.

"B. MEMBERSHIP; SERVICE

§88-41 Limitation of other statutes. No other provision in any other statute which provides wholly or partly at the expense of the State or any county for pensions or retirement benefits for employees of the State or of any county, their surviving spouses or other dependents shall apply to members, retirants, or beneficiaries of the system established by this part and parts VII and VIII of this chapter, their surviving spouses or other dependents, except such benefits as may be provided under Title II of the Social Security Act. [L 1925, c 55, pt of §14; RL 1935, §7933; RL 1945, §718; RL 1955, §6-22; am L 1957, c 143, §10; HRS §88-41; am L 1969, c 110, pt of §1; am L 1980, c 8, §1; am L 1984, c 108, §3; am L 2004, c 179, §3]

Attorney General Opinions

Public moneys not to be used for retirement benefits in excess of that provided by law. Att. Gen. Op. 85-1.

" **§88-42 Membership generally.** Except as otherwise provided in this part, all employees of the Territory or any county on July 1, 1945, shall be members of the system on that date, and all persons who thereafter enter or reenter the service of the State or any county shall become members at the time of their entry or reentry.

Per diem workers shall become eligible for membership on January 1, 1952, and all persons who are employed as per diem workers after December 31, 1951, shall become members of the system. Any person who was a per diem worker before January 1, 1952, so long as the person is employed as a per diem worker, shall not be required to become a member or to remain a member if the person has elected before October 2, 1953, to withdraw as a member.

Members of the legislature shall become eligible for membership on July 1, 1951. Any member of the legislature in service on July 1, 1951, or thereafter entering the legislature, shall become a member or elect to be excluded from membership in the system as provided in section 88-42.6. [L 1925, c 55, §3(1); am L 1927, c 223, §1; am imp L 1927, c 251, §§1, 2, 5; am imp L 1929, c 190, §1; RL 1935, §7922; RL 1945, pt of §703; am L 1945, c 73, pt of §1(b); am L 1951, c 110, §1(b); am L 1953, c 37, §1(c); RL 1955, pt of §6-23; HRS §88-42; am L 1969, c 110, pt of §1; gen ch 1993; am L 2008, c 47, §4]

Attorney General Opinions

A retired government employee who accepts reemployment may not receive the retiree's retirement allowance during the retiree's reemployment period. Att. Gen. Op. 66-26.

" **§88-42.5 Membership of employees holding more than one position, appointment, or office.** (a) The membership of any employee holding more than one full-time position, appointment, office, or any combination thereof shall be limited to the position, appointment, or office of the employee's option; provided that the employment in the position, appointment, or office shall meet the minimum membership eligibility requirements as provided in this part. Any contributions made based on the compensation, pay, or salary of the employee's position, appointment, or office other than that on which the employee's membership is based shall be returned to the employee.

The foregoing shall not apply to any employee holding two part-time positions of the same class if each position meets the minimum eligibility requirements for membership, and the sum total of the compensation, pay, or salary received for both positions does not exceed the higher of the full-time compensation, pay, or salary for either position.

(b) The membership of any faculty member or lecturer of the University of Hawaii with multiple part-time appointments or positions shall be based on an aggregate of all such part-time faculty or lecturer appointments or positions not to exceed one full-time position. For the purposes of this chapter, the sum total of the compensation, pay, or salary received from the positions shall not exceed an amount equal to the highest of the full-time compensation, pay, or salary for any one of the part-time appointments or positions.

Notwithstanding any other law to the contrary, with respect to any existing or former faculty member, lecturer, or administrative, professional, or technical employee of the University of Hawaii who holds or held multiple part-time appointments or positions prior to July 1, 2003, and who was reported by the University of Hawaii to the system as eligible for membership in the system, the system shall not adjust its records for, or reduce the benefits of, such faculty member, lecturer, or administrative, professional, or technical employee by reason of the failure of such faculty member, lecturer, or administrative, professional, or technical employee to meet the system membership eligibility requirements without the aggregation of multiple part-time appointments or positions. [L 1982, c 165, §2(10); am L 2003, c 119, §2]

Attorney General Opinions

Intent is to limit employees' retirement system membership to one full-time position. Att. Gen. Op. 85-10.

" **[§88-42.6] Membership of elective officers.** (a) An elective officer shall be a member of the employees' retirement system; provided that an elective officer shall have a one-time election to be excluded from membership in the employees' retirement system.

(b) Unless the elective officer is a member of the system, a former member of the system, or a retirant, an elective officer shall make the election to be excluded from membership in the system no later than thirty days following the elective officer's taking office. The election shall be irrevocable. If the elective officer fails to make an election to be excluded from membership in the system within the period allowed for making the election, the elective officer shall become a member effective as of the date the elective officer takes office.

(c) Notwithstanding section 88-21, 88-98, 88-273(c), or 88-344, or any other law to the contrary, the retirement allowance of a retirant who returns to service as an elective officer shall not be suspended if the retirant:

- (1) Retired pursuant to section 88-73(d); or
- (2) Has been retired for at least twelve consecutive months prior to return to service and elects to have the retirement allowance continue. The election whether or not to have the retirant's retirement allowance continue shall be irrevocable and shall be made no later than thirty days following the retirant's first return to service as an elective officer.

If the retirant's retirement allowance is not suspended, the retirant shall not become a member of the system and shall not earn additional service credit or gain any additional retirement benefits.

(d) An elective officer who retired pursuant to section 88-73(d) shall not be eligible for membership in the system while serving as an elective officer. [L 2008, c 47, §2]

" **§88-43 Persons ineligible for membership.** Except with respect to faculty members or lecturers employed on one or more campuses of the University of Hawaii who hold multiple part-time appointments or positions, in such capacities, any of which may be less than one-half of a full-time equivalent but all of which, when added together, aggregate to at least one-half of a

full-time equivalent position, the board may deny membership to any class of part-time employees or persons engaged in temporary employment of three months or less; provided that no officer or employee entering service after January 1, 1928, who is entitled to become a member of any pension system under part III shall be entitled to become a member of the system. [L 1925, c 55, §3(3); am imp L 1927, c 251, §§1, 2, 5; am imp L 1929, c 190, §1; RL 1935, pt of §7922; RL 1945, pt of §703; am L 1955, c 141, §1(c); RL 1955, §6-25; am L 1961, c 181, §2; HRS §88-43; am L 1969, c 110, pt of §1; am L 2003, c 119, §3; am L 2008, c 47, §5]

Case Notes

Per diem employees are included in class of part-time employees to whom agency may deny membership in the system under this section and its implementing administrative rule. Because at least portions of plaintiff's time as per diem judge fell within categories specified in the rule, agency correctly determined that plaintiff did not qualify for full-time credited service under the retirement law. 75 H. 42, 856 P.2d 1227.

" **§88-44 Enrollment.** Upon entering or reentering service, an employee shall file with the board such information as the board of trustees may require for enrollment and administrative purposes including a designation of a person or persons to receive any benefit that may be payable in the event of the employee's death.

An employee becoming a member of the system shall also present at such time and in such form as the board prescribes, evidence of the employee's date of birth. No statement or record of age or birth made or presented by a member of the system may be impeached by the member or the member's successors in interest. [L 1941, c 225, §1; RL 1945, §706; RL 1955, §6-27; am L 1963, c 127, §1; HRS §88-44; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-45 Employee contributions.** After June 30, 1988, each class A and class B member shall contribute seven and eight-tenths per cent of the member's compensation to the annuity savings fund; provided that after June 30, 1989, all firefighters, police officers, corrections officers, investigators of the departments of the prosecuting attorney and of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators shall contribute twelve and two-tenths per cent of their compensation

to the annuity savings fund for service in that capacity; provided further that each class A and class B member who becomes a member after June 30, 2012, shall contribute nine and eight-tenths per cent of the member's compensation to the annuity savings fund; provided further that all firefighters, police officers, corrections officers, investigators of the departments of the prosecuting attorney and of the attorney general, narcotics enforcement investigators, and public safety investigations staff investigators who become members after June 30, 2012, shall contribute fourteen and two-tenths per cent of their compensation to the annuity savings fund for service in that capacity. [L 1925, c 55, pt of §8; RL 1935, pt of §7927; RL 1945, pt of §712, subs 1; RL 1955, §6-82; am L 1957, c 231, §1(e); am L 1961, c 175, §§5, 10 and c 181, §6; am L 1964, c 62, §10; am L 1965, c 222, §13; am L 1967, c 130, §3; HRS §88-45; am L 1969, c 110, pt of §1; am L 1970, c 113, §2; am L 1973, c 179, §27; am L 1982, c 165, §2(4); am L 1984, c 108, §4; gen ch 1985; am L 1988, c 41, §1; am L 1989, c 343, §2; am L 1990, c 141, §1; am L 1993, c 357, §1(2); am L 1994, c 196, §3 and c 276, §2; am L 2011, c 163, §1]

Cross References

Contribution rate reduction, see §88-59.

" **[§88-45.4] Contributions for unpaid leaves of absence.** Contributions required as a condition to inclusion in membership service of unpaid leaves of absence shall be made by the member within one year after return from the leave of absence. [L 2015, c 86, §2]

Revision Note

Section was enacted as an addition to subpart A but was codified to this subpart pursuant to §23G-15.

" **§88-45.5 Acceptance of rollovers and transfers from other plans.** The system may accept an eligible rollover distribution or a direct transfer of funds from:

- (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. Any rules adopted by the board 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 tax-free transfer treatment under federal income tax law. [L 2004, c 179, §2; am L 2008, c 41, §4]

" **§88-46 Deducting employee contributions from salary and employer pick up of employee contributions.** (a) The head of each state department and the finance director of each county shall deduct from the compensation of each class A or class B member on each and every payroll under their respective jurisdiction, the percentage of compensation of each member as provided under section 88-45. The total amount of deductions made from the salaries of employees and a record of the amount deducted from each member's compensation shall be transmitted to the system monthly or at such other times as may be agreed upon by the board of trustees. The amounts deducted shall be paid into the annuity savings fund and shall be credited to the individual account of the member from whose compensation the deductions were made. Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

(b) The State and each county, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1986, as amended, shall pick up and pay the contributions which would otherwise be payable by each class A or class B member, including contributions designated by the member relating to the

acquisition of membership service as provided under section 88-59, from compensation paid after December 31, 1987. The contributions so picked up shall be treated as employer contributions for the purpose of determining the amount of federal income tax to withhold from each class A or class B member's compensation.

(c) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each class A or class B member's compensation equal to the amount of the member's contributions picked up by the employer, provided that such deduction shall not reduce the member's compensation for the purpose of computing benefits under this chapter.

(d) Member contributions picked up by the employer shall be transmitted to the system in accordance with subsection (a). Such contributions shall be credited to a separate account within each member's individual account in the annuity savings fund, so that the amount contributed by the member before January 1, 1988, may be distinguished from the member contributions picked up by the employer. Regular interest shall also be credited to the individual account of the member in the annuity savings fund. [L 1925, c 55, pt of §8; am imp L 1927, c 251, §4; RL 1935, pt of §7927; RL 1945, pt of §712, subs 1; RL 1955, §6-83; am L 1957, c 143, §8; am L 1963, c 127, §16; am L 1964, c 62, §11; HRS §88-46; am L 1969, c 110, pt of §1; am L 1984, c 108, §5; am L 1987, c 115, §1; am L 1988, c 41, §2; am L 1997, c 213, §1]

Attorney General Opinions

Member must have made contributions in order to have pay included as part of average final compensation. Att. Gen. Op. 85-10.

" **§88-46.5 REPEALED.** L 2006, c 40, §4.

" **[\$88-46.6] 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. [L 2007, c 215, §1]

" **§88-47 Membership.** (a) There shall be four classes of members in the system to be known as class A, class B, class C, and class H, defined as follows:

(1) Class A shall consist of:

- (A) Judges, elected officials, and legislative officers;
- (B) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators;
- (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, not making the election to become a class C member as provided in part VII or to become a class H member as provided in part VIII;
- (D) The following members in service prior to July 1, 2006, including those who are on approved leave of absence, not making the election to become a class H member as provided in part VIII:
 - (i) Members whose salaries are set forth in sections 26-52 and 26-53 and their county counterparts, managing directors or an administrative assistant to the mayor, other county department heads, and agency heads appointed and subject to removal by the mayor;
 - (ii) First deputies appointed by the county attorney and prosecuting attorney;
 - (iii) The county clerk and deputy county clerk of each county;
 - (iv) The directors of the offices of council services of the county of Maui and the city and county of Honolulu;
 - (v) The administrative director of the courts;
 - (vi) The deputy administrative director of the courts;
 - (vii) The executive officer of the labor and industrial relations appeals board; and
 - (viii) The executive officer of the Hawaii labor relations board;

- (E) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership; and
 - (F) All former class B retirants who return to employment requiring the retirant's active membership, except for:
 - (i) Former retirants who return in the positions of police officer or firefighter;
 - (ii) Former retirants who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (iii) Former retirants who were in positions to which coverage under Title II of the Social Security Act was not extended who entered membership after June 30, 1957, but before January 1, 2004;
- (2) Class B shall consist of:
- (A) Police officers and firefighters, including former retirants who return to service in such capacity;
 - (B) All employees, including former retirants, who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (C) All employees, including former retirants, in positions to which coverage under Title II of the Social Security Act is not extended, who enter membership after June 30, 1957, but before January 1, 2004, not making the election to become a class H member as provided in part VIII;
- (3) Except for members described in paragraphs (1) and (2), class C shall consist of all employees, not making the election to become a class H member as provided in part VIII, who:
- (A) First enter service after June 30, 1984, but before July 1, 2006;
 - (B) Reenter service after June 30, 1984, but before July 1, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class C member as provided in part VII; or
 - (D) Are former class C retirants who return to service requiring the retirant's active membership; and
- (4) Except for members described in paragraphs (1) and (2), class H shall consist of all employees who:
- (A) First enter service after June 30, 2006;

- (B) Reenter service after June 30, 2006, without vested benefit status as provided in section 88-96(b);
- (C) Make the election to become a class H member as provided in part VIII; or
- (D) Are former class H retirants who return to service requiring the retirant's active membership.

(b) None of the provisions of this part shall apply to class C members except as specifically provided in part VII. None of the provisions of this part shall apply to class H members except as specifically provided in part VIII. [L 1925, c 55, §3(1); am L 1927, c 223, §1; am imp L 1927, c 251, §§1, 2, 5; am imp L 1929, c 190, §1; RL 1935, §7922; RL 1945, pt of §703; am L 1945, c 73, pt of §1(b); am L 1951, c 110, §1(b); am L 1953, c 37, §1(c); RL 1955, pt of §6-23; am L 1957, c 143, §2; am L 1959, c 236, §1; HRS §88-47; am L 1969, c 110, pt of §1; am L 1984, c 108, §6; am L 1987, c 118, §1 and c 149, §1; am L 1989, c 343, §3; am L 1993, c 357, §1(3); am L 1994, c 196, §4 and c 276, §3; am L 1998, c 189, §1; am L 2002, c 183, §6; am L 2003, c 121, §1; am L 2004, c 179, §5; am L 2005, c 58, §4; am L 2006, c 309, §1]

" **§88-48 Deduction in class A member's account.** An amount equal to the taxes under the Federal Insurance Contributions Act payable by a class A member for the period beginning January 1, 1956, and ending on the date class A membership is obtained, shall be deducted from the class A member's account in the system. Any member may elect to contribute to the system an amount equal to the taxes so deducted, which amount shall be credited to the member's account. [L 1957, c 143, §9; Supp, §6-83.01; HRS §88-48; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-49 Employees paid partly from federal funds.** Where any employee, subject to the compensation law, has a portion of the employee's salary paid from federal funds but is not subject to the federal retirement system, the employee shall be entitled to all benefits and be required to make all employee contributions under the system based upon the full salary received by the employee, including that portion of the salary paid from federal funds.

This section shall be retroactive as to all employees affected, upon the employee paying into the system the contributions which would have been required had the employee's full salary been paid by the State or county, together with the

necessary interest accumulations. [L 1945, c 25, §§1, 2; RL 1955, §6-24; HRS §88-49; am L 1969, c 110, pt of §1; gen ch 1985]

Attorney General Opinions

Employee subject to federal retirement system is not entitled to membership in state system. Att. Gen. Op. 71-10.

" **[\$88-49.3] Employees paid from certain federal funds.** Any provision of law to the contrary notwithstanding, a participant in a work-experience, on-the-job training, or a temporary public service employment position whose salary is paid in whole or in part from federal funds provided under the Comprehensive Employment and Training Act of 1973 (Public Law 93-203; 87 Stat. 839), as amended, shall not be eligible for membership in the system from and after July 1, 1978, except as provided for in this section.

Any such participant who is a member of the system on June 30, 1978, shall remain a member of the system unless the participant elects in writing on a form prescribed by the board to terminate the participant's membership. An election shall not be effective unless filed on or before December 31, 1978. Any participant who elects to terminate the participant's membership in accordance with this section shall be paid all of the participant's accumulated contributions. [L 1978, c 240, §1; gen ch 1985]

Attorney General Opinions

Capacity to make election. Att. Gen. Op. 86-2.

" **[\$88-49.5 Certain employees subject to federal retirement system; election.]** Any provision in this chapter to the contrary notwithstanding, any employee who was subject to the federal retirement system and was a member of the employees' retirement system of the State on July 25, 1971, shall be entitled to all benefits which accrued from such membership and shall be permitted to continue membership in the system with all the benefits thereof, including the right to acquire as membership service credit pursuant to section 88-59, the period of service for which the employee was denied membership in the system because of being subject to the federal retirement system, provided that such election shall be made before January 1, 1973. [L 1972, c 23, §1; gen ch 1985]

" **[§88-49.7] East-West center employees.** Any employee of the Center for Cultural and Technical Interchange Between East and West, Inc., a Hawaii educational nonprofit public corporation, who elected to remain a member of the system pursuant to section 14(e)(1) of Act 82, Session Laws of Hawaii 1975, establishing such corporation, shall be entitled to all benefits and required to make all employee contributions under the system for the period during which such employee remains in the employ of such corporation and a member of the system, and such corporation shall be responsible for the remittance of all employer and employee contributions required to be made under the system. [L 1975, c 82, §19(b)]

Revision Note

Act "82, Session Laws of Hawaii 1975" added.

" **§88-50 Computation of year of service.** The board of trustees may fix and determine by appropriate rules and regulations how much service in any year is equivalent to a year of service but in no case shall more than one year of service be credited in twelve calendar months, nor shall the board allow credit as service for any period of more than one month's duration during which the employee was absent without pay. [RL 1945, pt of §704; am L 1945, c 73, pt of §1(c); RL 1955, §6-32; HRS §88-50; am L 1969, c 110, pt of §1]

Case Notes

Legislature clearly delegated authority to determine the amount of service equivalent to a "year of service" to board of trustees. 73 H. 9, 828 P.2d 260.

" **§88-50.5 Credit for mandatory maternity leave.** Any member of the system who was required to take mandatory maternity leave prior to July 1, 1973, may be credited up to four years of membership service credit for mandatory maternity leave; provided that the maximum credit for each pregnancy shall be limited to twelve months.

A member's maternity leave shall be considered service in the member's occupation at the time the leave was taken and may be credited in accordance with sections 88-59, 88-272, and 88-324.

Any retirant, who returns to employment and is reenrolled as a member of the system and who has at least three years of credited service in the system during the period of reemployment, may be credited with membership service credit for maternity leave as provided in this section. [L 1990, c 104, §2; am L 2004, c 179, §6]

" **§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 subsequent to:
 - (A) January 1, 1926, by an employee of the State; or
 - (B) 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 employee was a member of the system immediately preceding the time the employee renders the service;
 - (B) The employee reenters the service of the State or county within one year after termination of the service; and
 - (C) The employee has, to the satisfaction of the board, waived the employee's right to any credit under the Civil Service Retirement Act (5 U.S.C.A. 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 the service;provided further that credit for 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 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;

- (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 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 a full-time, year-round employee of the legislature during any legislative session, except for service rendered as a session employee, as defined in section 88-54.2, and employed after October 31, 2006;
- (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 the cafeteria manager or worker was working on a 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 contributions to the system if required by parts II, VII, and VIII of this chapter. [RL 1945, pt of §704; am L 1945, c 73, pt of §1(c); am L 1955, c 256, §1; RL 1955, §6-31; am L 1959, c 189, §1; am L 1965, c 222, §4; am L 1967, c 186, §1 and c 192, §1; HRS §88-51; am L 1969, c 74, §1, c 110, pt of §1, and c 157, §1; am L 1971, c 121, §1; am L 1973,

c 73, §1; am L 1976, c 151, §1; am L 1977, c 51, §1; am L 1978, c 24, §1; am L 1982, c 165, §2(5); gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11; am L 2002, c 183, §7; am L 2007, c 2, §3 and c 215, §4]

" **§88-51.5 REPEALED.** L 1982, c 165, §2(6).

" **§88-52 Service while a member of the legislature.** Under such rules and regulations as the board of trustees may adopt, any legislator electing to become a member or any former legislator electing to become a member, shall file, on a form approved by the board, a detailed statement of all service as a legislator rendered by him for which he claims credit and which is not otherwise credited to him under this part. The board shall verify as soon as practicable the period of service therein claimed and shall allow prior service credit for all such service rendered prior to July 1, 1951, anything to the contrary in this part notwithstanding. All service rendered as a member of the legislature after June 30, 1951, shall be considered membership service. [L 1951, c 110, §1(c); am L 1955, c 248, §1; RL 1955, pt of §6-38; HRS §88-52; am L 1969, c 110, pt of §1]

Attorney General Opinions

No age restriction imposed on granting membership for prior service as elected official. Att. Gen. Op. 64-40.

" **§88-53 (Reserved)**

" **§88-54 Service while legislative employee.** Any member who takes a leave of absence to be employed by the legislature during any legislative session shall be entitled to all benefits and required to make all employee contributions under the system for the period during which such employee worked for the legislature; provided that the contributions shall be made on the same basis as would have been required had the employee not been on leave of absence. [L 1947, c 58, §1; am L 1951, c 193, §1; RL 1955, §6-37; am L 1967, c 176, §2; HRS §88-54; am L 1969, c 110, pt of §1; am L 1982, c 165, §2(7)]

" **[§88-54.2] Session employees of the legislature; exempt from mandatory enrollment.** (a) Notwithstanding section 88-42 or any other section in part II, VII, or VIII, any person who is

employed as a session employee by the legislature or any legislative service agency after October 31, 2006, to provide services during any session of the legislature and who is not subject to section 88-54 shall be excluded from membership in the employees' retirement system throughout the person's employment as a session employee.

(b) For the purposes of this section, "session employee" means a person who is not subject to section 88-54 and who is employed by the legislature or any legislative service agency to provide services during any session of the legislature, including a reasonable period immediately prior to and after that session as the legislature and legislative service agencies shall determine. [L 2007, c 2, §1]

" **§88-54.5 Service while a member of the board of trustees of the office of Hawaiian affairs.** Notwithstanding any provisions of section 10-9 that may previously have precluded a member of the board of trustees of the office of Hawaiian affairs from participating as a member of the employees' retirement system:

- (1) Any trustee of the office of Hawaiian affairs in service on July 1, 2002, may become a member in accordance with section 88-43 by October 1, 2002;
- (2) Any trustee of the office of Hawaiian affairs elected or appointed after July 1, 2002, shall become a member or elect to be excluded from membership in the system in accordance with section 88-42.6;
- (3) Any service as a trustee of the office of Hawaiian affairs during the period of July 1, 1993, through July 1, 2002, if claimed by the member, shall be credited in the member's class at the time the service is acquired; provided that membership service shall be credited in accordance with sections 88-59, 88-272, and 88-324; and
- (4) Any former trustee of the office of Hawaiian affairs who retired from service prior to July 1, 2002, shall not be entitled to claim membership service as a trustee during the period July 1, 1993, through June 30, 2002. [L 2002, c 183, §2; am L 2004, c 179, §7; am L 2008, c 47, §6]

" **§88-55 Services of field civilian personnel of the Hawaii national guard.** Civilian field personnel of the Hawaii national guard are entitled to membership credit for all service performed by them in such capacity since August 1, 1946, upon

making application therefor and complying with sections 88-59 and 88-324; provided that by federal law or regulation a payroll deduction has been made for the contribution required to be made into the system by the employee.

Any of the foregoing to the contrary notwithstanding, any civilian field personnel of the Hawaii national guard who elected to become, and who became, a member of the federal retirement system after December 31, 1968, shall not be entitled to membership credit for the period of time the individual was a member of the federal retirement system, nor shall the individual be entitled to any previous membership service credit for any period of service between August 1, 1946, and December 31, 1968, if the individual is entitled to a benefit under the federal retirement system for such period of service. [L 1953, c 265, §1; RL 1955, §6-39; HRS §88-55; am L 1969, c 110, pt of §1; am L 1982, c 165, §2(8); am L 2004, c 179, §8]

" **§88-56 REPEALED.** L 1982, c 165, §2(9).

" **§88-57 Prior service generally.** Prior service is credited without cost to the member entitled thereto. Prior service includes:

- (1) Service as an employee rendered
 - (A) By an employee of the Territory prior to January 1, 1926, or
 - (B) By an employee of any county prior to January 1, 1928,
- (2) Service in a similar capacity paid for by the Republic of Hawaii or by the preceding provisional or monarchical governments,
- (3) All service creditable to the employee under any other retirement system supported wholly or in part by the State at the time the employee became a member of this system,
- (4) Periods of honorable service in the army, navy, marine corps, coast guard and public health services of the United States at any time between the dates of April 5, 1917, and July 2, 1920, which service necessitated separation at the time of its inception from existing Territorial or county employment,
- (5) Service as an employee during the period from January 1, 1926, to December 31, 1927, in the case of a member who became an employee of the Territory during said period was in the regular employ of any county immediately prior to the time the member became a Territorial employee and was an employee of the Territory on January 1, 1928, and

- (6) Other areas or periods of service described and designated in this part to constitute prior service. [L 1925, c 55, pt of §4; am L 1927, c 223, §2; am imp L 1927, c 251, §§1, 2; am imp L 1929, c 190, §1; am imp L 1931, c 219, §§1, 2, 3; RL 1935, pt of §7923; am L 1935, c 48, §6; am L 1937, c 235, §1; RL 1945, pt of §704; am L 1945, c 73, pt of §1(c); RL 1955, §6-30; HRS §88-57; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-58 Prior service credit while per diem employee.**

Under such rules as are adopted by board of trustees, all members who formerly filled per diem positions after December 31, 1927, in the various counties as road maintenance workers, shall be allowed full prior service credit in the system for their per diem service. [L 1959, c 173, §§1, 2; am L 1960, c 22, §§2, 3; am L 1964, c 62, §2; Supp, §6-36.8; HRS §88-58; am L 1969, c 110, pt of §1; am L 1982, c 165, §2(11)]

Attorney General Opinions

Section (1969) neither required nor permitted ERS to include entirety of judges' per diem terms in computation of their retirement benefits. Att. Gen. Op. 97-11.

" **§88-59 Acquisition of membership service.** (a) Under rules as the board may adopt, any member may file with the system a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member's last becoming a member that is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

(b) After the filing of the statement, the board shall verify the service claimed and determine the service credit allowable. Verified prior service shall be credited. Verified membership service shall be paid for by the member in any one of the following methods, at the member's option:

- (1) If deductions commence or the lump sum payment is made prior to July 1, 2020:
 - (A) By 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 88-46. An irrevocable payroll authorization filed by the

member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The member may elect to have:

- (i) Deductions from the member's compensation of twice the contribution rate provided for in section 88-45 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
 - (ii) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-45 over a period equal to twice the period for which membership service credit is allowable not to exceed sixty months; or
- (B) By lump sum payment of contributions computed at the contribution rate provided for in section 88-45 applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable; provided that after July 1, 1982, this method shall not be available to any new member with fewer than five years of membership service exclusive of any previous service acquired under subparagraph (A).
- (2) If the deductions commence or the lump sum payment is made after June 30, 2020:
- (A) By 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 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty 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 sufficient to amortize the actuarial cost of the membership service to be credited, together with interest at the investment yield rate assumption in effect as of the date the claim for service credit is made, in level twice-monthly payments over the period specified in the irrevocable authorization. Service credited shall be proportional on the basis of whole months. For example, if a member elects to acquire twenty-four months of service

over sixty months and terminates employment after thirty and one-half months of deductions, the member will acquire twelve months of membership service credit; or

- (B) By lump sum payment equal to the actuarial cost of the membership service to be credited; provided that the member has at least five years of membership exclusive of any previous service acquired under paragraph (1) or subparagraph (A).

