

ACT 276

H.B. NO. 2515

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

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

SECTION 1. The purpose of this Act is to correct Act 357, Session Laws of Hawaii 1993, and to fulfill the intended objectives of that Act as originally proposed. The original premise of Act 357 was to grant retirement eligibility to water safety officers without reduction for age upon twenty-five years of service. However, the class status of water safety officers was also changed. It was not intended to require water safety officers to become contributory members subject to mandatory contribution of 12.2 per cent of compensation, but to recognize the inherently dangerous nature of their work and provide an early retirement without reduction for age in view of the strenuous physical requirements of that position, comparable to the benefit provided another class C group, sewer workers.

This Act will restore water safety officers to class C or noncontributory status. This amendment will allow service retirement, without actuarial reduction for age, for a public employee who has at least twenty-five years of credited service, the last five years of which are credited as a water safety officer. However, to the extent that some water safety officers have obtained rights under Act 357, those rights are preserved by permitting an election to remain a class A member.

In addition, the unfunded benefit obligation, actuarially determined, should be addressed. The funding of the retirement program for the security of members of the retirement system and the taxpayers is a matter of significant concern. However, any action taken will have consequences. Accordingly, the actuarial assumptions, as well as distribution of investment earnings are made subject to periodic actuarial review and legislative adjustment. This measure should assure that funding levels remain appropriate.

SECTION 2. Section 88-45, Hawaii Revised Statutes, is amended to read as follows:

"§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, and water safety officers not making the election under section 88-271 shall contribute twelve and two-tenths per cent of their compensation to the annuity savings fund for service in that capacity."

SECTION 3. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be three classes of members in the system to be known as class A, class B, and class C, defined as follows:

- (1) Class A shall consist of members covered by section 88-74(3), those members whose salaries are set forth in sections 26-52 and 26-53, investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers[,] not making the election under section 88-271, and those members in service prior to

July 1, 1984, including those who are on approved leave of absence, who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:

- (A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;
 - (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and
 - (C) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership;
- (2) Class B shall consist of all members who are not class A or class C members; and
- (3) Except for members [covered by section 88-74(3), those members whose salaries are set forth in sections 26-52 and 26-53, investigators of the department of the attorney general, narcotics enforcement investigators, and water safety officers,] described in section 88-47(a)(1), class C shall consist of all employees in positions covered by Title II of the Social Security Act who:
- (A) First enter service after June 30, 1984;
 - (B) Reenter service after June 30, 1984, 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."

SECTION 4. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

"§88-74 Allowance on service retirement. Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of 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 B member, 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; provided that:
 - (A) 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;
 - (B) 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;
 - (C) 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;
 - (D) 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;

- (E) After June 30, 1992, if the member has at least ten years of credited service, a part of which is credited as a corrections officer or narcotics enforcement investigator; provided the member is employed with the department of public safety, is promoted or accepts a position as a public safety internal affairs investigator, and retires from that department; and
- (F) 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;

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 water safety officer, 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 in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; 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, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;

- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for the refund thereof as permitted by section 88-72, the member may accept refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest; or
- (3) If the member has credited service as a judge, an elective officer, or the chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature, the member's retirement allowance shall be computed on the following basis:

- (A) Irrespective of age, for each year of credited service as a judge, an elective officer, or the chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms of either house of the legislature, 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 such service; and
- (B) For all other credited service, as provided in paragraphs (1) and (2). 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 subparagraph (A), and the portion of the accumulated contributions specified in that subparagraph in excess of the requirements of the reduced annuity shall be returned to the member.

The allowance for judges under this paragraph, 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."

SECTION 5. Section 88-105, Hawaii Revised Statutes, is amended to read as follows:

"§88-105 Actuarial investigations, valuations. At least once in each five-year period, commencing with [the year 1929,] fiscal year 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 such mortality, service and other tables as shall be deemed appropriate and necessary[.], and the actuary shall recommend to the legislature for its adoption the investment yield rate and annual salary increase assumption. The actuary shall assess the actual investment earnings during the five-year review period and recommend appropriate adjustments to the contributions under section 88-123 for the same period. The actuary shall further recommend the acceptable level of pension benefit obligation 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.

