

**ACT 121**

**S.B. NO. 876**

**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 88-75, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

**“§88-82 [~~Appeal of decision of medical board;~~] Petition for contested case hearing regarding disability retirement or accidental death benefits; attorney’s fees and costs [reimbursable].** (a) A member or applicant who is not satisfied with the preliminary decision of the ~~[medical]~~ board to grant or deny an application for disability retirement benefits or accidental death benefits based on the certifications and findings of the medical board may ~~[appeal the decision to]~~ file a petition for contested case hearing with the board [of trustees] within sixty days after receiving written notification of the preliminary decision of the ~~[medical]~~ board. ~~[The right of appeal to the board of trustees shall apply to all decisions and recommendations which the medical board is authorized to make.]~~

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

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

**“§88-98 Return to service of a retirant.** (a) Any retirant who returns to employment requiring active membership in the system shall be reenrolled as an

active member of the system in the same class from which the retirant originally retired and the retirant's retirement allowance shall be suspended.

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

- (A) For members with fewer than three years of credited service during the member's period of reemployment, the allowance to which the member was entitled under the retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula under section 88-74 in existence at the time of the member's latest retirement; or

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

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

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

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by this chapter; and
- (3) Be subject to the age and service requirements under section 88-73 when the member again retires.

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

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

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

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

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

and the retirant retired with a maximum allowance equal to seventy per cent of the retirant's average final compensation, the retirant's maximum allowance for the retirant's period of reemployment may not exceed ten per cent of the retirant's average final compensation for the retirant's period of reemployment; and

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

~~[(e)]~~ (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.

~~[(d)]~~ (e) A retirant who returns to service shall not be considered to be "in service,"<sup>[5]</sup> for the purposes of section 88-75, 88-79, 88-84, or 88-85, or any other provision of this chapter providing for benefits arising out of the disability or death of a member. A retirant who returns to service and dies during the period of reemployment shall be considered to have retired again effective as of the first day of the month following the month in which the death occurs, except for death during the month of December when the effective date of retirement may be the last day of the month.

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

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

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

- (1) If the former class C member becomes a member again within one ~~[calendar]~~ full year ~~[from the date of termination,]~~ following the calendar year in which the member's employment terminated, all service credit for previous service shall be restored. If the former class C member becomes a member again more than one ~~[calendar]~~ full year ~~[after the date of termination,]~~ following the calendar year in which the member's employment terminated, one month of service credit for previous service shall be restored for each month of service rendered following the return to membership~~[-]; and~~
- (2) If the former class C member becomes a class A, class B, or class H member within one ~~[calendar]~~ full year ~~[from the date of termination,]~~ following the calendar year in which the member's employment terminated, all class C service credit for previous service shall be restored. If the former class C member becomes a class A, class B, or class H member more than one ~~[calendar]~~ full year ~~[after the date of termination,]~~ following the calendar year in which the member's employment terminated, one month of class C service credit for previous service shall be restored for each month of service rendered following the return to membership.

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

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

“(b) Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed. A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following ~~[such]~~ the approval; provided that retirement shall become effective on the first day of the month following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

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

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

“(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,]~~ December 31, 2008, in the manner provided in subsection (d). The option to convert class C credited service to class H credited service shall also apply:

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

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

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

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

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

2. By amending subsection (d) to read:

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

- (1) By after-tax deductions from the member’s compensation. An irrevocable payroll authorization filed by the member for a period not to exceed one hundred twenty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of the deductions shall be in an amount sufficient to amortize the actuarial cost of the conversion, together with interest at the rate of eight per cent a year, in level bi-monthly payments over the period specified in the irrevocable authorization. Service credited will be proportional on the basis of whole months. For example, a member electing to convert one hundred twenty months of service over sixty months and terminating after thirty and one-half months of deductions pursuant to this subsection, will have converted sixty months of class C service to class H service; or

- (2) By lump sum payment.

~~[If the deductions from compensation do not commence, or if the lump sum payment is not paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service, the election shall be deemed revoked.]~~ The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member’s individual account and become part of the member’s accumulated contributions. The deductions from compensation shall commence, and any lump sum payment shall be paid to the system, within one hundred eighty days after the deadline for making the election to convert class C credited service to class H credited service. If a member is absent from the state while in the military service of the United States during the one hundred eighty-day period after the deadline for making the election, the deductions from the member’s compensation shall commence, and any lump sum payment shall be made by the member, within one hundred eighty days after the member’s return to the member’s regular employment with the State or county; provided that any extension, pursuant to subsection (c), of the deadline for making the election to convert class C credited service to class H credited service shall not extend the time for the deductions from the member’s compensation to commence or for the member to make any lump sum payment unless the extension pursuant to subsection (c) is applicable to all members eligible to make the election. A member’s election to convert class C credited service to class H credited service shall be deemed revoked as to any service for which payments by deductions from compensation do not commence, or for which the lump sum payment is not made, within the time required by this subsection.”

3. By amending subsection (f) to read:

“(f) The actuarial cost of converting a member’s class C credited service to class H credited service under subsections (a) and (b) shall be based on the member’s actual age in full years as of ~~[the last day of the sixth calendar month preceding the date of the notice described in subsection (e),]~~ December 31, 2008, and on the member’s monthly base salary or monthly basic rate of pay as of ~~[the last day of the sixth calendar month preceding the date of the notice described in subsection (e),]~~ December 31, 2008, exclusive of overtime, differentials, supplementary payments, bonuses, and salary supplements, but including elective salary reduction contributions under ~~[sections]~~ Sections 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as amended.”

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

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

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

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

(Approved June 15, 2009.)