The actuarial cost of the membership service to be credited shall be determined by the actuary for the system based on the age of the member in full years as of the date the claim for service credit is made, the investment yield rate assumption in effect as of the date the claim for service credit is made, the retirement age eligibility requirements and retirement allowance provisions applicable to the member, and other actuarial assumptions adopted by the board in effect as of the date the claim for service credit is made.

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.

(c) Membership service credit, in addition to any other service credited to the member, shall be allowed for the period for which the deductions from compensation or lump sum payment have been made as described in this section; provided that payment shall commence within one year after the system notifies the member that the service claimed has been verified and that service credit is allowable; provided further that, for a member who becomes a member after June 30, 2016:

- (1) Membership service credit for prior service or for service rendered prior to the member's last becoming a member shall be claimed within one year after the member enters service;
- (2) Membership service credit for military service pursuant to section 88-132.5 shall be claimed within one year after the member meets the requirements of section 88-132.5(a) or (b); and
- (3) Any other membership service credit acquired pursuant to this section shall be claimed within one year after the member becomes eligible to receive the service credit upon satisfaction of the requirements of this section.

(d) The contribution rates under section 88-45 shall be reduced by one and eight-tenths per cent for any service being claimed prior to July 1, 2020, that was rendered prior to July

1, 1961. [RL 1945, pt of §704; am L 1949, c 269, pt of §1; am L 1951, c 110, §1(c); RL 1955, §6-35; am L 1961, c 181, §3; HRS §88-59; am L 1969, c 110, pt of §1; am L 1972, c 129, §1; am L 1982, c 165, §2(12); gen ch 1985; am L 1989, c 100, §1; am L 1997, c 213, §2; am L 2005, c 58, §5; am L 2008, c 47, §7; am L 2015, c 86, §4]

" **§88-59.5 Previous membership service credit for legislative officers.** (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(d), 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.

(b) Any retirant who returns to employment and is enrolled as a member of the system will have previous service as an assistant clerk or assistant sergeant at arms recognized as provided in this section. [L 1991, c 96, §1(1); am L 2005, c 58, §6; am L 2007, c 215, §5; am L 2011, c 163, §2]

" **§88-59.6 REPEALED.** L 2008, c 47, §12.

" **§88-60 Members whose services are on loan to other governments.** Any member whose services are on loan to another government, as authorized by section 78-27, shall retain the member's membership and shall receive credit in the system for such service; provided that the member returns to the member's

former employment within ninety days after the termination of such service; and provided further that the government receiving the loan of the member's services fulfills all of the requirements of section 78-27. [L 1969, c 110, pt of §1; gen ch 1985; am L 2002, c 148, §5]

" **§88-61 Termination of membership.** (a) Except as otherwise provided by section 88-96, any member absent from service for four calendar years following the calendar year in which the member's employment terminated shall cease to be a member, and the former member's credited service shall be forfeited.

(b) Any member who withdraws the member's contributions, becomes a retirant, or dies, ceases to be a member as of the date of withdrawal, retirement, or death. [L 1969, c 110, pt of §1; am L 1971, c 90, §1; gen ch 1985; am L 1998, c 151, §4; am L 2006, c 169, §§7, 8; am L 2008, c 47, §8]

" **§88-62 Return to service of a former member.** (a) For members who became members before July 1, 2012:

- (1) If a former member who has fewer 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 part II, VII, or VIII;

- (2) If a former member with fewer than five years of credited service and who did not withdraw the former member's accumulated contributions returns to service within four full calendar years after the year in which the former member left service, the former member shall again become a member in the same manner and under the same conditions as anyone first entering service, except that the member shall be credited with service credit for the service the member had when the member terminated employment and:
 - (A) 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
 - (B) If the member returns to service after June 30, 2006, as a class H member, section 88-321(b) shall apply; and
 - (3) If a former member with five or more years of credited service who did not withdraw the former member's contributions returns to service, the former member's status shall be in accordance with the provisions described in section 88-97.
- (b) For members who become members after June 30, 2012:
- (1) If a former member who has fewer than ten 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 part II, VII, or VIII;

- (2) If a former member with fewer than ten years of credited service and who did not withdraw the former member's accumulated contributions returns to service within four full calendar years after the year in which the former member left service, the former member shall again become a member in the same manner and under the same conditions as anyone first entering service, except that the member shall be credited with service credit for the service the member had when the member terminated employment:
 - (A) 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
 - (B) If the member returns to service as a class H member, section 88-321(b) shall apply; and

- (3) If a former member with ten or more years of credited service who did not withdraw the former member's contributions returns to service, the former member's status shall be in accordance with the provisions described in section 88-97. [L 1969, c 110, pt of §1; am L 1982, c 165, §2(13); am L 2006, c 169, §9; am L 2007, c 215, §6; am L 2011, c 163, §3]

" **[\$88-63] Credit for unused sick leave.** A public employee who retires or leaves government service in good standing with sixty days or more of unused sick leave shall be entitled to additional service credit in the retirement system as follows:

- (1) An employee with sixty days of unused sick leave to the employee's credit shall have the employee's years of service increased by three months for the purpose of computing the employee's retirement allowance.
- (2) For each additional twenty days or major fraction thereof of unused sick leave in excess of sixty days that the employee has to the employee's credit the employee shall have the employee's years of service increased by one month for the purpose of computing the employee's retirement allowance.

The allowance on service retirement of section 88-74 and the service benefit limitation therein shall not apply to retirement allowances which exceed such limitations by virtue of the application of this section in the computation of retirement allowances and no reduction in such retirement allowances shall be made on account of such limitations. [L 1975, c 177, §1; gen ch 1985]

Attorney General Opinions

Section applied to different fact situations. Att. Gen. Op. 82-5.

"C. BENEFITS

[\$88-70] Third application for retirement; withdrawal prohibited and retirement mandatory. If a member:

- (1) Has submitted two separate written applications for service retirement but has withdrawn each of the applications prior to the dates of retirement specified in the applications; and
- (2) Submits a third written application for service retirement;

during the member's lifetime, the member shall not be allowed to withdraw the third application and shall be retired on the date specified in the third application. [L 1982, c 115, §1]

" **§88-71 Credited service at retirement.** Credited service at retirement on which the retirement allowance of a member shall be based shall consist of the member's membership service, the member's credit for unused sick leave as provided in section 88-63, and the member's prior service, if any, as provided in this part. [L 1925, c 55, pt of §4; RL 1935, pt of §7923; RL 1945, pt of §704; am L 1945, c 73, pt of §1(c); am L 1947, c 140, §1(c); RL 1955, §6-40; am L 1964, c 62, §3; HRS §88-61; am L 1969, c 110, pt of §1; am L 1975, c 177, §2; gen ch 1985]

" **§88-72 REPEALED.** L 2007, c 215, §29.

" **§88-73 Service retirement.** (a) Any member who:

- (1) Became a member before July 1, 2012, and has at least five years of credited service and has attained age fifty-five;
- (2) Became a member before July 1, 2012, and has at least twenty-five years of credited service;
- (3) Has at least ten years of credited service, which includes service as a judge before July 1, 1999, an elective officer, or a legislative officer;
- (4) Becomes a member after June 30, 2012, and has at least ten years of credited service and has attained age sixty; or
- (5) Becomes a member after June 30, 2012, and has at least twenty-five years of credited service and has attained age fifty-five,

shall become eligible to receive a retirement allowance after the member has terminated service.

(b) Any member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, and who has at least five years of credited service and has attained age fifty-five or has at least twenty-five years of credited service shall become eligible to receive a retirement allowance after the member has terminated service. Any member who first earned credited service as a judge after June 30, 2012, and has at least ten years of credited service and has attained age sixty or has at least twenty-five years of credited service and has attained age fifty-five shall be eligible to receive a retirement allowance after the member has terminated service.

(c) A member may retire upon the written application specifying the date of retirement, which shall not be less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(d) Any member of the legislature who attains age sixty-five may retire and receive a service retirement allowance although the member continues to fill the elective position.

(e) In the case of a class A or B member who also has prior credited service under part VII or part VIII, total credited service as a class A, class B, class C, and class H member shall be used to determine the eligibility for retirement allowance.

(f) A member's right to the member's accrued retirement benefit is nonforfeitable upon the attainment of normal retirement age and the completion of the requisite years of credited service.

For the purpose of this subsection:

"Normal retirement age" means age sixty-five.

"Requisite years of credited service" means five years for class A and B members who became members before July 1, 2012, and ten years for class A and B members who became members after June 30, 2012. [L 1925, c 55, §6(1); RL 1935, pt of §7925; RL 1945, §708, subs 1; am L 1947, c 85, §1(c); RL 1955, §6-41; am L 1957, c 24, §1 and c 231, §1(b); am L 1959, c 67, §1; am L 1961, c 175, §1; am L 1963, c 127, §3; am L 1964, c 62, §4; HRS §88-63; am L 1969, c 110, pt of §1; am L 1971, c 90, §2; am L 1975, c 199, §1; am L 1982, c 115, §2; am L 1984, c 85, §2; am L 1987, c 117, §1; am L 1991, c 96, §1(2); am L 1998, c 151, §5; am L 1999, c 65, §2; am L 2002, c 128, §4; am L 2003, c 118, §3; am L 2004, c 179, §9; am L 2008, c 47, §9; am L 2011, c 163, §4; am L 2013, c 124, §2]

Attorney General Opinions

Paragraph (3) authorizes payment of allowance only to a legislator over 65; all other retirees who reenter government service not entitled to continuation of allowance. Att. Gen. Ops. 66-26, 68-15.

Precludes board of regents from adopting a mandatory retirement policy. Att. Gen. Op. 84-6.

Case Notes

Retirement occurs not upon execution and filing of application but upon date specified. 61 H. 596, 607 P.2d 415.

" **§88-74 Allowance on service retirement.** (a) Upon retirement from service, a member shall receive a maximum retirement allowance as provided in this section.

(b) If a member, who became a member before July 1, 2012, has attained age fifty-five, the member's maximum retirement allowance shall be 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 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 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:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) 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;
- (7) After June 30, 2002, 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 B position other than a firefighter; and
- (8) After June 30, 2004, 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 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 for age as provided in subsection (e).

(c) If a member, who became a member prior to July 1, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (1) 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 service;
- (2) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, 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 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 for age as provided in subsection (e);

- (3) For a member who first earned credited service as a judge after June 30, 2012, for each year of credited service as a judge, three 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 service. 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);
- (4) For a judge with other credited service, as provided in subsection (b). 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 for age as provided in subsection (e); or
- (5) For a judge with credited service as an elective officer or as a legislative officer, as provided in subsection (d).

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 paragraphs (1), (2), and (3) and the portion of the accumulated contributions specified in paragraphs (1), (2), and (3) 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 subsection, 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.

(d) If a member, who became a member before July 1, 2012, 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 paragraphs (1), (2), (3), (4), (5), and (6) as follows:

- (1) For a member who has credited service as an elective officer before July 1, 2012, 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;
- (2) For a member, who first earned credited service as an elective officer after June 30, 2012, irrespective of

age, for each year of credited service as an elective officer, three 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;

- (3) For a member who has credited service as a legislative officer before July 1, 2012, 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;
- (4) For a member who first earned credited service as a legislative officer after June 30, 2012, irrespective of age, for each year of credited service as a legislative officer, three 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;
- (5) 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 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 service;
 - (B) For a member who first earned credited service as a judge after June 30, 1999, but before July 1, 2012, 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 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 for age as provided in subsection (e); and

(C) For a member who first earned credited service as a judge after June 30, 2012, and has attained the age of sixty, for each year of credited service as a judge, three 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 service. 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); and

(6) For each year of credited service not included in paragraph (1), (2), (3), (4), or (5), 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 for age as provided in subsection (e).

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 paragraphs (1), (2), (3), (4), and (5) and the portion of the accumulated contributions specified in these paragraphs 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 subsection shall supersede the formula contained in subsection (c).

(e) Except as provided in subsections (b), (c), and (d), if a member, who became a member before July 1, 2012, 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.

(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 public safety investigations staff investigator;
- (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
- (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, 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).

(g) If a member, who becomes a member after June 30, 2012, has credited service as a judge, the member's retirement allowance shall be computed on the following basis:

- (1) For each year of credited service as a judge, three 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 service. 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) For a judge with other credited service, as provided in subsection (f). 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); and
- (3) For a judge with credited service as an elective officer or as a legislative officer, as provided in subsection (h).

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 paragraph (1) and the portion of the accumulated contributions specified in paragraph (1) 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 subsection, 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.

(h) If a member, who becomes a member after June 30, 2012, 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 paragraphs (1), (2), (3), and (4) as follows:

- (1) Irrespective of age, for each year of credited service as an elective officer, three per cent of the member's average final compensation as computed under section 88-81(f)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (2) Irrespective of age, for each year of credited service as a legislative officer, three per cent of the member's average final compensation as computed under section 88-81(f)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (3) For each year of credited service as a judge, three per cent of the member's average final compensation as computed under section 88-81(f)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service. 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); and
- (4) For each year of credited service not included in paragraph (1), (2), or (3), the average final compensation as computed under section 88-81(f)(4)

shall be multiplied by one and three-fourth per cent for credited service earned as a class A or class H member, two and one-fourth per cent for credited service earned as a class B member, and one and one-fourth per cent for credited service earned as a class C member. 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).

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section 88-81(f)(1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under paragraphs (1), (2), and (3) and the portion of the accumulated contributions specified in these paragraphs 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 subsection shall supersede the formula contained in subsection (g).

(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 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. [L 1925, c 55, §6(2); RL 1935, pt of §7925;

RL 1945, §708, subs 2; am L 1945, c 73, §1(e); am L 1947, c 85, §1(d); RL 1955, §6-42; am L 1957, c 143, §3 and c 231, §1(c); am L 1961, c 175, §2 and c 181, §4; am L 1962, c 20, §3; am L 1963, c 127, §4; am L 1964, c 62, §5; am L 1965, c 222, §5; am L 1967, c 130, §§2, 4; HRS §88-64; am L 1969, c 110, pt of §1; am L 1973, c 179, §28; am L 1975, c 178, §1 and c 199, §2; am L 1977, c 191, §2; am L 1978, c 230, §1; am L 1982, c 165, §2(14); gen ch 1985; am L 1987, c 117, §2; am L 1989, c 343, §4; am L 1991, c 96, §1(3); am L 1992, c 160, §2; am L 1993, c 357, §1(4); am L 1994, c 196, §5 and c 276, §4; am L 1997, c 211, §1 and c 374, §2; am L 1999, c 65, §3; am L 2002, c 205, §1; am L 2003, c 118, §4; am L 2004, c 177, §1 and c 179, §10; am L 2005, c 58, §7; am L 2007, c 215, §7; am L 2011, c 163, §5; am L 2012, c 153, §1]

Attorney General Opinions

Upon retirement, a member with service as a judge or an elected officer is entitled to have each year of such service computed at the 3-1/2% rate, regardless of the length of such service. Att. Gen. Op. 72-19.

Enhanced benefits of various law enforcement officers and firefighters, discussed. Att. Gen. Op. 90-2.

In general, the calculation of retirement benefits of elective officers who were elective officers on July 1, 1997, pursuant to Act 374, Session Laws of Hawaii 1997, should be made thus: the law as it existed before the effective date of Act 374 (July 1, 1997) is applied to service accrued before the effective date of the Act (i.e., elective officers can apply a high average final compensation to years of possibly multiple types of services, including elective service) and the amount derived from that calculation is added to the amount arrived at by applying the Act to service accrued after the effective date of the Act (which is segregated by service category). This results in using different average final compensations for pre- and post-Act service. Att. Gen. Op. 2000-1.

Case Notes

Mentioned: 75 H. 42, 856 P.2d 1227.

" **§88-74.5 Finalizing of pensions.** (a) The system shall finalize a retirant's pension benefit within six calendar months following the month of the retirant's retirement. For pension benefits finalized after the sixth calendar month following the month of the retirant's retirement, an interest payment amounting to four and one-half per cent per annum shall be paid

to the retirant. Interest shall be calculated on the difference between the amount the retirant is entitled to receive from the retirant's retirement date up to the day the payment is made and the amount the retirant was paid, including any refund of member contributions.

Beginning January 1, 2004, or the first day of the seventh calendar month following the month of retirement, whichever is later, interest payments calculated as simple interest shall be prorated up to the date payment is made; provided that any pension adjustment made after the retirant's pension has once been finalized shall not be subject to any interest payment.

The system shall finalize ordinary and service-connected disability retirements within six calendar months following the month that the member's retirement is approved by the board or the actual retirement date specified by the member, whichever is later.

(b) Any department or agency of the State or counties that fails to comply with the system's request for information shall be subject to a monthly fee for each request as follows:

- (1) For requests for unused sick leave balances and lump sum vacation payments not reported within ninety days of an employee's retirement; and
- (2) For requests for payroll or personnel information not reported within thirty days of receipt of request.

Beginning January 1, 2004, the system shall assess \$10 for each month or fraction thereof that the department or agency fails to provide the system with the requested information for each retiree. All assessments collected shall be deposited to the pension accumulation fund. [L 2003, c 134, §1; am L 2006, c 169, §10]

" **§88-74.6 Unreduced allowance on service retirement; when applicable.** In addition to those positions identified in section 88-74(e) 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 a member, who became a member before July 1, 2012, has at least:

- (1) Thirty years of credited service through June 30, 2003;
- (2) Twenty-nine years of credited service on or after July 1, 2004;
- (3) Twenty-eight years of credited service on or after July 1, 2005;
- (4) Twenty-seven years of credited service on or after July 1, 2006;
- (5) Twenty-six years of credited service on or after July 1, 2007; or

(6) 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. [L 2003, c 199, §1; am L 2007, c 215, §8; am L 2011, c 163, §6]

" **§88-74.7 Commencement of benefits on required beginning date.** (a) The purpose of this section is to provide for distribution of benefits in accordance with a reasonable and good faith interpretation of section 401(a)(9) of the Internal Revenue Code. Section 401(a)(9) of the Internal Revenue Code requires that the "entire interest" of a member be distributed or that distribution of the member's benefits begin no later than the member's "required beginning date".

(b) For the purposes of this section, "required beginning date" means April 1 of the calendar year following the calendar year in which a member terminates service or attains age seventy and one-half, whichever is later.

(c) A member or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, shall be paid to the member or former member, or payment of the benefits payable under part II, VII, or VIII of this chapter shall commence, no later than the member's or former member's required beginning date. The payment or payments shall be made on, or beginning no later than, the member's or former member's required beginning date even if the member or former member does not apply for payment or file a retirement application.

(d) If, by a member's or former member's required beginning date:

(1) The member or former member's accumulated contributions or hypothetical account balance, as defined in section 88-311, are not paid to the member or former member; or

(2) Payment of the benefits payable under part II, VII, or VIII of this chapter do not commence, the system shall pay the service retirement benefits for which the member or former member is eligible pursuant to part II, VII, or VIII of this chapter, as applicable, retroactive to the member's or former member's required beginning date with regular interest.

(e) If the system does not receive a written election from the member or former member under section 88-83, 88-283, or 88-333, as applicable, prior to the later of the member's or former

member's required beginning date or sixty days following the receipt by the member or former member of notice from the system that the member or former member is required to make an election, the following election shall be deemed to have been made as of the member or former member's required beginning date:

- (1) If the member or former member is unmarried or has no reciprocal beneficiary, the member or former member shall be deemed to have elected the maximum retirement allowance; or
- (2) If the member or former member is married or has a reciprocal beneficiary, the member or former member shall be deemed to have elected option 3 under section 88-83, or option A under section 88-283, as applicable, and to have designated the member's or former member's spouse or reciprocal beneficiary as the member's or former member's beneficiary;

provided that if the system receives the written election after the member's or former member's required beginning date, but within sixty days following receipt by the member or former member of notice from the system that the member or former member is required to make the election, the written election shall apply, and the member's or former member's retirement benefit shall be recomputed, based on the written election, retroactive to the member or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(f) If the system does not have current information about the member's or former member's marital or reciprocal beneficiary status at the time of a deemed election, the following presumptions shall apply:

- (1) If the member or former member was married or had a reciprocal beneficiary at the time the member or former member last provided information to the system about the member's or former member's marital or reciprocal beneficiary status, it shall be presumed that the member or former member is still married to the same spouse or is in the same reciprocal beneficiary relationship. If the system does not have information as to the age of the spouse or reciprocal beneficiary, the spouse or reciprocal beneficiary shall be presumed to be forty years younger than the member or former member for purposes of computing the member's or former member's benefit; and

(2) If the member or former member was unmarried and did not have a reciprocal beneficiary at the time the member or former member last provided information to the system about the member or former member's marital status, it shall be presumed that the member or former member is married and that the spouse of the member or former member is forty years younger than the member or former member.

(g) The presumptions in subsection (f) shall cease to apply when the member or former member provides the system with current information as to the member's or former member's marital or reciprocal beneficiary status and the age of the member or former member's spouse or reciprocal beneficiary, if any, on the member's or former member's required beginning date. The information shall be provided in a form satisfactory to the system. At that time, the member's or former member's retirement allowance shall be recomputed, retroactive to the member's or former member's required beginning date, based on the updated information; provided that, except as provided in subsection (e), the member or former member shall not be permitted to change the member's or former member's retirement allowance option election or beneficiary; provided further that the benefit being paid to any member or former member who, on the member's or former member's required beginning date, was unmarried and did not have a reciprocal beneficiary, but who was deemed to elect option 3 or option A with an assumed spouse or reciprocal beneficiary, shall be converted to the maximum retirement allowance retroactive to the member's or former member's required beginning date. The amount of any underpayment resulting from recomputing the benefit shall bear regular interest. If recomputing the benefit results in an overpayment, payments shall be adjusted so that the actuarial equivalent of the benefit to which the member or former member was correctly entitled shall be paid.

(h) If the system cannot locate the member or former member, the member's or former member's benefit shall be payable only until the end of the member's or former member's life expectancy, as determined at the member's or former member's required beginning date. If the member or former member has not by that time made a claim for benefits, the member or former member shall be deemed to be deceased at that time. Interest under subsection (d) shall cease on benefits presumed to be abandoned property, pursuant to part I of chapter 523A, upon payment of the property to the administrator under part I of chapter 523A.

(i) Rules necessary for the purposes of this section shall be adopted as provided in section 88-22.5. [L 2011, c 96, §2; am L 2013, c 123, §4]

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

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Upon approval by the board, the member shall be eligible to 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 shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. 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 such approval; provided that retirement shall become effective on the first day of 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. [L 1925, c 55, §6(3); RL 1935, pt of §7925; RL 1945, §708, subs 3; am L 1951, c 158, §1(a); RL 1955, §6-44; HRS §88-65; am L 1969, c 110, pt of §1; am L 1971, c 157, §1; am L 1973, c 37, §1; gen ch 1985; am L 1997, c 212, §1; am L 2002, c 128, §5; am L 2006, c 185, §2; am L 2009, c 121, §1]

" **§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(c), (d), (g), or (h), as applicable. The minimum retirement allowance payable under this section

shall be thirty per cent of the member's average final compensation. [L 1925, c 55, §6(4); RL 1935, pt of §7925; RL 1945, §708, subs 4; RL 1955, §6-45; am L 1957, c 143, §4 and c 231, §1(d); am L 1961, c 175, §3 and c 181, §5; am L 1962, c 20, §3; am L 1963, c 127, §5; am L 1964, c 62, §7; am L 1965, c 222, §7; HRS §88-66; am L 1969, c 110, pt of §1; am L 1975, c 199, §3; gen ch 1985; am L 1990, c 287, §1; am L 1991, c 96, §1(4); am L 1993, c 137, §1; am L 1997, c 374, §3; am L 2005, c 58, §8; am L 2006, c 169, §11; am L 2007, c 215, §9; am L 2011, c 163, §7]

" **§§88-77, 78 REPEALED.** L 1998, c 151, §§13, 14.

" **§88-79 Service-connected disability retirement.** (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 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.

(b) In the case of firefighters, police officers, and sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the

purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in permanent incapacity to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or to the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability or was receiving vocational rehabilitation services occasioned by the disability.

(d) The board may determine whether or not the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) The certification made by the head of the agency in which the member is employed; or
- (2) A finding to this effect by the medical board.

(e) Upon approval by the board, the member shall be eligible to receive a service-connected disability retirement benefit after the member has terminated service. Retirement shall become effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. [L 1963, c 127, §7; am L 1965, c 225, §2; Supp, §6-46.1; HRS §88-69; am L 1969, c 110, pt of §1; am L 1971, c 152, §3; am L 1974, c 182, §3; am L 1975, c 41, §1; am L 1983, c 124, §15; gen ch 1985; am L 1987, c 81, §1 and c 283, §14; am L 1997, c 212, §3; am L 1998, c 151, §6; am L 2002, c 128, §6; am L 2007, c 215, §10]

Attorney General Opinions

Heart attack could constitute "accident" within meaning of section. Att. Gen. Op. 69-25.

Case Notes

Applicant for benefits under section is, by chapter 91 and constitutional due process, entitled to trial-type hearing on contested issues before the board of trustees. 52 H. 212, 473 P.2d 866.

Danger that accompanies a particular job is an "occupational hazard" if it is not a risk common to employment in general. 67 H. 485, 693 P.2d 405.

Office worker's permanent incapacitation for duty caused by asthmatic bronchitis was not cumulative result of an occupational hazard; incapacitation due to an "accident" or as "the cumulative result of some occupational hazard" are mutually exclusive. 5 H. App. 279, 687 P.2d 1340.

Where an employee is on the employer's premises, doing what the employer requires at a time and place the employee is required to do it, the employee is engaged in the actual performance of duty for purposes of service-connected disability retirement. 112 H. 292 (App.), 145 P.3d 835.

" **§88-80 Allowance on retirement for service-connected disability.** Upon retirement for service-connected disability, a member shall receive the amount of the member's accumulated contributions and a maximum retirement allowance that shall consist of fifty per cent of the member's average final compensation. [L 1963, c 127, §9; Supp, §6-47.1; HRS §88-70; am L 1969, c 110, pt of §1; gen ch 1985; am L 1998, c 151, §7; am L 2005, c 58, §9]

Case Notes

If employee totally incapacitated by a service-connected accident, employee should be awarded total disability benefits though employee may have been incapacitated by superimposed subsequent condition; test for total incapacitation; "odd-lot" doctrine not applicable to determination of total incapacitation. 66 H. 304, 660 P.2d 36.

In three year reevaluation of disability, board must consider whether service-connected accident causes employee to be totally incapacitated for employment. 4 H. App. 526, 669 P.2d 638.

" **§88-81 Average final compensation.** (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.

(b) The average final compensation of members shall be calculated as follows:

- (1) For employees who become members before January 1, 1971:
 - (A) During the member's five highest paid years of credited service, including vacation pay, or the three highest paid years of credited service excluding vacation pay, whichever is greater; or
 - (B) If the member has fewer than three years of credited service, during the member's actual years of credited service;
- (2) For employees who become members after December 31, 1970, but before July 1, 2012:
 - (A) During the member's three highest paid years of credited service, excluding vacation pay; or
 - (B) If the member has fewer than three years of credited service, during the member's actual years of credited service; and
- (3) For employees who become members after June 30, 2012:
 - (A) During the member's five highest paid years of credited service, excluding vacation pay; or
 - (B) If the member has fewer than five years of credited service, during the member's actual years of credited service.

(c) In computing the compensation of a judge, the compensation paid to the judge by the United States as well as by the Territory shall be included.

(d) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows:

- (1) During a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and
- (2) During a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session.

For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during the member's term of office.

(e) If a member, who became a member before July 1, 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 three highest paid years of credited service as an elective officer, or if the member has fewer than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has fewer than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has fewer than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has fewer than three years of credited service in that capacity, then the member's actual years of credited service.

(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 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. [L 1963, c 127, pt of §2; Supp, pt of §6-38; pt of HRS §§88-21 and 88-53; am L 1969, c 32, §1 and c 110, pt of §1; am L 1970, c 91, §1; am L 1997, c 374, §4; am L 2002, c 128, §7; am L 2003, c 118, §5; am L 2007, c 215, §11; am L 2011, c 163, §8; am L 2012, c 153, §2]

Attorney General Opinions

Average final compensation does not include pay for temporary summer work where no retirement contributions deducted. Att. Gen. Op. 85-10.

