

MINUTES OF THE REGULAR MEETING OF THE
BOARD OF TRUSTEES OF THE EMPLOYEES' RETIREMENT SYSTEM
OF THE STATE OF HAWAII

APRIL 12, 2021

CITY FINANCIAL TOWER
201 MERCHANT STREET, SUITE 1200
HONOLULU, HAWAII 96813

Trustees present: Mr. Emmit Kane, Chair
(by teleconference) Mr. Jerome Rauckhorst, Vice Chair
Mr. Vincent Barfield
Dr. Catherine Chan
Mr. Craig Hirai
Dr. Genevieve Ley
Mr. Wesley Machida
Mr. Bennett Yap

Trustees absent: Mr. Craig Hirai

Staff present: Mr. Thomas Williams, Executive Director
(City Financial tower Ms. Kanoe Margol, Deputy Executive Director
by teleconference) Ms. Donna Curry, Program Specialist
Mr. Bart Asato, Program Specialist
Ms. Shanna Sakagawa, Program Specialist
Mr. Karl Kaneshiro, Retirement Benefits Manager
Ms. Lori Kobayashi, General Professional
Ms. Shirlyn Young, General Professional
Ms. Elizabeth Burton, Chief Investment Officer
Mr. Howard Hodel, Deputy Chief Investment Officer
Mr. Aaron Au, Investment Officer – Illiquid Markets
Mr. Anthony Goo, Investment Officer – Liquid Markets
Mr. Ian Wetzal, Investment Officer
Mr. Andrew Chen, Investment Specialist
Ms. Gerri Konishi, Member Home Loan Assistant (audio only)
Ms. Diana Gomes, Secretary
Ms. Dale Kehau Kanae, Recording Secretary
Ms. Lori Kim, Secretary

Attorneys present: Mr. Ivan Torigoe, Deputy Attorney General
(by teleconference) Ms. Elmira Tsang, Deputy Attorney General
Ms. Diane Wong, Deputy Attorney General

Guests present: Mr. Colin Bebee, Meketa Investment Group, Inc.
(by teleconference) Mr. Neil Rue, Meketa Investment Group, Inc.
Mr. Chae Hong, Townsen Group, an Aon Company

Public present: Mr. Michael Bowman
(by teleconference) Mr. McCyril Espanol, Pageant Media
SVC Teams – User1, Pageant Media

QUORUM/CALL TO ORDER

A quorum being present (Chair Kane, Vice Chair Rauckhorst, Trustees Barfield, Chan, Ley, Machida, and Yap), Chair Kane called the regular meeting of the Board of Trustees (Board) of the Employees' Retirement System of the State of Hawaii (ERS) to order at 9:00 a.m.

QUORUM/CALL TO ORDER
(CONT'D)

On a motion made Trustee Machida, by seconded by Trustee Barfield, and unanimously carried, to be able to hold a meeting closed to the public and allow Trustees to participate by teleconference or other remote meeting technology, pursuant to the Governor of the State of Hawaii's Eighteenth Proclamation Related to the COVID-19 Emergency, dated February 12, 2021, in order to implement social distancing measures.

PUBLIC COMMENT

Chair Kane called for public comment. There were no members of the public present by teleconference or in person. There was also no public written testimony received for this meeting.

EXECUTIVE DIRECTOR'S
REPORT

Executive Director (ED) Thomas Williams gave an oral presentation of his report to the Board for activities as follows:

- Pending final legislative process, the House Finance Committee approved the State budget allowing ERS to retain all of its existing 111 positions including 2 temporary and 1 new investment officer position. ERS would like to thank Trustee Machida in his efforts to get the additional Investment Officer position secured.
- With Deputy Attorney General (DAG) Elmira Tsang, ERS signed a friend of the court, amicus curiae brief related to a lawsuit between Goldman Sachs and the Arkansas Teacher Retirement System. Goldman Sachs is trying to lower the standard for proof as it relates to securities litigation initiatives and this would make it difficult for institutional investors to protect their interest. CalPERS, Pennsylvania Teachers Retirement System, Virginia, Washington State, Maryland, Michigan, and Alaska, and others as well signed on.
- ERS Administrative team met with CEM Benchmarking Inc., a public pension plans and sovereign wealth funds vendor firm based in Canada. We plan to work with them next fiscal year so we can develop a more objective assessment of our performance, identify our strengths and weaknesses, and prepare a benchmark with which to compare and aspire to.
- As part of the strategic initiatives for this fiscal year, a kick-off meeting was held for the business continuity and disaster recovery project. ERS is receiving help from KMH LLP and RSM US, however, this project is being led by Keith Miyamoto and all Branch Chiefs and administrative staff are involved.
- Met with DocuSign regarding digital completion of ERS forms, applications, and a notary feature. This would increase our efficiency and services to our members.
- An e-mail notification was sent to the Board with regard to an ERS staff testing positive for COVID. We have monitored the individual and before return a doctor's note is required. Trustee Ley responded with information about how the virus is transmitted. Staff voiced concerns that they should have been notified in a more-timely manner and the office shut down. Administration has taken the necessary right steps by deep cleaning the offices. Building management does disinfectant cleaning on a regular basis.
- Legislative updates have been sent out regularly to the Trustees by Program Specialist Donna Curry and a detailed report will be done by the Chair of the Legislative Committee.
- Budget & Finance approved filling of ERS' request of vacant positions. The Governor has delegated authority to Department Directors to

- approve filling of vacant positions if sourcing is non-general funds.
- EUTF has asked to downsize their office space and the Hawaii Supreme Court is also releasing their space, ERS is working with Heitman on possible occupants.
- A Request to Delegate Authority to the Executive Director to Select an Actuary in FY 2021 Pursuant to the Request for Proposal for Actuarial Services will be discussed later in this meeting.
- Reminder that Board members respond to the survey from Meketa Investment Group regarding the Investment Summit.
- Reports in the financial press about total return swaps with Archegos. Chief Investment Officer Elizabeth Burton updated the Board on total return swaps. Deputy Chief Investment Officer Howard Hodel described the portfolio exposure in total return swaps as very minimal.

DEPUTY EXECUTIVE
DIRECTOR’S OPERATIONS
REPORT

Deputy Executive Director Kanoë Margol gave updates to ERS staffing and projects of Administration, Accounting, Information Services, Retirement Benefits and Staff Support Services Branches.

Chair Kane requested reports from the Committee Chairs:

REPORTS BY
ADMINISTRATIVE &
AUDIT COMMITTEE

Administrative & Audit Committee (Committee) Chair Ley reported that the Committee met on April 1, 2021 and discussed the Amendments to the Hawaii Administrative Rules (HAR) Title 6.

