

“National Service” as Credited Service for Public Retirement: Issues and Discussion

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FOREWORD

This study was prepared in response to House Resolution No. 315 (1992), which concerned the issues and standards related to crediting service in the Peace Corps and other forms of national service by the Employees' Retirement System (ERS) of the State of Hawaii as though this were membership service.

The Bureau expresses its appreciation to Mr. Titus Yap, to Mr. Melvin Kutara, and to the ERS and its staff, for their assistance, with special thanks to Mr. Stanley Siu, Administrator, ERS, for giving freely of this time and expertise in the preparation of the study. The Bureau also wishes to acknowledge, with thanks, the research assistance of staff at the federal documents section, Hawaii State Library; government documents section, Hamilton Library, University of Hawaii at Manoa; State Archives; Supreme Court Law Library; and the Office of the Lieutenant Governor.

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Chapter 1

INTRODUCTION

House Resolution No. 315 (1992) requests the Legislative Reference Bureau to prepare "a study that develops standards under which members of the Employees' Retirement System [of the State of Hawaii (hereinafter, "ERS" or "the System"))]:

- (1) "Who previously rendered national service";
- (2) "Are eligible to purchase membership service credit".

Scope of Study

The "standards" selected as relevant to this discussion¹ are those provisions of Chapter 88, *Hawaii Revised Statutes* ("ERS law"), pertaining to credits for membership service, federal laws relating to "national service" agencies and programs, and, to a limited extent, other state retirement system statutes relating to the crediting of comparable categories of membership service.² Information concerning other state systems is of "limited" value only because an indepth analysis--to determine that systems selected for comparison are based upon similar public policy variables³ as is the ERS (figuratively speaking, so that one is comparing apples to apples and oranges to oranges)--requires a much broader study, going well beyond the scope of House Resolution No. 315 ("the Resolution").⁴

This study focuses on ERS law crediting military service, since the military service credit is cited by the Resolution as precedent for a "national service" credit. Also, because the military and "national" service are federal matters,⁵ a portion of the study describes certain federal agencies, organizations and programs. The Legislature will need to consider Congress' policies in determining the Legislature's own policy for crediting "national service", and in creating a definition of "national service" consistent with that policy.

The study is organized into nine chapters, the first of which is this Introduction. Chapter 2 describes the categories of service credited under ERS law prior to 1989, including military service for which ERS members left their state or county jobs. Chapter 3 analyzes the terms and conditions of the military service credit enacted in 1989, particularly since that sets a new precedent by crediting service rendered before a person ever joined the System ("out-of-state service"). Chapter 4 discusses the United States Peace Corps, particularly as to those elements attributed to the Peace Corps, in the Resolution, as exemplifying "national service". Chapter 5 discusses certain agencies and programs deemed by Congress to constitute civilian "national service". Chapter 6 discusses the Reserves, National Guard, and other "military" organizations, presently credited only to a limited extent or not credited under ERS law, but whose exclusion from the military service credit needs to be re-examined by the Legislature if any "national service" credit is to be considered. Chapter 7 provides an overview of provisions from twenty-five retirement systems relating to creditable military service and other types of "out-of-state service". Chapter 8 discusses what might be done to obtain the membership estimates requested by the Resolution, some available information relating to cost implications, and some underlying policy issues. Chapter 9 contains findings and recommendations.

ENDNOTES

1. Merriam-Webster, Inc., Webster's Ninth New Collegiate Dictionary (Springfield, Mass.: 1988) (hereinafter, "Webster's"), p. 346, lists five main definitions of the verb transitive, "to develop". Definitions 1a, "to set forth or make clear by degrees or in detail: EXPOUND" and 2, "to work out the possibilities of", appeared to be, in context and consistent with the statutory purposes of the Legislative Reference Bureau (see Hawaii Rev. Stat., sec. 23G-3(2)(1985), in particular), what the Resolution seeks from this study: hence, legal research, analysis and discussion.
2. Webster's, p. 1148, defines "standard" as "something established by custom, authority or general consent as a model or example" (definition 3), and "something set up and established by authority as a rule for the measure of quantity, weight, extent, value or quality" (definition 4), drawing the distinction among the synonyms "STANDARD, CRITERION, GAUGE, YARDSTICK, TOUCHSTONE" that "STANDARD applies to any definite rule, principle or measure established by authority". Webster's first definition of "legislation" (p. 683) is "the action of legislating; specif: the exercise of the power and function of making rules (as laws) that have the force of authority by virtue of their promulgation by an official organ of a state or other organization".
3. For examples of "public policy variables" in public retirement systems, see Chapter 8, endnote 49.
4. For a caveat concerning the comparison of different systems, see Chapter 7, endnote 11. For this reason, this study did not attempt to find any "type, model or combination of elements accepted as correct or perfect". See Henry Campbell Black, Black's Law Dictionary (St. Paul, Minn.: West Publishing Co., 1990), p. 1404: a "standard" is defined as "stability, general recognition, and conformity to established practice" or "a type, model or combination of elements accepted as correct or perfect".
5. Although "national service" includes community service at state and local levels (see Chapter 5, text at endnote 138) and the National Guard has a state function (see Chapter 6, text at endnotes 14, 28 ff.).

Chapter 2

BACKGROUND: THE EMPLOYEES' RETIREMENT SYSTEM LAW, CHAPTER 88, HAWAII REVISED STATUTES

House Resolution No. 315 seeks the ramifications of expanding, to "national service", an existing retirement credit for military service. The Resolution describes that statutory precedent as follows:

WHEREAS, currently individuals who served in the military during times of war or national or state emergencies may purchase membership service credit from the Employees' Retirement System...

There are, in fact, four different sections in Chapter 88, *Hawaii Revised Statutes*, the law governing the Employees' Retirement System of the State of Hawaii ("ERS" or "the System"), that credit military service. Three of these sections credit the military service--during World War I, World War II generally, and a period beginning with the Korean Conflict, respectively--of ERS members who were required to leave their state or county employment in order to serve ("intervening military service").

