

ACT 169

S.B. NO. 2273

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

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

SECTION 1. Section 88-21, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

““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.

“Active member”: a member who is an employee.

“Child or children”:

(1) A natural child of a member;

(2) A legally adopted child of a member; or

(3) A foster child or 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.

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

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

“§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 [part] 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.”

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

“**§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 [sueh] members under [part] 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.”

SECTION 4. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of “beneficiary” and “retirement allowance” to read as follows:

““Beneficiary”: the recipient of any benefit from the system or, as¹ context may indicate, the [natural] person or persons designated by a member to receive the benefits payable in the event of the member’s death.

“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 [mode-of] retirement allowance option selected by the member, exclusive of any bonus or bonuses.”

SECTION 5. Section 88-31, Hawaii Revised Statutes, is amended to read as follows:

“**§88-31 Medical board.** The board [~~of trustees~~] 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 [part] parts VII and VIII of this chapter, shall investigate all essential statements and certificates by or on behalf of a member in connection with applica-

tion for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all the matters referred to it.”

SECTION 6. Section 88-59.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, any judge who retires under section 88-61(c) and continues in service as a judge shall be allowed membership in the system and entitlement to membership service credit for any eligible class A service; provided that ~~[such]~~ the membership service shall be credited in accordance with section 88-59; and provided further that when the judge retires, it shall be as if it were for the first time, and sections ~~[88-73(1);]~~ 88-73(a), 88-74(3), and 88-76 shall be used to determine the retirement allowance.”

SECTION 7. Section 88-61, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.”

SECTION 8. Section 88-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The membership of an elective officer or judge in the system may be terminated upon election of the member to retire whenever the allowance for ~~[such]~~ the member reaches seventy-five per cent of the member’s average final compensation. The member’s right to receive the retirement allowance prescribed in section 88-74 after the member’s future separation from service as provided in section 88-73 shall vest on the date of the election. Upon the date of the election, the member shall be entitled to receive the portion of the accumulated contributions, if any, which would be required to be returned to the member under section ~~[88-74(3)(B)]~~ 88-74(3) as if the member’s retirement allowance had commenced on that date, and after the date of the election the member shall not be allowed or required to make any future contributions.”

SECTION 9. Section 88-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If a former member who has less 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 ~~[he]~~ the former member left service, or if a former member who withdrew ~~[his]~~ the former member’s accumulated contributions returns to service, ~~[he]~~ the former member shall become a member in the same manner and under the same conditions as anyone first entering service; however, ~~[he]~~ the former member may obtain membership service credit in the manner provided by applicable law for ~~[his former]~~ credited service ~~[as provided in section 88-59.]~~ that was forfeited by the member upon termination of the member’s previous membership. If ~~[such]~~ the member did not withdraw ~~[his]~~ the former member’s accumulated contributions prior to ~~[his]~~ the former member’s return to service, ~~[such]~~ the accumulated contributions shall be returned to ~~[him]~~ the member as part of the process of enrolling ~~[him]~~ 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.

~~[In order to]~~ To be eligible for any benefit, ~~[he must]~~ the member shall fulfill the membership service requirements for ~~[such]~~ the benefit through membership service after again becoming a member, in addition to meeting any other eligibility requirement established for ~~[such]~~ 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 this part."

SECTION 10. Section 88-74.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The system shall finalize a ~~[retiree's]~~ retirant's pension benefit within six calendar months following the month of the ~~[retiree's]~~ retirant's retirement. For pension benefits finalized after the sixth calendar month following the month of the ~~[retiree's]~~ retirant's retirement, an interest payment amounting to four and one-half per cent per annum shall be paid to the ~~[retiree.]~~ retirant. Interest shall be calculated on the difference between the amount the ~~[retiree]~~ retirant is entitled to receive from the ~~[retiree's]~~ retirant's retirement date up to the day the payment is made and the amount the ~~[retiree]~~ 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 ~~[retiree's]~~ 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 ~~[of trustees]~~ or the actual retirement date specified by the member, whichever is later."

SECTION 11. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

"§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 ~~[full]~~ 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(3) or (4), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member's average final compensation."