RECOMMENDATIONS ON
AMENDMENTS TO HAWAII
ADMINISTRATIVE RULES
(HAR) TITLE 6:

Program Specialist (PS) Donna Curry discussed the Summary of Proposed Amendments to HAR Chapter 6-20, 6-21, 6-22, 6-23, 6-26, and 6-29 as presented and included amended HAR Chapters. (The Amendment Summary is attached for clarification.)

HAR CHAPTER 6-20, TO UPDATE DEFINITIONS, INCREASE TIME FOR ACTION ON RULE CHANGE PETITIONS; DISCLOSURE OF INFORMATION TO ALTERNATE PAYEES RELEVANT TO DIVORCE PROCEEDINGS; CLARIFY PROCEDURES FOR PETITIONS FOR RULE CHANGES OR DECLARATORY RULINGS; UPDATE STATUTORY REFERENCES;

PS Curry clarified that “teachers” in this section of the Chapter refers to DOE teachers.

HAR CHAPTER 6-21, TO ADDRESS SERVICE CREDIT FOR FRACTIONAL MONTHS OF EMPLOYMENT, AND TEACHERS ON MODIFIED SCHOOL SCHEDULES; CONVERSION OF SICK LEAVE CREDITS WHEN MEMBER RETIRES OR TERMINATES IN GOOD STANDING; TYPOGRAPHICAL CORRECTIONS;

The Board asked, in reference to this section, since the change to have the ED involved with decision making regarding Disability actions, how will the Board know about these administrative decisions?

HAR CHAPTER 6-22, TO USE A “DESIGNATED ENTITY” ALTERNATIVE TO MEDICAL BOARD PER ACT 17, 2017 SESSION LAWS OF HAWAII (ACT 17); UPDATE AND CLARIFY DEFINITIONS AND

ED Williams stated that the same report, with decisions, would be submitted to the Board as a receive and file. The members still have the right to appeal

PROCEDURES FOR DISABILITY
RETIREMENT AND DEATH
BENEFITS CERTIFICATIONS
AND FINDINGS;

to the Board and any final decisions rests with the Board.

HAR CHAPTER 6-23,
SUBCHAPTER 1, TO UPDATE
RULES FOR CONTESTED CASE
HEARINGS ON DISABILITY
RETIREMENT AND
ACCIDENTAL DEATH BENEFITS,
TO USE A “DESIGNATED
ENTITY” ALTERNATIVE TO
MEDICAL BOARD PER ACT 17,
2017 SESSION LAWS OF HAWAII;
HAVE “THE ERS SYSTEM”
(EXECUTIVE DIRECTOR)
HANDLE PRELIMINARY
DECISIONS ON APPLICATIONS
FOR SUCH BENEFITS; UPDATE
DEFINITIONS CONSISTENT
WITH HAR CHAPTERS 6-20 AND
6-22; CLARIFY USE OF
HEARINGS OFFICERS; UPDATE
CONTESTED CASE
PROCEDURES;

HAR CHAPTER 6-23,
SUBCHAPTER 2, TO UPDATE
RULES FOR CONTESTED CASES
FOR OTHER THAN THOSE
UNDER HAR CHAPTER 6-20
(DECLARATORY RULINGS) OR
CHAPTER 6-23, SUBCHAPTER 1,
(DISABILITY RETIREMENT AND
DEATH BENEFITS) TO CLARIFY
USE OF HEARINGS OFFICERS
AND UPDATE CONTESTED CASE
PROCEDURES; AND THAT
INFORMAL DECISIONS AND
PETITIONS MUST RELATE TO
ALLEGED MISAPPLICATION OF
HRS CHAPTER 88 OR ITS
IMPLEMENTING RULES
REGARDING AN ALLEGED
ENTITLEMENT;

HAR CHAPTER 6-26, TO ALLOW
FOR COPIES OF ORIGINAL
DOCUMENTS, AND REAL ID
CREDENTIALS TO BE ACCEPTED
AS EVIDENCE OF AGE AND
DATE OF BIRTH; UPDATES THE
DATES USED FOR AGE
COMPUTATION EXAMPLES;

HAR CHAPTER 6-29, TO UPDATE
RULES TO CURRENT PRACTICES
AND PROCEDURES ON
ACCOUNT BALANCE
INFORMATION ACCESS;
ADDRESS CHANGES, DELETING
CERTAIN LIMITS ON LEAVE OF
ABSENCE THAT QUALIFY AS
SERVICE CREDIT; THAT

Trustee Machida stated that he had minor changes to the HAR Chapter that he would send to PS Curry. Trustee Machida and ED Williams thanked PS Curry, the program specialists, and DAG Elmira Tsang for working on these rule changes.

On a motion made by Committee Chair Ley, seconded by Vice Chair Rauckhorst, and unanimously carried, the Board approved, as recommended by the Administrative and Audit Committee, the summary and draft

SPECIFIED EMPLOYEES' CONTRIBUTION PERCENTAGE DURING WORKERS COMPENSATION APPLIES TO CLASS H MEMBERS; IMPLEMENTS SECTION 1 OF ACT 17 REGARDING THE DETERMINATION OF FINALIZED PENSION BENEFITS AND INTEREST RATES APPLICABLE WHEN FINALIZATION TAKES MORE THAN 6 MONTHS AFTER RETIREMENT

REQUEST TO DELEGATE AUTHORITY TO EXECUTIVE DIRECTOR TO SELECT THE ACTUARY IN FY 2021 PURSUANT TO THE REQUEST FOR PROPOSAL FOR ACTUARIAL SERVICES

REPORTS BY COMPENSATION REVIEW, GOVERNANCE POLICY, INVESTMENT AND KAA NAPALI AD HOC, AND LEGISLATIVE COMMITTEES

amendments for Chapters 6-20, 6-21, 6-22, 6-23, 6-26, and 6-29 as presented, and to include any minor corrections from Trustee Machida and approval to proceed with the rule-making process.

Committee Chair Ley discussed with the Board the delegation request noting that the current actuary contract would be expiring July 1, 2021. Due to the urgency, the Committee considered the delegation request at its meeting on April 1, 2021 and agreed to forward the request to the Board for consideration with a recommendation of approval. The Committee did request that a Board member be included as part of the selection team.

On a motion made by Committee Chair Ley, seconded by Trustee Chan, and unanimously carried, the Board accepted the recommendation of the Administrative and Audit Committee and approved the request to delegate authority to the Executive Director to select the actuary in FY 2021 based on recommendations of the request for proposal evaluation team to include a Board member as part of that evaluation team.

DAG Torigoe suggested that the selection of the Trustee be done subject to the procurement rules and laws.

Compensation Review Committee Chair Rauckhorst discussed with the Board that at the last Compensation Review Committee meeting, the Committee Charter was revised and Timeline has been updated. The Committee will have more meetings up until July.