The fourth such section, enacted in 1989 and codified as section 88-132.5, *Hawaii Revised Statutes* ("the military service credit"), permits an ERS member to acquire retirement credit for military service rendered at any time. Section 88-132.5, apparently intended by House Resolution No. 315 as the precedent for a "national service" credit, credits military service rendered without regard to a person's having already been a member of the System, and therefore is a departure from the patterns of creditable service and intervening military service credits existing in ERS law before 1989.

Service Credits

As a general rule, an ERS member¹ is entitled to retire--to receive an ERS pension--if he or she meets certain requirements for age and/or for length of service.² A member's length of service is also a determinative factor in computing the member's benefit upon retirement.³

Prior to 1989, all service creditable toward retirement, generally speaking, related to functions performed by state or county government. For example, "service" is defined as "service as an employee paid by the State or county".⁴ Service on behalf of a county government entity, regardless of when this occurred, was creditable. Hence, the System credits "prior service", which is:

...service rendered by a member to the State, territory or county or predecessor government prior to the establishment of the system or, as specifically provided in this part, prior to the admission of certain groups or classes of employees into the system membership.⁵

Finally, the System also credits "service during the period of a leave of absence or exchange", if certain requirements, described in that definition, are met.⁶ Other sections of the ERS law pertaining to creditable service relate to what may be deemed state or county government functions ("service" and "prior service") and address what constitute periods of creditable absences.⁷

Intervening Military Service

Until 1989, the ERS law credited service in the United States military only if the military service required a member to leave state or county employment--in a sense, take a leave of absence, since the member had to return to employment in order to be credited for that period of military service. Sections of the ERS law crediting such "intervening military service"⁸ are:

Section 88-57(4), which credits:

Periods of honorable service in the army, navy, marine corps, coast guard and public health services of the United States at any time between the dates of April 5, 1917 and July 2, 1920, which service necessitated separation at the time of its inception from existing Territorial or county government.

Section 88-51(8), which credits:

Service, not exceeding four years, in the military service of the United States during the period 1941-1949 rendered by an employee who was employed by the Territory or county prior to the employee's induction into the military and who subsequently returned to employment of the Territory or county following the employee's discharge.

Section 88-132 was enacted in 1951 as part of the "Servicemen's Act".⁹ Prior to 1987, this section stated, in pertinent part:

Every active member of the system who leaves the member's regular position or employment for the purpose of entering the military service (which term as used in this section shall include national guard, air, naval and coast guard services) of the United States 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 position or employment that the member left].

In 1987, the parenthetical phrase defining "military service" was deleted, and three restrictions were added: (1) a member's military service had to be "in time of war or declared national or state emergency" or when "called involuntarily to active duty"; (2) the credit was limited to four years; and (3) members had to "return to state or county government service within ninety days of release from active duty under honorable conditions".¹⁰

Without such restrictions, explained the Committee on Labor and Public Employment,¹¹ "[c]onceivably, a member, after brief service with the State or County, could enter the military service for the rest of that person's working career", and, at the end of that career, collect a retirement allowance paid for, over the years, by the state or county.¹² The "cap" in the original version of the bill on length of creditable military service was extended by the Committee from two years to four years, "to recognize the full term service regardless of the branch in which a person may enlist to serve this nation".¹³

However, the Veterans' Reemployment Rights Act, 38 U.S.C.A. §4301 *et seq.* (1993 Supp.),¹⁴ which requires the continuation of service credit during a member's absence on active military duty, confers possibly longer periods of leave. Under this Act, a person--who leaves civilian employment in order to perform "training and service" in the Armed Forces of the United States¹⁵ and who satisfies the Act's requirements--must be:

...so restored [to that position that he or she left to enter the military] or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time of such person's entering the Armed Forces until the time of such person's restoration to such employment, or reemployment.¹⁶

Protected absences under this federal law may exceed four years. For example, the prior civilian employment of a person who enlists in the Armed Forces of the United States and is released from duty under honorable conditions is protected if the total military service performed between June 24, 1948, and August 1, 1961, does not exceed four years, if the total military service, "additional or otherwise", performed after August 1, 1961, does not exceed five years, and:

...if service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law). (Emphasis added.)¹⁷

For persons who enter active duty, "whether or not voluntarily...in response to an order or call to active duty"¹⁸ and who are relieved from active duty under honorable conditions, the total active duty after August 1, 1961, must:

...not exceed four years (plus in each case any additional period in which such person was unable to obtain orders relieving such person from active duty).¹⁹

Hence, the Veterans' Reemployment Rights Act protects one's civilian employment during absences for military service that may last longer than the four years credited under section 88-132. Protections are not limited to military service in time of war or emergency, or to "involuntary" military service. The latter distinction is significant because the Armed Forces have been an All-Volunteer Force since 1973.²⁰

Military Service Credit: Setting Precedents

In summary, three sections of ERS law permitted ERS members prior to 1989 to continue to accrue membership credit after they were called away to serve in the military, during the term of that military service. The periods during which military service qualified for credit under these provisions (i.e., sections 88-57(4), 88-51(8), and 88-132) are, or roughly begin with, periods of war.²¹ However, ERS law is not always consistent with relevant federal statutes. For example, since 1987, section 88-132 no longer includes the definition in which, e.g., the national guard and coast guard are named as branches of the military services.²² This section was amended in 1987 without reference to the All-Volunteer Force, and its protections are more limited than those of the Veterans' Reemployment Rights Act.²³

Although House Resolution No. 315 contemplates an expansion of the military service credit, such credits in the past have been more limited. Moreover, the Servicemen's Act may not have necessarily been intended to create permanent entitlements. Such legislation had been in effect for World War II, repealed in 1949, and then "reenacted" in 1951,

[i]n view of the present emergency and of the actuality of hostilities in Korea and the imminence of World War III,...²⁴

Section 88-142 of the Act expressly states:

The provisions of sections 88-131 to 88-142 shall not be deemed to constitute a contract with any service member and the legislature reserves the right to amend or repeal the sections at any time as to any benefit or allowance not accrued prior to the time of the amendment or repeal.... (Emphasis added.)