SECTION 12. Section 88-81.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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.'

SECTION 13. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

“§88-83 Election of ~~mode of~~ retirement allowance[-] option. (a) ~~[Maximum allowance:]~~ 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 member's death, there shall be paid to the member's beneficiary, otherwise to the member's estate, the difference between the balance of the member's accumulated contributions at the time of the member's retirement and the retirement allowance paid or payable to the member 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 ~~[of trustees]~~. Upon the death of the retirant, any balance remaining in the initial insurance reserve, after deducting the retirement allowance paid to the retirant prior to death, shall be paid to the retirant's beneficiary, otherwise to the retirant's estate. In lieu of the lump sum balance, the beneficiary may 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.

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 ~~[during the lifetime of the person. In the event of death of]~~ designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to [that of] the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's 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 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 member 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 ~~[such]~~ 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 [during the lifetime of that

~~person. In the event of death of] designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to [that of] the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's 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 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 member 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 ~~[mode of]~~ retirement[-] option.

To receive benefits, the beneficiary must have been designated by the member in the form and manner prescribed by the board.

~~[Any election of a mode of retirement allowance shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (e).]~~

(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~~[- if the member was eligible to retire on the date of the [member's] death,]~~ may elect to receive either death benefits 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 [a] 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.

(c) No election 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 established by the board pursuant to chapter 91; ~~[or]~~

- (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 rules of the board pursuant to 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 [such] the benefits as would have been paid under section 88-84 had the retirant died immediately prior to retirement, less any payments which the retirant received.
- (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 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 in whole or in part on the age of the member's designated beneficiary."

SECTION 14. Section 88-84, Hawaii Revised Statutes, is amended to read as follows:

“§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 88-76; 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.

(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 [~~dependent child, or~~] 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 [~~or dependent child or~~] and no children^[s] 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.”

SECTION 15. Section 88-85, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [Upon the receipt of proper proofs of a member’s death by the board of trustees,] 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 [if, upon the receipt of evidence or proofs that the death was 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 that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member,] there shall be paid in lieu of the ordinary death benefit payable under section 88-84, [effective on the first day of a 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,] 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 [sueh] the age of eighteen, divided in [sueh] 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 [sueh] 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 [sueh] 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.”

SECTION 16. Section 88-85.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-85.5 [Accidental death claims.] 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 [as specified in sections] pursuant to section 88-85, 88-286, [and] or 88-339[-], on a form provided by the system. The application shall be filed no later than [two] three years from the date of [receipt of the written notification from the system.] the member’s death.

(b) ~~[If a claim is filed,] 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.

~~[(e) If the medical board certifies that the death was 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 that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member.]~~

(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.

~~[(d)]~~ (e) After the medical board submits its certification to the system, the board shall approve or disapprove the application. Upon approval^[5] of an application, benefits shall be paid [effective the date the claim was filed with the system, in accordance with sections] as provided in section 88-85, 88-286, [and] or 88-339."

SECTION 17. Section 88-93, Hawaii Revised Statutes, is amended to read as follows:

"§88-93 Named beneficiaries by [active] members^[5] and by former employees with vested benefit status; effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death. (a) All [nominations by] written [designation] designations of beneficiaries for members and for former employees with vested benefit status shall become null and void when:

- (1) The beneficiary predeceases the member^[5] 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 ~~[such] the~~ designation and, except as provided in sections 88-84(b) and 88-333(b), all benefits payable by reason of the death of the member or former employee shall be payable to the member's [legal representatives] 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 [of trustees].

(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.”

SECTION 18. Section 88-95, Hawaii Revised Statutes, is amended to read as follows:

“§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 ~~[Hawaii public employees health]~~ employer-union health benefits trust fund and employee organizations for dues and insurance premiums.”

SECTION 19. Section 88-96, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any member who ceases to be an employee and who has fewer than five years of credited service [shall], excluding unused sick leave, upon application to the board [of trustees], shall 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 [any such] 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 ~~[of trustees]~~, the member has become an employee again.