Governance Policy Committee Chair Kane did not have any report.

Legislative Committee Chair Chan gave a brief update and PS Curry gave a detailed update of the legislative bills as referenced by e-mail sent to the Trustees on April 9, 2021. (e-mail is attached for reference).

The Board is concerned with the overtime/pension spiking and requested last year's report that ERS provided employer's regarding such. The Board is suggesting submittal of a Legislative bill addressing pension spiking for the next Legislative session. It is also a possibility that the Board could publicize and present an informational session to the Legislature and other stakeholders on the subject matter.

(Chair Kane was disconnected from the teleconference, however, reconnected via telephone at 10:20 a.m. Chair Kane notified ED Williams by telephone that he is monitoring the meeting, however, unable to speak and will send a text message if necessary. Vice Chair Rauckhorst presided over the meeting).

Investment and Kaanapali Ad Hoc Committee (Committee) Chair Barfield reported to the Board on the last Committee meeting of March 22, 2021. Presentations included reviews of diversified strategies, FRM, and

REPORTS BY
COMPENSATION REVIEW,
GOVERNANCE POLICY,
INVESTMENT AND
KAANAPALI AD HOC, AND
LEGISLATIVE
COMMITTEES (CONT'D)

ENTER EXECUTIVE
SESSION

REPORTS BY
COMPENSATION REVIEW,
GOVERNANCE POLICY,
INVESTMENT AND
KAANAPALI AD HOC, AND
LEGISLATIVE
COMMITTEES (CONT'D)

EXECUTIVE SESSION
(CONT'D)

EXECUTIVE SESSION,
PURSUANT TO HRS § 92-5(A)(4)
AND (8), TO CONSULT WITH
THE BOARD'S ATTORNEY ON
QUESTIONS AND ISSUES
PERTAINING TO THE BOARD'S
POWERS, DUTIES, AND
PRIVILEGES, IMMUNITIES,
AND LIABILITIES WITH
RESPECT TO A REQUEST TO
FORGIVE OVERPAYMENTS
PURSUANT TO HRS § 88-106;
AND TO DELIBERATE OR
MAKE A DECISION UPON A
MATTER THAT REQUIRES THE
CONSIDERATION OF
INFORMATION THAT MUST BE
KEPT CONFIDENTIAL
PURSUANT TO HRS § 92F-13(1)

platform managers role. Also discussed the investment process that CIO Burton shared with the Board a few months ago and reviewed the standard investment office activities including the 2020 ESG report.

Committee Chair Barfield requested the Board enter into Executive Session due to real estate transactions that include confidential matters, and potential changes in the investment monitoring process that are also confidential.

On a motion made by Trustee Machida, seconded by Trustee Yap, and unanimously carried, the Board entered into Executive Session at 10:25 a.m.

(Public participation concluded by ending the teleconference link.)

- Pursuant to HRS § 92-5(a)(4) and (8), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, and privileges, immunities, and liabilities with respect to a request to forgive overpayments pursuant to HRS § 88-106; and to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to HRS § 92F-13(1) and (4), § 92F-14(b)(6), and Hawaii State Constitution, Article 1, Section 6.
- Pursuant to HRS § 92-5(a)(4) and (8), to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, and privileges, immunities, and liabilities with respect to a compromise and settlement pursuant request to forgive overpayments pursuant to HRS § 88-106.5; and to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to HRS § 92F-13(1) and (4), § 92F-14(b)(6), and Hawaii State Constitution, Article 1, Section 6.

(Before this agenda item, Chair Kane notified ERS staff by telephone that he will recuse himself, for personal reasons, from the next agenda item. Investment Office staff members were excused from the meeting. Retirement Benefits Branch staff entered the meeting.)

AND (4), § 92F-14(B)(6), AND
HAWAII STATE
CONSTITUTION, ARTICLE 1,
SECTION 6

(Chair Kane re-entered the meeting by telephone.)

EXECUTIVE SESSION,
PURSUANT TO HRS § 92-5(A)(4)
AND (8), TO CONSULT WITH
THE BOARD'S ATTORNEY ON
QUESTIONS AND ISSUES
PERTAINING TO THE BOARD'S
POWERS, DUTIES, AND
PRIVILEGES, IMMUNITIES,
AND LIABILITIES WITH
RESPECT TO A REQUEST TO A
COMPROMISE AND
SETTLEMENT PURSUANT TO
HRS § 88-106.5; AND TO
DELIBERATE OR MAKE A
DECISION UPON A MATTER
THAT REQUIRES THE
CONSIDERATION OF
INFORMATION THAT MUST BE
KEPT CONFIDENTIAL
PURSUANT TO HRS § 92F-13(1)
AND (4), § 92F-14(B)(6), AND
HAWAII STATE
CONSTITUTION, ARTICLE 1,
SECTION 6

APPROVAL OF
EXECUTIVE SESSION
MINUTES
– DECEMBER 14, 2020

EXIT EXECUTIVE SESSION

On a motion made by Trustee Barfield, seconded by Trustee Machida, and unanimously carried, the Board exited Executive Session at 10:59 a.m.

APPROVAL OF MINUTES
– DECEMBER 14, 2020

On a motion made by Trustee Machida, seconded by Trustee Yap, and unanimously carried, the Board approved the Minutes of December 14, 2020, as presented.

ADJOURNMENT

On a motion made by Trustee Barfield, seconded by Trustee Machida, and unanimously carried, Vice Chair Rauckhorst adjourned the meeting at 11:00 a.m.

REDACTED SIGNATURE

Thomas Williams
Executive Director

TW:dkik

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HAR Amendment Summary
Admin & Audit Committee (04-01-2021)

SUMMARY OF PROPOSED AMENDMENTS TO HAR CHAPTER 6-20, 6-21, 6-22, 6-23, 6-26 AND 6-29

INTRODUCTION

The Employees' Retirement System of the State of Hawaii (ERS) provides the following summary of the proposed amendments to chapters 6-20, 6-21, 6-22, 6-23, 6-26 and 6-29 of the Hawaii Administrative Rules (HAR).

EXECUTIVE SUMMARY OF PROPOSED AMENDMENTS

The ERS has not made a major amendment to its rules since 2009. A new section (6-40) was added in 2020 to implement Hawaii Domestic Relations Orders under Sec. 88-93.5, Hawaii Revised Statutes (HRS). The purposes of the proposed amendments are to: (a) update the ERS rules with respect to current statutory law and decisions of the ERS board of trustees (ERS Board); (b) clarify the ERS rules on declaratory rulings and contested case proceedings; (c) conform the ERS rules to current ERS practices and procedures; (d) update and make consistent the definitions and terminology used in the ERS rules; and (e) make other clarifications and housekeeping changes. Some of the proposed amendments are to implement Act 17, 2017 Session Laws of Hawaii (Act 17).