Section 88-132.5 as the Precedent for a National Service Credit

Since House Resolution No. 315 refers to military service during war or emergencies, is section 88-132--which credits intervening military service only if rendered during war or emergencies²⁵--the statutory precedent for a "national service" credit? By contrast, section 88-132.5 credits military service, with the exception of Reserves and National Guard service,²⁶ rendered at any time. For other reasons, however, it is apparent that the Resolution refers to section 88-132.5. First, the Resolution speaks of national service rendered by members during "years of their youth", impliedly prior to being employed in state or county government. Second, no leaves of absence are mentioned, so the Resolution is not intending a credit for any "intervening" national service.

Finally, findings cited in the Resolution are derived from testimony in support of a bill that would have allowed retirement service credit for Peace Corps volunteer service, and the text of that bill is borrowed verbatim from section 88-132.5.²⁷ Therefore, section 88-132.5 is intended by the Resolution as the model or standard for the proposed national service credit. The next chapter analyzes the terms and conditions of the military service credit, section 88-132.5 of the Hawaii Revised Statutes.

ENDNOTES

1. The Employees' Retirement System is the retirement system for an employee or officer of the State of Hawaii or any county. Hawaii Rev. Stat., sec. 88-21 (1985) defines "employee" as "any employee or officer of the State or any county," listing within the definition, e.g., the inspectors, school and legislative personnel, and others; "county" is defined as "the counties of Hawaii, Honolulu, Kauai and Maui, including their respective boards of water supply and other quasi-independent boards, commissions and agencies".
2. Hawaii Rev. Stat., sec. 88-21 (1985), definition of "service retirement". The manner in which retirement benefits are calculated are described in Chapter 3, text at endnotes 22 - 29.
3. See Chapter 3, text at endnote 22, regarding the calculation of retirement benefits.
4. Hawaii Rev. Stat., sec. 88-21 (1985), definition of "service".
5. Hawaii Rev. Stat., sec. 88-21 (1985), definition of "prior service", applicable to Class A and B members: the comparable "prior service" provision for Class C members is section 88-272(6) (1992 Supp.).

1925 Laws of the Territory of Hawaii [Session Laws of Hawaii], Act 55, sec. 3(1) states that "[m]embership in the retirement system shall begin not earlier than the first day of January, 1926". Act 55 established the System.

1927 Laws of the Territory of Hawaii [Session Laws of Hawaii], Act 251, extended System membership to officers and employees of all counties. Under Section 1 of that Act, county personnel were eligible for membership "[o]n and after January 1, 1928".

6. Hawaii Rev. Stat., sec. 88-21 (1985), definition of "service".
7. Sections in chapter 88, Hawaii Rev. Stat., regarding membership:

A. Prior service

Section 88-57 (1985): service prior to establishment of the System or prior to eligibility of county workers for membership (paragraph (1)); to the Territory's predecessors (paragraph (2)); creditable under any other retirement system supported by the State (paragraph (3)); during January 1, 1926 to December 31, 1927 where a county employee became a Territorial employee; other service as designated as prior service.

Section 88-58 (1985): service by per diem county employees receives prior service credit.

Section 88-59.5 (1992 Supp.): prior service as an assistant clerk or assistant sergeant at arms of either house of the Legislature.

B. Service

Section 88-51 (1985): service--as an employee of the federal government where that function was then transferred to the State or county, or of an employee, transferred to the federal government, who is retransferred to the State or county (paragraph (3)); as an employee of the territorial guard (paragraph (5)); at various hospitals (paragraph (9)); as a full-time sheriff or deputy sheriff (paragraph (10)); as an employee during a legislative session (paragraph (12)).

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Section 88-52 (1985): service as a member of the legislature.

Section 88-54 (1985): service while a legislative employee (member who takes leave of absence from state or county employment to be employed by the Legislature during any legislative session).

Section 88-55 (1985): service by field civilian personnel of Hawaii National Guard.

According to the 1990 National Guard Almanac (Uniformed Services Almanac, Inc.: Falls Church, Virginia 1990), p. 74, The National Guard Technicians Act of 1968 converted technicians, full-time personnel who handled the operation and equipping of the National Guard, from state to federal status on January 1, 1969. Section 6 of that Act (Pub. L. 90-486, 82 Stat. 755 in 1968 U.S. Code Congressional and Administrative News 874, 90th Cong. 2d Sess.) provides, in part, that technicians who were at that time covered by a state employee retirement plan could, with the consent of that state, choose to remain with that state retirement system. Without such an election, the technician would thereafter be covered by federal retirement.

C. Periods of absence

Section 88-51 (1985): professional improvement leave (paragraph (6)); while member works for a federal defense agency at the direction of the member's employer, during the period 1941-1947, and subsequently returned to state or county employment (paragraph (7)); service to a delegate to Congress for Hawaii or to a United States senator or representative from Hawaii, not to exceed eight years (paragraph (4)); absence for injuries received in the scope of employment, where workers' compensation benefits were received prior to July 1, 1967 (paragraph (11)).

Section 88-60 (1985): where a member's services are on loan to other governments per statutory requirements.

Section 88-50.5 (1992 Supp.): mandatory maternity leave taken prior to 1973. See Chapter 3, text generally at endnotes 71 - 73.

8. The phrase "intervening military service" has been adopted, for purposes of this study, from the Pennsylvania retirement system discussed in Chapter 7. Section 88-57(4) credits that period defined under federal law as World War I; section 88-51(8) credits a period which extends three years past the end of World War II: see Chapter 3, endnote 56.
9. 1951 Haw. Sess. Laws, Act 262. The "Servicemen's Act" enacted what is now part E of Chapter 88, consisting of sections 88-131 to 88-142, Hawaii Rev. Stat., with the exception of section 88-132.5, which was added in 1989. Hawaii Rev. Stat., sec. 88-131 (1985), refers to "sections 88-131 to 88-142". Hawaii Rev. Stat., sec. 88-133 (1985), states that service members, who retain membership in the System under the Servicemen's Act, "have the status, [are] entitled to the benefits, and [are] subject to the conditions and limitations set forth in sections 88-131 to 88-142".
10. 1987 Haw. Sess. Laws, Act 116.
11. Hawaii, House Standing Committee Report No. 950 on Senate Bill No. 1740, Fourteenth Legislature, 1987, State of Hawaii (this bill became Act 116, 1987 Haw. Sess. Laws).
12. Ibid. The House Committee on Labor and Public Employment states:

For members who enter the military service for set periods, the entitlement under Section 88-132 terminates ninety days after the period for which the member entered the military forces. However, if a member enters the military service for an indefinite period, the member would accumulate retirement credits for the entire period of service and the State or County employer would be responsible for all payments to the retirement system.