On the basis of such tables and other factors as the board or legislature, as the case may be, shall adopt, the actuary shall make an annual valuation of the assets and liabilities of the funds of the system."

SECTION 6. Section 88-107, Hawaii Revised Statutes, is amended to read as follows:

"§88-107 Interest. 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; [and]
- (2) The expense fund shall be credited with such sums as provided in section 88-116; and
- [(2)] (3) The remaining investment earnings, if any, shall be credited to the pension accumulation fund.

The amounts to be contributed to the pension accumulation fund by the State and counties shall be reduced by any investment earnings in excess of the investment yield rate applied in actuarial valuations[.], except as otherwise provided. Any additional amount required to meet the investment yield rate for the preceding year until fiscal year 2000 shall be paid by the State and counties, and shall be credited to the pension accumulation fund.

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 each succeeding fiscal year, another ten per cent, cumulatively up to one hundred per cent, of any excess such earnings shall be similarly allocated and deposited in the pension accumulation fund.

Following each five-year actuarial review as provided in section 88-105, the legislature shall evaluate the allocation and distribution of investment

earnings in excess of the investment yield rate, and make such adjustments as appropriate. In the absence of affirmation by resolution, investment earnings in excess of the investment yield rate shall be applied to the contributions under section 88-123."

SECTION 7. Section 88-114, Hawaii Revised Statutes, is amended to read as follows:

"§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."

SECTION 8. Section 88-116, Hawaii Revised Statutes, is amended to read as follows:

"§88-116 Expense fund. The expense fund shall be the fund to which shall be credited all money [provided by the State and counties] 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[. The expense shall be prorated among the State and the respective counties upon the basis of the total payroll of the employees of each who are included in the system, and each shall pay its prorata share thereof.], 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."

SECTION 9. Section 88-122, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The actuarial valuations made for years ending June 30, [1993,] 1995, and June 30, [1994,] 1996, shall be based on an eight per cent investment yield rate, assumed salary increases of six and one-half per cent, and¹ tables and factors adopted by the board² or legislature for actuarial valuations of the [system.] system, subject to recommendations made by the actuary appointed under section 88-30."

SECTION 10. Section 88-271, Hawaii Revised Statutes, is amended to read as follows:

"§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, 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 such 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) [A] 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) The board shall provide information explaining the effects of the election described in subsection (a).

(d) Any water safety officer who is in service on the effective date of this Act 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 the effective date of this Act shall be class C members."

SECTION 11. Section 88-281, Hawaii Revised Statutes, is amended:

1. By amending subsection (b) to read as follows:

"(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 normal retirement benefit unreduced for age."

2. By amending subsection (e) to read as follows:

"(e) 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 ninety days subsequent to the date of filing. If the member dies after the date of filing the application to retire but prior to the effective date of retirement, the member's designated beneficiary may receive the member's retirement benefits which shall be computed as though the member had died on the effective date of retirement under the mode of retirement selected."

SECTION 12. Section 2 of Act 357, Session Laws of Hawaii 1993, is repealed.

["SECTION 2. (a) All water safety officers of any county of the State shall be designated class A members of the employees' retirement system as of December 31, 1993.

(b) Water safety officers who are class C members shall have the option of converting their class C water safety officer service to class A. All water safety officers who are class C members, shall file an election form with the board of trustees by December 1, 1993, and arrange for additional deductions or lump sum payments pursuant to sections 88-45 and 88-59, Hawaii Revised Statutes, to commence by July 1, 1994."]

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SECTION 13. All rights, entitlements, and obligations under Act 357, Session Laws of Hawaii 1993, are preserved for those water safety officers who do not elect to become class C members as permitted by section 10 of this Act.

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. The provisions of this Act are declared severable, and if any provision thereof is held to be invalid for any reason, the validity of the remainder of the Act shall not be affected.

SECTION 16. Sections 6, 7, and 8 of this Act shall apply to the amounts to be contributed to the pension accumulation fund and expense fund beginning July 1, 1995.

SECTION 17. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18. This Act shall take effect on July 1, 1994.

(Approved July 5, 1994.)

Notes

1. Prior to amendment "the" appeared here.
2. Prior to amendment "of trustees" appeared here.