HAR Chapter 6-20. This chapter contains the ERS rules for general definitions, public records and information, adoption, amendment, or repeal of ERS rules, and ERS declaratory rulings. The proposed amendments: update and clarify some of the general definitions used in the ERS rules; correct a statutory reference in the rule establishing ERS copying charges; increases the time that the ERS Board has to consider petitions seeking a change in the ERS rules; and makes some clarifying changes to the rules regarding ERS declaratory ruling proceedings.

HAR Chapter 6-21. This chapter contains the ERS rules for the determination of service credit, the conversion of unused sick leave credit for retirement benefits, and the exclusion of certain types of appointments. The proposed amendments will address payment fractional months of employment service credit; service credit for teachers on modified school schedules; to confirm that the conversion of sick leave credit would only apply to members who retire or terminate in good standing as reported by the employing agency; and corrects typographical errors in this chapter.

HAR Chapter 6-22. This chapter contains the ERS rules for certifications and findings of the ERS medical board regarding disability retirement and accidental death benefits applications. The proposed amendments implement sections 3-10 of Act 17 which allow the ERS to use a designated entity as an alternative to the ERS medical board. The proposed amendments also update the definitions and provisions used in disability retirement and accidental death benefits applications and proceedings to current decisions of the ERS Board and current ERS practices and procedures.

HAR Chapter 6-23, Subchapter 1. This chapter contains the ERS rules for contested case hearings on applications for disability retirement and accidental death benefits. The proposed amendments implement sections 3-10 of Act 17 which allow the ERS to use a designated entity as an alternative to the ERS medical board and provides for applications for disability retirement and accidental death benefits to be handled by the ERS system (executive director) instead of the ERS Board. The proposed amendments make the definitions used in this subchapter consistent with the definitions in HAR chapters 6-20 and 6-22. The proposed amendments update the rules to current ERS practices

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HAR Amendment Summary
Admin & Audit Committee (04-01-2021)

and procedures – which provide for contested case hearings to be conducted by a hearing officer and exceptions to the hearing officer’s recommended decisions to be heard by the ERS Board.

HAR Chapter 6-23, Subchapter 2. This chapter contains the ERS rules for petitions for contested case hearings not covered by HAR Chapter 6-20 (declaratory rulings) or HAR Chapter 6-23, Subchapter 1 (disability retirement and accidental death benefits). The proposed amendments update the rules to current ERS practices and procedures which provide for contested case hearings to be conducted by a hearing officer and exceptions to the hearing officer’s recommended decisions to be heard by the ERS Board. The proposed amendments also make other clarifying and housekeeping changes to the rules.

HAR Chapter 6-26, Subchapter 2. This chapter contains the ERS requirements for applications for retirement benefits, proof of age, and rules for the computation of age. The proposed amendments for Subchapter 2 address the acceptance of copies of original documents for proof of birth and revises the types of acceptable evidence of a member’s or beneficiary’s date of birth.

HAR Chapter 6-29. This chapter contains ERS rules for miscellaneous administrative provisions. The proposed amendments update these rules to conform to current ERS practices and procedures. There is a new rule that implements section 1 of Act 17 regarding the finalization of ERS retirant’s pension benefits and the interest rate to be applied for a finalization that takes place more than six calendar months after the month of the retirant’s retirement.

EXPLANATION OF PROPOSED AMENDMENTS

1. PROPOSED AMENDMENTS TO RULES

A. Chapter 6-20

Section 6-20-1 Definitions.

The definition of “Administrator” is replaced with a definition for “Executive Director” which means the “executive director of the system or, in the executive director’s absence, the deputy executive director of the system or other officer appointed by the board of trustees to act as the executive director of the system.” The purpose of this amendment is to implement Act 23, 2013 Session Laws of Hawaii, which amended HRS § 88-29 to replace the term “administrator” with “executive director” as denoting the senior ERS staff member that the ERS Board appoints.

The definition of “Alternate Payee” is added for the purpose of implementing Act 263. SLH 2016 and its amending Act 30, SLH 2018 for the distribution of property in a divorce action. The alternate payee (spouse or former spouse of a member, former member or retirant) is recognized as having the right to receive all or a portion of the benefits payable by the system by a Hawaii Domestic Relations Order under Section 88-93.5.

The definition of “Hearing officer” is amended by deleting the words “and authorized” which is unnecessary and adding that a hearing officer may be appointed by the system (i.e., ERS executive director). Stating that ERS hearing officers are “appointed” is sufficient and having the ERS executive director contract with and appoint hearing officers has been the ERS’s practice and procedure for some time.

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HAR Amendment Summary
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The definition of “Petition” is amended to delete unnecessary and excess language. No substantive change results from this amendment.

The definition of “Presiding officer” is amended to add that a hearing officer may be appointed by the system (i.e., ERS executive director) as well as the ERS Board. As noted above, this is consistent with what has been ERS’s practice and procedure for some time. The other amendments to this definition are non-substantive language changes.

Section 6-20-4. Disclosure of information. This section is amended to allow the ERS to release information to an alternate payee under section 88-93.5, HRS, with a certified copy of a complaint or decree for divorce, information relevant to the alternate payee’s interest in the ERS member’s, former member’s with vested benefit status, or retirant’s benefits.

Section 6-20-4.01 Cost of copies for government records and rules. Subsection (a) is amended to replace “section 92F-19” with “chapter 92F, HRS.” When this rule was changed in 2009, the wrong statutory reference for public records requests was used. Public records requests are made under HRS chapter 92F, not HRS §92F-19. The purpose of this amendment is to provide the proper statutory reference for public records request in this rule.

Section 6-20-7 Consideration of petition. This section is amended to lengthen the time that the ERS Board has to consider petitions to adopt, amend, or repeal an ERS rule from “thirty” to “sixty” days. The ERS Board usually only meets once a month. Thirty days or less is not a sufficient amount of time for the ERS Board to review a petition proposing a change in one or more ERS rules, receive staff and counsel analysis of the proposed rule change, and decide whether or not to accept or reject the petition for a rule change. The purpose of this amendment is to give the ERS Board enough time to fully consider, rationally analyze, and make a reasoned decision on petitions for proposed rule changes.

Section 6-20-9 Form and content of petition.

Subsection (6) of this rule is amended to add the word “proposed” - since what is desired in a petition for a declaratory ruling to the ERS Board is the petitioner’s “proposed interpretation of the statute, rule, or order”

Subsection (7) of this rule is amended to delete that “[t]he board may require the petitioner to file additional data or memoranda.” This section has to do with the required contents of a petition for a declaratory ruling. The deleted language does not pertain to the form of a petition for declaratory ruling. The deleted language is also unnecessary as the ERS Board may always ask for additional data or memoranda in the course of a declaratory ruling proceeding.