In general, the calculation of retirement benefits of elective officers who were elective officers on July 1, 1997, pursuant to Act 374, Session Laws of Hawaii 1997, should be made thus: the law as it existed before the effective date of Act 374 (July 1, 1997) is applied to service accrued before the effective date of the Act (i.e., elective officers can apply a high average final compensation to years of possibly multiple types of services, including elective service) and the amount derived from that calculation is added to the amount arrived at by applying the Act to service accrued after the effective date of the Act (which is segregated by service category). This results in using different average final compensations for pre- and post-Act service. Att. Gen. Op. 2000-1.

" **§88-81.5 Federal tax limits on annual compensation.** (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.

(b) Notwithstanding subsection (a), any member who accrued a benefit prior to July 1, 2004, based on annual compensation in excess of the limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall receive a nontax-qualified benefit equal to the difference between:

- (1) The pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service, the member's class of service, and the member's average final compensation as of June 30, 2004, without regard to the limit under section 401(a)(17); and

- (2) The tax-qualified pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service and the member's class of service as of June 30, 2004, and the member's average final compensation as limited by section 401(a)(17) as of the earliest age the member could retire with an unreduced benefit, or, upon the member's termination of service, if earlier.

(c) The nontax-qualified benefit under subsection (b) shall be determined and paid in a single lump sum within the time required to meet federal tax withholding and reporting obligations for the first year the benefit is taxable. The lump sum shall be the actuarial equivalent of a single-life annuity payable at the earliest age the member could retire with an unreduced benefit, assuming that the compensation limit in effect under section 401(a)(17) at the time the benefit is taxable will increase two per cent annually. The actuarial equivalent of the single-life annuity shall be calculated on the following assumptions:

- (1) An eight per cent discount rate;
- (2) The 1994 Group Annuity Mortality Static Table (Males and Females), published in the Transactions of the Society of Actuaries 1995, vol. 47 (table 18), using a blended mortality table that is a fifty per cent-fifty per cent blend of the 1994 Group Annuity Mortality table for males set back two years and the 1994 Group Annuity Mortality table for females set back one year; and
- (3) A two and one-half per cent simple interest cost of living adjustment to the original annuity.

(d) At the earliest age the member could retire with an unreduced benefit, or, upon the member's termination of service, if earlier, the member shall be entitled to an additional payment if the actual compensation limit then in effect under section 401(a)(17) is less than the limit that was assumed to be in effect under subsection (c) as of the date that was assumed to be the member's unreduced retirement age. Such additional payment, if any, shall be the difference between:

- (1) The benefit that would have been paid under subsection (c) if the member's unreduced retirement age and the actual section 401(a)(17) limit in effect at the earlier of the member's unreduced retirement age or termination of service had been known and used; and
- (2) The benefit that was paid under subsection (c).

The amount of any additional payment shall be adjusted for interest at eight per cent from the date of payment under subsection (c) to the date of payment under this subsection.

(e) The nontax-qualified benefit shall be administered by the board of trustees; provided that:

(1) State members shall be paid with funds appropriated from the State's general revenues; provided that the University of Hawaii and the departments and agencies subject to section 88-125 shall reimburse the State for the respective amounts payable on account of the employees of the University of Hawaii or in such departments and agencies; and

(2) County members shall be paid by the respective counties pursuant to assessments made and received by the system.

(f) Section 88-91 shall apply to the nontax-qualified benefit. [L 2004, c 183, §2; am L 2006, c 169, §12; am L 2007, c 215, §12]

" **§88-82 Petition for contested case hearing regarding disability retirement or accidental death benefits; attorney's fees and costs.** (a) A member or applicant who is not satisfied with the preliminary decision of the board to grant or deny an application for disability retirement benefits or accidental death benefits based on the certifications and findings of the medical board may file a petition for contested case hearing with the board within sixty days after receiving written notification of the preliminary decision of the board.

(b) If the member or applicant is the prevailing party in the contested case, and disability retirement or accidental death benefits are awarded to the member or applicant by the board or court of the appropriate jurisdiction under section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334, 88-336, or 88-339, the member or applicant shall be paid reasonable attorney's fees together with any costs payable by the system. The attorney's fees and costs shall be subject to the approval of the board or approval by a court of appropriate jurisdiction after evidence has been provided by the member or applicant regarding the reasonableness of the claimed attorney's fees and costs. [L 1964, c 53, pt of §2; Supp, pt of §6-68.5; am L 1967, c 173, §1; pt of HRS §88-73; am L 1969, c 110, pt of §1; am L 1989, c 114, §1; am L 1998, c 151, §8; am L 2004, c 179, §11; am L 2009, c 121, §2]

Board of trustees, after hearing on appeal from medical board's decision, may overrule any decision or recommendation which the medical board is authorized to make. Att. Gen. Op. 81-8.

Case Notes

Appeal to trustees is a contested case within meaning of §91-1(5), and the administrative procedure act is applicable, including the due process provision of §91-9. 52 H. 212, 473 P.2d 866.

Mentioned: 74 H. 181, 840 P.2d 367.

" **§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 retirant's death, there shall be paid to the retirant's designated beneficiary, or otherwise to the retirant's estate the difference between:

- (1) The balance of the member's accumulated contributions at the time of the member's retirement; and
- (2) The retirement allowance and, if the retirant retired after November 30, 2004, the post retirement allowances paid or payable to the 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. 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 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 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 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 88-84 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 adopted by the board 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 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 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 benefit that would have been paid under section 88-84 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 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. [L 1925, c 55, §6(11); RL 1935, pt of §7925; RL 1945, §708, subs 11; am L 1951, c 127, §2; am L 1955, c 270, §3; RL 1955, §6-50; am L 1959, c 157, §1; am L 1963, c 127, §11; am L 1964, c 62, §§6, 8; am L 1965, c 222, §§6, 9; Supp, §6-42.5; HRS §§88-74, 75; am L 1969, c 110, pt of §1; am L 1972, c 22, §1; am L 1977, c 82, §1; am L 1982, c 115, §3; gen ch 1985; am L 1988, c 8, §1; am L 1998, c 151, §9; am L

2003, c 182, §1; am L 2004, c 179, §12; am L 2006, c 169, §13;
am L 2007, c 215, §13]

Attorney General Opinions

Change to "unisex" option factor tables valid. Att. Gen. Op.
82-3.

" **§88-83.5 Benefit limitations.** (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 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 with vested benefit status, and retirants. To the extent the applicable interest rate, as defined in section 417(e)(3) of the Internal Revenue Code of 1986, as amended, is used in computing the limitations under section 415 of the Internal Revenue Code of 1986, as amended, the stability period for the purposes of applying section 1.417(e)-1(d)(4) of the United States Treasury Regulations shall be one calendar year beginning January 1, and the lookback month for the purposes of applying section 1.417(e)-1(d)(4) of the United States Treasury Regulations shall be the fourth full calendar month preceding the first day of the stability period (September).

(b) Effective January 1, 2009, the following rules shall apply for the purposes of applying the limitations in section 415(b) of the Internal Revenue Code of 1986, as amended:

- (1) The dollar limit in section 415(b)(1)(A) of the Internal Revenue Code of 1986, as amended, shall be applied to the member's annual benefit as of the member's annuity starting date, as defined in section 417(f)(2) of the Internal Revenue Code of 1986, as amended, without regard to any automatic cost-of-living increases; and
- (2) In no event may the member's annual benefit exceed the dollar limit applicable at the member's annuity starting date, as defined in section 417(f)(2) of the Internal Revenue Code of 1986, as amended, as increased in subsequent years pursuant to section

415(d) of the Internal Revenue Code of 1986, as amended.

(c) Notwithstanding any other law to the contrary, the benefits payable to all employees who first became members before January 1, 1990, shall be subject to the greater of the following limitations as provided in section 415(b)(10) of the Internal Revenue Code of 1986, as amended:

- (1) The limitations set forth in section 415 of the Internal Revenue Code of 1986, as amended; or
- (2) The benefit of the member without regard to any benefit increases pursuant to an amendment adopted after October 14, 1987.

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

- (1) All retirants and beneficiaries of the system whose pension has been limited by 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 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 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 and deposited in a separate fund from an allocation of employer contribution amounts pursuant to this chapter;
- (4) The board 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 415(m) of the Internal Revenue Code of 1986, as amended. [L 1990, c 104, §1; am L 2000, c 215, §2; am L 2008, c 41, §5; am L 2013, c 124, §3]

" **§88-84 Ordinary death benefit.** (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 88-74, 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.
- (b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:
- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a)(1), (2), or (3);
 - (2) To the deceased member's children under age eighteen, if there is no surviving spouse or reciprocal

beneficiary, an equally divided benefit as specified under subsection (a)(1); or

- (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary and no children under the age of eighteen, a benefit as specified under subsection (a)(1).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(d) The application for ordinary death benefits shall be filed no later than three years from the date of the member's death. [L 1925, c 55, §6(8); RL 1935, pt of §7925; RL 1945, §708, subs 8; am L 1949, c 200, §1; am L 1951, c 127, §1; RL 1955, §6-51; am L 1963, c 127, §12; am L 1967, c 247, §1; HRS §88-77; am L 1969, c 110, pt of §1; gen ch 1985; am L 1987, c 299, §2; am L 1988, c 41, §3 and c 242, §1; am L 1993, c 67, §1; am L 1994, c 108, §3; am L 1997, c 212, §4 and c 383, §28; am L 2002, c 128, §8; am L 2006, c 169, §14; am L 2007, c 215, §14]

Attorney General Opinions

Because of operation of renunciation of succession pursuant to Uniform Probate Code, beneficiary, deceased parent, was deemed to have predeceased member; thus, only remaining beneficiary was remaining parent, and employees' retirement system may pay member's benefits to sole remaining beneficiary. Att. Gen. Op. 97-3.

" **[§88-84.5] Federal limits on annual compensation for ordinary death benefit.** (a) Commencing July 1, 1996, compensation used to determine the benefit payable under section 88-84(a)(1) shall be subject to the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended; provided that there shall be paid to the beneficiary of any member:

- (1) Who dies while in service or on authorized leave without pay after June 30, 2004, and before July 1, 2006; and
- (2) Whose compensation earned during the year immediately preceding the member's death exceeds the annual limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended,

a nontax-qualified benefit equal to the difference between the benefit that would have been payable under section 88-84(a)(1)

without applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to compensation earned prior to July 1, 2005, and the benefit that is payable under section 88-84(a)(1) applying the limit under section 401(a)(17) of the Internal Revenue Code of 1986, as amended, to the compensation earned during the year immediately preceding the member's death.

(b) The nontax-qualified benefit provided by subsection (a) shall be administered by the board of trustees; provided that:

- (1) State members shall be paid by the respective department or agency that employs the member pursuant to assessments made and received by the system; and
- (2) County members shall be paid by the respective counties pursuant to assessments made and received by the system.

(c) Section 88-91 shall apply to the nontax-qualified benefit. [L 2005, c 58, §1]

" **§88-85 Accidental death benefit.** (a) In the case of an accidental death as determined by the board pursuant to section 88-85.5, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and there shall be paid in lieu of the ordinary death benefit payable under section 88-84, a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under the age of eighteen, divided in the manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains the age of eighteen; or
- (3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the

deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

The pension shall be effective on the first day of the month following the member's death, except for the month of December, when benefits shall be effective on the first or last day of the month.

(b) Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a firefighter, police officer, or sewer worker, shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the firefighter's, police officer's, or sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that such firefighter, police officer, or sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) Benefits payable under subsection (a) shall continue through the end of the last month in which the payee is eligible for the benefit. [L 1925, c 55, §6(9); am L 1927, c 251, §§1, 4, 5; RL 1935, pt of §7925; RL 1945, §708, subs 9; RL 1955, §6-52; HRS §88-78; am L 1969, c 110, pt of §1; am L 1974, c 118, §1(2) and c 182, §4; am L 1977, c 44, §1 and c 191, §2; gen ch 1985; am L 1997, c 383, §29; am L 2002, c 128, §9; am L 2004, c 179, §13; am L 2005, c 58, §10; am L 2006, c 169, §15]

Attorney General Opinions

Heart attack could constitute "accident" within meaning of section. Att. Gen. Op. 69-25.

Death resulting from operation on knee injured in actual performance of duty was natural and proximate result of injury and compensable. Att. Gen. Op. 71-6.

Police officer injured in automobile accident while driving home from work in police officer's own, but government equipped car, is injured while in the actual performance of duty. Att. Gen. Op. 71-6.

Hanai children are not included within meaning of "child" or "children" as used in section. Att. Gen. Op. 93-1.

" **§88-85.5 Applications for accidental death benefits; approval by the board.** (a) An application for service-connected accidental death benefits may be filed with the system by or on behalf of the claimant pursuant to section 88-85, 88-286, or 88-339, on a form provided by the system. The application shall be filed no later than three years from the date of the member's death.

(b) After the claimant files an application for service-connected accidental death benefits, the system shall obtain the following:

- (1) A copy of the employer's report of the accident submitted by the employer to the department of labor and industrial relations, workers' compensation division, and other reports relating to the accident;
- (2) A certified statement from the head of the department in which the deceased member was employed, stating the date, time, and place of the accident, and the nature of the service being performed when the accident occurred. The statement shall also include an opinion as to whether or not the accident was the result of wilful negligence on the deceased member's part;
- (3) A copy of the latest position description of the deceased member's duties and responsibilities;
- (4) A certified copy of the death certificate; and
- (5) A copy of an autopsy report, if performed.

(c) Upon the system's receipt of the application and documents specified in subsection (b), the medical board shall determine and certify to the board whether the member's death was an accidental death as defined in section 88-21.

(d) The board may accept as conclusive as to whether or not the member's death was caused by wilful negligence on the part of the member:

- (1) A certification made by the head of the agency in which the member is employed; or
- (2) A finding by the medical board.

(e) After the medical board submits its certification to the system, the board shall approve or disapprove the application. Upon approval of an application, benefits shall be paid as provided in section 88-85, 88-286, or 88-339. [L 2000, c 215, §1; am L 2004, c 179, §14; am L 2006, c 169, §16]

" **§88-86 REPEALED.** L 1970, c 52, §1.

" **§88-87 Adjustment for deficiency in accumulated contributions.** Upon retirement, the maximum retirement allowance of any member whose accumulated contributions are deficient shall be reduced by an amount which is the actuarial

equivalent of the amount of the deficiency. A deficiency shall be the amount by which a member's accumulated contributions fail to equal the accumulated contributions which would be standing to the member's account had the member contributed at the full rate required by law. Deficiencies may be paid by the member in advance of retirement, in which case the member's retirement allowance shall not be reduced. [L 1969, c 110, pt of §1; gen ch 1985; am L 2000, c 215, §3]

" **§88-88 Adjustment of retirement allowances of retirants.** The retirement allowance of any class A member whose allowance was reduced by reason of social security coverage subsequent to December 31, 1955, shall be increased by the amount of such reduction; provided that the increase shall be limited to 1/280 of that part of the class A member's average final compensation not in excess of \$4,200 per annum multiplied by the number of years of the class A member's creditable service rendered between January 1, 1956, and January 1, 1965, for which the class A member received compensation covered by social security, and provided that in the case of a member who retired on a service-connected disability retirement the increase shall be limited to 16 and 2/3 per cent of that part of the member's average final compensation not in excess of \$4,200 per year. [L 1969, c 102, §1; gen ch 1985]

" **§88-89 Minimum amount.** Each retirant who has a minimum of ten years of credited service and whose service retirement allowance is less than \$50 per month, shall be paid an amount which, together with the retirant's retirement allowance, equals the sum of \$50 per month. [L 1943, c 130, §1; RL 1945, §709, subs 1; RL 1955, §6-43; am L 1957, c 143, §7; HRS §88-80; am L 1969, c 110, pt of §1 and c 127, §32; gen ch 1985; am L 1998, c 151, §15]

" **§88-90 Post retirement allowances.** (a) There shall be payable to each person receiving any pension, annuity or retirement allowance, a post retirement allowance which shall consist of an amount equivalent to one and one-half per cent of the monthly pension, annuity, or retirement allowance as originally computed, approved, and paid. This benefit shall be added to the monthly pension, annuity, or retirement allowance on the first day of July in each year following June 30, 1961, as follows:

- (1) To each person receiving a pension, annuity, or retirement allowance on June 30, 1961, payment of the benefit shall commence on July 1, 1961, except that after June 30, 1963, the monthly benefits payable

under this subsection shall be computed and paid on the basis of the number of years that has elapsed since the person entitled thereto first became the recipient of the pension, annuity, or retirement allowance from which the benefit is derived; and

- (2) To each person first receiving a pension, annuity, or retirement allowance after June 30, 1961, payment of the benefit shall commence on the first of July following the calendar year in which the payment of the pension, annuity, or retirement allowance is effective.

(b) After June 30, 1970, the post retirement allowance shall consist of an amount equivalent to two and one-half per cent of the monthly pension, annuity, or retirement allowance as originally computed and paid. This benefit shall be payable on the first day of July in each year following June 30, 1970, as follows:

- (1) To each person, who on June 30, 1970, was receiving a post retirement allowance as described under subsection (a) hereof, payment of the benefit shall commence on July 1, 1970; and
- (2) To each person first receiving a pension, annuity, or retirement allowance after December 31, 1968, payment of the benefit shall commence on the first day of July following the calendar year in which the payment of the pension, annuity, or retirement allowance is effective.

(c) Notwithstanding subsections (a) and (b), for employees who become members after June 30, 2012, and for any person who receives a monthly pension, annuity or retirement allowance as a beneficiary or survivor of the employee, the post retirement allowance shall consist of an amount equivalent to one and one-half per cent of the monthly pension, annuity, or retirement allowance as originally computed and paid. Payment of the benefit shall commence on the first day of July following the calendar year in which the payment of the pension, annuity or retirement allowance is effective. [L 1961, c 175, §7; am L 1963, c 127, §10; Supp, §6-49.5; HRS §88-81; am L 1969, c 110, pt of §1; am L 1970, c 113, §1; am L 2011, c 163, §9]

" **§88-90.5 Actuarial assumptions.** (a) Notwithstanding any provision in this chapter to the contrary, the board 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 executive director. [L 2005, c 56, §2; am L 2007, c 215, §15; am L 2013, c 23, §4]



" **§88-91 Exemption from taxation and execution.** [Section effective until June 30, 2018. For section effective July 1, 2018, see below.] The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this part and the moneys in the various funds created under this part are exempted from any tax of the State and, except as in section 88-92 provided, shall not be subject to execution, garnishment or any other process and shall be unassignable except as in this part specifically provided. [L 1925, c 55, §12; am L 1933, c 81, §1; RL 1935, §7930; RL 1945, §715; RL 1955, §6-58; HRS §88-82; am L 1969, c 110, pt of §1]



§88-91 Exemption from taxation and execution. [Section effective July 1, 2018. For section effective until June 30, 2018, see above.] The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit or death benefit, any other right accrued or accruing to any person under this part and the moneys in the various funds created under this part are exempted from any tax of the State and, except as provided in sections 88-92 and 88-93.5, shall not be subject to execution, garnishment or any other process and shall be unassignable except as in this part specifically provided. [L 1925, c 55, §12; am L 1933, c 81, §1; RL 1935, §7930; RL 1945, §715; RL 1955, §6-58; HRS §88-82; am L 1969, c 110, pt of §1; am L 2016, c 263, §3]

Attorney General Opinions

Power of attorney authorizing attorney to receive, endorse and collect checks does not constitute assignment of retirement allowance prohibited by section. Att. Gen. Op. 61-69.

To extent that divorce decrees create liens that act directly on retirement system funds, the decrees are unenforceable. Att. Gen. Op. 79-3.

Case Notes

Section does not prevent divorce court to order a party to maintain his former wife and children as beneficiaries under the retirement system. 52 H. 357, 477 P.2d 620.

" **§88-92 Garnishment in certain cases; procedure.** Whenever the comptroller or attorney general of the State, or any county finance director or attorney, or the head of any department, bureau, board or other agency of the State or any county finds, or has reason to believe, that any person entitled to any moneys mentioned in section 88-91 (such person being hereinafter in this section designated as the defendant) has embezzled, stolen or otherwise unlawfully taken, received, retained or failed properly to account for, any property or funds belonging, and which have not been returned or repaid, to the State or any county or any department, bureau, board, or other agency thereof, he shall promptly notify the board of trustees thereof in writing requesting the board to withhold payment of such moneys to the defendant pending the investigation hereinafter provided for and shall proceed promptly to make such investigation as he deems necessary to ascertain the facts.

If after the investigation he finds insufficient evidence in his judgment to warrant the action hereinafter provided for, or if the investigation exonerates the defendant, he shall promptly notify the board in writing of such finding and shall withdraw the notice to withhold.

If, however, in his judgment, the evidence warrants the action, he shall forthwith bring an action in the name of the State or county, or the department, bureau, board or other agency concerned (if it is authorized by law to sue in its own name), as the case may be, against the defendant in a court having jurisdiction of the amount of the judgment prayed for in any district or circuit, as the case may be, in which the defendant can be found or resides, or in the circuit court of the first judicial circuit, setting forth of his own knowledge or on information and belief, as the case may be, the facts of the case, including the amount of funds or the value and description of the property alleged to have been embezzled, stolen or otherwise unlawfully taken, received or retained, or not properly accounted for, naming the board as garnishee, and praying for judgment against the defendant and for the issuance

of garnishment process against the board. All such courts are hereby given jurisdiction of these actions.

The form of the complaint and summons shall be similar, as nearly as may be, to that used in proceedings against government beneficiaries under chapter 653, and the action authorized by this section shall lie notwithstanding the fact that the claim in certain cases may be for an unliquidated amount or may sound in tort. Upon receipt of the notice, the board shall withhold the payment of the moneys to the defendant for the period and in the manner hereinafter provided. If the garnishment process hereinabove mentioned is not served upon the board within the period of sixty days after receipt by the board of the notice to withhold, or if before the expiration of the period the notice to withhold shall be withdrawn, the board shall thereupon pay such moneys to the defendant.

If, however, the garnishment process is served upon the board within the period, it shall be unlawful for the board to pay any such moneys to the defendant or his order until the garnishment proceedings shall have been withdrawn or dismissed, or the judgment, if any, obtained against the defendant shall have been fully paid, any of which events, as the case may be, shall be certified by the court, in or before which such proceedings has been pending. The moneys so withheld from the defendant shall be deemed sequestered in the custody of the board from the time of service on the board. At any time after service upon the board, the court, upon the consent of the plaintiff or upon motion of the defendant or of the board and notice to the plaintiff, may determine whether the amount so withheld is excessive in comparison with the judgment that the plaintiff might obtain in the action, and, if so, what part thereof is a reasonable amount to be so sequestered, and may thereupon release the remainder thereof from being so sequestered.

The provisions of chapter 653 shall be applicable, as nearly as may be, to garnishment proceedings authorized by this section, as to certification of the judgment to the garnishee, payment of judgment, and other matters not specifically provided for in this section. [L 1933, c 81, §2; RL 1935, §7931; RL 1945, §716; RL 1955, §6-59; am L 1957, c 152, §1; HRS §88-83; am L 1969, c 110, pt of §1]

" **§88-93 Named beneficiaries by members and by former employees; 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 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 88-338(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. [L 1951, c 156, §1; am L 1955, c 12, §1; RL 1955, §6-54; HRS §88-84; am L 1969, c 110, pt of §1; gen ch 1985; am L 1997, c 383, §30; am L 2006, c 169, §17; am L 2007, c 215, §16]

Attorney General Opinions

Because of operation of renunciation of succession pursuant to Uniform Probate Code, beneficiary, deceased parent, was deemed to have predeceased member; thus, only remaining beneficiary was remaining parent, and employees' retirement system may pay member's benefits to sole remaining beneficiary. Att. Gen. Op. 97-3.

Case Notes

Provision revoking a designation by subsequent marriage operated to revoke a designation made prior to enactment of provision; not unconstitutional. 42 H. 532.

Divorce decree may order party to maintain his former wife and children as beneficiaries, and upon failure of party to comply, court will determine rights of parties as if obligation had been performed. 52 H. 357, 477 P.2d 620.

" **[§88-93.5]** *[Section effective July 1, 2018.]* **Distribution of property in a divorce action.** (a) As used in this section:

"Alternate payee" means a spouse or former spouse of a member or retirant who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to that member or retirant.

"Benefits payable with respect to a member or retirant" means any payment required to be made to a member or retirant.

"Domestic relations order" means a judgment, decree, or order, including approval of a property settlement agreement, that:

- (1) Relates to the provision of marital property rights to a spouse or former spouse of a member or retirant; and
- (2) Is made pursuant to a domestic relations law of this State or another state.

"Hawaii domestic relations order" means a domestic relations order that:

- (1) Creates or recognizes the right of an alternate payee, or assigns to an alternate payee, the right to receive all or a portion of the benefits payable with respect to a member or retirant under the system;
- (2) Directs the system to disburse benefits to the alternate payee; and
- (3) Meets the requirements of this section.

(b) A Hawaii domestic relations order shall clearly specify:

- (1) The name and last known mailing address, if any, of the member or retirant;
- (2) The name and mailing address of the alternate payee covered by the order;
- (3) The amount or percentage of the member or retirant's benefits to be paid by the system to the alternate payee, or the manner in which the amount or percentage is to be determined;
- (4) The number of payments or period to which the order applies; and
- (5) That the order applies to the system.

(c) If, pursuant to a Hawaii domestic relations order, an alternate payee is receiving all or a portion of a retirant's pension, annuity, or retirement allowance, the alternate payee shall be entitled to receive a post retirement allowance as provided by section 88-90.

(d) A Hawaii domestic relations order shall not:

- (1) Purport to require the designation by the member or retirant of a particular person as the recipient of benefits upon the death of the member or retirant;

- (2) Purport to require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the member may select;
- (3) Require any action on the part of the system contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to an alternate payee;
- (4) Make the award to the alternate payee an interest that is contingent on any condition other than those conditions resulting in the liability of the system for payment under its plan provisions;
- (5) Purport to give to someone other than a member or retirant the right to designate a beneficiary or to choose any retirement plan or option available from the system;
- (6) Attach a lien to any part of amounts payable with respect to a member or retirant;
- (7) Award an alternate payee a portion of the benefits payable with respect to a member or retirant under the system and purport to require the system to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum;
- (8) Purport to require the system, without action by the member, to terminate a member from membership or employment, to refund contributions, or to retire a member;
- (9) Provide any type or form of benefit, or any option, not otherwise provided by the system;
- (10) Provide increased benefits, determined on the basis of actuarial value; or
- (11) Require the system to provide benefits or refunds to an alternate payee that are required to be paid to another alternate payee pursuant to an earlier Hawaii domestic relations order.

(e) Upon receipt of a copy of the complaint for divorce, certified by the clerk of the court in which the complaint was filed, and a written request that identifies the member or retirant by name and social security number and states the date of the marriage, the system shall provide the spouse or former spouse of a member or retirant with the same information that would be provided to the member or retirant on the member's or retirant's benefits that is relevant to the spouse's or former spouse's interest in the member's or retirant's benefits.

(f) A person who wishes to have the system review a domestic relations order or a proposed domestic relations order

to establish whether the order or proposed order meets the requirements for a Hawaii domestic relations order shall submit to the system a written request for review and a copy of the order or proposed order. If the order has been entered by a court, the copy of the order shall be certified by the clerk of the court that entered the order. The order or proposed order shall be reviewed as provided by this section.

The filing fee in effect at the time that an order or proposed order is submitted shall be paid before the order or proposed order is processed or reviewed. In addition, the system shall charge for legal and actuarial services as provided by subsection (s).

Before any legal or actuarial services are performed, the system shall notify the person who requested the review of the order or proposed order that the services will be needed as part of the review. The notification shall include an estimate of the extent of the services and the estimated costs relating to those services. The charges for legal and actuarial services shall be paid before the system may issue notification of determination on an order or notification whether or not a proposed order meets the requirements for a Hawaii domestic relations order.

If a domestic relations order is submitted for review after it has been entered by the court and is thereafter amended with the intention that it shall be a Hawaii domestic relations order, the member, retirant, or the alternate payee shall submit a certified copy of the amended order to the system. The system shall review any amended order that it receives according to the same rules applicable to all other orders.