Conceivably, a member, after brief service with the State or County, could enter the military service for the rest of that person's working career. Then upon termination of military service that person could collect a retirement allowance from the State retirement system. This allowance would be calculated on the full period of time in the military service with that person having contributed nothing to the retirement system except for the brief period spent as a State or County employee.

According to section 88-140, Hawaii Revised Statutes, benefits of the Servicemen's Act extend "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 [that time, return to State or county service]". Persons who fail to re-enter state or county service during that ninety-day period or who voluntarily extend their tours of duty have the same status as a regular employee who terminates employment:

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...

Whatever were perceived as its inadequacies, Hawaii Rev. Stat., sec. 88-140 (1985), was not amended.

13. House Standing Committee Report No. 950.
14. Enacted in 1974 (P.L. 93-508), its predecessors are Section 9 of the Military Selective Service Act of 1967, 50 U.S.C. App. sec. 459(b), and Section 8(b) of the Selective Training and Service Act of 1940, according to the United States Supreme Court in Alabama Power Co. v. Davis, 431 U.S. 581, 582-584, 97 S.Ct. 2002, 2003-2004 (1977) at footnotes 2, 6, 7.
15. 38 U.S.C.A. sec. 4301(a) (1993 Supp.). Section 4301(a) of the Veterans' Reemployment Rights Act requires that the civilian employment must be other than a temporary position, that the person satisfactorily complete military service, and that application for reemployment be made within ninety days of the person's being relieved of military training and service. Section 4304 of the Act sets out the lengths of absences allowable for different classes of military personnel.
16. 38 U.S.C.A. sec. 4301(b)(2) (1993 Supp.). According to the United States Supreme Court, if a person's employment includes retirement benefits that "are calculated by the use of formulas in which years of accredited service are multiplied by an earnings factor," then to effectuate the purpose of the Act--i.e., to place a person in the same position that he or she would have been, were it not for service in the Armed Forces--the period of this person's military service must be credited. Alabama Power Co. v. Davis, 431 U.S. 581, at 591, 594, 97 S. Ct. 2002 at 2008, 2010 (1977). The opinion discusses its analysis of the pension plan at issue in that case, 431 U.S. at 590-594, 97 S. Ct. 2007-2010.
17. 38 U.S.C.A. sec. 4304(a) (1993 Supp.). The federal regulation governing military discharge documentation, 45 C.F.R. sec. 45.3(6), states:

For the purpose of reemployment rights...all extensions of service, except those under 10 U.S.C. 972, are considered to be at the request and for the convenience of the Government.

18. 38 U.S.C.A. sec. 4304(b)(1) (1993 Supp.).

19. Ibid.

20. The relevant statute is 50 App. U.S.C.A. sec. 467(c)(1990), which provides:

Notwithstanding any other provisions of this title [sections 451 to 471a of this Appendix], no person shall be inducted for training and service in the Armed Forces after July 1, 1973, except persons now or hereafter deferred under section 6 of this title [section 456 of this Appendix] after the basis for such deferment ceases to exist. (Brackets in the original.)

21. For periods of war, as defined by federal law, see endnote 56 of Chapter 3. Section 88-132 (as part of the Servicemen's Act) was enacted at the commencement of the Korean Conflict: see text at endnote 24, below.
22. By deleting the parenthetical phrase in section 88-132 which provided that the term "military service...as used in this section shall include national guard, air, naval and coast guard services": see the quoted paragraph in the text that follows endnote 9.

Section 88-131, Hawaii Rev. Stat. (1985), provided that "[a]s used in sections 88-131 to 88-142: "Service in the armed forces" [meant] active service (1) in military service, as defined in section 88-132" (Emphasis added). The 1987 amendment to section 88-132 left the Servicemen's Act without a definition of "military service".

In 1990, section 88-132.5 was amended to provide that "honorable active military service" was "in the armed forces of the United States" (see Chapter 3, text at endnote 45).

A federal regulation naming the Coast Guard as a Military Service (by agreement with the Department of Transportation) is cited in Chapter 3 at endnote 8. The National Guard as a reserve component of the Armed Forces is discussed in Chapter 6.

23. Section 4301(c) of the Veterans' Reemployment Rights Act (38 U.S.C.A. (1993 Supp.)) allows states or their political subdivisions to establish "greater or additional rights or protections."
24. Hawaii, House Standing Committee Report No. 544 on House Bill Nos. 9, 141, and 706, Twenty-Sixth Legislature, 1951, Territory of Hawaii (House Bill Nos. 141 and 706 were combined into House Bill No. 9, according to this report) states:

For World War II these provisions were contained in Sections 125.02, 556, 556.01, 557, 558, 558A, 559, 560, 561, 719, 720 and 721 of the Revised Laws of Hawaii 1945, as amended. All of these provisions were repealed by Act 370 (Ser. A-20) of the Session Laws of Hawaii 1949.

25. Hawaii Rev. Stat. (1992 Supp.). According to Mr. Stanley Siu, Administrator, Employees' Retirement System of the State of Hawaii, telephone interview on December 10, 1992, applicants for retirement credit under section 88-132 are required to furnish to the ERS, in addition to their discharge papers ("DD Form 214"), their orders to active duty, to establish that their military service was during time of war or national or state emergency.

26. The relevant portion of the statute is discussed in Chapter 3, text at endnotes 55 - 58.
27. House Bill No. 2682, Sixteenth Legislature, 1992, State of Hawaii. The phrase "volunteer service in the Peace Corps" replaces the phrase "honorable active military service in the armed forces of the United States," and the phrase "Peace Corps volunteer service" replaces the phrase "active military service" wherever that latter phrase appears in section 88-132.5. The factual recitals in House Resolution No. 315 concerning Peace Corps volunteer service that were adapted from written testimony submitted in support of House Bill No. 2682 are discussed in more detail in Chapter 4.