Section 6-20-10 Consideration of petition. This section is amended to state in a more logical order what the ERS Board’s options are upon receipt of a petition for declaratory ruling, i.e., deny the petition without a hearing, grant the petition without a hearing, or set the petition for a hearing before the board or a designated hearing officer. The amendments are for form and readability not substantive.

Section 6-20-14 Notice of hearing. Subsection (c) of this rule is amended to state in a clearer fashion that the notice of hearing shall inform a party of the right to retain and be represented by legal counsel, and that the ERS Board or designated hearing officer may require any person purporting to

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represent a party to show authority or qualifications to act in that capacity. The amendments are for form and readability not substantive.

Section 6-20-16 Conduct of hearing. Subsection (c) of this rule is amended to update the reference to the “administrator” with the “executive director.” See HRS § 88-29. It is also amended to clarify that the presiding officer shall summarize “what is stated and requested in” the petitioner’s petition as opposed to summarizing “the statement of” the petition. The other changes to this section are non-substantive language changes.

Section 6-20-17 Parties; service. This section is amended to update references to the “administrator” with the “executive director.” See HRS § 88-29.

Section 6-20-18 Advisory memorandum. This section is amended to replace references to the “administrator” with the “executive director.” See HRS § 88-29. It is also amended to clarify that memoranda of the executive director’s and other parties’ positions may be filed with a hearing officer (where the hearing is before a hearing officer and not the ERS board of trustees).

Section 6-20-19 Request for additional facts or supplemental memorandum; documents. This section is amended to show that a hearing officer (like the ERS Board) may request a petitioner or other party to submit a statement of additional facts or a legal memorandum, and that a hearing officer may strike or require amendments of documents filed in a proceeding. The section is also amended to replace references to “administrator” with “executive director.” See HRS § 88-29.

Section 6-20-20. Argument. This section is amended to note that a hearing officer (like the ERS Board) has the discretion to set a matter for hearing. A non-substantive language change is also proposed for this section.

Section 6-20-21 Proposed findings of fact and conclusions of law. This section is amended to note that a hearing officer (like the ERS Board) has the discretion to order the filing of proposed findings of fact and conclusions of law.

Section 6-20-22 Disposition of petition. This section is amended to replace references to “administrator” with “executive director,” and to make some non-substantive language changes for clarity. See HRS § 88-29.

Section 6-20-23.01 Withdrawal of petition. This section is amended to replace a reference to the “administrator” with the “executive director.” See HRS § 88-29.

B. Chapter 6-21

Section 6-21-4 Fractional month of employment. This section is amended to include that the employee must be paid for the days worked in the fractional month to be credited for a full month of employment.

Section 6-21-6 Teachers. This section is amended to delete the specific dates of “September 1 to August 31” which defined a traditional school year prior to the revision of school calendars and teacher’s annual earnings as determined by the Department of Education. In addition, this section is amended to differentiate traditional school year schedules from modified school year schedules for the purpose of determining credited service and the crediting of fractional months of employment.

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HAR Amendment Summary
Admin & Audit Committee (04-01-2021)

Section 6-21-10(c) Limitations. This subsection is amended to emphasize that, in order for the member's unused sick leave to be considered for additional service credit after retirement, the member's employing agency must certify that the member's termination was in good standing. The nature of termination is the employer's determination and is not the ERS's discretion.

Section 6-21-14(5) Employees excluded from membership. This subsection is amended to correct a typographical error, replacing the word "or" with "of."

C. Chapter 6-22

Title and Table of Contents.

The title of the chapter and the table of contents are modified to reflect that under Act 17, the ERS Board may use a designate entity as an alternative to the ERS medical board.

Section 6-22-1 Scope. This section is amended to state that HRS Chapter 6-22 shall govern certifications and findings of "a designated entity" as well as the ERS medical board. The purpose of this amendment is to implement sections 2-10 of Act 17, which provide, in part, that the ERS Board may use "a designated entity" as well as the ERS medical board to review disability retirement and accidental death applications.

Section 6-22-2 Definitions.

One of the proposed amendments to this section is a new definition of "Designated entity." This is added to implement sections 3-10 of Act 17 which, in part, permit the ERS to use an entity designated by the ERS Board as an alternative to the ERS medical board to provide requires certifications . The definition defines a "designated entity" to mean "an entity designated by the system to review applications for disability retirement and accidental death benefits and to provide findings and certifications to the system regarding those applications in accordance with sections 88-75, 88-79, 88-85.5, 88-284, 88-285, 88-286, 88-335, 88-336, or 88-339, HRS."

The definition of "Occupational hazard" is amended to make the definition consistent with applicable Hawaii appellate court decisions. Under those decisions, an occupational hazard is a danger or risk which is inherent in, and concomitant to, a particular occupation, and "the causative factors must be those which are not ordinarily incident to employment in general and must be different in character from those found in the general run of occupations." See *Lopez v. Board of Trustees, ERS*, 66 Haw. 127, 129 (1983). The decisions do not state that an occupational hazard is a danger or risk inherent in, or concomitant to, a "particular job" – so that language is deleted.

Section 6-22-3 Examination of a member. In order to implement sections 3-10 of Act 17, this section is amended to provide that the ERS executive director may have a "designated entity" investigate, review, and evaluate medical reports and other materials submitted to the ERS regarding applications for disability retirement or accidental death benefits, and may subject a member to a physical examination in arriving at its certifications and findings. As noted previously, Act 17 provides that the ERS may use a designated entity as an alternative to the ERS medical board to review applications for disability retirement and accidental death benefits.

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Section 6-22-4 Engagement of other specialists. In order to implement sections 3-10 of Act 17, this section is amended to provide that, in addition to the ERS medical board, a “designated entity” may engage physicians and other specialists to examine a member or review records.

Section 6-22-5 Workers’ compensation and Social Security Administration reports and findings. In order to implement sections 3-10 of Act 17, this section is amended to provide that a “designated entity” may consider but is not bound by determinations of the disability compensation division of the department of labor and industrial relations, the labor and industrial relations appeals board, and the Social Security Administration relating to an applicant’s claimed disability or death benefit.

Section 6-22-6 Position description of member. In order to implement sections 3-10 of Act 17, this section is amended to provide that, in addition to the ERS medical board, a “designated entity” may consider probative and credible evidence of a member’s actual job duties in its review of the member’s application for disability retirement.