[The former employee’s membership shall not continue after the fourth full year following the calendar year in which the individual’s employment terminates. The system, as soon as possible after termination of a former employee’s membership, shall return to the former employee the former employee’s accumulated contributions.] 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 former employee attains age sixty-two.

(b) Any member having five or more years of credited service who ceases to be an employee, upon application to the board [of trustees], shall 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 [any such] 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 ~~[of trustees]~~, the member has become an employee again.

If the contributions are not withdrawn by the ~~[member]~~ former employee within four calendar years following the calendar year in which the ~~[member's]~~ former employee's employment terminates, the ~~[member]~~ former employee shall have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the ~~[member's]~~ former employee's retirement, payable in accordance with this chapter² ~~[and the contributions shall not be withdrawn by the member thereafter.];~~ 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."

SECTION 20. Section 88-98, Hawaii Revised Statutes, as amended, is amended to read as follows:

"§88-98 Return to service of a retirant. (a) Any retirant who returns to employment requiring active membership 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 ~~[mode-of]~~ 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 ~~[mode-of]~~ retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula 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~~;~~ and.

~~[(3)]~~ (b) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

~~[(A)]~~ (1) Have the retirant's retirement allowance suspended;

~~[(B)]~~ (2) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and

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

(c) 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.

(d) The board ~~[of trustees]~~ shall adopt ~~[such]~~ any rules as may be required to administer the purposes of this section."

SECTION 21. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

“§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 [of trustees]. 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 [sueh] leasehold interest at [sueh] 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 [~~of trustees~~];

- (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 does 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 [~~of trustees~~] may retain [~~sueh~~] 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; provided that all [~~sueh~~] the real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all [~~sueh~~] the leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each;

- (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 [~~sueh~~] 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 [~~of trustees~~];
- (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 [~~of trustees~~], 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 [~~of trustees~~] it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on [~~such~~] 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 [~~of trustees~~], are appropriate to invest funds of the system. In evaluating venture capital investments, the board [~~of trustees~~] shall consider, among other things, the impact an investment may have on job creation in Hawaii and on the state economy."

SECTION 22. Section 88-132, Hawaii Revised Statutes, is amended to read as follows:

"§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, ~~so long as the member remains in military service,~~ 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 ~~were~~ had remained continuously in the active service of the State or county, as the case may be, ~~so long as the member remains continuously in~~ during the period of the member's military service, ~~but in no event shall~~; provided that:

- (1) The cumulative length of time for which a member shall be entitled to payment ~~be made for more than~~ of the contributions shall not exceed four years. ~~This section shall apply only to members who return;~~
- (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 interest at the rate of four and one-half per cent a year compounded annually 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. 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."

SECTION 23. Section 88-137, Hawaii Revised Statutes, is amended to read as follows:

"§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 ~~[shall be paid to the service member's estate or the service member's designated beneficiary]."~~

SECTION 24. Section 88-138, Hawaii Revised Statutes, is amended to read as follows:

"§88-138 Accidental death benefit. ~~[The estate or designated beneficiary of~~ a] If a service member [who] 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, [shall not be entitled to] the death shall not be an accidental death [benefit provided by] and shall not be eligible for accidental death benefits under sections 88-85, 88-286(c), and 88-339; however, the [estate or the beneficiary shall be entitled to the] ordinary death benefit shall be payable as provided in section 88-137."

SECTION 25. Section 88-140, Hawaii Revised Statutes, is amended to read as follows:

~~“§88-140 Duration of service member’s status. [A service member shall continue to be entitled to the benefits of the Servicemen’s Act until the expiration of ninety days after the termination of the service member’s service in the armed forces unless the service member shall within the ninety day period have reentered the service of the State or any county, in a position which constitutes the service member an employee as defined by section 88-21, in which latter event the service member’s status thenceforth shall be the same as that of any other regular member of the system in the service without any loss of the service credit preserved and allowed to the service member under the Servicemen’s Act, or unless the service member shall have resigned before the expiration of the ninety day period and waived the service member’s right to such reemployment. In the event the service member fails to reenter the service of the State or any county within the ninety day period, and shall not have resigned from the system and waived the service member’s right to reemployment, the service member’s status thereafter shall be the same as that of a regular member who terminated the regular member’s employment as such an employee and such termination shall be deemed to have occurred on the ninetieth day after the termination of the service member’s service in the armed forces.~~