Chapter 3

THE MILITARY SERVICE CREDIT

Section 88-132.5, *Hawaii Revised Statutes* (1992 Supp.), allows up to four years' military service to be credited in the System as though it were state or county employment. The credit so acquired counts toward, e.g., the minimum length of service necessary for retirement, and results, for most members, in a larger retirement allowance.¹ This chapter will discuss the terms and conditions for, and the benefit derived from, acquiring credit under this statutory section, as well as questions regarding the policy or policies promoted by the credit.

Terms and Conditions

To receive credit for military service under section 88-132.5, a state or county employee must do or have done three things. First, that member must have performed "honorable active military service in the armed forces of the United States".² Second, the member must have been employed for the following minimum numbers of years:

Eight years' credited membership service is required to acquire two years' military service credit;

Twenty years' credited membership service is required to acquire up to three years' military service credit; and

Twenty-five years' credited membership service is required to acquire up to four years' military service credit.

A member may be credited "for active military service of up to four years or the actual number of years of active military service, whichever is less...."³

Third, the member must apply to acquire the credit while he or she is still an active "member".⁴ For members in Classes A and B ("contributory plan"), service is credited pursuant to section 88-59, *Hawaii Revised Statutes*; for Class C or "noncontributory plan" members, military service is credited pursuant to section 88-272.⁵

Application Form: Honorable Active Duty

To apply for military service credit, a member submits ERS form 1551, "Request to Acquire Military Service", to which must be attached a copy of the member's "DD214".⁶ The "DD Form 214" is the Certificate of Release or Discharge from Active Duty⁷ issued to any military personnel "separated" from the Military Services:⁸

...from a period of active duty for training, full-time training duty, or active duty for special work...furnished...when [personnel] have served 90 days or more, or when required by the Secretary [of the Military Service] concerned for shorter periods.⁹

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Cost or No Cost/Computation

For noncontributory plan members, military service is to be "credited at no cost upon certification by the [S]ystem", as provided in section 88-272(4). As explained by the ERS:

Effective June 1, 1990, Act 141/90 amended [Section 88-272] to allow service rendered prior to System membership to be credited at no cost because of the lower benefit level of the Noncontributory plan. As a result, upon certification by the System, service is credited at the rate of 1 month of service credit for each month of service rendered.¹⁰

The ERS provides the following, to illustrate:

Example:

- . Claim form requesting acquisition of 4 years of military service is received by the System on November 10, 1990.
- . As of that date, the member is credited with 9 years of membership service.
- . Member is immediately eligible to acquire 2 of the 4 years of military service at no cost.
- . Member will then be credited with 11 years of membership service.
- . The remaining 2 years of military service will be credited at no cost when the member has 20 years (1 year) and 25 years (1 year) of membership service providing the member notifies the System of the balance to be credited at that time.¹¹ (Emphasis in the original.)

For contributory plan members, section 88-59 requires that a member, when applying to acquire the credit, agree to "additional payroll-deducted monthly contributions" or to make a lump sum payment.¹² The additional payroll deductions may be made at either twice the statutory contributions rate¹³ "over a period equal to the period for which membership service credit is allowable" or at one and one-half times the statutory contributions rate over "twice the period for which membership credit is allowable".¹⁴ The ERS points out:

...the cost for acquiring service via additional payroll-deducted monthly contributions is not fixed. Only the period over which the additional deductions occur is fixed. Consequently, the total cost will depend upon any salary changes during the period of additional deductions.¹⁵

The lump sum payment required under section 88-59 is calculated by multiplying the statutory rate (7.8 percent or 12.2 percent), times the member's monthly salary, times the number of months of military service to be credited. The ERS illustrates this calculation by the following:¹⁶

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Example:

Military Service--4 years (January 1961 to December 1964)	January 1961- <u>June 1961</u>	July 1961- <u>December 1964</u>
Current Monthly Salary	\$2,000	\$2,000
Contribution Rate	x <u>6%</u>	x <u>7.8%</u>
	\$ 120	\$ 156
Military Service	x <u>6</u> (months)	x <u>42</u> (months)
Cost	\$ 720	\$6,552
	\$ 720	
	+ <u>6,552</u>	
Total Lump Sum Cost to Acquire 4 Years of Military Service	<u>\$7,272</u>	

Timing of the Applications

Presumably, members will apply to acquire credit for military service at the eight, twenty, and twenty-five year intervals set out in section 88-132.5.¹⁷ On the other hand, a member with four years' military service could elect to wait, earn twenty-five years' membership service, and apply for the full credit all at once.¹⁸ There is no "deadline" to acquire credit for military service, "[a]s long as one remains a member of the System".¹⁹

However, a state or county employee who dies, terminates his or her employment, or retires is no longer a "member",²⁰ and therefore cannot apply for military service credit. Section 88-132.5 was amended in 1990 to permit a "retirant" to apply for this credit on the condition that the retirant return to state or county employment for three years.²¹

Benefit

Monetary

A member's retirement benefit is calculated by multiplying a percentage of the member's credited service times the member's average final compensation or average salary.²² Credit for military service increases a member's total credited service, and thereby increases the resulting benefit. To illustrate, the ERS calculates the retirement benefit for a hypothetical member, age fifty-five, who has thirty years of membership service and an average monthly salary of \$2,000, both with and without four years of credited military service:²³

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Contributory Plan

Formula: $2\% \times \text{Credited Service}$
 $\times \text{Average Salary}$
 $= \text{Maximum Allowance}$

Maximum Allowance (without military service)

30 years $\times 2\% = 60\% \times \$2,000 = \$1,200$ per month

Maximum Allowance (with military service)

34 years $\times 2\% = 68\% \times \$2,000 = \$1,360$ per month

Noncontributory Plan

Formula: $1\frac{1}{4}\% \times \text{Credited Service}$
 $\times \text{Average Salary}$
 $= \text{Normal Retirement}$

Normal Retirement (without military service)

30 years $\times 1\frac{1}{4}\% = 37.5\% \times \$2,000 = \$750$ per month

Normal Retirement (with military service)

34 years $\times 1\frac{1}{4}\% = 42.5\% \times \$2,000 = \$850$ per month

Acquiring military service increases the member's credited service, thereby increasing the percentage of the average salary which results in a larger retirement benefit.