Section 6-22-8 Certifications and findings. In order to implement sections 3-10 of Act 17, this section is amended to provide that a “designated entity,” as well as the ERS medical board, can provide the system with certifications and findings regarding a member’s application of ordinary or service-connected disability retirement. The section is also amended to clarify that for ordinary and service-connected disability retirement, the member’s incapacity and the permanence of that incapacity must be found at the time of the member’s application. In past contested case proceedings, there has been some confusion as to whether the ERS disability retirement statutes require a member to show that the member’s incapacity was likely to be permanent at the time of the member’s application. The clarification made by this amendment is in line with the ERS Board’s decisions on the matter.

Section 6-22-9 Appearance as a witness. In order to implement sections 3-10 of Act 17, this section is amended to provide that representatives of a “designated entity” may serve as witnesses at any hearing of an appeal from the designated entity’s certifications and findings. It is also clarified that more than one representative of a designated entity and more than one member of the ERS medical board may appear as witnesses in a hearing. In the past, the language of this section raised a question as to whether more than one member of the ERS medical board could testify at a hearing. There have been occasions whether more than one member of the ERS medical board has been required to testify due to the differing expertise of such members, e.g., where an applicant claims disability from both medical and psychiatric causes.

Section 6-22-10 Additional medical reports. In order to implement sections 3-10 of Act 17, this section is amended to provide that a “designated entity, “ as well as the ERS medical board, may consider additional medical reports offered by an applicant after it has submitted its certifications and findings to the system, with the prior approval of the ERS executive director.

D. Chapter 6-23, Subchapter 1

Section 6-23-1 Scope. In order to implement sections 3-10 of Act 17, this section is amended to provide that this subchapter governs all petitions for contested case hearings filed with the “system” disputing preliminary decisions by the “system” regarding applications for disability retirement or accidental death benefits pursuant to certifications and findings of the medical board “ or a designated entity.” Some of the changes made by Act 17 were to provide for disability retirement and accidental

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death benefits to be granted by the “system” instead of the ERS Board, and to provide for the ERS to use a “designated entity” as an alternative to the ERS medical board.

Section 6-23-2 Definitions. This section is amended to note that definitions applicable to this subchapter are provided in HAR §§ 6-20-1 and 6-22-2, and to delete definitions that are repetitive of those already provided in HAR §§ 6-20-1 and 6-22-2. Another amendment modifies the definition of “causation” to state that it applies to accidental death as well as disability retirement, and to clarify the wording of that definition.

Section 6-23-3 Preliminary decision by system; notice of preliminary decision; petition for contested case hearing. In order to implement sections 3-10 of Act 17, this section is amended by adding “or designated entity” to all references to the “medical board” and replacing all references to the “board” with the “system” or the “executive director on behalf of the system.” Thus, the section is amended to provide that upon receipt of the medical board’s “or a designated entity’s” certifications and findings, the “executive director on behalf of the system” shall make a preliminary decision as to whether to accept the medical board’s “or designated entity’s” certifications and findings or remand the same to the medical board “or designated entity” for any clarification or correction, or reject the medical board’s “or designated entity’s” certifications and findings. Further, the section is amended so that the “executive director” notifies the applicant of the “system’s” preliminary decision, and of the applicant’s right to file a petition for a contested case hearing disputing the “system’s” preliminary decision.

Section 6-23-4 Filing of petition for contested case hearing. In order to implement Act 17, this section is amended to replace all references to the board with the “system” and adds “or the designated entity” to the section’s reference to the medical board. In accordance with HRS § 88-29, it replaces the reference to administrator with “executive director.” Thus, the section provides that after receipt of the “system’s” preliminary decision regarding the medical board’s “or the designated entity’s” certifications and findings, the applicant may file a petition for a contested case hearing. The section is also amended to shorten the time for the applicant to file such a petition from sixty to thirty days following receipt of written notification of the system’s preliminary decision. Given the simple nature of filing a petition under the ERS rules and the need to expeditiously handle these matters, the ERS Board and staff believe that shortening the time for the filing of a petition is warranted.

Section 6-23-5 Contents of petition. This section is amended to replace references to “employee organization” and “organization” with “a person or other entity” because petitions for contested case hearing by applicants seeking disability retirement or accidental death benefits are often filed on behalf of applicants by person or entities other than employee organizations, e.g., personal lawyers, relatives, or friends. Such persons or other entities should also be required to submit proof that they have the right to represent the member or applicant.

Section 6-23-6 Contested case hearing. This section is amended to clarify that contested case hearings under this subchapter are held before a hearing officer not the ERS Board. In accordance with current ERS practices and procedures, the “system” not the ERS Board contracts with and appoints ERS hearing officers.

Section 6-23-7 Time and place of hearing and notice. This section is amended to clarify that contested case hearings under this subchapter are held before a hearing officer not the ERS Board, so it

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is the hearing officer not the “board” that sets the time and place of the hearing and gives the required notice.

Section 6-23-8 Docket. This section is amended to replace the reference to “administrator” with the “system.” See HRS § 88-29. In addition, sections 3-10 of Act 17 provide for the “system” to grant or deny disability retirement and accidental death benefits. Thus, it should be the “system” that maintains the docket of petitions disputing denials of such benefits.

Section 6-23-9 Computation of time; extension of time. This section is amended to clarify that time periods may be set by orders of the “system or a presiding officer,” as well as the ERS Board, and that extensions of such time periods may be extended by the “presiding officer or the executive director on behalf of the system or board.”

Section 6-23-10 Documents. In order to implement sections 3-10 of Act 17, this section is amended to provide that documents filed in petitions under this subchapter are to be filed with the “system” and in substantial conformity with the applicable rules of the “system.”

Section 6-23-11 Depositions. This section is amended to delete references to the “board” as under ERS practices and procedures, applications for depositions under this subchapter are made to and approved by an ERS hearing officer not the ERS Board.

Section 6-23-12 Depositions; person before whom taken, oath, examination, and cross examination, record of examination, filing of deposition. This section is amended to require that depositions be forwarded for filing with the “system” instead of the “board” at the system’s office. This is in accord with ERS practices and procedures.

Section 6-23-13 Use of depositions. This section is amended to replace the reference to “presiding officer” with “hearing officer.” Since contested case hearings are not held before the ERS Board, the use of deposition testimony in such proceedings will only be considered by an ERS hearing officer - not a “presiding officer” which under HAR § 6-20-1 includes the chairperson or other designated member of the ERS Board.

Section 6-23-14 Jurisdiction; Presiding officer; powers and duties. Under ERS practices and procedures, contested case hearings under this subchapter are heard only before an ERS hearing officer, and exceptions to the ERS hearing officer’s recommended decision are heard by the ERS Board. Thus, this section is amended to provide that a “hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter” and that “the chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-20.” The section is also amended to specify the powers and duties of the presiding officer regarding exceptions hearings before the ERS Board. The section is also amended to make it clear that the substantive provisions of HAR §§ 6-22-5, 6-22-6, and 6-22-7 apply to contested case hearings and exceptions hearings under this subchapter.