~~A service member who voluntarily extends the service member’s period of service in the armed forces ninety or more days beyond the expiration date of the service member’s initial enlistment or the period for which the service member was inducted or the period for which the service member was ordered to active duty shall be deemed to be on the same status as that of a regular member who terminates the regular member’s employment as an employee, and the termination shall be deemed to have occurred on the ninetieth day following the expiration date of the service member’s enlistment or the period for which the service member was inducted or the period for which the service member was ordered to active duty.] (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).”~~

SECTION 26. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

“§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, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 [tø], 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84 [tø], 88-85, 88-87 [tø], 88-88, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E.”

SECTION 27. Section 88-271, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 [sueh] 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.”

SECTION 28. Section 88-273, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Any retirant who retired under the provisions of part VII of this chapter and returns to service requiring 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. [~~At such time as~~] When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the [~~mode of~~] 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 [~~mode of~~] 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 in existence at the time of the member’s final retirement. If the member’s designation of beneficiary was irrevocable upon the member’s initial retirement, the member may not change the member’s designated beneficiary when the member returns to service or when the member again retires.

(d) Any retirant who retired under part VII and returns to service requiring 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. [~~At such time as~~] When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the [~~mode of~~] 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 [~~mode of~~] 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 in existence at the time of the member’s final

retirement. If the member's designation of beneficiary was irrevocable upon the member's initial retirement, the member may not change the member designated beneficiary when the member returns to service or when the member again retires."

SECTION 29. Section 88-283, Hawaii Revised Statutes, is amended as follows:

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

"§88-283 [Retirement] Election of retirement allowance [options.] 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 [described in sections 88-282, 88-284, and 88-285], 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; provided that for members retiring after November 30, 2004, [in the event that] 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; provided that for members retiring after November 30, 2004, [in the event that] 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 if the member dies within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary for the balance of the ten-year period.**

Only one beneficiary shall be designated under options A and B. 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) [Any] Upon a member's retirement:

- (1) The member's election of a [mode of] retirement allowance option shall be irrevocable [and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).]; and**

(2) The member's designation of a beneficiary shall be irrevocable if the retirement option elected by the member is option A or B."

2. By amending subsections (e), (f), and (g) to read:

"(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]~~ 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, ~~[if the member was eligible to retire on the date of the member's death,]~~ 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 [a] 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 under this section pending disposition of the claim for benefits under section 88-286(c). No death benefits will be payable under section 88-286(c) while benefits are paid pursuant to an election made under this section.

(g) ~~[In the event of the death of]~~ 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 option selected by the retirant; or
- (2) The death benefit under option B; provided that 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 shall be returned to the system."

SECTION 30. Section 88-286, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The surviving spouse or reciprocal beneficiary and ~~[dependent child or]~~ 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 an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service or 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 ~~[dependent]~~ 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

- [dependent] child attains age eighteen; provided that the aggregate death benefits for all the [dependent] 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 [dependent] 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 [dependent] child attains age eighteen; provided that the aggregate death benefits for all the [dependent] 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 [a] 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 [dependent] 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 [dependent] 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 [dependent] 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 [dependent] child until the [dependent] child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each [dependent] 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 [dependent] 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 [dependent] 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 [dependent] child until the [dependent] child attains age eighteen.''

SECTION 31. Section 88-301, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§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, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 [tø], 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, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D; and
- (5) Subpart E.’’

SECTION 32. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any member, except for [members] a member described in subsection (c), who is in service on June 30, 2006, or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b), may elect to become a class H member effective July 1, 2006, or upon return to service, 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 made by members entering or returning to service after [February 28,] June 30, 2006, within thirty days of entering or returning to service. The election shall be irrevocable.’’

SECTION 33. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Notwithstanding any other law to the contrary, after June 30, 2006:
- (1) A class C member who returns to service 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); and

- (2) A class A or a class B member, who returns to service 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~~[-The system shall return to the member the member's accumulated contributions]~~ 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."