(g) The system shall review an order or proposed order for compliance with the requirements imposed by this section. Upon completion of the review:

- (1) The system shall not issue a determination that a proposed order is or is not a Hawaii domestic relations order but shall notify the person who submitted the proposed order, in writing, and may also notify the member or alternate payee whether the proposed order meets the requirements for a Hawaii domestic relations order, identifying any provisions of this section that the proposed order does not meet; and
- (2) If the order has been entered by the court, the system shall notify the member or retirant and the alternate payee in writing of the determination that the order is or is not a Hawaii domestic relations order, identifying any provisions of this section that the order does not meet.

(h) During any period not exceeding eighteen months, beginning on the date on which the first payment would be required to be made to the alternate payee under the domestic relations order, in which a domestic relations order is under review to determine whether it is a Hawaii domestic relations order, or in which a determination that an order is not qualified is on appeal to the board or to a court, the system shall limit the member's or retirant's rights in the member's or retirant's benefits to the extent the system deems appropriate to protect the largest amount that would be payable to the proposed alternate payee under the system's interpretation of the domestic relations order. Any amounts not paid to the member or retirant during this eighteen-month period shall be separately accounted for. If the domestic relations order is determined to be a Hawaii domestic relations order before the end of the eighteen-month period, the system shall pay benefits to the member or retirant and the alternate payee in accordance with the Hawaii domestic relations order and the terms of the plan, including any benefits separately accounted for during the period between the date on which the first payment was to be made under the Hawaii domestic relations order and the date the determination is made. If the domestic relations order is finally determined not to be a Hawaii domestic relations order, or if the eighteen-month period expires without a determination that the domestic relations order is a Hawaii domestic relations order, none of the amounts separately accounted for shall be paid to the alternate payee, and the member or retirant shall be entitled to the member's or retirant's full benefits in accordance with the terms of this chapter, including any benefits that had been separately accounted for and withheld from the member or retirant. If the domestic relations order is determined to be a Hawaii domestic relations order after the end of the eighteen-month period, or if the system later receives another domestic relations order that is determined to be a Hawaii domestic relations order, the Hawaii domestic relations order shall apply prospectively only and shall not affect benefits already paid to the member or retirant.

(i) Subject to the limitations of applicable statutes and this section, if a domestic relations order is determined to be a Hawaii domestic relations order, the system shall pay benefits in accordance with the order at the time benefits become payable to, or in the case of contributions or hypothetical account balances, are withdrawn by, the member or retirant. Any determination that an order is a Hawaii domestic relations order is voidable or subject to modification if the system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

(j) If a member terminates membership in the system by withdrawal of contributions or hypothetical account balance, the system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a Hawaii domestic relations order. Payment to any alternate payee pursuant to this subsection shall be in a lump sum. If the former member later resumes membership in the system, the system shall pay to an alternate payee no portion of any benefits payable to the member or retirant that result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during the marriage.

(k) In order to receive credit for all service represented by withdrawn or refunded contributions, a member, in reinstating service credit by repaying amounts previously withdrawn or refunded, shall repay the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to an alternate payee.

(l) When the system has not yet begun to make payment to an alternate payee under this section and is provided with proof of the death of the alternate payee, benefits payable with respect to the member or retirant shall be paid without regard to the Hawaii domestic relations order.

(m) When the system receives a certified copy of a domestic relations order prior to a member's retirement, and if the domestic relations order is determined to be a Hawaii domestic relations order, the system, except as provided in subsection (j), shall pay the alternate payee an amount that is the actuarial equivalent of the benefit that is awarded to the alternate payee in the form of an annuity payable in equal monthly installments for the life of the alternate payee.

Payment under this subsection shall be determined as follows:

- (1) As of the date payment to the alternate payee is scheduled to begin, the system shall determine the single life annuity value of the retirement benefit payable to the member;
- (2) If the portion of the benefit awarded to the alternate payee by the order is not clearly stated as a percentage of the member's maximum retirement allowance, the system shall determine the percentage of the member's maximum retirement allowance that is the equivalent to the benefit awarded to the alternate payee;
- (3) The single life annuity value determined by the system shall be multiplied by the percentage of the member's maximum retirement allowance awarded to the alternate payee. The result of this calculation shall be

actuarially converted to a single life annuity payable to the alternate payee for the lifetime of the alternate payee;

- (4) The benefit payable to the member shall be reduced by an amount actuarially equivalent to the value of the benefit payable to the alternate payee; payment by the system of the alternate payee's interest as provided by this section shall have no effect on the right of a member to name a beneficiary or the right of a member to choose an optional method of payment upon retirement; and
- (5) Payment of the alternate payee's interest under this subsection shall be effective as of the same date that benefit payments are effective for the member.

(n) When the system receives a certified copy of a domestic relations order subsequent to the member's retirement, and if the domestic relations order is determined to be a Hawaii domestic relations order, the interest awarded to the alternate payee by the Hawaii domestic relations order shall be paid as a portion of the retirement benefit the retirant is receiving as follows:

- (1) If the alternate payee is already a named beneficiary under any option elected by the retirant at retirement, the benefit to which the retirant is entitled, without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. Upon the death of the retirant or the alternate payee, the benefit amount to be paid to the survivor shall be the amount required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed; or
- (2) If the alternate payee is not a named beneficiary under the option elected by the retirant at retirement, the benefit to which the retirant is entitled without regard to the Hawaii domestic relations order, shall be apportioned between the retirant and the alternate payee according to the terms of the Hawaii domestic relations order. If the retirant predeceases the alternate payee, payments to the alternate payee shall cease and payments to the retirant's named beneficiary or beneficiaries shall be made as required under the option elected by the retirant at retirement, as though no Hawaii domestic relations order had existed. If the alternate payee predeceases the retirant, the benefit then being paid

to the retirant shall be increased by the amount of the benefit that was being paid to the alternate payee at time of death.

Payment according to the terms of the Hawaii domestic relations order under this subsection shall commence as of the first day of the month following the date upon which the order is determined to be qualified, unless the parties jointly direct that payment shall commence at a later date.

(o) If a retirant returns to employment requiring active membership in the system:

- (1) Payments to an alternate payee pursuant to a Hawaii domestic relations order shall not be suspended; and
- (2) The system shall pay to an alternate payee no portion of any benefits payable to the retirant that result from the resumption of membership.

(p) For the purpose of calculating earnings limitations for retirants who have been restored to service, the retirant's maximum retirement allowance shall be considered to be the amount that would have been paid if there had not been any Hawaii domestic relations order applicable to the retirant.

(q) A court does not have jurisdiction over the system with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retirant is created or established. A determination by the system that a domestic relations order is not a Hawaii domestic relations order shall be subject to review as provided in chapter 91 and the system's rules relating to contested cases. The system shall not be made party to any other judicial proceedings except as provided in this subsection. A party to any action who attempts to make the system a party to the action contrary to this subsection shall be liable to the system for the system's costs and attorney's fees in the action, including attorneys' fee and costs for obtaining a dismissal.

(r) If a member or retirant, or the beneficiary or estate of either, receives the amount of any distribution that should have been paid by the system to the spouse or former spouse of the member or retirant, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the person to whom the amount should have been paid. If a spouse or former spouse of a member or retirant, or the estate, heirs, or legatees of the spouse or former spouse receive any amount of a distribution that should have been paid to a member or retirant, or the estate, heirs, or legatees of either, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the member or retirant

or other person to whom the amount should have been paid. If a member, retirant, or the beneficiary, estate, heirs, or legatees of either, receives any amount that should not have been paid by the system, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the system. If an alternate payee or the estate, heirs, or legatee of the alternate payee, receives any amount that should not have been paid by the system, the recipient shall be designated a constructive trustee for the amount received and shall immediately transmit that amount to the system.

(s) The board shall adopt rules in accordance with chapter 91, and adopt forms as it deems necessary to effectuate this section. The board, by motion at a duly noticed meeting of the board, may establish and revise from time to time:

- (1) A filing fee for processing and review of domestic relations orders and proposed domestic relations orders for the purposes of this section;
- (2) A schedule of charges for legal and actuarial services incurred by the system in the review and processing of domestic relations orders and proposed Hawaii domestic relations orders for the purposes of this section; and
- (3) A required form or forms for Hawaii domestic relations orders. [L 2016, c 263, §2]

" **§88-94 Withholding of income taxes.** Pension, annuity, and retirement allowance payments from the system shall be subject to income tax withholding requirements as set forth by the federal government; payment of these taxes as withheld shall be the liability of the system. The board of trustees shall adopt rules to administer the purposes of this section. [L 1966, c 11, §§2, 3; HRS §88-85; am L 1969, c 110, pt of §1; gen ch 1985; am L 2005, c 58, §1]

" **§88-95 Withholding of dues and insurance premiums.** A retired member, if the retired member requests in writing, may have withheld from the retired member's pension, annuity, or retirement allowance, payments to the employer-union health benefits trust fund and employee organizations for dues and insurance premiums. [L 1967, c 219, §1; HRS §88-86; am L 1969, c 110, pt of §1; gen ch 1985; am L 1987, c 54, §1; am L 2006, c 169, §18]

" **§88-96 Rights of members separated from service.** (a) Any member who ceases to be an employee and who became a member

before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has fewer than ten years of credited service, excluding sick leave, shall, upon application to the board, be paid all of the member's accumulated contributions and the member's membership shall thereupon terminate and all credited service shall be forfeited; provided that a member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board, the member has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are returned to the former employee; provided that the former employee's membership shall not continue after the fourth full year following the calendar year in which the individual's employment terminates. Upon termination of the former employee's membership, the former employee's credited service shall be forfeited and, if the former employee's accumulated contributions are \$1,000 or less at the time of distribution, the system shall return the former employee's contributions to the former employee. If the former employee does not become an employee again and if the former employee's accumulated contributions have not been withdrawn by the former employee or previously returned by the system to the former employee, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the later of: (A) the former employee attaining age sixty-two; or (B) the termination of the former employee's membership.

(b) Any member who ceases to be an employee and who became a member before July 1, 2012, and has more than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has more than ten years of credited service, excluding sick leave, shall, upon application to the board, be paid all of the member's accumulated contributions and thereupon the former employee's membership shall terminate and all credited service shall be forfeited; provided that a member shall not be paid the member's accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or

- (2) If, at the time the application for return of accumulated contributions is received by the board, the member has become an employee again.

If the contributions are not withdrawn by the former employee within four calendar years following the calendar year in which the former employee's employment terminates, the former employee shall have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's retirement, payable in accordance with this chapter; provided that if the former employee withdraws the former employee's accumulated contributions, the former employee's vested benefit status shall terminate and all credited service shall be forfeited.

(c) In case of the death of any former member after the termination of service, the former member's accumulated contributions shall be payable to the former member's estate or to such person as the former member has nominated by written designation duly executed and filed with the board. [L 1925, c 55, §6(10); RL 1935, pt of §7925; RL 1945, §708, subs 10, 13; am L 1945, c 73, §1(f); am L 1947, c 103, §1(b), (c); RL 1955, §6-53; am L 1963, c 127, §13; am L 1965, c 222, §10; HRS §88-87; am L 1969, c 110, pt of §1; am L 1982, c 165, pt of §2(15); am L 1984, c 32, §1; am L 1989, c 100, §2; am L 2004, c 179, §15; am L 2005, c 58, §12; am L 2006, c 169, §19; am L 2011, c 163, §10; am L 2015, c 85, §1]

Attorney General Opinions

Returning retirants are without "vested benefit status". Att. Gen. Op. 86-20.

" **§88-97 Return to service of a member who has vested benefit status.** If a former member who has a vested benefit status as provided in section 88-96(b) returns to service before the former member's retirement, the former member shall again become a member and shall contribute for membership service as provided by the law in effect during the member's reenrolled period of membership. Upon retirement, the member's benefit shall be the benefit computed with the member's combined service included under the formula in effect at the time of retirement. [L 1969, c 110, pt of §1; am L 1982, c 165, pt of §2(15); am L 2005, c 58, §13]

" **§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 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 maximum retirement allowance upon the retirant's initial retirement was subject to the limits on maximum retirement allowance under section 88-74:

(1) The limit shall apply to the computation of the retirant's maximum retirement allowance for the

retirant's period of service during the retirant's reemployment, so that the sum of:

- (A) The per cent by which the retirant's average final compensation for the retirant's years of service prior to the retirant's initial retirement is multiplied to determine the retirant's maximum retirement allowance upon the retirant's initial retirement; and
- (B) The per cent by which the retirant's average final compensation for any period of reemployment after the retirant's initial retirement is multiplied to determine the retirant's maximum retirement allowance for the period of reemployment,

shall not exceed the limit, under section 88-74, on the per cent by which the retirant's average final compensation may be multiplied for the purpose of determining the retirant's maximum retirement allowance. For example, if a retirant's maximum retirement allowance upon the retirant's initial retirement was limited by section 88-74 to eighty per cent of the retirant's average final compensation, and the retirant retired with a maximum allowance equal to seventy per cent of the retirant's average final compensation, the retirant's maximum allowance for the retirant's period of reemployment may not exceed ten per cent of the retirant's average final compensation for the retirant's period of reemployment; and

- (2) If the retirant's maximum retirement allowance upon the retirant's initial retirement was equal to or greater than the applicable limit under section 88-74, the retirant shall not earn service credit or earn any additional retirement allowance during the retirant's period of reemployment, and the reemployed retirant shall not make any contributions under section 88-45.

(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 88-75, 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.

(f) The board shall adopt any rules as may be required to administer this section. [L 1974, c 108, §1; gen ch 1985; am L 1987, c 118, §2; am L 1998, c 151, §10; am L 2001, c 61, §1; am L 2006, c 169, §20; am L 2007, c 215, §17; am L 2009, c 121, §3]

Attorney General Opinions

Return to service of contributory plan retirant; participation in noncontributory plan. Att. Gen. Op. 85-21.

Case Notes

Under this section (1993), for a member who retired for a second time, the only deductions authorized from the member's maximum monthly retirement allowance were deductions of the actuarial equivalent of the member's accumulated contributions when the member withdrew them upon the member's first and second retirements, and paragraph (2) (1993) did not authorize a reduction for the total of the monthly payments received by the member during the member's first retirement before the member's second employment. 89 H. 70 (App.), 968 P.2d 1081.

" **[\$88-99] Moratorium on benefit enhancements.** There shall be no benefit enhancements under this chapter for any group of members, including any reduction of retirement age, until such time as the actuarial value of the system's assets is one hundred per cent of the system's actuarial accrued liability. [L 2011, c 29, §2]

" **[\$88-100] 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. [L 2012, c 153, §5]

"D. ADMINISTRATION; FINANCING

§88-101 Payment of existing pensions. (a) The pensions of all teachers on the pension rolls of the retirement fund for pensioning retired teachers on January 1, 1926, shall be continued and paid from the pension accumulation fund at the rates at which they were paid prior to that date.

(b) The pensions of all other persons retired prior to April 22, 1925, and granted pensions on account of service for the Territory shall, if they were in force on June 30, 1925, be continued and paid from the pension accumulation fund. Any

additional amount required to continue such pensions shall be provided by an increase in the accrued liability contribution otherwise payable to the pension accumulation fund.

(c) The administration and payment of all other pensions provided by the legislature and the pensions and allowances similarly provided for veterans of the Hawaii guard shall be the responsibility of the system from and after June 5, 1953. All sums required for these purposes shall be provided by appropriation to the system. [L 1925, c 55, pt of §9, and §10; am L Sp 1933, c 10, §§3, 4; RL 1935, §7928; am L 1935, c 45, §2; RL 1945, §713; RL 1955, §6-55; HRS §88-91; am L 1969, c 110, pt of §1]

" **§88-102 Classification of members.** The board of trustees shall classify each member in one of the following groups:

- (1) General employees of the State and counties, including administrative, clerical, professional, and technical workers, mechanics, laborers, and all others not otherwise classified;
- (2) Teachers, including all teachers regularly engaged in public education whose salaries are wholly or partly paid by the State, and faculty members and instructors of the University of Hawaii; or
- (3) Police officers in the employ of the counties and firefighters in the employ of the State or of the counties,

or in any other group that may be recommended by the actuary on the basis of service and mortality experience and approved by the board, to cover any part of any group or groups previously created or any additional class of employees. [L 1925, c 55, §3(5); am imp L 1927, c 251, §3; RL 1935, pt of §7922; RL 1945, pt of §703; RL 1955, §6-28; HRS §88-92; am L 1969, c 110, pt of §1; am L 1977, c 191, §2; am L 1978, c 193, §2; am L 2005, c 58, §14]

" **§88-103 Records.** (a) The board of trustees shall keep a record of all its proceedings which record shall be open to public inspection. It shall publish annually a report showing in detail: (1) the fiscal transactions of the system for the year ending the preceding June 30, (2) the amount of the accumulated cash and securities of the system, and (3) an actuarial valuation of the assets and liabilities of the system. The board shall submit the report to the governor and shall furnish copies thereof to the heads of the various departments

of the State and county for their use and the use of the members employed therein.

(b) The board shall include in its annual report submitted prior to January 1 of each odd-numbered year: (1) a comparison of the investment performance of the system with the investment performances of the public employees' retirement systems of other jurisdictions which have authority to make investments substantially similar to the investment authorized under section 88-119, and (2) a comparison of the funded ratio on June 30 of the preceding year with the funded ratios of the public employees' retirement systems of other jurisdictions. [L 1925, c 55, §5(10); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-67; HRS §88-93; am L 1969, c 110, pt of §1; am L 1984, c 108, §7]

" **§88-103.5 Disclosure of information.** (a) The employees' retirement system shall:

- (1) Disclose to the Hawaii employer-union health benefits trust fund and employee organizations information related to the administration of pension, annuity, or retirement allowance deductions, as follows: name, social security number, and amounts and dates of both voluntary and mandatory deductions remitted to the recipient; and
- (2) Release the records of its retirants and beneficiaries to the Hawaii employer-union health benefits trust fund for the disbursement of payments authorized under section 87A-23.

(b) Any government agency or employee organization receiving government records pursuant to this section shall be subject to the same restrictions on disclosure of the records as the originating agency. [L 1990, c 250, §2; am L 1998, c 89, §1; am L 2004, c 10, §2]



" **§88-103.7 Information from the State and counties.** [Section effective July 1, 2020. For section effective until June 30, 2020, see below.] (a) To fulfill its responsibilities under this chapter, the system shall 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 shall specify the format in which the information shall be furnished. Without limitation of the foregoing, the system shall 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;
- (2) Specify the purpose or nature of the payment; and
- (3) Indicate any changes or errors in payments that require correcting or updating.

(b) All departments and agencies of the State or counties shall furnish the information required by the system pursuant to this section in the format required by the system. The system shall notify each department or agency of the State or counties that is required to furnish information to the system of any change in the required format for the information. Each department or agency shall have one hundred eighty days from the date of the receipt of the notice of a change in the required format to update the format in which the required information is provided to the system.

(c) If a department or agency of the State or county fails to furnish the system with the information required pursuant to this section in the format required by the system, the State or county shall pay to the system, on the first day of the fiscal year following the fiscal year in which the failure to furnish the required information occurred, an amount equal to the employer contributions payable by the State or county, relative to the department or agency that is not in compliance with this section, during the fiscal year in which the failure to furnish the required information occurred. This amount shall be applied to contributions required under section 88-124 for the State and section 88-126 for the counties.

(d) If full payment of the amount required under subsection (c) is not made by the State or county on the first day of the fiscal year, then:

- (1) Any unpaid amounts shall bear interest at the rate equal to the investment yield rate assumption in effect for actuarial valuations of the system; and
- (2) Any payments received by the system for the State or county, except for payments made pursuant to sections 88-46, 88-100, and 88-326, shall be applied first to accrued interest and then to the amount required to be paid under subsection (c).

(e) The system may waive the requirements of subsections (c) and (d) if the system determines, in its sole discretion, that the failure by the department or agency to furnish the required information in the required format is the result of an unforeseen system failure, natural disaster, or other unforeseen event.

(f) The system shall annually submit to the department of budget and finance and the legislature, not later than twenty days prior to the convening of each regular session, a report that details the following for the current fiscal year:

- (1) Any department or agency of the state or counties that failed to comply with this section; and
- (2) Any amounts required to be paid under subsection (c), including the anticipated amounts payable in the upcoming fiscal year, and identification of any state budget programs that may be affected. [L 2008, c 41, §1; am L 2015, c 87, §1]

§88-103.7 Information from the State and counties.

[Section effective until June 30, 2020. For section effective July 1, 2020, see above.] 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. [L 2008, c 41, §1]

Note

Reports to 2016-2020 legislature on state and county departments' and agencies' progress in complying with §88-103.7, as amended by L 2015, c 87, by July 1, 2020. L 2015, c 87, §2.

" **§88-104 Actuarial data.** The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the system and for checking the experience of the system. [L 1925, c 55, §5(9); RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-69; HRS §88-94; am L 1969, c 110, pt of §1]

" **§88-105 Actuarial investigations, valuations.** (a) At least once in each five-year period, commencing with fiscal year 1994-1995, the actuary shall make an actuarial investigation of

the experience of the system and shall recommend to the board of trustees the adoption for actuarial valuation of the system of mortality, service, and other assumptions, factors, and tables as shall be deemed appropriate and necessary. The actuary shall further recommend the acceptable funded ratio for the system, taking into consideration the guaranties of article XVI, section 2 of the state constitution, section 88-107, and section 88-127.

(b) Commencing with fiscal year 2009-2010, the actuary shall recommend, based on the actuarial investigation, the appropriate adjustments to the contribution rates under section 88-122(e).

(c) On the basis of such tables and other factors as the board or legislature, as the case may be, shall adopt, and commencing with fiscal year 2005-2006 and the contribution rates of section 88-122(e), the actuary shall make an annual valuation of the assets and liabilities of the funds of the system. [L 1925, c 55, §5(14), (15), (16); am imp L 1927, c 251; RL 1935, pt of §7924; RL 1945, pt of §707; RL 1955, §6-71; am L 1964, c 62, §9; HRS §88-95; am L 1969, c 110, pt of §1; am L 1994, c 276, §5; am L 2004, c 181, §1; am L 2007, c 256, §2; am L 2011, c 163, §21]

Attorney General Opinions

Change to "unisex" option factor tables valid. Att. Gen. Op. 82-3.

" **§88-106 Correction of errors.** Should any change or error in records result in any member, retirant, or beneficiary receiving from the system more or less than the member, retirant, or beneficiary would have been entitled to receive had the records been correct, the board of trustees shall correct the error and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which the member, retirant, or beneficiary was correctly entitled shall be paid. Should any error in calculation or records result in any member, retirant, or beneficiary receiving from the system more than the member, retirant, or beneficiary would have been entitled to receive had the calculation or records been correct, the board of trustees shall correct the error and may forgive any such overpayment. [L 1925, c 55, §13; RL 1935, §7932; RL 1945, §717; RL 1955, §6-57; HRS §88-96; am L 1969, c 110, pt of §1; gen ch 1985; am L 1986, c 95, §1]

" **[§88-106.5] Compromise and settlement.** The board may compromise or settle any claim for benefits under this chapter; provided that, if the compromise or settlement would result in a person receiving benefits that the person would not otherwise, as a matter of law, be entitled to receive, the compromise or settlement shall be subject to the approval of the attorney general and may be made only if:

- (1) The settlement or compromise relates to or arises out of a representation made to a member concerning the member's eligibility for benefits under this chapter;
- (2) The representation:
 - (A) Was made in writing by an employee of the system with authority to make representations on behalf of the system as to amounts of and eligibility for benefits under this chapter; and
 - (B) Was erroneous as to the amount or class of credited service to which the member was entitled;
- (3) The member, in good faith and reasonable reliance on the representation, retired or terminated the member's status as an employee or the member's membership in the system; and
- (4) The settlement or compromise will prevent manifest injustice. [L 2005, c 57, §1]

" **§88-107 Interest.** (a) The board of trustees shall annually allocate the interest and other earnings of the system to the funds of the system, as follows:

- (1) The annuity savings fund shall be credited with the amount of regular interest credited to members' accounts;
 - (2) The expense fund shall be credited with such sums as provided in section 88-116; and
 - (3) The remaining investment earnings, if any, shall be credited to the pension accumulation fund.
- (b) Beginning with actual investment earnings in fiscal year 1995 in excess of the investment yield rate, to address outstanding unfunded pension obligations, ten per cent of such excess earnings shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amounts to be contributed under section 88-123. In fiscal year 1996, twenty per cent of the actual investment earnings in excess of the investment yield rate shall be deposited in the pension accumulation fund; remaining excess earnings shall be applied to the amount contributed under section 88-123. In fiscal years 1997 and 1998, actuarial investment earnings in excess of a ten

per cent actuarial investment yield rate shall be applied to the amount contributed under section 88-123. Beginning in fiscal year 1999, one hundred per cent of the investment earnings shall be deposited in the pension accumulation fund.

(c) The application of actuarial investment earnings to the amount contributed under section 88-123 for fiscal years 1997 and 1998 as provided in subsection (b) is a one-time only provision and no law shall be enacted to again require the employees' retirement system to apply actuarial investment earnings to offset the amount contributed under section 88-123. [L 1925, c 55, pt of §7; am imp L 1927, c 251, §4; am imp L Sp 1933, c 10, §1; RL 1935, pt of §7926; am imp L 1935, c 48, §2; RL 1945, §711, subs 1; RL 1955, §6-78; am L 1963, c 127, §15; am L 1965, c 222, §12; HRS §88-97; am L 1969, c 110, pt of §1; am L 1984, c 23, §1; am L 1988, c 41, §4; am L 1994, c 276, §6; am L 1997, c 327, §2; am L 1999, c 100, §1]

" **§88-108 Cash for meeting disbursements.** For the purpose of meeting disbursements for retirement allowances, pensions, annuities and other payments, there may be kept available cash, not exceeding ten per cent of the total amount in the several funds of the system, on deposit in any one or more banks or trust companies of the State, organized under the laws thereof or of the United States. The sum on deposit in any one bank or trust company shall not exceed twenty-five per cent of the paid up capital and surplus of the bank or trust company. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; RL 1945, §711, subs 3; RL 1955, §6-79; HRS §88-98; am L 1969, c 110, pt of §1]

" **§88-109 Funds of the system.** The assets of the system are assigned to the following funds hereby created:

- (1) The annuity savings fund;
- (2) The pension accumulation fund; and
- (3) The expense fund. [L 1925, c 55, pt of §8; RL 1935, pt of §7927; RL 1945, pt of §712; RL 1955, §6-72; am L 1961, c 175, §8; am L 1963, c 127, §14; HRS §88-99; am L 1969, c 110, pt of §1; am L 1974, c 220, §4; am L 1988, c 41, §5; am L 1998, c 151, §16]

" **§88-110 Board; trustees of funds.** The board of trustees shall be trustees of the several funds of the system and may invest and reinvest such funds as authorized by this part and by law from time to time provided. Subject to the terms, conditions, limitations and restrictions of this part and by law from time to time provided, the trustees may hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which any of the funds created herein shall have

been invested, as well as of the proceeds of the investments and any moneys belonging to the funds. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; am L 1939, c 5, pt of §1; RL 1945, §710, subs 1; RL 1955, §6-74; HRS §88-100; am L 1969, c 110, pt of §1]

Attorney General Opinions

Trustees may not waive penalty for prepayment of loan. Att. Gen. Op. 62-22.

Case Notes

Mentioned: 74 H. 181, 840 P.2d 367.