Section 6-23-14.01 Default. This new section provides that a presiding officer may find a party to be in default for: “(1) failure to comply with an administrative order; (2) failure to appear at a pre-hearing conference or hearing without good cause being shown; or “failure to prosecute the case.” The new section also provides that the presiding officer may issue a default order that constitutes a recommended decision if issued by a hearing officer or a proposed decision if issued by the chairperson

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or other designated member of the ERS Board. There have been many occasions where petitioners have failed to appear for pre-hearing conferences with ERS hearing officers or failed to prosecute their case, e.g., failed to return calls from the hearing officer or failed to appear at status conferences. This new provision is meant to clarify that ERS hearing officers may enter a default order that will terminate the contested case hearing. Such a remedy is necessary to avoid undue and costly delays in the processing of petitions covered by this subchapter.

Section 6-23-14.02 Motions to dismiss or for summary judgement. This new section provides that a presiding officer issue an order for summary judgment as to claims in contested case proceedings under this subchapter if there is no genuine issue of material fact and a party is entitled to judgment as a matter of law, and that a presiding officer may issue an order of dismissal for lack of jurisdiction, failure to state a claim or other ground upon which a petition under this subchapter may be dismissed. Such orders shall constitute recommended decisions if issued by a hearing officer or shall constitute proposed decisions if issued by the chairperson or other designated member of the ERS Board. The purpose of this new rule is to avoid the time and cost of contested case hearings or exceptions hearings where there are one or more dispositive issues as to the whole case or significant parts of the case.

Section 6-23-15 Reassignment of petition. This section is amended to provide that the “system” rather than the “board” will reassign contested case hearings where a hearing officer is unable to complete a hearing. This change recognizes that the “system” as opposed to the “board” is the entity that is handling disability retirement and accidental death benefits under sections 3-10 of Act 17.

Section 6-23-16 Conduct of contested case hearing. The proposed amendments to this section recognize two things. First, that under ERS practices and procedures, it is an ERS “hearing officer” that convenes and conducts contested case hearings. The chair or other designated member of the ERS Board, who are included in the definition of “presiding officer,” do not handle contested case hearings. Second, that under sections 3-10 of Act 17, a “designated entity” may appear as the respondent in the contested case hearings as well as the ERS medical board.

Section 6-23-17 Recommended decision. This section is amended to clarify that recommended decisions by a hearing officer are filed with the “system” not the “board.” As noted above, sections 3-10 of Act 17 provide for the system not the board to handle disability retirement and accidental death benefits applications and proceedings.

Section 6-23-18 Proposed decision. This section is amended to provide that “the executive director on behalf of the system” not the “board” may accept recommended decisions and issue the “system’s” proposed decision. As noted above, sections 3-10 of Act 17 provide for the system not the board to handle disability retirement and accidental death benefits applications and proceedings.

Section 6-23-19 Filing of exceptions; extension of time; finality of proposed decision. This section is amended to provide that within fifteen days of the “system’s” proposed decision, any party may file exceptions with the “system.” It is also amended to provide that upon good cause shown, the “executive director on behalf of the system” may extend the time for filing exceptions. As noted above, sections 3-10 of Act 17 provide for the system not the board to handle disability retirement and accidental death benefits applications and proceedings. The amendments also delete language that allowed the ERS Board to order further proceedings even in the absence of exceptions. The ERS Board has never ordered further proceedings in the absence of exceptions. In addition, this language has been

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argued to create an ambiguity as to when an ERS proposed decision becomes final. Thus, the ERS believes that this language should be deleted.

Section 6-23-20 Argument on exceptions. This section is amended so that the “system” as opposed to the “board” grants an opportunity to present arguments to the ERS Board and replaces a reference to the “administrator” with the “executive director.” Under ERS practices and procedures, oral argument on exceptions is customarily granted by the executive director and ERS staff set the time and date for hearing such arguments.

Section 6-23-21 Final decision. This section is amended to delete a provision regarding when the “board has heard and examined all the evidence” As noted previously, under current ERS practices and procedures, only an ERS hearing officer hears evidence in contested case proceedings under this subchapter. Thus, this provision is inaccurate and should be deleted.

Section 6-23-21.01 Attorneys’ fees upon successful petition. This section is amended to provide for a successful petitioner to move the “system” and not the “board “ for reimbursement of the petitioner’s attorneys’ fees and costs. This change is commensurate with the greater authority granted the system regarding disability retirement and accidental death benefits under sections 3-10 of Act 17.

E. Chapter 6-23, Subchapter 2

Section 6-23-23 Definitions. This section is amended to delete the repetitive definition of “Petition” already set out in HAR § 6-20-1, to clarify the definition of “Respondent” to mean persons proceeded against in a petition “under this subchapter,” and to clarify that an “information decision” and “petition” must relate to an alleged misapplication of provisions chapter 88, HRS (or rules promulgated thereunder) setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement.”

Section 6-23-24 Commencement of proceedings; service. This section is amended to clarify that petitions under this subchapter are filed “at the system’s main office in Honolulu” as opposed to any of the other offices of the system, e.g., the ERS offices on Hawaii, Maui, or Kauai. The purpose of this amendment is to avoid confusion as to where petitions under this subchapter are to be filed.

Section 6-23-26 Computation of time; extension of time. This section is amended to reflect that an order setting a period of time for something to be done or extending such a period of time, may be done by a “hearing officer” as well as the “board.” Contested case hearings under this subchapter are handled by ERS hearing officers. This amendment is needed because in these contested case hearings, the hearing officer is the one who sets deadlines and decides whether such deadlines may be extended.

Section 6-23-28 Contents of the petition; form; rejection. This section is amended to provide that petitions shall be filed with the “system” and not the “board,” that the “executive director on behalf of the system” may reject petitions that don’t comply with the requirements of this section, and that petitions that are not rejected “will be assigned by the system to a hearing officer.” These provisions are in line with current ERS practices and procedure. This section is also amended to delete a provision that the “board may require the petitioner to file additional statements.” The ERS Board has never invoked this provision and it has little to do with the form of petitions.

Section 6-23-29 Consideration of petition. This section is amended to provide that a “hearing officer” not a “presiding officer” will deny or set the petition for a hearing. Under ERS practices and

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procedure, ERS hearing officers initially consider petitions under this subchapter and make recommended decisions to the ERS Board. The ERS Board does not make initial reviews of petitions under this subchapter. This section is also amended to clarify that denial of a petition is proper where there is no alleged misapplication of provisions chapter 88, HRS (or rules promulgated thereunder) setting forth an alleged entitlement to a benefit, service credit, or other alleged entitlement.