Concludes the ERS, "[n]oncontributory plan members can increase their Normal Retirement allowance by a maximum of 5% ($1\frac{1}{4}\% \times 4$ years)" and contributory plan members "can increase their Maximum Allowance by a maximum of 8% ($2\% \times 4$ years military service)".²⁴ Finally, those contributory plan members:

...who are covered by a higher benefit formula at retirement (i.e., $2\frac{1}{2}\%$ for police officers, firefighters, investigators, corrections officers; $3\frac{1}{2}\%$ for judges and elected officials) and who have not attained the ceiling imposed on their benefit by law, can increase their Maximum Allowance by a maximum of 10% ($2\frac{1}{2}\% \times 4$ years military service) and 14% ($3\frac{1}{2}\% \times 4$ years military service), respectively.²⁵

Vesting and Earlier Retirement

Credited military service counts toward vesting and toward the minimum number of years needed to retire. For example, a judge, elective officer, chief clerk, assistant clerk, sergeant at arms, or assistant sergeant at arms needs ten years' membership service to qualify for a "service retirement".²⁶ Two years' military service credit added to that member's eight years' state or county service gives the member the minimum length of service to retire.²⁷ If a contributory plan member, who must serve twenty-five years in order to retire, acquires credit for military service after eight and twenty years' membership service, this member becomes eligible to retire after only twenty-two years' actual state or county employment.²⁸

Noncontributory plan members may retire at age sixty-two with a minimum of ten years' membership service, or at age fifty-five with thirty years' membership service.²⁹ Therefore, two years' military service, credited when a sixty-two-year-old has been an ERS member for only eight years, entitles that person to retire. For example, consider this hypothetical employee, born in 1928, drafted at age eighteen in 1946, and honorably discharged in 1948 after two full years of peace time service in the United States armed forces. He lives and works in New York State for over thirty years. Retiring from that job, he moves to Hawaii and is employed by a county in 1982. By 1990, this person has eight years' membership service; he celebrates his sixty-second birthday. He applies for and receives two years' credit for military service that occurred years before he ever saw Hawaii much less became a Hawaii resident: this person is now eligible to retire from Hawaii's ERS. Twenty percent of the years of service that enabled this individual to retire will have been based on military service which may have no connection to Hawaii in any way whatsoever.

Benefit to Firefighters, Police, Corrections Officers

For contributory members, military service "shall be considered service in the member's occupation at the time that service is credited...."³⁰ (Emphasis added). This provision of the military service credit potentially benefits such contributory plan members as firefighters, police, corrections officers, or investigators, because:

Section 88-74(1), [Hawaii Rev. Stat.], allows a member under 55 years of age to retire without an age reduction penalty if the member has 25 years of credited service as a firefighter or police officer of which the last 5 or more years prior to retirement is in that capacity.³¹ (Emphasis added).

The ERS illustrates this with the example of a firefighter or police officer who, although not yet age fifty-five, has twenty-three years' service in that capacity: when this member then acquires two years' military service credit, these two additional years are deemed served in that member's occupation, and the member is eligible to retire without penalty.³²

Questions and Comments

The next section describes what policies³³ are possibly promoted by the military service credit, and what goals might be furthered by the terms, conditions and benefits of the credit (discussed in the preceding section). This analysis is to determine whether--and to

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what extent--the military service credit might be expanded to other forms of "national service". Also discussed are the following "problems" with section 88-132.5: (1) certain categories of persons cannot benefit from the statute; (2) not all military service is credited; and (3) it permits "double-dipping", i.e., it credits service even if the same period of service counts toward retirement benefits from another retirement system.

Legislative History

General Statements of Purpose

Section 88-132.5 originated as Senate Bill No. 1551 (1989), and the committee reports (legislative history) say the following concerning the general purpose of the bill:

- (1) It is described as:

...adding [to chapter 88, Hawaii Revised Statutes] a new section to provide for the purchase of membership service credits for military service rendered before entering public service.³⁴

- (2) Two standing committee reports characterize the bill as adding "a third type of military service...for membership service credit":

This would be military service rendered at any time by the member even if rendered prior to his membership in the System.³⁵

- (3) Three standing committee reports cite, as precedent, "present statutes" that have already "recognized", for membership service credit, military service (1) after June 24, 1950, and (2) for the period 1941 to 1949.³⁶

- (4) The Senate Committee on Labor and Employment states that military service should be entitled to "some" credit toward retirement:

Your Committee believes that those who serve their country in Armed Forces should be given the opportunity to purchase some service credit in the State Retirement System.³⁷

- (5) The Conference Committee Reports state:

The purpose of this bill is to provide that any employee of the State or a county, who has had prior military service for which the member is not eligible to receive a military pension, the option to purchase membership service credit in the employees' retirement system.³⁸ (Emphasis added)

Rationales Described for Specific Terms or Conditions

The Committee Reports on Senate Bill No. 1551 discuss the following specific terms and conditions:

- (1) The Senate Committee on Labor and Employment³⁹ amended the bill so that military service could not be credited toward retirement benefits under more than one retirement system:

...your Committee believes that no one should receive pensions from both the military and the State Retirement System for the same years of service. Therefore your Committee has amended the bill to prohibit any member who has rendered military service for which he is receiving a military pension or is eligible to receive a military pension, from being able to purchase service under the terms of this bill.⁴⁰

- (2) The House Committees on Labor and Public Employment and Judiciary amended Senate Bill No. 1551 to provide for four years' credit, on a graduated basis, so that any state or county employee with prior military service would have:

...the option to purchase two years prior military credit in the Employees' Retirement System after the employee has served for fifteen years in [sic] the State or county. After twenty years of service in [sic] the State or county, the employee may purchase up to three years. And after twenty-five years of employment with the State or county, the employee may purchase up to four years.⁴¹

- (3) The House Committee on Finance added the present eight-year minimum eligibility requirement:

...any member with eight, instead of fifteen, years of credited service may purchase up to two years of membership service credit.⁴²

- (4) In Conference Committee, the bill was amended:

...to exclude service in the reserves or National Guard unless that service was in time of war or declared emergency. The amendment also provides for forfeiture and loss of benefits for such military service for any violation of this section.⁴³

No other reasons or policy discussions are provided in the Committee Reports for the changes that they describe.