" **§88-111 Custodian of the funds.** The State director of finance shall be the custodian of the several funds. All payment from the funds shall be made by the director of finance only upon vouchers signed by the chairperson and countersigned by such other person as may be designated by the board of trustees. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; RL 1945, pt of §711; RL 1955, §6-73; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §88-101; am L 1969, c 110, pt of §1; gen ch 1985, 1993]

" **§88-112 Annuity savings fund; annual statement.** The annuity savings fund shall be comprised of the members' accumulated contributions, which beginning July 1, 1988, shall include any contributions made by the member to the post retirement fund. A member shall be mailed an annual statement showing the member's accumulated contributions upon request therefor. [L 1925, c 55, pt of §8; RL 1935, pt of §7927; RL 1945, pt of §712, subs 1; RL 1955, §6-81; am L 1959, c 174, §1; HRS §88-102; am L 1969, c 110, pt of §1; gen ch 1985; am L 1988, c 41, §6]

" **§88-113 Payments from annuity savings fund.** Any lump sum payment of a member's contributions shall be charged against the annuity savings fund. When a member retires, the member's accumulated contributions shall be transferred from the annuity savings fund to the pension accumulation fund. [L 1925, c 55, pt of §8; RL 1935, pt of §7927; RL 1945, pt of §712, subs 1; RL 1955, §6-85; am L 1963, c 127, §18; HRS §88-103; am L 1969, c 110, pt of §1; gen ch 1985]

" **§88-114 Pension accumulation fund.** The pension accumulation fund shall be the fund in which shall be

accumulated all contributions made by the State and any county and all income from investments and from which shall be paid all benefits, including the bonus authorized under section 88-11, and other than those benefits which are specifically payable from other funds. [L 1925, c 55, §8(3); am imp L 1927, c 251, §4; RL 1935, pt of §7927; RL 1945, pt of §712, subs 3; RL 1955, §6-87; am L 1963, c 127, §19; HRS §88-104; am L 1969, c 110, pt of §1; am L 1994, c 276, §7]

" **§88-115 REPEALED.** L 1988, c 41, §8.

" **§88-115.5 REPEALED.** L 1998, c 151, §18.

" **§88-116 Expense fund.** The expense fund shall be the fund to which shall be credited all money to pay the administration expenses of the system, and from which shall be paid all the expenses necessary in connection with the administration and operation of the system. Biennially, the board of trustees shall estimate the amount of money necessary to be paid into the expense fund during the ensuing biennium to provide for the expense of operation of the system, and shall pay that amount into the expense account from the investment earnings of the system, subject to review by the legislature and approval by the governor. [L 1925, c 55, §8(5); am imp L 1927, c 251, §4; RL 1935, pt of §7927; RL 1945, §712, subs 5; RL 1955, §6-96; am L Sp 1959 1st, c 13, §2; HRS §88-107; am L 1969, c 110, pt of §1; am L 1994, c 276, §8]

" **§§88-117, 118 REPEALED.** L 1998, c 151, §§19, 20.

" **§88-119 Investments.** Investments may be made in:

- (1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
 - (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action;
 - (B) Obligations secured by mortgages insured by the Federal Housing Administration;
 - (C) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act;
 - (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the

obligation at the time investment is made therein shall not exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section 431:6-308;

- (E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that:
- (i) Each leasehold interest at the time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures; and
 - (ii) The amount of the obligation at the time investment is made therein shall not exceed eighty per cent of the value of the respective leasehold interest and improvements, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it;
- provided further that the obligation is insured or guaranteed against default or loss under a

mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board;

- (F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920; and
- (G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage shall not contain provisions that might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board may retain or dispose of the real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted in the same manner as other investments in interest in real property authorized by this section;

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on the obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any

municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and

- (C) Obligations issued or guaranteed by any federal home loan bank, including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;
- (3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board;
- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks;
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the time the investment is made at least fifteen per cent more than the amount of the respective obligations;
- (8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein;
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board, it is prudent to invest funds of the system. For purposes of this paragraph, "real property" includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies, group or unit trusts, limited

partnerships, limited liability companies, investment trusts, title-holding corporations recognized under section 501(c) of the Internal Revenue Code of 1986, as amended, similar entities that would protect the system's interest, and other pooled funds invested on behalf of the system by investment managers retained by the system;

- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board, it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on the contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); and
- (11) Private placements. Investments in institutional blind pool limited partnerships, limited liability companies, or direct investments that make private debt and equity investments in privately held companies, including but not limited to investments in Hawaii high technology businesses or venture capital investments that, in the informed opinion of the board, are appropriate to invest funds of the system. In evaluating venture capital investments, the board shall consider, among other things, the impact an investment may have on job creation in Hawaii and on the state economy. The board shall report annually to the legislature on any Hawaii venture capital investments it has made; provided that if the board determines it is not prudent to invest in any Hawaii venture capital investments the board shall report the rationale for the decision. The board, by January 1, 2008, shall develop criteria to determine the amount of funds that may be prudently invested in Hawaii private placement investments. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; am L 1935, c 156, §1; am L 1939, c 5, pt of §1; am L 1941, c 50, §1 and c 61, §1; RL 1945, §710, subs 2; am L 1947, c 233, §1; am L 1949, c 297, §1; am L Sp 1949, c 27, §1; am L 1951, c 56, §1; am L 1955, c 270, §§1, 2; RL 1955, §6-75; am L

1959, c 81, §1, c 144, §1, and c 175, §1; am L 1961, c 111, §1; am L 1965, c 222, §11; am L 1967, c 166, §§1, 2; HRS §88-110; am L 1969, c 107, §1, c 110, pt of §1, and c 159, §1; am L 1970, c 89, §§1 to 3; am L 1974, c 177, §1; am L 1977, c 83, §1; am L 1978, c 11, §2; am L 1981, c 129, §1; am L 1983, c 105, §1; am L 1986, c 71, §1 and c 77, §2; am L 1987, c 114, §1; am L 1990, c 34, §8; am L 1991, c 17, §1; am L 1998, c 151, §21; am L 1999, c 168, §1; am L 2000, c 297, §12; am L 2006, c 169, §21; am L 2007, c 260, §2; am L 2014, c 35, §1]

" **§88-119.5 Investment guidelines.** Notwithstanding any other law to the contrary, real estate loans and mortgages made pursuant to section 88-119(1)(D) and (E) shall be in accordance with conditions and restrictions set forth by the board of trustees; provided that the board may establish the minimum and maximum loan amounts and interest rates for these real estate loans and mortgages by motion, at any duly noticed meeting of the board. The board of trustees, subject to chapter 91, shall adopt, amend, and repeal rules having the force of and effect of law to implement all provisions of this section other than those relating to loan amounts and interest rates for its real estate loans and mortgages. [L 1982, c 165, §3; am L 1991, c 17, §2; am L 1998, c 151, §22]

" **§88-120 Service charges.** The board of trustees may pay out of any of the several funds held for investment, a reasonable amount to any person for servicing and handling of mortgages purchased by the board or for supplying investment advisory or consultative services; and to meet such other costs incident to the prudent investment of system funds as the board may approve. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; am L 1939, c 5, pt of §1; RL 1945, §710, subs 3; RL 1955, §6-76; HRS §88-111; am L 1969, c 110, pt of §1]

" **§88-121 Power to make agreements to protect securities on reorganization or otherwise.** Anything in this part to the contrary notwithstanding, the board of trustees may enter into an agreement or agreements for the purpose of protecting the interests of the system in securities held by the system, or for the purpose of reorganization of a corporation which issued securities so held, and deposit of securities thereunder with a committee or depositories appointed under the agreement, but the agreement and deposit must first be approved in writing by a majority of the members of the board with a statement of their

reasons for such approval. The board may accept corporate stock or bonds or other securities, which may be distributed pursuant to any such agreement approved as aforesaid or to any plan or reorganization approved in writing by a majority of the members of the board with a statement of their reasons for such approval. But if securities so received consist in whole or in part of stock in any corporation or of bonds or obligations which are not secured by adequate collateral security or where less than two-thirds of the total value of the required collateral security therefor consist of collateral other than stock, then any stock and any such bond or obligation so received shall be disposed of within five years from the time of acquisition or before expiration of such further period or periods of time as may be fixed in writing for that purpose by the governor. [L 1925, c 55, pt of §7; RL 1935, pt of §7926; am L 1935, c 156, §2; RL 1945, §710, subs 4; RL 1955, §6-77; HRS §88-112; am L 1969, c 110, pt of §1]

" **[§88-121.5] Power to enter into security loan agreements.** Anything in this part to the contrary notwithstanding, the board of trustees may enter into an agreement or agreements with a financially responsible stock or bond brokerage firm, bank, or similar financial institution ("borrower") authorized to do business under the laws of any state or the United States, for the purpose of lending to the borrower securities held by the system, subject to the following conditions:

- (1) The securities shall be loaned to the borrower for a period not to exceed one year;
- (2) At the termination of the loan period, the borrower shall deliver to the board of trustees certificates for identical securities which are of the same class and issue as the loaned securities;
- (3) For the protection of the system, the borrower shall deliver to the board of trustees or its agent, collateral in the form of cash, letters of credit, bonds, or other interest-bearing notes and obligations of the United States or federal instrumentalities which are eligible for investment by the board of trustees, in an amount not less than one hundred two per cent of the market value of the loaned securities, as determined by the board of trustees. The system shall have a security interest in the collateral to secure borrower's obligations under the agreement. The board of trustees shall not be obligated to return the collateral or any part thereof to the borrower, except upon borrower's delivery to the board or its agent of securities identical to the loaned

securities, as provided in paragraph (2). The board of trustees or its designated agent shall monitor the market value of the loaned securities daily, and if, on any business day, the amount of the collateral deposited by the borrower is less than one hundred two per cent of the market value of the loaned securities on that day, the borrower shall immediately deposit with the board or its agent additional collateral in the form of cash, letters of credit, bonds, or other interest-bearing notes and obligations of the United States or federal instrumentalities which are eligible for investment by the board of trustees. Such additional collateral, together with the collateral previously on deposit, shall be in an amount not less than one hundred two per cent of the market value of the loaned securities at the time of such deposit;

- (4) The board of trustees, at its election, may use or invest any collateral delivered by a borrower to the board or its agent pursuant to the agreement, and any income and profits earned on the collateral shall be retained for the benefit of the system. Any investment of the collateral shall be subject to section 88-119;
- (5) Until the termination of the loan, the borrower may exercise all the incidents of ownership of loaned securities, including the right to transfer the loaned securities to others and vote or otherwise consent as a holder of such securities; provided that the borrower shall be obligated to the board of trustees for all dividends and distributions made with respect to the loaned securities during the period of the agreement, including, without limitation, cash, stock or property dividends or distributions, interest payments, and subscription rights;
- (6) In the event that the borrower, at the termination of the loan period, fails to deliver to the board of trustees certificates for identical securities which are of the same class and issue as the loaned securities, the borrowers shall forfeit to the system the collateral deposited. [L 1981, c 212, §1]

" **§88-122 Determination of employer normal cost and accrued liability contributions.** (a) Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board, on the basis of successive annual actuarial valuations, shall determine the employer's normal cost and accrued liability contributions for

each fiscal year beginning July 1 separately for the following two groups of employees:

- (1) Police officers, firefighters, and corrections officers; and
- (2) All other employees.

(b) The actuarial valuations shall be based on the contribution rates approved by the legislature, and the tables, assumptions, and factors adopted by the board for actuarial valuations of the system; provided that the investment yield rate assumption for the year ending June 30, 2011, shall be seven and three-quarters per cent.

(c) With respect to each of the two groups of employees in subsection (a), the normal cost for each year after June 30, 1994, shall be the percentage of the aggregate annual compensation of employees as of March 31 of the valuation year as determined by the actuary using the entry age normal cost funding method. On each June 30 the board shall determine the allocation of the assets of the pension accumulation fund between the two groups of employees in subsection (a); provided that the assets of the pension accumulation fund as of June 30, 1976, shall be allocated between the two groups in the same proportion as the aggregate annual compensation of each group as of March 31, 1976.

(d) Commencing with fiscal year 1994-1995 and each subsequent fiscal year, the actuary shall determine the total unfunded accrued liability using the entry age normal cost funding method separately for each of the two groups of employees in subsection (a). The accrued liability contribution for each of the two groups of employees shall be the annual payment required to liquidate the unfunded accrued liability over a period of twenty-nine years beginning July 1, 2000. Any increase or decrease in the total unfunded accrued liability resulting from legislative changes in the benefit provisions of the employees' retirement system shall be liquidated over a period of time to be determined by the actuary.

(e) Commencing with fiscal year 2005-2006 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on fifteen and three-fourths per cent of the member's compensation for police officers, firefighters, and corrections officers and thirteen and three-fourths per cent of the member's compensation for all other employees. Commencing with fiscal year 2008-2009 and each subsequent fiscal year until fiscal year 2011-2012, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on nineteen and seven-tenths per cent of the member's compensation

for police officers, firefighters, and corrections officers and fifteen per cent of the member's compensation for all other employees. In fiscal year 2012-2013, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-two per cent of the member's compensation for police officers, firefighters, and corrections officers and fifteen and one-half per cent of the member's compensation for all other employees. In fiscal year 2013-2014, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-three per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen per cent of the member's compensation for all other employees. In fiscal year 2014-2015, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-four per cent of the member's compensation for police officers, firefighters, and corrections officers and sixteen and one-half per cent of the member's compensation for all other employees. Commencing with fiscal year 2015-2016 and each subsequent fiscal year, the employer contributions for normal cost and accrued liability for each of the two groups of employees in subsection (a) shall be based on twenty-five per cent of the member's compensation for police officers, firefighters, and corrections officers and seventeen per cent of the member's compensation for all other employees. The contribution rates shall amortize the total unfunded accrued liability of the entire plan over a period not to exceed thirty years.

The contribution rates shall be subject to adjustment:

- (1) If the actual period required to amortize the unfunded accrued liability exceeds thirty years;
- (2) If there is no unfunded accrued liability; or
- (3) Based on the actuarial investigation conducted in accordance with section 88-105. [L 1925, c 55, pt of §8; am imp L 1927, c 251, §4; am L 1933, c 181, §3; am L Sp 1933, c 10, §§2, 3; RL 1935, pt of §7927; am L 1935, c 48, §§2, 4; RL 1945, pt of §712, subs 3; RL 1955, §6-89; am L 1964, c 62, §12; am L 1965, c 222, §15; HRS §88-113; am L 1969, c 110, pt of §1; am L 1973, c 19, §1; am L 1977, c 171, §2 and c 191, §2; am L 1981, c 201, §1; am L 1982, c 147, §6; am L 1983, c 190, §1; am L 1985, c 128, §1; gen ch 1985; am L 1987, c 291, §1; am L 1988, c 41, §7; am L 1989, c 184, §1; am L 1991, c 170, §1; am L 1993, c 144, §1; am L 1994, c 276, §9; am L 1996, c 79, §1; am L 1997, c 327, §3; am L 1998, c 151, §1; am L 2001, c 104, §1; am L 2002,

c 147, §2; am L 2004, c 181, §2; am L 2007, c 256, §3;
am L 2011, c 163, §§16, 22]

" **§88-123 Amount of annual contributions by the State and counties.** The contribution payable in each year to the pension accumulation fund by the State and by each county shall be determined by allocating the sum of the normal cost and the accrued liability contribution for:

(1) Police officers, firefighters, and corrections officers, the latter after the actual transfer of all county jails pursuant to executive order of the governor; and

(2) All other employees

in the same proportion as the aggregate annual compensation of each group employed by the State and by each county, respectively, as of March 31 of the valuation year. Commencing with fiscal year 2005-2006, the contribution payable in each year to the pension accumulation fund by the State and each county, respectively, shall be determined by multiplying the contribution rates in section 88-122(e) by the actual covered payroll in a given fiscal year for each of the two groups of employees in section 88-122(a). [L 1925, c 55, pt of §8; am imp L 1927, c 251, §4; am L 1933, c 181, §3; am L Sp 1933, c 10, §§2, 3; RL 1935, pt of §7927; am L 1935, c 48, §§2, 4; RL 1945, pt of §712, subs 3; RL 1955, §6-91; am L 1964, c 62, §13; HRS §88-114; am L 1969, c 110, pt of §1; am L 1977, c 171, §3; am L 1983, c 124, §15; am L 1997, c 327, §4; am L 2004, c 181, §3]

Cross References

Trustees to submit estimates of amount due from county, see §248-3.

" **§88-124 Payment of state contributions to the system.** (a) The State shall pay to the various funds of the system the amounts payable by the State under this part. Payments shall be made:

(1) On a monthly basis, within thirty days after the end of each month; or

(2) In advance, in an amount greater than the amount payable for the current fiscal quarter, taking into account amounts previously paid during the quarter and any offsets for any excess contributions in the previous quarter.

(b) The system shall determine the actual amount owed by the State under this part for each fiscal quarter, commencing with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the State for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter and any excess contributions from the previous quarter. Any additional contributions owed by the State for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess contributions by the State may be used to offset amounts owed by the State for the next fiscal quarter. [L 1925, c 55, pt of §8; am L Sp 1933, c 10, §3; RL 1935, pt of §7927; am L 1935, c 48, §2; RL 1945, §712, subs 6; RL 1955, §6-100; am L Sp 1959 1st, c 13, §2; HRS §88-115; am L 1969, c 110, pt of §1; am L 2004, c 181, §4; am L 2005, c 58, §15; am L 2016, c 31, §1]

" **§88-125 Contributions by certain state agencies.** (a) Each of the departments and agencies hereinafter described, the office of Hawaiian affairs, and the Hawaii health systems corporation shall reimburse the State for the respective amounts payable by the State to cover the liability of the State to the various funds of the system on account of the employees in the departments and agencies, the trustees of the office of Hawaiian affairs, and the employees of the Hawaii health systems corporation. This provision shall apply to any department or agency of the State that is authorized by law to fix, regulate, and collect rents, rates, fees, or charges of any nature. This subsection shall not apply as to rental units receiving federal subsidies until approval has been obtained from the appropriate federal agency.

(b) Whenever any department or agency of the State or the Hawaii health systems corporation receives federal-aid funds that may be expended for the purpose of covering the liability of the State to the various funds of the system, the department or agency or the Hawaii health systems corporation shall set aside a portion of these funds sufficient to cover the amount of the State's liability to the various funds of the system on account of the employees in the department or agency or the Hawaii health systems corporation whose compensation is paid in whole or part from federal funds.

(c) The amount payable by each department or agency of the State, the office of Hawaiian affairs, or the Hawaii health systems corporation, covered by this section shall be determined at least quarterly by the department of budget and finance on the basis of the payroll of the employees of the department or agency, trustees of the office of Hawaiian affairs, or the Hawaii health systems corporation who are members of the system

in the same manner the allocation of employer contributions is determined in section 88-123. The comptroller of the State, the office of Hawaiian affairs, the Hawaii health systems corporation, or any department or agency having control of its own funds, upon information furnished by the department of budget and finance, shall issue a check for the proper amount to the director of finance, charging the same to the appropriate fund. The director of finance shall place all such sums to the credit of the State as part payment of the State's contributions to the various funds of the system.

(d) With respect to the Hawaii health systems corporation only, this section shall be operative with respect to costs accrued beginning July 1, 1996. [L 1951, c 245, §§1, 2, 3; RL 1955, §6-101; am L Sp 1959 2d, c 1, §26; am L 1965, c 222, §16; HRS §88-116; am L 1969, c 110, pt of §1; am L 2002, c 183, §8; am L 2004, c 181, §5; am L 2009, c 182, §4]

" **§88-126 Payment of county contributions to the system.**

(a) Commencing with fiscal year 2005-2006, each of the counties shall make contributions in accordance with section 88-123. The amounts payable under this part by each county on account of its employees who are members of the system shall be paid by the county as follows:

- (1) Before October 31, 2005, for the period from July 1, 2005, through September 30, 2005;
- (2) Commencing October 1, 2005, each county shall pay on a monthly basis the amounts payable by the county under this part on account of its employees who are members of the system. Payments shall be made within thirty days after the end of the month; and
- (3) Commencing July 1, 2016:
 - (A) On a monthly basis, within thirty days after the end of each month; or
 - (B) In advance, in an amount greater than the amount payable for the current fiscal quarter, taking into account amounts previously paid during the quarter and any offsets for any excess contributions in the previous quarter.

(b) The system shall determine the actual amount owed by a county under this part for each fiscal quarter, beginning with the first fiscal quarter of fiscal year 2005-2006. The actual amounts owed by the county for the fiscal quarter shall be compared against the amounts paid in the fiscal quarter and any excess contributions from the previous quarter. Any additional contributions owed by the county for a fiscal quarter shall be paid before the end of the next fiscal quarter. Any excess

contributions by the county may be used to offset amounts owed by the county for the next fiscal quarter.

(c) If the amount or any portion of the amounts owed is not paid by the county before the dates specified in subsection (a), the director of finance shall retain out of the transient accommodations tax money collected a sum equal to the amount or portion thereof not so paid. All the moneys retained and collected by the director of finance shall be deposited in the appropriate fund or funds of the system. The amount of any deficiency in meeting the obligations shall be added to the amount due from the county for the succeeding quarter. [L 1925, c 55, §8; am imp L 1927, c 251, §4; am imp L 1929, c 182, §1; am imp L 1932 2d, c 50, §1; am L 1933, c 181; am L Sp 1933, c 10, §§2, 3; RL 1935, §7927; am L 1935, c 48, §§2, 4; am L Sp 1941, c 67, §1; RL 1945, pt of §712; RL 1955, §6-102; am L 1957, c 152, §1; am L Sp 1959 2d, c 1, §§12, 14; am L 1963, c 114, §1; HRS §88-117; am L 1969, c 110, pt of §1; am L 1994, c 138, §2; am L 1998, c 151, §17; am L 2004, c 181, §6; am L 2005, c 58, §16; am L 2016, c 31, §2]

" **§88-127 Guaranty.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves and pension reserves as provided for the payment of all pensions, annuities, retirement allowances, refunds, and other benefits granted under this part, and all expenses in connection with the administration and operation of the system are made obligations of the State and of the respective counties. All income, interest, and dividends derived from deposits and investments authorized by this part shall be used for the payment of such obligations. After June 30, 1964, the income shall include capital gains or losses, whether realized or unrealized, in the value of the retirement system assets as taken from time to time thereafter by the board of trustees. It is hereby declared that any and all sums contributed or paid from whatever source to the system for the funds created by this part, and all funds of the system including any and all interest and earnings of the same, are and shall be held in trust by the board for the exclusive use and benefit of the system and for the members of the system and shall not be subject to appropriation for any other purpose whatsoever. [L 1925, c 55, §11; am L 1933, c 181, §2; am L Sp 1933, c 10, §5; RL 1935, §7929; am L 1935, c 48, §§2, 5; RL 1945, §714; RL 1955, §6-103; am L 1965, c 222, §17; HRS §88-118; am L 1969, c 110, pt of §1; am L 2004, c 181, §7]

Trustees may not waive penalty for prepayment of loan of retirement system funds. Att. Gen. Op. 62-22.

Case Notes

Employees' retirement system (ERS) board of trustee's contention that no statute in chapter 88 provides that ERS owes a duty to individual members to provide individual notice and counseling, particularly absent a request for information was incorrect where, reading §88-27 and this section in para materia, the ERS board is charged with the duty to diligently and honestly administer all funds held in trust for the exclusive use and benefit of the system and for the members of the system. 108 H. 338, 120 P.3d 237.

"E. SPECIAL BENEFITS FOR MEMBERS IN MILITARY SERVICE

§88-131 Definitions. As used in sections 88-131 to 88-142:

"Service in the armed forces": active service (1) in military service, as defined in section 88-132, or (2) in any other essential war service covered by the Servicemen's Act.

"Service member": a member of the system who is entitled to the benefits provided by the Servicemen's Act.

"Servicemen's Act": includes section 88-132 and any other act extending benefits similar to those of the section to other classes of persons in essential war services. [L 1951, c 262, pt of §3; RL 1955, §6-110; HRS §88-121; am L 1969, c 110, pt of §1]

Revision Note

Definitions rearranged.

" **§88-132 Service credit; payment of contributions.** (a) Every active member of the system who leaves active service of the State or any county for the purpose of entering the military service of the United States in time of war or declared national or state emergency, or is called involuntarily to active duty after June 24, 1950, shall, so long as the member remains in military service, be allowed service credit in the system to the same extent as if the member were continuously in the active service of the State or county, as the case may be, in the position which the member held immediately prior to the member's entry into military service; provided that in no event shall the allowance of service credit exceed a period of four years.

(b) The State or county, as the case may be, in whose service the member was employed immediately prior to the member's induction into military service shall pay all contributions to the pension accumulation fund and to the annuity savings fund, and any other payment to the system, which would otherwise be payable to the system by the State, the county, or the member if the member had remained continuously in the active service of the State or county, as the case may be, during the period of the member's military service; provided that:

- (1) The cumulative length of time for which a member shall be entitled to payment of the contributions shall not exceed four years;
- (2) The member returns to state or county government service within ninety days of release from active duty or dies in the performance of the member's military service; and
- (3) The member's release from active duty was under honorable conditions.

(c) The State or county, as the case may be, shall pay all contributions required to be made under subsection (b) within sixty days after:

- (1) The member returns to state or county government service; or
- (2) The State or county, as the case may be, receives notice of the member's death in the performance of the member's military duty.

(d) If the State or county, as the case may be, fails to pay the contributions within the time specified in subsection (c), the State or county, as the case may be, shall also pay to the system regular interest from the date the member returned to state or county government service or the date of the member's death in the performance of the member's military duty until payment is made. Regular interest paid on the portion of the contributions that would have been payable by the member shall be included in the member's accumulated contributions. [L 1951, c 262, pt of §3; RL 1955, §6-111; HRS §88-122; am L 1969, c 110, pt of §1; gen ch 1985; am L 1987, c 116, §1; am L 1989, c 100, §3; am L 2006, c 169, §22; am L 2011, c 163, §19]

Attorney General Opinions

Employee called to active duty as member of armed forces reserve is entitled to benefits provided by this subpart. Att. Gen. Op. 63-34.

" **§88-132.5 Credit for military service.** (a) Any employee who becomes a member of the system in accordance with section 88-42 after June 17, 1996, and has rendered honorable active military service in the armed forces of the United States, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with ten years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(b) Any employee who became a member of the system in accordance with section 88-42 before June 18, 1996, and has rendered honorable active military service in the armed forces of the United States, may be credited with membership service credit for active military service of up to four years or the actual number of years of active military service, whichever is less, as follows:

- (1) Any member with eight years of credited service in the system may be credited with up to two years of membership service credit;
- (2) Any member with twenty years of credited service in the system may be credited with up to three years of membership service credit; and
- (3) Any member with twenty-five years of credited service in the system may be credited with up to four years of membership service credit.

(c) Any retirant receiving a pension or retirement allowance under this chapter, who retired prior to July 2, 1989, who rendered honorable active military service in the armed forces of the United States and who had at least eight years of credited service in the system at retirement, shall be eligible for an increase in pension or retirement allowance for each year of military service up to four years, as follows:

- (1) A retirant with eight years of credited service in the system at retirement may be certified with up to two years of military service;
- (2) A retirant with twenty years of credited service in the system at retirement may be certified with up to three years of military service; and

- (3) A retirant with twenty-five years of credited service in the system at retirement may be certified with up to four years of military service.

Upon certification by the system, each year of certified military service shall provide an increase of \$36 a month in the retirant's pension or retirement allowance effective July 1, 2001; provided that the retirant claims the military service between July 1, 2001, and June 30, 2002. Military service certified under this subsection shall not be considered membership service credit nor shall it provide for any other benefits under this chapter.

(d) For the purposes of subsections (a) and (b), the latest membership date shall be used if there is a change in membership date due to termination and re-entry into the system.

(e) Any retirant who returns to employment, is reenrolled as a member of the system, and has at least three years of credited service in the system during the period of reemployment may be credited with membership service credit for active military service as provided in subsection (a) or (b); provided that membership service credit shall be based upon the member's total service and the service was not previously certified in accordance with subsection (c).

(f) Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency. Membership service creditable under this section shall be credited in accordance with sections 88-59, 88-272, and 88-324.

(g) A member's active military service shall be considered service in the member's occupation at the time that service is credited. A class A or class B member's active military service shall be purchased at the rate specified in section 88-45 and the retirement allowance provided by that service shall be calculated as provided in section 88-74. A class C member's active military service shall be credited at no cost upon certification by the system and the retirement allowance provided by that service shall be calculated as provided in section 88-282. A class H member's active military service shall be purchased at the rate specified in section 88-325, and the retirement allowance provided by that service shall be calculated as provided in section 88-332.

(h) Any violation of this section shall result in the forfeiture of the amount of the purchase of membership service and loss of benefits and membership service credit for military service. [L 1989, c 385, §1; am L 1990, c 141, §2; am L 1996, c 241, §1; am L 1997, c 136, §2; am L 2001, c 284, §1; am L 2004, c 179, §16]

Attorney General Opinions

Member of state employees' retirement system ordered to active national guard duty during wartime may obtain military service credit. Att. Gen. Op. 91-04.

Former employee, as a vested noncontributory plan participant, was a member of ERS who was eligible to apply for and be credited with military service credit pursuant to this section (1994). Att. Gen. Op. 97-12.