SECTION 34. Section 88-322, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(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 June 30, 2006, in the manner provided in subsection (d). The option to convert class C credited service to class H credited service shall ~~[not]~~ also apply:

- (1) To forfeited credit for previous service ~~[not]~~ that a member is eligible to have restored as of June 30, 2006; ~~[or]~~ 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~~[- which the member has failed to claim by 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 June 30, 2006. The option to convert class C credited service to class H credited service shall ~~[not]~~ also apply:

- (1) To forfeited credit for previous service ~~[not]~~ that a member is eligible to have restored as of June 30, 2006; ~~[or]~~ 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~~[- which the member has failed to claim by 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.”

SECTION 35. Section 88-324, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(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 ~~[June 30, 2006,]~~ 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) 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:
 - (A) 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
 - (B) 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
- (2) 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.

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.

(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 ~~[June 30, 2006,]~~ 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.”

SECTION 36. Section 88-333, Hawaii Revised Statutes, is amended to read as follows:

“§88-333 [Retirement] Election of retirement allowance [options.] 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 member’s death, there shall be paid to the member’s beneficiary, or otherwise to the member’s estate, the difference between the balance of the member’s accumulated contributions at the time of the member’s retirement and the retirement allowance paid or payable to the member 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 [optional plans] 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, [if the member was eligible to retire on the date of the member’s death,] 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 [a] 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.

(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 member, 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.

(d) [Any] Upon a member’s retirement:

- (1) The member’s election of a [mode of] 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 in whole or in part on the age of the member's beneficiary.

(e) No election 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. The system shall not be liable for any false statements made by the member.

(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."

SECTION 37. Section 88-338, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~88-338~~(1)~~] Ordinary death benefit. (a) Upon receipt by the ~~board~~ system of proper proof of a class H member's death occurring in service or while on authorized leave without pay and if no pension is payable under section 88-339, there shall be paid to the member's designated beneficiary an ordinary death benefit as follows:

- (1) If the member had less than five years of credited service at the time of death, the member's accumulated contributions shall be paid to the member's designated beneficiary;

- (2) If the member had five or more years of credited service at the time of death, an amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary;
 - (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 88-335; 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.
- (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 [~~dependent child, or~~] 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 [~~dependent child 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."

SECTION 38. Section 88-339, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Upon the receipt by the board of trustees, of proper proof of a class H member's death,] 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 [if, upon the receipt of evidence or proof that the death was 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 that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member,] there shall be paid in lieu of the ordinary death benefit payable under section 88-338[; effective on the first day of a 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,] 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 [or] 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 [such] 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."

SECTION 39. Section 88-341, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any class H member who ceases to be an employee and who has fewer than five years of credited service [~~shall~~], 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 [~~any such~~] 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 former employee attains age sixty-two.”

SECTION 40. Section 88-344, Hawaii Revised Statutes, is amended to read as follows:

“[~~§88-344~~] **Return to service of a retirant.** (a) Any retirant who retired under the provisions of part VIII of this chapter and returns to service requiring 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. [At such time as] When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the ~~[mode of]~~ 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 ~~[mode of]~~ 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 in existence at the time of the member's final retirement.

(b) Any retirant who retired under part VIII and returns to service requiring 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. [At such time as] When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the ~~[mode of]~~ 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 ~~[mode of]~~ 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 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, 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 chapter 88; 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) The board shall adopt ~~[such]~~ any rules as may be required to administer the purposes of this section."

SECTION 41. Section 88-261, Hawaii Revised Statutes, is amended by repealing the definitions of "accidental death" and of "ordinary death".

~~[""Accidental death": death which 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 recklessness on the part of the member.~~

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

SECTION 42. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 43. This Act shall take effect on July 1, 2006; provided that section 26 shall take effect retroactive to July 1, 2003, sections 31 and 39 shall take

ACT 169

effect retroactive to July 1, 2004, section 32 shall take effect retroactive to January 1, 2006, and sections 34 and 35 shall take effect on June 30, 2006.

(Approved June 5, 2006.)

Notes

1. Prior to amendment “the” appeared here.
2. Prior to amendment “,” appeared here.