1990 Amendment. In 1990, House Bill No. 2891 amended section 88-132.5.⁴⁴ According to written testimony submitted by the Department of Budget and Finance, this was

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"an Administration Bill to clarify the language and address the inequities in [section 88-132.5, as originally enacted]..."; the changes are described as follows:

- (1) That "active military service must be in the armed forces of the United States";
- (2) That the word "purchase" is deleted, since House Bill No. 2891 amends section 88-132.5 to allow noncontributory plan members to acquire credit for military service at no cost;
- (3) That membership service credit would "now be available to retirees who have at least three years of credited service during reemployment"; and
- (4) That "[a]ctive military service will be considered service in the contributory member's occupation at the time the service is purchased and will provide a corresponding retirement benefit."⁴⁵

According to the Department of Budget and Finance, the second item, above, is pursuant to a policy that noncontributory plan membership should cost nothing to the member.⁴⁶

The testimony gives no underlying policies for the other provisions of House Bill No. 2891, nor does it identify the "inequities" sought to be corrected. The Committee Reports concerning this bill also mention no policies, if any, furthered by the changes.⁴⁷

One final substantive amendment was added to House Bill No. 2891 by the Senate Committee on Labor and Employment, and the Committee stated its reasons as follows:

Your Committee is concerned that state law which restricts a person's right to collect a federal military pension may be subject to challenge as contrary to federal law. Therefore, your Committee has amended the bill by deleting the provision in section 88-132.5, Hawaii Revised Statutes, that excludes members who receive or are eligible to receive federal military pensions from acquiring membership service credit.⁴⁸

In summary, the legislative history for section 88-132.5 indicates that, in enacting this law, the Legislature sought to provide "some" retirement credit for those ERS members who had served in the Armed Forces of the United States and who were not entitled to receive a military pension. However, the prohibition against "double-dipping" (i.e., receiving ERS credit for the same military service that entitles a member to a military pension) was deleted, in 1990, by the same standing committee that introduced it in 1989. The Legislature provides no further details concerning any underlying policies that this law was intended to promote.

Problems with the "Model"?

Persons Excluded: A "Timing" Problem

Two categories of persons, who would otherwise qualify for military service credit, receive no benefit. First, the law was enacted too late for those persons, eligible for a higher benefit formula, who had already reached the statutory ceiling on benefits by mid-1989.⁴⁹

Second, the law was enacted too late for persons who had retired by June 30, 1989 ("retirants"), since retirants are no longer "members".⁵⁰

This distinction between "member" and "retirant" appears to be a fundamental distinction in ERS law. For example, one remains a "retirant" even if one returns to employment. Section 88-98 provides that a contributory plan retirant who returns to employment for less than three years retains the mode of retirement elected when that person first retired; if this person is then reemployed for more than three years, this person's allowance is re-computed as though the person were retiring for the first time. For noncontributory plan retirants, section 88-273(a) provides that a member who terminates service prior to vesting "shall cease to be a member"; section 88-273(c) governs reemployment in a Class C capacity, and section 88-273(d) governs reemployment in service requiring membership in Class A or B.⁵¹

Because only "members" may apply for the credit, this results in the apparent inequity that, for example, credit for the same period of World War II active duty service is not equally available to two individuals who have the required twenty-five years' membership service. By July 1, 1989, the effective date of the credit, World War II veterans could have already earned thirty years' service in state or county employment and retired: assume that two individuals, age eighteen, volunteer for the Armed Forces in 1943. They serve until honorably discharged in 1947, and go to work, full-time, for the State of Hawaii. The first individual retires in 1978, after thirty years' service. The second individual continues to work. On July 1, 1989, the latter individual (assume that his employment is not subject to the eighty percent ceiling) can apply to acquire four years' credit for military service, whereas the former individual, with the same military service record, cannot--unless he returns to work for three years.

Factors cited by the ERS as weighing against extending eligibility to retirants--for both the military service credit and credit for mandatory maternity leave--were (1) cost, (2) administrative concerns, and (3) the departure from established precedent.⁵² Mr. Stanley Siu, ERS Administrator, indicated that the number of retirants who conceivably qualify for the additional credit was unknown; however, from his familiarity with ERS' membership, his "ballpark" estimate was that fifty percent of the retirants might qualify for either credit.

Administratively, for each retirant who becomes an active member in order to acquire such credit, the ERS must (1) suspend present retirement benefits; (2) re-enroll the person as a member; (3) re-calculate that person's retirement, and (4) re-retire the member. If all retirants (who otherwise qualified) were rendered automatically eligible to acquire such credit, the ERS would have to recalculate each member's retirement allowance based on the additional credit--separate and apart from considerations of cost to state or county government. Allowance of credit to the already-retired was referred to by Mr. Siu as "an administrative nightmare". The established precedent has been to award all benefits prospectively; allowing retirants to change, post-retirement, their retirement benefit by acquiring credit for military service would break with that precedent.⁵³

Military Service Excluded: National Guard and Reserves

Section 88-132.5(c) states:

Active military service in the military reserve or national guard is not considered active military service unless in time of war or declared national or state emergency.

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This distinction between service in the National Guard or Reserves and service in the Armed Forces is not consistent with federal law.⁵⁴ The Attorney General's Office has reduced the degree of inconsistency to a small degree by rendering an opinion that:

...while on active duty for training, a member of the national guard or reserves is in the active military service of the United States armed forces.⁵⁵

The opinion further states that a member of the Reserves or National Guard does not have to "go to war" in order to qualify for credit, since service is deemed rendered "in time of war" if it occurs during any period defined under federal law as a period of war.⁵⁶ However, the opinion does not eliminate all inconsistency (this is discussed in Chapter 6⁵⁷): under section 88-132.5(c), full-time duty with the Hawaii National Guard under Title 32 of the United States Code is generally not eligible for military service credit.⁵⁸

By contrast, any service in the active duty forces qualifies for the retirement credit even though not during a period of war or national or state emergency.