Section did not set a time by which a member must apply for military service credit. Att. Gen. Op. 97-12.

" **§88-133 Benefits and conditions applicable to service member.** All service members shall by reason of their retention of membership in the system under the Servicemen's Act, have the status, be entitled to the benefits, and be subject to the conditions and limitations set forth in sections 88-131 to 88-142. [L 1951, c 262, pt of §3; RL 1955, §6-112; HRS §88-123; am L 1969, c 110, pt of §1]

" **§88-134 Service retirement benefit.** If a service member has terminated the service member's service with the armed forces and otherwise complies with the requirements of sections 88-73, 88-281, or 88-331, as applicable, the service member shall be entitled to a service retirement benefit to be computed as provided in sections 88-74, 88-282, or 88-332, as applicable, including and taking into consideration the service credit preserved and allowed to the service member by the Servicemen's Act. [L 1951, c 262, pt of §3; RL 1955, §6-113; HRS §88-124; am L 1969, c 110, pt of §1; gen ch 1985; am L 2004, c 179, §17]

" **§88-135 Ordinary disability retirement benefit.** If a service member terminates the service member's service in the armed forces and complies with and fulfills the requirements of sections 88-75, 88-284, or 88-334, as applicable, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen's Act, the service member shall be entitled to the ordinary disability retirement benefit prescribed in the applicable section, computed as provided in sections 88-76, 88-284, or 88-335, including and taking into consideration the service credit preserved and allowed to the service member under the Servicemen's Act. [L 1951, c 262, pt of §3; RL 1955, §6-114; HRS §88-125; am L 1969, c 110, pt of §1; gen ch 1985; am L 2004, c 179, §18]

" **§88-136 Accidental disability benefit.** Any member who has been incapacitated for duty by accident, act of war, or otherwise, occurring while the member is not in the service of the State or any county, shall not by reason of such incapacity be entitled to the accidental disability benefit provided for by sections 88-79, 88-285, or 88-336, but in such event if the member can qualify for an ordinary disability retirement benefit as hereinabove provided, the member shall receive the ordinary disability retirement benefit. [L 1951, c 262, pt of §3; RL 1955, §6-115; HRS §88-126; am L 1969, c 110, pt of §1; gen ch 1985; am L 1998, c 151, §11; am L 2004, c 179, §19]

" **§88-137 Ordinary death benefit.** If any service member dies, the service member shall be deemed to be on authorized leave without pay for the purposes of the ordinary death benefit provided in sections 88-84, 88-286(b), and 88-338. [L 1951, c 262, pt of §3; RL 1955, §6-116; HRS §88-127; am L 1969, c 110, pt of §1; gen ch 1985; am L 2004, c 179, §20; am L 2006, c 169, §23]

" **§88-138 Accidental death benefit.** If a service member dies by accident, act of war, or other cause, occurring while the service member is not in the active service of the State or any county, the death shall not be an accidental death and shall not be eligible for accidental death benefits under sections 88-85, 88-286(c), and 88-339; however, the ordinary death benefit shall be payable as provided in section 88-137. [L 1951, c 262, pt of §3; RL 1955, §6-117; HRS §88-128; am L 1969, c 110, pt of §1; gen ch 1985; am L 2004, c 179, §21; am L 2006, c 169, §24]

" **§88-139 Return of contributions.** Any service member may resign from the system at any time, if the service member so chooses, and upon such resignation the service member shall be entitled to the return of the service member's accumulated contributions as provided in sections 88-96 and 88-341, including any amount to the service member's credit in the annuity savings fund which shall have been contributed by the State or any county under the Servicemen's Act, but the service member shall cease to be entitled to any of the benefits of the Servicemen's Act or of sections 88-131 to 88-142, except the return of accumulated contributions, upon the effective date of the service member's resignation. [L 1951, c 262, pt of §3; RL 1955, §6-118; HRS §88-129; am L 1969, c 110, pt of §1; gen ch 1985; am L 2004, c 179, §22]

" **§88-140 Duration of service member's status.** (a) An active member of the system who leaves active service of the

State or any county for the purpose of entering the military service of the United States in time of war or declared national or state emergency, or is called involuntarily to active duty after June 24, 1950, shall be entitled to the benefits of sections 88-134, 88-135, and 88-137:

- (1) For so long as the member remains in active full-time military service, up to an aggregate of five years; and
- (2) For an additional period ending on the earlier of:
 - (A) The ninety-first day after the termination of the member's eligibility for benefits pursuant to paragraph (1); or
 - (B) The day the member returns to the active service of the State or a county.

(b) If a service member resigns from employment by the State or a county and waives the service member's right to reemployment, the service member's status shall be the same as a regular member who terminated the regular member's employment as of the earlier of:

- (1) The effective date of the service member's resignation from employment; or
- (2) The expiration of the service member's rights under subsection (a). [L 1951, c 262, pt of §3; RL 1955, §6-119; HRS §88-130; am L 1969, c 61, §1 and c 110, pt of §1; gen ch 1985; am L 2006, c 169, §25]

" **§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 immediately thereafter while the member was not an employee as defined in section 88-21, the member's rate of compensation during the period shall, for the purposes of sections 88-131 to 88-142, be deemed to have been that which the member would have received but for the member's service in the armed forces. [L 1951, c 262, pt of §3; RL 1955, §6-120; HRS §88-131; am L 1969, c 110, pt of §1; gen ch 1985; am L 2008, c 41, §6]

" **§88-142 Right of amendment or repeal reserved; retroactive effect.** The provisions of sections 88-131 to 88-142 shall not be deemed to constitute a contract with any service member and the legislature reserves the right to amend or repeal the

sections at any time as to any benefit or allowance not accrued prior to the time of the amendment or repeal.

The sections shall apply retroactively, as well as prospectively, to all persons entitled to the benefits of the Servicemen's Act. [L 1951, c 262, pt of §3; RL 1955, §6-121; HRS §88-132; am L 1969, c 110, pt of §1]

**"PART III. POLICE OFFICERS, FIREFIGHTERS, AND
BANDSMEN PENSION SYSTEM**

§88-151 Application. No member of the police force, fire department, or band who on May 2, 1927, was receiving a pension from the State shall be a beneficiary under this part. This part shall not apply to any police officer, firefighter, or bandsman entering service after December 31, 1927, and no such person or the person's dependent widow, child or children, father or mother, sister or brother, or other relative or dependent shall receive any pension or other benefit under this part. [L 1917, c 220, §9; RL 1925, §2169; am L 1927, c 249, §2; RL 1935, §7912; RL 1945, §6181; RL 1955, §6-130; HRS §88-151; am L 1983, c 124, §15; gen ch 1985]

" **§88-152 Certain other employees included.** Whenever used in this part the term "police force" includes among others, jailors, turnkeys, guards, matrons, lunas, and cooks employed in any county jail.

This section shall apply only to county employees in service on December 31, 1927, who, if members of the police force on that date, would be or would have been entitled to membership in one of the pension systems provided for by this part, and who shall have applied to the board of trustees of the pension system in which they are entitled to claim membership under this section before January 1, 1932. No employee who complies with this section shall be held to have waived the employee's right to membership in any such system by reason of the employee's having joined or become a member of the employees' retirement system after December 31, 1927, but the membership in the system shall cease when the person becomes a member of any pension system.

The board of trustees shall pass upon the applications and determine whether or not the applicants are entitled to membership under this section. [L 1931, c 286, §§1, 2; RL 1935, §7913; RL 1945, §6182; RL 1955, §6-131; am L 1963, c 65, §2b; HRS §88-152; gen ch 1985]

" **§88-153 Police officers, firefighters, and bandsmen pension system; trustees, powers.** There shall be in every

county a police officers, firefighters, and bandsmen pension system which shall be governed and managed by a board of trustees. In each county the board shall consist of three members, who shall be appointed by the mayor with the approval of the county council in each instance. The terms of office of the trustees first taking office shall expire as designated by the appointing authority at the time of appointment, one after one year of service, one after two years of service, and one after four years of service. The terms of subsequent trustees shall be for four years and until their successors are appointed and qualified except that a person appointed to fill a vacancy caused by death, resignation, or otherwise, occurring prior to the expiration of the term, shall be appointed for the remainder of the term. The appointing authority shall designate one of the trustees as chairperson of the board in each instance. No person shall be eligible for membership or be a member of the board who occupies any elective or appointive office or position under the county government, and no member shall, during the member's term of office, serve as an officer or committee member of any political party organization, or present oneself as candidate or be a candidate for nomination or election to any public office in any primary or general election. The members of the board of trustees shall serve without pay.

The board may take by gift, grant, devise or bequest any money, choses in action, personal property, real estate, or any interest in anything of value, under the name and style of "The board of trustees of the police officers, firefighters, and bandsmen pension system" of the county in which the board shall be created, and hold the same or assign, transfer, or sell the same whenever proper or necessary under and by such name.

Any county that does not have a constituency for this pension system shall be exempt from these requirements. [L 1917, c 220, pts of §§1, 2; RL 1925, pts of §§2161, 2162; RL 1935, pts of §§7903, 7904; am L 1939, c 86, pt of §1; RL 1945, pts of §§6171, 6172; RL 1955, §6-132; am L 1963, c 65, §2d, e, f; am imp L 1967, c 80, §1; HRS §88-153; am L 1983, c 124, §15; gen ch 1985, 1993; am L 1998, c 261, §1]

" **§88-154 Officers of the board; duties.** The county clerk shall ex officio be the secretary of the board of trustees and shall keep in a separate book a true and correct account of the proceedings of the board. The county attorney shall be the legal adviser of the board. The treasurer of the county shall ex officio be the treasurer of the board. The auditor of the county shall audit all accounts of the pension system and shall draw all warrants payable therefrom, which warrants shall be

drawn only upon the order of a majority vote of the three members of the board, which order shall be certified to by the chairman and one other member of the board. The treasurer shall collect all moneys belonging to the system, shall have the custody of all its notes, bonds, and other securities, if any, and shall collect the principal and interest of the same, and he shall be liable on his bond as treasurer for the faithful accounting of all moneys and securities which may come into his hands belonging to the system. The treasurer shall, upon the expiration of his term of office, account to the board for all moneys, notes, bonds, and other securities coming into his hands and the proceeds of the same, and turn over to his successor in the office of treasurer all moneys, notes, and other securities belonging to the system remaining in his hands. [L 1917, c 220, pt of §1; RL 1925, pt of §2161; RL 1935, pt of §7903; am L 1939, c 86, pt of §1; RL 1945, pt of §6171; RL 1955, §6-133; am L 1963, c 65, §2c; HRS §88-154]

" **§88-155 Medical board.** Assisting the board of trustees there shall be a medical board to be composed of three licensed physicians, one of whom shall be the physician for the county, another of whom shall be appointed by the board of trustees, and the third of whom shall be named by agreement of the other two physicians. If for any reason any regular member of the medical board shall be unable to, or in the judgment of the board of trustees may not properly, act in any particular case, the board may designate a substitute to act on the particular case on the medical board. The medical board shall arrange for and pass upon all medical examinations required and shall perform all other services as may be required of it by the board of trustees, pursuant to this part, and shall report in writing to the board of trustees its conclusions and recommendations upon all matters referred to it. The medical board shall act by a majority of its members. [L 1933, c 46, §2; RL 1935, §7906; am L 1939, c 86, §4; RL 1945, §6175; RL 1955, §6-134; HRS §88-155]

" **§88-156 Appropriations and expenditure.** Annually the council of each county (or the city council in the case of the city and county of Honolulu) shall appropriate out of the general fund of the county the full amount required for each fiscal year to cover the payment of pensions and benefits granted under this part.

The appropriations shall be made so long as it shall be necessary to pay all pensions to persons on the pension rolls of the system as of December 31, 1927, and to pay all pensions which may become payable to or on account of all police

officers, firefighters and bandsmen who were in service on December 31, 1927. All the pensioners and police officers, firefighters, and bandsmen shall be entitled to benefits at the full rates.

Expenditure of the appropriations shall be solely for the purposes set forth in this part. [L 1917, c 220, pt of §2; RL 1925, pt of §2162; am L 1927, c 249, §1; RL 1935, pt of §7904; RL 1945, pt of §6172; RL 1955, §6-135; am L 1957, c 66, §1; am L 1963, c 65, §2g; HRS §88-156; am L 1983, c 124, §15]

Revision Note

"Council" substituted for "board of supervisors".

" **§88-157 Use of donations, contributions, gifts, or bequests.** All moneys received by the board of trustees as donations, contributions, gifts, or bequests to be used for the purposes set forth in this part shall be deposited into a special trust fund to be known as the "Police Officers, Firefighters, and Bandsmen Pension System Trust Fund" to be used for the purposes for which the moneys were received. [L 1917, c 220, pt of §3; RL 1925, pt of §2163; RL 1935, pt of §7905; RL 1945, pt of §6173; RL 1955, §6-137; am L 1963, c 65, §2i; HRS §88-157; am L 1983, c 124, §15]

" **§88-158 Disability retirement benefits.** Whenever any member of the police force, fire department, or band of any county shall, on examination by the medical board provided for in section 88-155, be found to be disabled physically or mentally because of any injury received or disease contracted while in the performance of the member's duty so as to render necessary the member's retirement from the service on the police force, fire department, or band of the county, then the board of trustees shall authorize a monthly payment to the person from the pension system of a sum equal to not less than one-quarter nor more than three-quarters of the person's average monthly compensation for the ten years (or less, if the person has had less than ten years) of the person's service, as defined in section 88-166, immediately preceding the person's adjudication of disability by the medical board. [L 1917, c 220, pt of §3; RL 1925, pt of §2163; am L 1933, c 46, pt of §1; RL 1935, pt of §7905; RL 1945, pt of §6173; RL 1955, §6-138; am L 1963, c 65, §2b; HRS §88-158; gen ch 1985]

" **§88-159 Reexamination of disability beneficiary; hearing.** After any member of the police force, fire department, or band has been retired upon pension by reason of disability, the board of trustees shall have the right at any time to cause the retired member again to be brought before it and examined by the medical board, and shall also have the right to examine other witnesses for the purpose of discovering whether the disability still continues, and whether the retired member should remain on the pension roll; but the retired member shall be retained on the pension roll until reinstated in the service of the police force, fire department or band, except in case of dismissal or resignation. The retired member shall be entitled to notice, and to be present at the hearing of evidence, shall be permitted to propound any question pertinent or relevant to the matter and shall also have the right to introduce evidence upon the retired member's own behalf. All witnesses so produced shall be examined under oath and any member of the board of trustees is authorized to administer the oath. Should the retired member recover from the retired member's disability and be, in the opinion of the medical board, again fit for active duty, then the member shall again be put on active duty and full pay, and from the time the board of trustees shall decide that the member is fit for active duty, the member shall cease to be entitled to any payments out of the pension system because of disability for which the member was retired. [L 1917, c 220, pt of §3; RL 1925, pt of §2163; am L 1933, c 46, pt of §1; RL 1935, pt of §7905; RL 1945, pt of §6173; RL 1955, §6-139; am L 1963, c 65, §2b; HRS §88-159; gen ch 1985]

Cross References

Hearings, generally, see chapter 91.

" **§88-160 Service retirement benefits.** (a) Any member of the police force, fire department, or band who has been in the service of any county as a member of the police force, fire department, or band for twenty years and less than twenty-five years, upon the member's written application to the board of trustees to be retired, shall be retired from the police force, fire department, or band, and the member shall thereafter receive from the pension system a monthly payment equal to forty per cent of the average monthly compensation for the five years of the member's service, as hereinafter defined, immediately preceding the date of the member's retirement.

(b) Any member of the police force, fire department, or band who has been in the service of the county as a member of

the police force, fire department, or band for twenty-five years, upon the member's written application to the board to be retired, shall be retired from the police force, fire department, or band and the member shall thereafter receive from the pension system a monthly payment equal to fifty per cent of the average monthly compensation for the five years of the member's service, as hereinafter defined, immediately preceding the date of the member's retirement.

(c) Any member of the police force, fire department, or band who has been in the service of the county as a member of the police force, fire department or band for more than twenty-five years, upon the member's written application to the board to be retired, shall be retired from the police force, fire department, or band and the member shall thereafter receive from the pension system a monthly payment equal to fifty per cent of the average monthly compensation for the five years of the member's service, as hereinafter defined, immediately preceding the date of the member's retirement, plus two per cent for each year in excess of twenty-five years, but not in excess of eighty per cent. [L 1917, c 220, pt of §3; RL 1925, pt of §2163; am L 1933, c 46, pt of §1; RL 1935, pt of §7905; RL 1945, pt of §6173; am L 1953, c 149, §1; RL 1955, §6-140; am L 1963, c 65, §2b; am L 1967, c 131, §1; HRS §88-160; gen ch 1985]

" **§88-161 Dismissal after twenty years' service; pensions.**

Any member of the police force, fire department or band who is dismissed therefrom for any cause other than for being convicted of a felony, after the member shall have been in actual service for twenty years or more, shall receive from the pension system a monthly payment equal to forty per cent of the average monthly compensation for the ten years of service immediately preceding the member's dismissal. [L 1917, c 220, §7; RL 1925, §2167; am L 1933, c 46, §4; RL 1935, §7910; RL 1945, §6179; RL 1955, §6-141; am L 1963, c 65, §2b; HRS §88-161; gen ch 1985]

" **§88-162 Dismissal after ten years' service; pension.**

Any member of the police force, fire department, or band in any county not having a civil service commission, who shall be dismissed from service without cause after the member shall have been in actual service for ten years or more, but not exceeding twenty years and who shall be unable through sickness or other disability to support oneself and one's dependents, shall receive from the pension system a monthly payment equal to twenty-five per cent of the average monthly compensation for the ten years of service immediately preceding the member's dismissal so long as so disabled. [L 1917, c 220, §8; RL 1925,

§2168; am L 1933, c 46, §5; RL 1935, §7911; RL 1945, §6180; RL 1955, §6-142; am L 1963, c 65, §2b; HRS §88-162; gen ch 1985]

" **§88-163 Death benefits: funeral expenses; payments to dependents.** (a) Upon the death of any member of the police force, fire department, or band, as a result of any injury received or disease contracted while in the performance of his duty, or when entitled to a pension under this part or who has been pensioned under this part there shall be paid, for funeral expenses, a sum not to exceed \$100. Should the deceased member leave a dependent widow or reciprocal beneficiary and a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the widow until her death or remarriage or to the reciprocal beneficiary until death, marriage, or entry into a new reciprocal beneficiary relationship and \$7.50 per month to the widow or reciprocal beneficiary for each child so long as the child shall reside with the widow or reciprocal beneficiary or is supported by the widow or reciprocal beneficiary. Upon the death of such widow or reciprocal beneficiary, or in the event the deceased member leaves no widow or reciprocal beneficiary but a child or children under the age of eighteen years, then there shall be paid out of the system \$50 per month to the child or children of the deceased member under the age of eighteen years with each child, if there be more than one, receiving an equal share of the \$50 per month payment plus \$7.50 per month. All payments to a child of a deceased member provided for herein shall cease when he or she arrives at the age of eighteen years.

(b) If any member of the police force, fire department or band, dies not leaving a widow or reciprocal beneficiary, but leaving a father or mother dependent upon him, the father or mother (but not both) shall, upon satisfactory proof of dependency being made to the board of trustees receive from the system a sum not exceeding \$50 per month. The board shall determine whether the father or mother is dependent and how much of the amount herein provided for shall be paid to him or her. If there be no widow or reciprocal beneficiary and no child and no father or mother, but dependent brothers or sisters, then such pension shall be paid to them in such sums as shall not exceed the aggregate amount of \$30 per month. All pensions authorized as provided in this subsection shall be subject to reduction by the board of trustees whenever, in its judgment, circumstances make it reasonable, fair, or necessary. All pensions so reduced may thereafter be restored or further reduced as the board may deem best.

(c) On the remarriage of any widow or reciprocal beneficiary entitled to the benefits of any sum, or in the event

of any father or mother, brothers or sisters ceasing to be dependents then the payments to them shall cease. [L 1917, c 220, pt of §3; am L 1923, c 99, §1 and pt of §2; RL 1925, pt of §2163; am L 1929, c 9, pt of §1; am L 1931, c 144, §1; RL 1935, pt of §7905; am L 1939, c 86, §2; RL 1945, pt of §6173; RL 1955, §6-143; am L 1963, c 65, §2b, j; am L 1967, c 141, §1; HRS §88-163; am L 1997, c 383, §31]

Case Notes

Pensioner may bring claim for arrears in pension. 34 H. 150. The claim does not survive death of pensioner. 34 H. 667.

" **§88-164 Benefits in lieu of other payments.** The benefits set forth in this part shall be in lieu of any or other compensation payable to a member of a police force, fire department, or band or any of the member's dependents under or on account of chapter 386, or any other claim or demand against the county by whom the member is employed. However, the member of the police force, fire department, or band or the member's dependents may, at the member's or their election, waive the benefit provided for in this part and in lieu thereof claim any compensation or benefits that would otherwise be payable to the member or the member's dependents under chapter 386, or in any manner authorized by law. [L 1917, c 220, pt of §3; am L 1923, c 99, pt of §2; RL 1925, pt of §2163; am L 1929, c 9, pt of §1; RL 1935, pt of §7905; RL 1945, pt of §6173; RL 1955, §6-144; HRS §88-164; gen ch 1985]

" **§88-165 Adjustments of pensions.** The board of trustees shall have full authority, within the limits set down in this part, to review all pensions previously granted or which are hereafter granted under this part and make adjustments considered fair, reasonable, or necessary. [L 1939, c 86, pt of §3; RL 1945, pt of §6173; RL 1955, §6-145; HRS §88-165]

" **§88-166 Computation; service as police officer, firefighter, or bandsman.** To entitle anyone to be retired because of time of service only, the time served by the person upon the regularly constituted police force, fire department, or band on which the person shall then be serving, or of the Territory or the Republic of Hawaii, its predecessor, shall be computed, but all times so served by the person before, as well as after May 2, 1917, shall be included in the computation. No time served by any person as a special police officer or a police officer solely paid by any private person, or as a

merchant police officer, shall be considered in computing the length of service of the person in the police force. [L 1917, c 220, pt of §3; RL 1925, pt of §2163; RL 1935, pt of §7905; RL 1945, pt of §6173; RL 1955, §6-146; HRS §88-166; am L 1983, c 124, §15; gen ch 1985]

" **§88-167 Computation; prior credits.** The board of trustees of the pension system for each county shall include and take into consideration, when computing the period of service of each member of the pension system to determine the member's eligibility for retirement and also to determine the amount of any pension allowable to the member on such retirement, not only service as a police officer, firefighter, or bandsman in such county, but any other service under the government of the county, for which service the member would be entitled to "prior service credit" or "membership service" as defined in part II, if the member had become a member of the retirement system on January 1, 1928, as a person then in the service of the county.

No additional credit for service other than as a police officer, firefighter, or bandsman, provided for by this section, shall be given to any member of the pension system unless the member shall have, on or before December 31, 1941, applied to the trustees of the pension system upon such forms and in accordance with such rules as the trustees shall prescribe, for the additional service credit.

This section shall apply to persons pensioned before, as well as after, April 30, 1941, but any increase of pension resulting from the additional service credit allowed under this section shall not be retroactive as to pension payments made prior to April 30, 1941. [L 1941, c 133, §§1, 2; RL 1945, §6174; RL 1955, §6-147; am L 1963, c 65, §2b; HRS §88-167; am L 1983, c 124, §15; gen ch 1985]

" **§88-168 Orders, discipline, medical examination, etc.** Any member of the police force, fire department or band placed on the retired list, except those who have served on the force for twenty years or more and have retired for that reason, shall report for duty to the head of the police force, fire department or band, respectively, from time to time as may be ordered by the board of trustees or may be provided for in the bylaws of the board and shall be subject to the orders and discipline of the head of the police force, fire department, or band, respectively, and shall perform such duties as may be required of the member and for which, in the opinion of the medical board, the member may be fit, and for which the member shall be allowed full pay. For any refusal to obey these orders and for a breach of discipline, the head of the police force, fire

department or band, as the case may be, shall report the member at once to the civil service commission in any county having a civil service commission, otherwise to the county council for such action as it may be deemed proper for the good of the service. The member shall be subject to punishment and dismissal in the same manner as those in active service. Any pension the retired member may have received shall cease in case of the retired member's expulsion, and the pension for any refusal to obey orders and all other breaches of discipline as aforesaid shall be subject to whatever orders may be deemed proper by the civil service commission, or the county council as the case may be. The medical board shall make all examinations of the members of the police force, fire department, or band of the county whenever requested by the board of trustees or whenever requested by any member, for the purpose of certifying to the member's physical or mental condition to the board of trustees. [L 1917, c 220, §4; RL 1925, §2164; am L 1933, c 46, §3; RL 1935, §7907; RL 1945, §6176; RL 1955, §6-148; HRS §88-168; gen ch 1985]

Revision Note

"County council" substituted for "board of supervisors".

" **§88-169 Payments of pensions; inalienable.** If at any time there should not be sufficient money to the credit of the pension system to pay all claims against it in full, claims on account of the death of members of the police force, fire department, or band, shall be paid first in full with as little delay as possible, after which an equal percentage shall be paid upon all other claims to the full extent of the funds on hand until the funds be replenished so as to pay them in full. All pensions shall be paid by the treasurer at the treasurer's office at the same time and in such installments as the members of the police force, fire department, or band are paid. All pensions granted and payable out of the pension system shall be exempt from seizure or levy upon attachment, execution, supplemental process, and all other process whether mesne or final and shall not be subject to sale, assignment, or transfer by any beneficiary. [L 1917, c 220, §5; RL 1925, §2165; RL 1935, §7908; RL 1945, §6177; RL 1955, §6-149; am L 1963, c 65, §2b; HRS §88-169; gen ch 1985]

Case Notes

Lack of assignability is an indication of lack of survival of a cause of action. 34 H. 667.

" **§88-170 Forfeiture of pension.** Whenever any person who has received a pension from the pension system fails to report oneself for examination for duty (unless excused by the board of trustees), or disobeys the requirements of the board in respect to such examination, or fails to perform such duty as may be required of the person if found able to perform such duty, then the board shall order that the pension allowed and paid to the person shall cease permanently or temporarily. [L 1917, c 220, §6; RL 1925, §2166; RL 1935, §7909; RL 1945, §6178; RL 1955, §6-150; am L 1963, c 65, §2b; am L 1967, c 169, §1; HRS §88-170; gen ch 1985]

" **§88-171 Public hearings; notice.** All adjudications by the board of trustees required by this part in connection with applications for pensions, revocations of pensions, or otherwise, shall be made by the board only after public hearings, public notice of which shall be given by the board at least once at least ten days before the date of hearing, and actual notice of which shall be given to the person concerned, if available, which notice shall specifically state that the person interested shall have the right to be present in person or by representative and to be represented by counsel. [L 1933, c 46, §6; RL 1935, §7914; RL 1945, §6183; RL 1955, §6-151; HRS §88-171; am L 1998, c 2, §26]

"PART IV. MUNICIPAL AND COUNTY PENSION SYSTEMS

§88-181 Pension boards created. There shall be a pension board, hereafter referred to as the "board", for each of the counties of the State, with full authority, within the limits prescribed by law, to make investigations necessary to comply with this part and to grant pensions to employees and former employees of their respective counties, who are or were ineligible to the benefits of the employees' retirement system, and are not the recipients or beneficiaries of pensions from the State or any county, or to the widows of the employees. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); am L 1941, c 299, §1; RL 1945, pt of §6184; RL 1955, §6-160; HRS §88-181]

" **§88-182 Members: appointment, terms, removals.** Except in the counties of Hawaii and Maui, each pension board shall consist of five members to be appointed for terms of five years.

The original members shall be appointed for staggered terms so that one shall expire on June 30 of each year. All vacancies occurring otherwise than by expiration of the term shall be filled by appointment for the remainder of the unexpired term. One of the members shall be named by the appointing power as chairperson. The members shall be appointed by the mayor, or chairperson of the council of the county, as the case may be, with the approval of the council, and the members may be removed by the appointing power with the approval of the following number of other members of the council: in the city and county of Honolulu, five; in the county of Kauai, three.