Section 6-23-30 Jurisdiction; powers and duties of presiding officer. This section is amended to accord with ERS practices and procedure which are that a “hearing officer appointed by the system shall preside over contested case hearings governed by this subchapter” and “the chairperson of the board or other member of the board designated by the chairperson shall preside over hearings of arguments on exceptions under section 6-23-51.” This section is also amended to set out the powers and duties of the presiding officer over exceptions hearings.

Section 6-23-32 Prehearing conference. This section is amended to replace the references to “presiding officer” with “hearing officer” as under current ERS practices and procedures, it is a hearing officer not a presiding officer (which includes the chairperson or other designated member of the ERS Board) who handles prehearing conferences for petitions under this subchapter.

Section 6-23-33 Notice of hearing. This section is amended to delete language regarding the power of the ERS Board to require any person acting in a representative capacity to show his or her authority to act in such capacity. This language is being deleted not to take away this power, but because it has nothing to do with the required content of a notice of hearing.

Section 6-23-35 Procedures at hearing. This section is amended to replace the references to “presiding officer” with “hearing officer” as under current ERS practices and procedures, it is a hearing officer not a presiding officer who handles hearings under this subchapter.

Section 6-23-36 Evidence; witnesses; exhibits. This section is amended to replace the references to “presiding officer” with “hearing officer” as under current ERS practices and procedures, it is a hearing officer not presiding officer who admits evidence in hearings under this subchapter. This section is also amended to do away with the requirement that eight copies of exhibits be provided. The ERS believes that the number of exhibits to be submitted by a party should be left up to the hearing officer involved. (The original requirement of eight copies is a holdover from when these types of hearings were heard before the ERS Board which has eight members.)

Section 6-23-37 Motions. This section is amended to provide that responses to motions shall be filed with the “presiding officer” instead of the “board or the hearings officer.” This is more commensurate with the rest of this section which provides that the “presiding officer” may deem when a party has waived objection to a motion, may extend or shorten the time for filing a response to a motion, and make other orders regarding a motion.

Section 6-23-38 Motions to dismiss or for summary judgment; disposition of claims. This section authorizes presiding officers to issue orders to dismiss or for summary judgment. As such, it should read that an order to dismiss is a “proposed decision if issued by the chairperson or other designated member of the board” not a “final decision if issued by the board.” The chairperson or other designated member of the board is the “presiding officer” under HAR 6-20-1, not the “board.”

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Section 6-23-39 Intervention. Since under current ERS practices and procedures, contested case hearings under this subchapter are handled by hearing officers not presiding officers, permission to intervene in such hearings should be handled by the “hearing officer” not “presiding officer.” This section is also modified to replace references to the “administrator” with the “executive director.” See HRS § 88-29.

Section 6-23-40 Default. This section is amended in two ways. First, it provides that “[t]erms and conditions of a default order can include dismissal of the petition.” While this may be implicit, it is inserted here for clarity. Second, it provides that the default order shall constitute a proposed decision if filed by the “chairperson or other designated member of the board” (i.e., by a presiding officer). Under this section, it is the presiding officer that issues a default order not the “board.”

Section 6-23-41 Filing of documents. In accordance with current ERS practices and procedures, this section is amended to provide for documents to be filed with the “system” not the “board.” Similarly, when a person believes that some document filed is not a government record open to inspection under HRS Chapter 92F, a motion by that person should be filed with the “system” not the “board or hearing officer.”

Section 6-23-42 Deposition; application for. This section is amended to reflect that under current ERS practices and procedures, hearing officers not the “board” approve the taking of depositions in proceedings under this subchapter.

Section 6-23-44v Use of Depositions. This section is amended to reflect that under current ERS practices and procedures, it is a “hearing officer” not a “presiding officer” that approves the use of depositions in proceedings under this subchapter.

Section 6-23-46 Reassignment of case. This section is amended to provide that the “system” rather than the “board” will reassign contested case hearings under this subchapter. This change reflects current ERS practices and procedures regarding the handling or reassignment of other contested case hearings.

Section 6-23-51 Argument on exceptions. To conform with HRS § 88-29, this section replaces the term “administrator” with “executive director.”

Section 6-23-52 Final decision. This section is amended to delete the provision regarding when the “board has heard and examined all the evidence” As noted previously, under current ERS practices and procedure, only an ERS hearing officer hears evidence in contested case proceedings under this subchapter. Thus, this provision is inaccurate and should be deleted.

F. Chapter 6-26

Section 6-26-11 Original documents of record; copies. This section is amended to allow copies to be submitted in lieu of original documents, as evidence of age and dates of birth. In addition, if copies are submitted in lieu of original documents, the system has the discretion to require that original documents be made available for inspection.

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Section 6-26-12 Types of evidence. This section is amended to include as evidence of date of birth, “Real ID” credentials. This amendment is based on the federal Real ID law requiring that original documents regarding date of birth be produced in order to obtain “Real ID” credentials.

G. Chapter 6-29

Section 6-29-1 Address change and account balance. This section is amended to include rules under which a member, retirant, beneficiary or alternate payee can obtain account balance information as well as notify the system of an address change. If a request is made by phone, the amendment requires information to verify the caller is the member, retirant, beneficiary, alternate payee or someone acting on their behalf, i.e., social security number, birth date, and address currently shown in the system.

Section 6-29-2 Mailing and distribution of semi-monthly pension checks. Under current ERS statutes and practice, nearly all pension payments are made monthly by electronic transfer. Thus, this rule is outdated, no longer needed, and should be repealed.

Section 6-29-4 Service while engaged in professional improvement leave with or without pay. This section is amended to delete certain limitations on leaves of absence that qualify for service under this rule, i.e., that leaves of absence not exceed two years and are authorized as educational or sabbatical leave. [Why?]

Section 6-29-5 Employee contributions; workers compensation. This section is being updated to note that it applies to Class H members and HRS § 88-325.

Section 6-29-6 Finalization of retirant’s pension benefit interest payment. This is a new rule to implement section 1 of Act 17 and to specify when a pension benefit may be determined “finalized.” Section 1 of Act 17 amends HRS § 88-74.5 by providing that the ERS shall finalize a retirant’s pension benefit within seven calendar months following the month of the retirant’s retirement, and by providing that finalizations after that time shall require the payment of interest at an amount to be established by the ERS board of trustees “that shall not be less than the ninety day United States treasury bill rate as of the end of the prior year plus one percent per year” This new rule contains language that applies the statutory language to ordinary and service-connected disability retirements (as well as regular service retirements), sets the method for calculating any interest payments due based on the difference between the retirant’s finalized pension amount and the actual pension paid to the retirant prior to finalization, and sets interest at “simple interest at a rate per year equal to the ninety day or three month United States treasury bill rate as of the end of the calendar year prior to the effective date of the retirant’s retirement plus one percent.”