The pension board for the county of Maui and the county of Hawaii shall consist of the chairperson of the council of the county, the county auditor, and the county treasurer. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); am L 1943, c 116, §§1, 2; RL 1945, pt of §6184; RL 1955, §6-161; HRS §88-182; am L 1998, c 124, §7]

" **§88-183 Qualifications.** Except in the counties of Hawaii and Maui, no person shall be appointed as a member of the pension board unless the person be a registered voter who has resided for five or more years in the county for which appointed; no person shall be eligible for membership or be a member of any such board, who occupies any elective or appointive office or position under any county government; and no member of any of such boards shall, during the term for which the member was appointed, serve as an officer or committee member of any political party or organization, nor shall the member present oneself as a candidate or be a candidate for nomination or election to any public office in any primary or general election during the term. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); RL 1945, pt of §6184; RL 1955, §6-162; am imp L 1967, c 80, §1; HRS §88-183; gen ch 1985]

" **§88-184 Expenses; appropriations.** The members of the pension boards shall serve without pay, but the respective county councils shall appropriate annually a sum sufficient to, and shall, defray the necessary expenses of the boards, including moneys required to cover the payment of pensions granted under this part; provided that the board of water supply of the city and county of Honolulu shall annually appropriate sufficient moneys to cover, and there shall be paid from such moneys, pensions granted under this part as a result of employment in the service of the board of water supply. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); RL 1945, pt of §6184; RL 1955, §6-163; HRS §88-184]

Revision Note

"County councils" substituted for "boards of supervisors or council".

" **§88-185 Assistants; county clerk, attorney, and treasurer.** The county clerk shall be the ex officio secretary of the pension board of the clerk's county and shall keep in a separate book a true and correct account of the proceedings of the board. The county attorney shall be the legal advisor of the board of the attorney's county; provided that the board, with the approval of the council of the county, may employ private legal counsel. The county treasurer shall be the ex officio treasurer of the board of the treasurer's county. The county auditor shall audit all accounts of the pension fund of the county and the county auditor shall draw all warrants payable therefrom, which warrants shall be drawn only upon a voucher certified by the chairperson, or acting chairperson, and one other member of the board. The county treasurer shall collect all moneys belonging to the fund, have the custody of all its notes, bonds, and other securities, if any, and collect the principal and interest of the same, and the treasurer shall be liable on the treasurer's bond as treasurer for the faithful accounting of all moneys that may come into the treasurer's hands belonging to the pension fund. The treasurer shall, upon the expiration of the treasurer's term of office, account to the board for all moneys, notes, bonds, and other securities coming into the treasurer's hands and the proceeds of the same, and turn over to the treasurer's successor all moneys, notes, and other securities remaining in the treasurer's hands and belonging to the pension fund. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); am L 1941, c 249, §1; RL 1945, pt of §6184; RL 1955, §6-164; HRS §88-185; am L 1998, c 124, §8]

" **§88-186 Meetings.** Each pension board shall meet at least once each quarter. No board shall defer action upon any application for a pension beyond the second quarterly meeting following the date of the filing thereof. [L 1937, c 237, §1; am L 1939, c 112, pt of §1(a); RL 1945, pt of §6184; am L 1947, c 87, §1; RL 1955, §6-165; HRS §88-186]

" **§88-187 Payment, conditions.** The pension system shall require as a prerequisite to the payment of a pension to any person:

- (1) That the person has attained the age of sixty years or, through accident sustained without the person's fault or negligence in the performance of duty in the person's service for the county, or illness, has become incapable of sustained remunerative work;
- (2) That the person, except in case of accident and disability has been in the service and employment of the county for a total period of not less than ten years.

Any employee who had the option to but did not elect to become a member of any retirement system now in effect shall be eligible to receive only fifty per cent of the pension amount otherwise computed under this part. [L 1937, c 237, §2; am L 1939, c 112, pt of §1; am L 1941, c 302, pt of §1; RL 1945, pt of §6185; am L 1949, c 156, §1; RL 1955, §6-166; HRS §88-187; gen ch 1985]

" **§88-188 Additional conditions.** The pension systems shall further provide, subject to this part, that:

- (1) If an employee becomes unable to work before the employee reaches the age of sixty after the employee has had ten or more years of service, the employee may retire, regardless of age, on a disability allowance payable for the remainder of the employee's life or until the employee is able to return to work. The allowance shall be established at nine-tenths of one-seventieth of the employee's average annual salary or compensation during the last ten years of employment by the county multiplied by the number of the employee's years of service.
- (2) If an employee prior to May 17, 1937, met with an accident incurred without the employee's fault or negligence in the performance of duty in the employee's service for the county which has rendered the employee incapable of continuing the employee's work the employee may retire on a pension of sixty-six and two-thirds per cent of the employee's average annual salary or compensation during the last ten years or such lesser time as the employee may have been in county employment, for life or until the employee is able to return to service. [L 1937, c 237, §3; RL 1945, §6186; RL 1955, §6-167; HRS §88-188; gen ch 1985]

" **§88-189 Widow's, widower's, and reciprocal beneficiary's pensions.** The widow and widower or reciprocal beneficiary of any deceased man or woman, who have been previously granted or

are found subsequent to his or her death to have been entitled to a pension under this part, or to have had ten or more years of service although he or she had not reached the age of sixty years, shall be eligible for a pension equal to the same amount, including all the bonuses provided in section 88-11, and all other benefits, that the said deceased was receiving or entitled to receive at the time of his or her death, and all future benefits deriving thereto, so long as the widow, widower, or reciprocal beneficiary remains unmarried or has not entered into a new reciprocal beneficiary relationship. [L 1937, c 237, §2; am L 1939, c 112, pt of §1; am L 1941, c 302, pt of §1; RL 1945, pt of §6185; am L 1949, c 156, §1; RL 1955, §6-168; HRS §88-189; am L 1974, c 118, §1(3); am L 1997, c 383, §32]

" **§88-190 Amount.** No pension under this part except an accidental disability pension shall be granted or paid which shall exceed the annual amount of one-seventieth of the average annual salary or compensation received by the person to whom the pension is granted during the last ten years of the person's employment by the county, multiplied by the number of years during which the person was in the employment or service of the county; provided notwithstanding any other provisions of this part, and regardless of the computed amount, any person or widow eligible to a pension shall be granted and paid not less than \$50 per month. [L 1937, c 237, §4; am L Sp 1941, c 59, §1; RL 1945, §6187; RL 1955, §6-169; HRS §88-190; am L 1969, c 127, §34; gen ch 1985]

" **§88-191 Computation of service.** Whenever the term of ten years is mentioned in this part, each year of the ten years shall be computed by adding together the months of service (including portions of any month, where the full month has not been served, as a full month), and dividing the months by twelve.

"Service" means service in any county, and where the proposed pensioner has service in any other county than the one by which it is proposed that he be pensioned, his service in the other county shall be added to his service in the pensioning county in order to determine his eligibility for or the amount of pension, provided his service in the police department under the sheriff, prior to the creation of the government of the city and county of Honolulu in 1905, shall be included. [L 1941, c 302, pt of §1; RL 1945, §6188; am L Sp 1949, c 58, §1; RL 1955, §6-170; HRS §88-191; am L 1974, c 121, §1]

" **§88-192 Examination by physician.** In connection with the consideration of any application for disability pension or

review of the pension granted under this part, any county pension board may refer any applicant or person receiving the pension to any physician receiving a regular monthly salary or fee from the State or any of its political subdivisions for physical examination and report to the board thereon as to the existence or continuance of disability. Any physician to whom the application is referred shall make the necessary physical examination and report the physician's findings and recommendations to the board, but shall neither charge nor receive any fee for the particular examination and report. [L 1937, c 237, §6; am L 1939, c 112, §1(e); RL 1945, §6189; RL 1955, §6-171; HRS §88-192; gen ch 1985]

" **§88-193 Compliance with law required.** No pension shall be granted by any county (except under present provisions of law relating to police, firefighters, and bandsmen and under part V) unless the same shall comply with the requirements of this part. [L 1937, c 237, §7; RL 1945, §6190; am imp L 1945, c 264; RL 1955, §6-172; HRS §88-193; am L 1983, c 124, §15]

"PART V. OTHER COUNTY PENSIONS

§88-201 Pensions eligible. Any provision to the contrary notwithstanding, the pension board of each county may grant pensions to former employees of the county upon the following conditions:

- (1) That the former employee was required to, and did, become a member of the employees' retirement system after having been in the service and employment of the county for a period of not less than ten years;
- (2) That the former employee has attained the age of sixty years, or through illness or injury sustained without the former employee's fault or negligence in the performance of duty in the former employee's service for the county has become incapable of sustained remunerative work;
- (3) That the former employee has ceased to be an employee of such county and is not a member of the system; and
- (4) That the former employee is not the recipient or beneficiary of any allowance or benefit from the system or any pension from the State or any county. [L 1945, c 264, §1; RL 1955, §6-180; HRS §88-201; gen ch 1985]

" **§88-202 Restrictions as to personnel.** This part shall not apply to any person who is in the service or employment of the State or any county on or after July 1, 1953, but shall apply to

per diem workers and former per diem workers who joined the employees' retirement system prior to January 1, 1952. [L 1945, c 264, §3; am L 1947, c 153, §1; am L 1949, c 161, §1; am L 1951, c 65, §1; am L 1955, c 38, §1; RL 1955, §6-181; HRS §88-202]

" **§88-203 Limitation of amount.** No pension granted under section 88-201 shall exceed the annual amount of one-seventieth of the average annual salary or compensation received by the person to whom the pension is granted during the person's last ten years of the person's employment by the county, multiplied by the number of years during which the person was in the employment or service of the county prior to the person's becoming a member of the employees' retirement system. The pension granted to a person who has not attained the age of sixty years but through illness or injury sustained without the person's fault or negligence in the performance of duty in the person's service for the county has become incapable of sustained remunerative work shall be nine-tenths of the amount computed in the manner hereinabove prescribed. [L 1945, c 264, §2; RL 1955, §6-182; HRS §88-203; gen ch 1985]

" **§88-204 County appropriations directed.** The respective councils of the several counties shall appropriate annually for each fiscal period a sum sufficient to cover the payment of the pensions granted under this part; provided that the board of water supply of the city and county of Honolulu shall appropriate sufficient funds to cover pensions granted under this part as a result of employment in the service of the board of water supply. [L 1945, c 262, §4; RL 1955, §6-183; HRS §88-204]

Revision Note

The words "boards of supervisors or", preceding "councils", have been deleted.

"PART VI. FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES

Note

Extension of the Social Security Act provisions to East-West Center employees. L 2004, c 176, §§1 to 4.

§88-211 Definitions. For the purposes of this part:

- (1) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that the term shall not include that part of the remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that Act;
- (2) The term "employment" means any service performed by an employee in the employ of the State, or any political subdivision thereof, for such employer except
 - (A) Service which in the absence of an agreement entered into under this part would constitute "employment" as defined in the Social Security Act; or
 - (B) Service which under the Social Security Act may not be included in an agreement between the State and the Department of Health and Human Services entered into under this part. Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that Act shall be included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to section 88-219;
- (3) The term "employee" includes an officer of the State or political subdivision thereof;
- (4) The term "state agency" means the executive director of the state employees' retirement system;
- (5) The term "Secretary of Health and Human Services" includes an individual to whom the Secretary of Health and Human Services has delegated any of the Secretary's functions under the Social Security Act with respect to coverage under the Act of employees of the states and territories and their political subdivisions;
- (6) The term "political subdivision" includes an instrumentality of the State, of one or more of its political subdivisions, or of the State and one or more of its political subdivisions, but only if the instrumentality is a juristic entity which is legally separate and distinct from the State or subdivision and only if its employees are not by virtue of their

relation to the juristic entity employees of the State or subdivision;

- (7) The term "Social Security Act" means the Act of Congress approved August 14, 1935, chapter 531, 49 Statutes At Large 620, officially cited as the "Social Security Act", (including regulations and requirements issued pursuant thereto), as such Act has been and may from time to time be amended;
- (8) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954. [L 1953, c 217, §2; RL 1955, §6-190; am L 1957, c 284, §§2, 3; HRS §88-211; gen ch 1985; am L 1993, c 6, §6; am L 2004, c 176, §5; am L 2013, c 23, §5]

" **§88-212 Federal-state agreement.** The state agency, with the approval of the governor, may enter on behalf of the State into an agreement with the Secretary of Health and Human Services, consistent with the terms and provisions of this part, for the purpose of extending the benefits of the federal old age and survivors insurance system to employees of the State or any political subdivision thereof with respect to services specified in the agreement which constitute "employment" as defined in section 88-211. The agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification, and termination of the agreement, administration, and other appropriate provisions as the state agency and Secretary of Health and Human Services, shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, the agreement shall provide in effect that:

- (1) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;
- (2) The State will pay to the Secretary of the Treasury, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages (as defined in section 88-211), equal to the sum of the taxes which would be imposed by the Federal

Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that Act;

- (3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of January 1951;
- (4) All services which constitute employment as defined in section 88-211 and are performed in the employ of the State by employees of the State, shall be covered by the agreement; provided that except for purposes of paragraph (6) of [this] section, services of state employees may be covered under the agreement at such times, as members of the coverage group or groups (as defined in section 218(b)(5) of the Social Security Act), and with such optional exclusions (as permitted by section 218(c) of the Social Security Act, including section 218(c)(3)(C) thereof) as may be decided upon by the state agency with the approval of the governor, as evidenced by the governor's approval of the pertinent agreement or modification thereto;
- (5) All services which (A) constitute employment as defined in section 88-211, (B) are performed in the employ of a political subdivision of the State, and (C) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under section 88-218, shall be covered by the agreement;
- (6) As modified the agreement shall include all service described in paragraph (4) and may include all service described in paragraph (5) of this section and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the Secretary of Health and Human Services pursuant to section 88-219. [L 1953, c 217, §3; RL 1955, §6-191; am L 1957, c 284, §§3, 4, 6; am L 1959, c 194, §2; HRS §88-212; gen ch 1985; am L 2004, c 176, §5]

" **§88-213 Division of retirement systems.** The employees' retirement system (or such components thereof as may be established by the governor or the governor's agent pursuant to section 218(d)(6) of the Social Security Act) shall, for the purpose of this chapter, be deemed to constitute two retirement

systems as provided in, and in accordance with, section 218(d)(6) one of which is composed of the members of the system who have expressed a desire to be covered under the Social Security Act and the other of which is composed of the members of the system who have not expressed a desire for such coverage. Upon request of the governing body of any political subdivision operating a retirement system, the membership of its retirement system may likewise be divided. [L 1957, c 284, §5; Supp, §6-191.5; HRS §88-213; gen ch 1985]

" **§88-214 Modifications to agreement.** The state agency may enter into such modification or modifications to the agreement as may be necessary to transfer members of the part of a divided retirement system which is composed of the members of the system who have not expressed a desire for coverage under the Social Security Act to the part of the system which is composed of the members who have expressed a desire for the coverage in accordance with section 218(d)(6)(F) of the Social Security Act. [L 1959, c 194, §1; Supp, §6-191.6; HRS §88-214]

Attorney General Opinions

In view of section, not necessary to amend this part to provide coverage for police officers originally excluded; but necessary to modify agreement, following prescribed procedures. Att. Gen. Op. 75-19.

" **§88-215 Contributions by state employees.** Every state employee whose services are covered by an agreement entered into under section 88-212 shall be required to pay for the period of the coverage, into the contribution fund established by section 88-224, contributions, with respect to wages (as defined in section 88-211) equal to the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that Act. Such liability shall arise in consideration of the employee's retention in the service of the State, or the employee's entry upon such service, after June 10, 1953. [L 1953, c 217, §4(a); RL 1955, §6-192; am L 1957, c 284, §7; HRS §88-215; gen ch 1985]

" **§88-216 Collection of contributions.** The contribution imposed by section 88-215 shall be collected by deducting the amount of the contribution from wages as and when paid. Failure to make the deduction shall not relieve the employee from

liability for the contribution. [L 1953, c 217, §4(b); RL 1955, §6-193; HRS §88-216]

" **§88-217 Adjustments.** If more or less than the correct amount of the contribution imposed by section 88-215 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe. [L 1953, c 217, §4(c); RL 1955, §6-194; HRS §88-217]

" **§88-218 Plans for coverage of employees of political subdivision.** Each political subdivision of the State may submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of the Act, to employees of the political subdivision. Each plan and any amendment thereof shall be approved by the state agency if it finds that the plan, or the plan as amended, conforms with such requirements provided in regulations of the state agency, except that no plan shall be approved unless:

- (1) It conforms with the requirements of the Social Security Act and with the agreement entered into under section 88-212;
- (2) It provides that all services which constitute employment as defined in section 88-211 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;
- (3) It specifies the source or sources from which the funds necessary to make the payments required by section 88-221 and by section 88-223 are expected to be derived and contains reasonable assurance that the sources will be adequate for the purpose;
- (4) It provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;
- (5) It provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require, and comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of the reports;

- (6) It authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in the plan, the termination to take effect at the expiration of the notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act. [L 1953, c 217, §5(a); RL 1955, §6-195; am L 1957, c 284, §§3, 8; HRS §88-218; am L 2004, c 176, §5]

" **§88-219 Referendum.** With respect to any state retirement system to which this part applies or to any retirement system of a political subdivision whose governing body so requests, the governor is empowered to authorize a referendum, and shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the State, or by a political subdivision thereof should be excluded from or included under an agreement under this part. The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or the individual designated to supervise the referendum shall deem necessary and sufficient to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this part. Upon receiving evidence satisfactory to the governor that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the Secretary of Health and Human Services. [L 1957, c 284, §10; Supp, §6-195.5; HRS §88-219; gen ch 1985; am L 2004, c 176, §5]

" **§88-220 Refusal or termination of plans.** The state agency shall not finally refuse to approve a plan submitted by a political subdivision under section 88-218, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby. [L 1953, c 217, §5(b); RL 1955, §6-196; HRS §88-220]

" **§88-221 Payments by political subdivisions.** Each political subdivision whose plan has been approved under section 88-218 shall pay to the contribution fund, with respect to wages (as defined in section 88-211), at such time or times as the state agency may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under section 88-212. [L 1953, c 217, pt of §5(c); RL 1955, §6-197; HRS §88-221]

" **§88-222 Contributions by employees of political subdivisions.** Each political subdivision required to make payments under section 88-221, may, in consideration of the employee's retention in, or entry upon, employment after June 10, 1953, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to the employee's wages (as defined in section 88-211), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that Act, and deduct the amount of such contribution from the employee's wages as and when paid. Contributions so collected shall be paid into the fund in partial discharge of the liability of the political subdivision or instrumentality under section 88-221. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor. [L 1953, c 217, pt of §5(c); RL 1955, §6-198; am L 1957, c 284, §9; HRS §88-222; gen ch 1985]

" **§88-223 Delinquent payments.** Delinquent payments due under section 88-221 may, with interest at the rate of six per cent a year, be recovered by action in the circuit court against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to such subdivision by any state department or agency. [L 1953, c 217, §5(d); RL 1955, §6-199; HRS §88-223]

" **§88-224 Contribution fund; established.** There is established a special fund to be known as the contribution fund. The fund shall consist of and there shall be deposited in such fund:

- (1) All contributions, interest, and penalties collected under sections 88-215 and 88-221 to 88-223;
- (2) All moneys appropriated thereto under this part;
- (3) Any property or securities and earnings thereof acquired through the use of moneys belonging to the fund;
- (4) Interest earned upon any moneys in the fund; and

- (5) All sums recovered upon the bond of the custodian or otherwise for losses sustained by the fund and all other moneys received for the fund and from any other source.

All moneys in the fund shall be mingled and undivided. Subject to the provisions of this part, the state agency is vested with full power, authority and jurisdiction over the fund, including all moneys and property or securities belonging thereto, and may perform any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with this part. [L 1953, c 217, §6(a); RL 1955, §6-200; HRS §88-224]

" **§88-225 Purpose of contribution fund.** The contribution fund shall be established and held separate and apart from any other state funds or moneys and shall be used and administered exclusively for the purpose of this part. Withdrawals from the fund shall be made for, and solely for (1) payment of amounts required to be paid to the Secretary of the Treasury pursuant to an agreement entered into under section 88-212; (2) payment of refunds provided for in section 88-217; and (3) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality. [L 1953, c 217, §6(b); RL 1955, §6-201; HRS §88-225]

" **§88-226 Payments to federal government.** From the contribution fund the custodian of the fund shall pay to the Secretary of the Treasury such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under section 88-212 and the Social Security Act. [L 1953, c 217, §6(c); RL 1955, §6-202; HRS §88-226]

" **§88-227 Custodian of fund.** The state director of finance shall be ex officio treasurer and custodian of the contribution fund and shall administer the fund in accordance with this part and the directions of the state agency and shall pay all warrants drawn upon it in accordance with sections 88-225 and 88-226 and with such regulations as the state agency may prescribe pursuant thereto. [L 1953, c 217, §6(d); RL 1955, §6-203; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §88-227]

" **§88-228 Appropriations to contribution fund.** (a) There are hereby authorized to be appropriated to the contribution fund, in addition to the contributions collected and paid into the contribution fund under sections 88-215 and 88-221 to 88-

223, to be available for the purposes of sections 88-225 and 88-226 until expended, such additional sums as are found to be necessary in order to make the payments to the Secretary of the Treasury which the State is obligated to make pursuant to an agreement entered into under section 88-212.

(b) The state agency shall submit to the director of finance at such time preceding each regular session of the legislature as the director may prescribe, an estimate of the amounts authorized to be appropriated to the contribution fund by subsection (a) of this section for the next appropriation period. [L 1953, c 217, §6(e); RL 1955, §6-204; am L Sp 1959 1st, c 13, §3; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §88-228; gen ch 1985]

" **§88-229 Rules and regulations.** The state agency shall make and publish such rules and regulations, not inconsistent with this part, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this part. [L 1953, c 217, §8; RL 1955, §6-205; HRS §88-229]

Cross References

Rules, see chapter 91.

" **§88-230 Studies and reports.** The state agency shall make studies concerning the problem of old age and survivors insurance protection for employees of the State and local governments and instrumentalities and concerning the operation of agreements made and plans approved under this part and shall submit a report to the legislature at the beginning of each regular session, covering the administration and operation of this part during the preceding fiscal period, including such recommendations for amendments to this part as it considers proper. [L 1953, c 217, §9; RL 1955, §6-206; am L Sp 1959 1st, c 13, §2; HRS §88-230]

"PART VII. RETIREMENT FOR CLASS C PUBLIC OFFICERS AND EMPLOYEES

A. APPLICABILITY OF PART II

§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, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71, 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-80, 88-83, 88-84, 88-85, 88-87, 88-88, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E. [L 1984, c 108, pt of §8; am L 1987, c 117, §3; am L 1990, c 104, §3; am L 1998, c 151, §12; am L 2004, c 179, §23; am L 2005, c 58, §17; am L 2006, c 169, §26; am L 2007, c 215, §18; am L 2008, c 47, §10]

Note

Section 88-72 referred to in paragraph (3) is repealed.

"B. DEFINITIONS

§88-261 Definitions. (a) The following words and phrases as used in this part shall have the same meanings as defined in section 88-21, unless a different meaning is plainly required by the context: "accumulated contributions"; "actuarial equivalent"; "average final compensation"; "beneficiary"; "board"; "county"; "employee"; "medical board"; "retirant"; "retirement allowance"; "service"; and "system".

(b) The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

"Member": a class C member as described in section 88-47. [L 1984, c 108, pt of §8; am L 1997, c 212, §5; am L 2005, c 58, §18; am L 2006, c 169, §41]

"C. MEMBERSHIP, CREDITED SERVICE

§88-271 Election. (a) Any class A or class B member who:

- (1) Is in service on June 30, 1984, or who returns to service after June 30, 1984, but before July 1, 2006, and has vested benefit status as provided in section 88-96(b); and
- (2) Is in a position covered by Title II of the Social Security Act,

may elect to become a class C member effective January 1, 1985; or upon return to service, by filing an election form with the board. The election shall be made prior to December 1, 1984, or within thirty days of return to service and shall be irrevocable. A class A or class B member who makes an election shall be refunded all accumulated contributions and shall not be

required to make further contributions upon becoming a class C member. The refund shall be made by March 31, 1985, or within ninety days after return to service. Upon the effective date of the election, all rights as a class A or class B member shall be extinguished.

(b) After June 30, 1984, a class A or class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b), shall become a class C member upon return to service and shall be refunded all accumulated contributions.

(c) Any water safety officer who is in service on July 1, 1994, may elect to become a class C member by filing an election form with the board. The election shall be made prior to September 1, 1994, and shall be irrevocable. The accumulated contributions of a water safety officer who makes this election shall be returned to the water safety officer through payroll adjustments or another procedure as determined by the board. Upon the effective date of the election, all rights as a class A member shall be extinguished. All persons first employed as a water safety officer after July 1, 1994, shall be class C members.

(d) The election by any class A or class B member to become a class C member pursuant to section 88-46.5 in the form in which it existed at any time prior to July 1, 2006, shall be irrevocable upon refund of the member's accumulated contributions.

(e) The system shall provide information explaining the effects of any election made under subsection (a) or (c). [L 1984, c 108, pt of §8; am L 1989, c 100, §4; am L 1994, c 276, §10; am L 2000, c 265, §2; am L 2004, c 179, §24; am L 2006, c 40, §2 and c 169, §27]

Note

Section 88-46.5 referred to in subsection (d) is repealed.

Attorney General Opinions

Deadline for election cannot be extended. Att. Gen. Op. 84-11.

Return to service of contributory plan retirant; participation in noncontributory plan. Att. Gen. Op. 85-21.

- " **§88-272 Credited service.** Credited service includes:
- (1) Service by an employee rendered since becoming a member;

- (2) Service credited under part II as a class A or class B member for members who make the election described in section 88-271(a);
- (3) Service for members who return to service in the manner described in section 88-271(b);
- (4) Service in the armed forces as provided by subpart E of part II; provided that the service shall be credited at no cost upon certification by the system;
- (5) Mandatory maternity leave as provided in part II; provided that such service shall be credited at no cost upon certification by the system;
- (6) Service rendered prior to becoming a class C member as described in section 88-51 that is not included in paragraphs (1) to (5); provided that the service shall be credited at no cost. Upon certification by the system, that service shall be credited at the rate of one month of service credit for each month of service rendered following the return to membership; and
- (7) Unused sick leave as provided in section 88-63; provided that any additional service credit shall not be used in determining eligibility for retirement or for any other purpose as a class C member. [L 1984, c 108, pt of §8; am L 1990, c 104, §4 and c 141, §3]

" **§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 full year following the calendar year in which the member's employment terminated, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one full year following the calendar year in which the member's employment terminated, one month of service credit for previous service shall be restored for each month of service rendered following the return to membership; and
- (2) If the former class C member becomes a class A, class B, or class H member within one full year following the calendar year in which the member's employment terminated, 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 full year following the calendar year in which the member's employment terminated, 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 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.

(d) Any retirant who retired under 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 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.

(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 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. [L 1984, c 108, pt of §8; am L 1987, c 117, §4; am L 2001, c 61, §2; am L 2004, c 179, §25; am L 2006, c 169, §28; am L 2007, c 215, §19; am L 2009, c 121, §4]

Attorney General Opinions

Return to service of contributory plan retirant; computation of retirement benefits. Att. Gen. Op. 85-21.

Pursuant to this section and §88-281, former employee was a member of ERS until effective date of former employee's retirement. Att. Gen. Op. 97-12.

"D. ELIGIBILITY; BENEFITS

§88-281 Service retirement. (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service who has attained the age of fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to receive a retirement allowance when the member has attained age sixty-five.

(e) If a 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, the emergency medical technician shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(f) A member may retire upon the written application to the board, specifying the desired date of retirement, which shall be not less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(g) A member's right to the member's accrued retirement benefit is nonforfeitable upon the attainment of normal retirement age and the completion of ten years of credited service.

For the purpose of this section, "normal retirement age" means age sixty-five. [L 1984, c 108, pt of §8; am L 1988, c 242, §3; am L 1994, c 276, §11; am L 2001, c 101, §1; am L 2002, c 128, §10; am L 2003, c 199, §3; am L 2004, c 179, §26; am L 2013, c 124, §4]

Attorney General Opinions

Pursuant to this section and §88-273, former employee was a member of ERS until effective date of former employee's retirement. Att. Gen. Op. 97-12.

" **§88-282 Service retirement allowance.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has met the requirements in section 88-281(a), (b), (d), or (e), a maximum retirement allowance of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service; or
- (2) If the member has met the requirements in section 88-281(c), an early retirement allowance equal to the maximum retirement allowance reduced by one-half per cent for each month the member is less than age sixty-two at retirement. [L 1984, c 108, pt of §8; am L 1987, c 117, §5; am L 2001, c 101, §2; am L 2005, c 58, §19]

" **§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 upon the death of the retirant within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the 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, 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 adopted by the board in accordance with chapter 91;

- (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 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.

(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). 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, 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. [L 1984, c 108, pt of §8; am L 1987, c 117, §6; am L 1988, c 8, §2; am L 1993, c 67, §2; am L 2001, c 101, §3; am L 2003, c 182, §2; am L 2004, c 179, §27; am L 2006, c 169, §29; am L 2007, c 215, §20]

" **§88-284 Ordinary disability retirement.** (a) Upon application of a member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board, after a medical examination of the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Upon approval by the board, the member shall be eligible to 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 shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. 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 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.

(c) A member who is determined to be permanently incapacitated for the further performance of duty pursuant to subsection (a) and eligible to receive an ordinary disability retirement allowance shall receive a maximum retirement allowance of one and one-fourth per cent of the average final compensation multiplied by the number of years of credited service unreduced for age. [L 1984, c 108, pt of §8; am L 1997, c 212, §6; am L 2001, c 101, §4; am L 2002, c 128, §11; am L 2006, c 185, §3; am L 2009, c 121, §5]

" **§88-285 Service-connected disability retirement.** A member who would be eligible to receive a service-connected disability retirement allowance pursuant to section 88-79 shall receive a maximum retirement allowance of thirty-five per cent of the member's average final compensation. [L 1984, c 108, pt of §8; am L 2001, c 101, §5; am L 2004, c 179, §28; am L 2005, c 58, §20]

" **§88-286 Death benefit.** (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:

(1) An ordinary death after accumulating ten years of credited service and the member dies:

(A) While in service; or

(B) While on authorized leave without pay; or

(2) An accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

(1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member's accrued maximum retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship, 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; and for each child under the age of eighteen an allowance equal to ten per cent of the member's accrued maximum retirement allowance unreduced for age, payable until the child attains age eighteen; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed twenty per cent of the member's accrued retirement allowance unreduced for age; or

(2) For the surviving spouse or reciprocal beneficiary, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an 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 and had elected to receive a retirement allowance under option B of section 88-283; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each child under the age of eighteen shall receive an allowance equal to twenty per cent of the member's accrued maximum retirement allowance unreduced for age, payable 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, until the child attains age eighteen; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year. The application for ordinary death benefits shall be filed no later than three years from the date of the member's death.

(c) In the case of accidental death as determined by the board pursuant to section 88-85.5, the death benefit shall be effective on the first day of the 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, as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage, marriage, or upon entry into a new reciprocal beneficiary relationship;
- (2) If there is a surviving spouse or reciprocal beneficiary, each child under the age of eighteen shall receive an allowance equal to the greater of:
 - (A) Ten per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed twenty per cent of the member's accrued maximum retirement allowance unreduced for age; or
 - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each child until the child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each child under the age of eighteen shall receive an allowance equal to the greater of:
 - (A) Twenty per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age; or
 - (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the children under the age of eighteen shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each child until the child attains age eighteen.

(d) Benefits payable under this section shall continue through the end of the last month in which the payee is eligible for the benefit. [L 1984, c 108, pt of §8; am L 1993, c 22, §1 as superseded by c 67, §3; am L 1994, c 108, §4; am L 1997, c 212, §7 and c 383, §33; am L 2001, c 101, §6; am L 2002, c 128, §12; am L 2004, c 179, §29; am L 2005, c 58, §21; am L 2006, c 169, §30; am L 2008, c 41, §7]

Attorney General Opinions

Hanai children are not included within meaning of "child" or "children" as used in section. Att. Gen. Op. 93-1.

"[PART VIII.] RETIREMENT FOR CLASS H PUBLIC OFFICERS AND EMPLOYEES

A. APPLICABILITY OF PART II

§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, 88-61, 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, 88-96, 88-97, and 88-98;

- (4) Subpart D; and
- (5) Subpart E. [L 2004, c 179, pt of §1; am L 2006, c 169, §31; am L 2007, c 215, §21; am L 2008, c 47, §11]

Note

Section 88-72 referred to in paragraph (3) is repealed.

"B. DEFINITIONS

§88-311 Definitions. The following words and phrases as used in this part shall have the following meanings, unless a different meaning is plainly required by the context:

"Actuarial cost" means the actuarial present value, at the date of valuation, of the increase in the retirement allowance that would be attributable to the years of service being converted to class H credited service. The actuarial present value shall be based on rates and tables recommended by the actuary and adopted by the board.

"Class A credited service" means credited service as a class A member, excluding any service converted to class H credited service pursuant to section 88-322(b).

"Class B credited service" means credited service as a class B member, excluding any service converted to class H credited service pursuant to section 88-322(b).

"Class C credited service" means credited service as a class C member, excluding any service converted to class H credited service pursuant to section 88-322(a).

"Class H credited service" means credited service as a class H member, including service described in section 88-323.

"Hypothetical account balance" means:

- (1) For members who became members before July 1, 2012, the sum of:
 - (A) One and one-half times the sum of:
 - (i) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-325;
 - (ii) Accumulated interest at the regular interest rate on the employee contributions; and
 - (B) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to purchase service, and accumulated interest on the employee contributions at the regular interest rate; or

- (2) For members who become members after June 30, 2012, the sum of:
 - (A) One and one-fifth times the sum of:
 - (i) Employee contributions made, either by the member or on behalf of the member, pursuant to section 88-325; and
 - (ii) Accumulated interest at the regular interest rate on the employee contributions; and
 - (B) Any employee contributions, including rollovers and contributions used to convert credited service to class H credited service, or used to purchase service, and accumulated interest on the employee contributions at the regular interest rate. [L 2004, c 179, pt of §1; am L 2005, c 58, §22; am L 2011, c 163, §11]

"C. MEMBERSHIP, CREDITED SERVICE

§88-321 Election and membership. (a) Any member, except for a member described in subsection (c), who is in service on June 30, 2006, may elect to become a class H member effective July 1, 2006, 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 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 irrevocable.

(b) Notwithstanding any other law to the contrary:

- (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);
- (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.

(c) The following members may not elect to become a class H member under subsection (a):

- (1) Judges, elected officials, and legislative officers;
- (2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, prosecuting attorney investigators not making the election under section 88-271, corrections officers not making the election under section 88-271, and public safety investigations staff investigators;
- (3) Police officers and firefighters;
- (4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act;
- (5) Former class A, B, or C retirants; and
- (6) Any 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), unless the refund was made pursuant to section 88-96 or 88-271(b), including any class C member whose contributions were refunded to the member pursuant to

section 88-46.5 in the form in which it existed at any time prior to July 1, 2006. [L 2004, c 179, pt of §1; am L 2005, c 58, §23; am L 2006, c 40, §3 and c 169, §§32, 33; am L 2008, c 41, §8]

Note

Section 88-46.5 referred to in subsection (c)(6) is repealed.

" **§88-322 Conversion of previous credited service.** (a) Class C 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 the full actuarial cost of the conversion as of December 31, 2008, in the manner provided in subsection (d). 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.

(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 December 31, 2008. 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.

(c) The election to convert class C credited service to class H credited service shall be made by filing a form with the system not later than one hundred eighty days after publication of the notice required by subsection (e). The board may, by action taken at a meeting held pursuant to chapter 92, extend the deadline for making the election.

(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. 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.

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. The deductions from compensation shall commence, and any lump sum payment shall be 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. If a member is absent from the state while in the military service of the United States during the one hundred eighty-day period after the deadline for making the election, the deductions from the member's compensation shall commence, and any lump sum payment shall be made by the member, within one

hundred eighty days after the member's return to the member's regular employment with the State or county; provided that any extension, pursuant to subsection (c), of the deadline for making the election to convert class C credited service to class H credited service shall not extend the time for the deductions from the member's compensation to commence or for the member to make any lump sum payment unless the extension pursuant to subsection (c) is applicable to all members eligible to make the election. A member's election to convert class C credited service to class H credited service shall be deemed revoked as to any service for which payments by deductions from compensation do not commence, or for which the lump sum payment is not made, within the time required by this subsection.

(e) The option to convert class C credited service to class H credited service pursuant to this section shall be applicable only to the extent that the conversion may be achieved without affecting the eligibility of the system as a qualified plan under section 401(a) of the Internal Revenue Code of 1986, as amended, or the eligibility of the employer pick up under section 414(h)(2) of the Internal Revenue Code of 1986, as amended. If the trustees determine that the conditions of the foregoing sentence are satisfied, the system shall publish a statewide notice that class H members who are eligible to convert class C credited service to class H credited service under this section, subject to the provisions of this section, may convert class C credited service to class H credited service.

(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 December 31, 2008, and on the member's monthly base salary or monthly basic rate of pay as of December 31, 2008, 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. [L 2004, c 179, pt of §1; am L 2005, c 58, §24; am L 2006, c 169, §34; am L 2007, c 215, §22; am L 2008, c 41, §9; am L 2009, c 121, §6]

" **[§88-323] Class H credited service.** Class H credited service includes:

- (1) Service by an employee rendered since becoming a class H member;
- (2) Service credited under part II as a class A member or a class B member and converted to class H credited service pursuant to section 88-322(b);

- (3) Service credited under part VII as a class C member and converted to class H credited service pursuant to section 88-322(a);
- (4) Service in the armed forces as provided by subpart E of part II;
- (5) Mandatory maternity leave as provided in part II; and
- (6) Unused sick leave as provided in section 88-63; provided that any additional service credit shall not be used in determining eligibility for retirement or for any other purpose as a class H member. [L 2004, c 179, pt of §1]

" **§88-324 Acquisition of membership service.** (a) Under rules as the board may adopt, any class H member may file with the system a statement of all service as an employee or other service paid for by the State or a county rendered prior to the member last becoming a member that is not credited to the member, for which the member claims prior service credit, and also a statement of the services for which the member claims membership service credit and, except as provided in subsection (d) or with respect to service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, or to forfeited service to which subsection (e) is applicable, for which the member agrees to have additional deductions made from the member's compensation or to make a lump sum payment as described in this section.

After the filing of the statement by the member, the system shall verify the service claimed and determine the service credit allowable.

(b) Except as otherwise provided in subsection (c), (d), or (e), verified membership service shall be paid for in any one of the following methods, at the member's option:

- (1) If deductions commence or the lump sum payment is made prior to July 1, 2020:

- (A) By 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 sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over

which the payroll payments are made. The member may elect to have:

- (i) Deductions from the member's compensation of twice the contribution rate provided for in section 88-325 over a period equal to the period for which membership service credit is allowable not to exceed sixty months; or
 - (ii) Deductions from the member's compensation of one and one-half times the contribution rate provided for in section 88-325 over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
- (B) By lump sum payment of contributions computed at the contribution rate provided for in section 88-325 applied to the member's monthly rate of compensation at the time of payment multiplied by the number of months for which membership service credit is allowable.
- (2) If the deductions commence or the lump sum payment is made after June 30, 2020:
- (A) By 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 sixty 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 sufficient to amortize the actuarial cost of the membership service to be credited, together with interest at the investment yield rate assumption in effect as of the date the claim for service credit is made, in level twice-monthly payments over the period specified in the irrevocable authorization. Service credited shall be proportional on the basis of whole months. For example, if a member elects to acquire twenty-four months of service over sixty months and terminates employment after thirty and one-half months of deductions, the member will acquire twelve months of membership service credit; or
 - (B) By lump sum payment equal to the actuarial cost of the membership service to be credited; provided that the member has at least five years

of membership exclusive of any previous service acquired under paragraph (1) or subparagraph (A). The actuarial cost of the membership service to be credited shall be determined by the actuary for the system based on the age of the member in full years as of the date the claim for service credit is made, the investment yield rate assumption in effect as of the date the claim for service credit is made, the retirement age eligibility requirements and retirement allowance provisions applicable to the member, and other actuarial assumptions adopted by the board in effect as of the date the claim for service is made.

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.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection; provided that payment shall commence within one year after the system notifies the member that the service claimed has been verified and that service credit is allowable; provided further that, for a member who becomes a member after June 30, 2016: membership service credit for prior service or for service rendered prior to the member's last becoming a member shall be claimed within one year after the member enters service; membership service credit for military service pursuant to section 88-132.5 shall be claimed within one year after the member meets the requirements of section 88-132.5(a) or (b); and any other membership service credit acquired pursuant to this section shall be claimed within one year after the member becomes eligible to receive the service credit upon satisfaction of the requirements of this section.

(c) Verified membership service for which a former class A or class B member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by the date established by the board pursuant to section 88-322(b), shall be paid for in any one of the following methods, at the member's option:

(1) If deductions commence or the lump sum payment is made prior to July 1, 2020:

(A) By 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 sixty months

shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:

- (i) Deductions from the member's compensation of twice the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to the period for which membership service credit is allowable, not to exceed sixty months; or
 - (ii) Deductions from the member's compensation of one and one-half times the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
- (B) By lump sum payment of contributions computed at the contribution rate applicable to the member under section 88-45 as of June 30, 2006, applied to the member's monthly rate of compensation at the time of payment, multiplied by the number of months for which membership service credit is allowable.
- (2) If the deductions commence or the lump sum payment is made after June 30, 2020:
- (A) By 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 88-46. An irrevocable payroll authorization filed by the member for a period not to exceed sixty 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 sufficient to amortize the actuarial cost of the membership service to be credited, together with interest at the investment yield rate assumption in effect as of the date the claim for service credit is made, in level twice-monthly payments over the period specified in the irrevocable authorization. Service credited shall be proportional on the basis of whole months. For example, if a member

elects to acquire twenty-four months over sixty months and terminates employment after thirty and one-half months of deductions, the member will acquire twelve months of membership service credit; or

- (B) By lump sum payment equal to the actuarial cost of the membership service to be credited; provided that the member has at least five years of membership exclusive of any previous service acquired under paragraph (1) or subparagraph (A).

The actuarial cost of the membership service to be credited shall be determined by the actuary for the system based on the age of the member in full years as of the date the claim for service credit is made, the investment yield rate assumption in effect as of the date the claim for service credit is made, the retirement age eligibility requirements and retirement allowance provisions applicable to the member, and other actuarial assumptions adopted by the board in effect as of the date the claim for service is made.

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.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection; provided that payment shall commence within one year after the system notifies the member that the service claimed has been verified and that service credit is allowable; and provided further that, for a member who becomes a member after June 30, 2016: membership service credit for prior service or for service rendered prior to the member's last becoming a member shall be claimed within one year after the member enters service; membership service credit for military service pursuant to section 88-132.5 shall be claimed within one year after the member meets the requirements of section 88-132.5(a); and any other membership service credit acquired pursuant to this section shall be claimed within one year after the member becomes eligible to receive the service credit upon satisfaction of the requirements of this section.

(d) Verified prior service and verified membership service for which a former class C member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by the date established by the board pursuant to section 88-322(a), shall be credited at no cost as class C credited service.

(e) Except as provided in subsection (f) or in section 88-322:

- (1) Class A, class B, or class C credited service shall not be acquired as class H credited service; and
- (2) Class A, class B, or class C credited service shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the later of conversion to class H membership or the return to membership as a class H member.

Forfeited class H membership service shall not be restored.

(f) Forfeited class A or class B credited service being acquired under an irrevocable payroll authorization entered into under section 88-59 prior to July 1, 2006, shall be credited as class H credited service. [L 2004, c 179, pt of §1; am L 2005, c 58, §25; am L 2006, c 169, §35; am L 2015, c 86, §5]

" **§88-325 Employee contributions.** (a) Each class H member, who became a member before July 1, 2012, shall contribute six per cent of the member's compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who became a member before July 1, 2012, and is a class H member shall contribute nine and three-fourths per cent of the member's compensation to the annuity savings fund for service in that capacity.

(b) Each class H member, who becomes a member after June 30, 2012, shall contribute eight per cent of the member's compensation to the annuity savings fund; provided that each sewer worker, water safety officer, and emergency medical technician who becomes a member after June 30, 2012, and is a class H member shall contribute eleven and three-fourths per cent of the member's compensation to the annuity savings fund for service in that capacity. [L 2004, c 179, pt of §1; am L 2011, c 163, §12]

" **[§88-326] Deducting employee contributions from salary and employer pick up of employee contributions.** (a) The head of each state department and the finance director of each county shall deduct from the compensation of each class H member on each and every payroll under their respective jurisdictions, the percentage of compensation of each member as provided under section 88-325.

The total amount of deductions made from the salaries of employees and a record of the amount deducted from each member's compensation shall be transmitted to the system semi-monthly or

at other times as may be agreed upon by the board. The amounts deducted shall be paid into the annuity savings fund and shall be credited to the individual account of the member from whose compensation the deductions were made.

Regular interest shall also be credited to the individual account of the member in the annuity savings fund.

(b) The State and each county, pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, shall pick up and pay the contributions that would otherwise be payable by each class H member, including contributions designated by the member relating to the conversion or acquisition of membership service as provided under sections [88-322(d)] and 88-324, from compensation paid after December 31, 1987. The contributions so picked up shall be treated as employer contributions for the purpose of determining the amount of federal income tax to withhold from each class H member's compensation. The member shall complete a payroll authorization form before the period in which the contributions are earned and service is acquired, converted, or credited. With respect to service to be acquired or converted, the form shall be a binding irrevocable payroll deduction authorization in which the member acknowledges that the system will not accept direct payment from the member while the form is in effect.

(c) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each class H member's compensation equal to the amount of the member's contributions picked up by the employer; provided that the deduction shall not reduce the member's compensation for the purpose of computing benefits under this chapter.

(d) Member contributions picked up by the employer shall be transmitted to the system in accordance with subsection (a). Such contributions shall be credited to a separate account within each member's individual account in the annuity savings fund so that the amount contributed by the member before January 1, 1988, may be distinguished from the member contributions picked up by the employer. Regular interest shall also be credited to the individual account of the member in the annuity savings fund. [L 2004, c 179, pt of §1]

"D. ELIGIBILITY; BENEFITS

§88-331 Service retirement. (a) A class H member who:

- (1) Became a member before July 1, 2012, has at least five years of credited service, and has attained age sixty-two;

- (2) Became a member before July 1, 2012, has at least thirty years of credited service, and has attained the age of fifty-five; or
- (3) Becomes a member after June 30, 2012, has at least ten years of credited service, and has attained age sixty-five; or
- (4) Becomes a member after June 30, 2012, has at least thirty years of credited service, and has attained age sixty,

shall become eligible to receive a retirement allowance after the member has terminated service.

(b) A class H member who became a member before July 1, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service. A class H member who becomes a member after June 30, 2012, and has at least twenty-five years of credited service as a sewer worker or water safety officer, of which the last five or more years prior to retirement is credited service in that capacity, and has attained age fifty-five shall become eligible to receive a retirement allowance unreduced for age after the member has terminated service.

(c) A class H member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) If a class H member, who became a member before July 1, 2012, has at least 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, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service. If a class H member, who becomes a member after June 30, 2012, has at least twenty-five years of credited service as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, and has attained age fifty-five, the member shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(e) A class H member may retire upon the written application to the system, specifying the desired date of

retirement, which shall be not less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

(f) A member's right to the member's accrued retirement benefit is nonforfeitable upon the attainment of normal retirement age and the completion of the requisite years of credited service.

For the purpose of this subsection:

"Normal retirement age" means age sixty-five.

"Requisite years of credited service" means five years for class H members who became members before July 1, 2012, and ten years for class H members who became members after June 30, 2012. [L 2004, c 179, pt of §1; am L 2011, c 163, §13; am L 2013, c 124, §5]

" **§88-332 Service retirement allowance.** (a) Upon retirement from service, a class H member who became a member before July 1, 2012, shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(a), (b), or (d), a maximum retirement allowance of two per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or
- (2) If the member has met the requirements in section 88-331(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-two at retirement.

(b) Upon retirement from service, a class H member who becomes a member after June 30, 2012, shall receive a maximum retirement allowance as follows:

- (1) If the member has met the requirements in section 88-331(a), (b), or (d), a maximum retirement allowance of one and three-fourths per cent of the average final compensation multiplied by the number of years of class H credited service, plus a retirement allowance at the rate of one and one-fourth per cent of the member's average final compensation multiplied by the number of years of class C credited service; or

- (2) If the member has met the requirements in section 88-331(c), an early retirement allowance equal to the maximum retirement allowance calculated as provided in paragraph (1), reduced by 0.4166 per cent for each month the member is less than age sixty-five at retirement. [L 2004, c 179, pt of §1; am L 2005, c 58, §26; am L 2011, c 163, §14]

" **§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 retirant's death, there shall be paid to the retirant's designated beneficiary, or otherwise to the retirant's estate, the difference between:
 - (A) The balance of the member's accumulated contributions at the time of the member's retirement; and
 - (B) The retirement allowance and the post retirement allowances paid or payable to the 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 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.

(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. [L 2004, c 179, pt of §1; am L 2005, c 58, §27; am L 2006, c 169, §36; am L 2007, c 215, §23]

" **§88-334 Ordinary disability retirement.** (a) Upon application of a class H member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board on an ordinary disability retirement allowance if the medical board, after a medical examination of the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

(b) Upon approval by the board, the member shall be eligible to 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 shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. 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 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. [L 2004, c 179, pt of §1; am L 2007, c 215, §24; am L 2009, c 121, §7]

" **§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. [L 2004, c 179, pt of §1; am L 2005, c 58, §28; am L 2012, c 153, §3]

" **§88-336 Service-connected disability retirement.** (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.

(b) In the case of sewer workers, the effect of the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors on the heart, lungs, and respiratory system shall be construed as an injury received or disease contracted while in the performance of their duty and as the result of some occupational hazard for the purpose of determining occupational disability retirement under this section.

Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system resulting in permanent incapacity to a sewer worker shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the sewer worker's part, and as a result of the inherent occupational hazard of exposure to the inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that the sewer worker shall have passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition.

(c) The board may waive strict compliance with the time limits within which a report of the accident and an application for service-connected disability retirement must be filed with the board if it is satisfied that the failure to file within the time limited by law was due to ignorance of fact or law, inability, or the fraud, misrepresentation, or deceit of any person, or because the applicant was undergoing treatment for the disability, or was receiving vocational rehabilitation services occasioned by the disability.

(d) The board may determine whether the disability is the result of an accident occurring while in the actual performance of duty at some definite time and place and that the disability was not the result of wilful negligence on the part of the member. The board may accept as conclusive:

- (1) The certification made by the head of the agency in which the member is employed; or
- (2) A finding to this effect by the medical board.

(e) Upon approval by the board, the member shall be eligible to receive a service-connected disability retirement benefit after the member has terminated service. Retirement shall be effective on the first day of a month, except for the

month of December when retirement on the first or last day of the month shall be allowed. [L 2004, c 179, pt of §1; am L 2007, c 215, §25]

" **§88-337 Service-connected disability retirement allowance.** Upon retirement for service-connected disability, a class H member shall receive the amount of the member's accumulated contributions and a maximum retirement allowance of thirty-five per cent of the member's average final compensation. [L 2004, c 179, pt of §1; am L 2005, c 58, §29]

" **§88-338 Ordinary death benefit.** (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) 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) 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.

(b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, the death benefit in the case of ordinary death shall be payable:

- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a);
- (2) To the deceased member's children under age eighteen, if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under paragraph (1) or (2) of subsection (a); or
- (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary or children under the age of eighteen, a benefit as specified under paragraph (1) or (2) of subsection (a).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(d) The application for ordinary death benefits shall be filed no later than three years from the date of the member's death. [L 2004, c 179, pt of §1; am L 2006, c 169, §37; am L 2007, c 215, §26; am L 2012, c 153, §4]

" **§88-339 Accidental service-connected death benefit.** (a) In the case of an accidental death as determined by the board pursuant to section 88-85.5, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and there shall be paid in lieu of the ordinary death benefit payable under section 88-338 a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under that age, divided in a manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains that age; or
- (3) If there is no surviving spouse or reciprocal beneficiary and no child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

The pension shall be effective on the first day of the month following the member's death, except for the month of December, when benefits shall be effective on the first or last day of the month.

(b) Notwithstanding any other law to the contrary, any condition of impairment of health caused by any disease of the heart, lungs, or respiratory system, resulting in death to a sewer worker shall be presumed to have been suffered in the actual performance of duty at some definite time and place through no wilful negligence on the sewer worker's part, and as a result of the inherent occupational hazard of exposure to and inhalation of smoke, toxic gases, chemical fumes, and other toxic vapors, unless the contrary be shown by competent evidence; provided that the sewer worker shall have passed a physical examination on entry into service or subsequent to entry, which examination failed to reveal any evidence of the condition.

(c) Benefits payable under subsection (a) shall continue through the end of the last month in which the payee is eligible for the benefit. [L 2004, c 179, pt of §1; am L 2005, c 58, §30; am L 2006, c 169, §38]

" **[\$88-340] Termination of membership.** Except as otherwise provided by section 88-341, any class H member absent from service for four calendar years following the calendar year in which the member's employment terminated shall cease to be a member. Any class H member who withdraws the member's contributions, becomes a retirant, or dies, shall cease to be a member as of the date of withdrawal, retirement, or death. [L 2004, c 179, pt of §1]

" **§88-341 Rights of members separated from service.** (a) Any class H member who ceases to be an employee and who became a member before July 1, 2012, and has fewer than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has fewer than ten years of credited service, excluding unused sick leave, shall, upon application to the board, be paid all of the former employee's accumulated contributions, and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that an individual shall not be paid the individual's accumulated contributions if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for return of accumulated contributions is received by the board, the individual has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are withdrawn; provided that the former employee's membership shall not continue after the fourth full year following the calendar year in which the individual's employment terminates. If the former employee does not become an employee again and has not withdrawn the former employee's accumulated contributions, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the later of: (A) the former employee attaining age sixty-two; or (B) the termination of the former employee's membership.

(b) Any class H member who ceases to be an employee and who became a member before July 1, 2012, and has more than five years of credited service, excluding unused sick leave, or who becomes a member after June 30, 2012, and has more than ten years of credited service, excluding sick leave, shall, upon application to the board, be paid an amount equal to the former employee's hypothetical account balance and the former employee's membership shall thereupon terminate and all credited

service shall be forfeited; provided that the individual shall not be paid the individual's hypothetical account balance if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for payment of the individual's hypothetical account balance is received by the board, the individual has become an employee again.

If the contributions are not withdrawn by the former employee after the individual's employment terminates, the former employee shall have vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the former employee's retirement, payable in accordance with this chapter.

(c) In case of the death after the termination of service and prior to retirement of any former class H member who has not withdrawn the member's contributions, there shall be paid to the former member's estate or to the person that the former member has nominated by written designation duly executed and filed with the board:

- (1) The former member's accumulated contributions, if the former member became a member before July 1, 2015, and had fewer than five years of credited service at the time of death or if the former member became a member after June 30, 2015, and had fewer than ten years of credited service at the time of death; or
- (2) The former member's hypothetical account balance, if the former member became a member before July 1, 2015, and had five or more years of credited service at the time of death or if the former member became a member after June 30, 2015, and had ten or more years of credited service at the time of death. [L 2004, c 179, pt of §1; am L 2005, c 58, §31; am L 2006, c 169, §39; am L 2011, c 163, §15; am L 2015, c 85, §2]

" **§88-342 Return to service of a former member without vested benefit status.** (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 part II, VII, or VIII.

(b) When a former class H member who does not have vested benefit status but who did not withdraw the former member's accumulated contributions returns to service, the member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined. [L 2004, c 179, pt of §1; am L 2007, c 215, §27]

" **§88-343 Return to service of a former member who has vested benefit status.** If a former class H member who has a vested benefit status as provided in section 88-341(b) returns to service before the former member's retirement, the former member shall again become a member and shall contribute for membership service as provided by the law in effect during the member's reenrolled period of membership, and the former member shall be credited with service credit for the service the member had when the member terminated employment and the member's new and previous accumulated contributions shall be combined. [L 2004, c 179, pt of §1]

" **§88-344 Return to service of a retirant.** (a) Any retirant who retired under the provisions of 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 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 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.

(f) The board shall adopt any rules as may be required to administer this section. [L 2004, c 179, pt of §1; am L 2006, c 169, §40; am L 2007, c 215, §28]