Searching for Possible Policies

One may surmise that the Legislature decided to allow up to four years' credit because four years was cited in 1987 as the length of one tour of duty in the Armed Forces.⁵⁹ Unlike section 88-132, however, eligibility for military service credit under section 88-132.5 is not restricted to times of war or national emergency or to service rendered "involuntarily" in response to the draft; the reason for the Legislature's departure from the restrictive policy expressed in 1987 is not explained. The military draft itself ended in 1973.⁶⁰

Since eligibility is conditioned on relatively long periods of membership service, the military service credit functionally is like "a reward for length of service".⁶¹ However, no pattern emerges from the specific periods--eight, twenty and twenty-five years membership service--required to qualify for the credit. After twenty years' membership service, a noncontributory plan member who is fifty-five years old is eligible to receive an early retirement allowance.⁶² After twenty-five years' service, sewer workers and Class A members in specified capacities may retire if their last five years are served in those respective capacities.⁶³ With the minimum eight years' membership service plus two years' military service credit, certain members qualify for retirement.⁶⁴

On the other hand, if the military service credit was structured to reward length of service--to encourage members to remain in state or county employment--it also allows members to retire earlier. This seeming contradiction is not explained in the legislative history of section 88-132.5.⁶⁵ For example, to encourage members to remain employed, the Legislature could have provided, "any additional service credit shall not be used in determining eligibility for retirement", as provided in section 88-272(7), *Hawaii Revised Statutes* (1992 Supp.), which credits unused sick leave.

Double-Dipping

In enacting the military service credit, the Legislature originally intended to benefit persons whose military service would receive no credit toward a military pension.⁶⁶ Hence, one criterion for eligibility was that a person could not be receiving or be eligible to receive a military pension.⁶⁷ Federal civilian retirement systems follow a similar policy, allowing credit for military service but not if that period of military service entitles the employee to military retired pay.⁶⁸

Under other state retirement systems, credit for non-intervening military service is allowed generally only for military service that is not credited toward a pension under another retirement system.⁶⁹ Section 88-132.5, as originally enacted, does not--contrary to the reported concerns of the Senate Committee on Labor and Employment--"[restrict] a person's right to collect a federal military pension".⁷⁰ The absence in section 88-132.5 of any prohibition against "double-dipping" therefore bears further consideration. It is not clear what state policy interest is served by allowing an individual to receive benefits under two retirement systems for the same period of service.

The Military Service Credit as Precedent

The military service credit is cited as precedent for the 1990 enactment of a provision crediting mandatory maternity leave taken before 1973, codified as section 88-50.5, *Hawaii Revised Statutes* (1992 Supp.). Conceptually, however, mandatory maternity leave was a leave of absence, and credit for this leave is consistent with pre-1989 ERS law regarding creditable service.⁷¹ This distinction between the military service credit and credit for mandatory maternity leave is not noted. The report of the House Committee on Labor and Public Employment provides this background for the credit:

Before 1973 and before the full impact of the Equal Rights Amendment was realized in Hawaii, female teachers were required to take unpaid leaves of absence during their pregnancies. These required leaves were directly tied to the school's semester calendar.

The Hawaii State Teachers Association testified that the female teachers who were forced to take leaves of absences [sic] should be extended the same option given to those in the military who are now provided the opportunity to purchase credits toward their retirement.⁷² (Emphasis added)

Hence--and apparently to match the military entitlement--up to four years' credit was allowed. The House Committee on Finance limited the maximum credit for each pregnancy to twelve months,⁷³ without addressing whether four years' maximum credit at twelve months per pregnancy fully "compensated" ERS members for the enforced leave.

Conclusions

The military service credit in section 88-132.5, *Hawaii Revised Statutes*, increases a member's retirement allowance and affords most eligible members the chance to retire somewhat earlier. Honorable active duty in the Armed Forces of the United States is readily verified because the Military Services issue a certificate (a "DD214") to each person who leaves the military. The credit inexplicably excludes certain categories of persons, applies inconsistently and therefore does not credit all military service, and allows certain individuals to "double dip", i.e., have the same periods of military service count toward benefits under two separate retirement systems. It is not clear what state policies or interests are promoted or served by these inconsistencies. When the Legislature subsequently enacted a credit for mandatory maternity leave, it grafted onto that latter provision the four-year maximum allowed under the military service credit. The legislative history for section 88-132.5, however, provides little discussion of any policies underlying that section's terms and conditions. Section 88-132.5 itself gives little guidance as to the extent to which that section might or should be extended to "national service".

ENDNOTES

1. This discussion is limited to computation of the basic maximum allowance under section 88-74 or 88-282, Hawaii Rev. Stat. (1992 Supp.); it will not cover the retirement options (section 88-83 or 88-283, Hawaii Rev. Stat. (1992 Supp.)), respectively, or, e.g., provisions for disability retirement.
2. Hawaii Rev. Stat., sec. 88-132.5(a) (1992 Supp.).
3. Ibid.
4. Hawaii, Employees' Retirement System of the State of Hawaii, Military Service Credit (Honolulu: August 1990) (hereinafter, "ERS booklet"), pp. 5, 7.
5. Hawaii Rev. Stat., sec. 88-132.5(c) (1992 Supp.). Hawaii Rev. Stat., sec. 88-47 (1992 Supp.), provides for "three classes of members in the [S]ystem to be known as class A members, class B members, and class C members...." Except for certain categories of members described in section 88-47(1), all persons employed after or who re-enter system service after June 30, 1984, are defined by section 88-47(3) as class C members.

Note that 1993 Haw. Sess. Laws, Act 357 amended Chapter 88, Hawaii Rev. Stat., by adding to section 88-21 the definition for "water safety officer" ("any regularly employed member of any county of the State whose principal duty is to stand guard over the beaches of the State and counties to ensure the safety of individuals thereon."). Affected are sections 88-45 (providing that water safety officers contribute at the rate of 12.2 percent: see endnote 13 and text at endnote 25), below, 88-47; and 88-74 (see text at endnote 31).

6. ERS booklet, p. 5 (the booklet refers to the "DD214" as "Armed Forces of the United States Report of Transfer or Discharge").
7. 32 C.F.R. Part 45--Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series), which describes the purpose, applicability and scope, policy and procedures, and responsibilities of those involved in the preparation and processing of the DD Form 214.
8. 32 C.F.R. sec. 45.2 defines "Military Services" as the Army, Navy, Air Force, Marine Corps, and, by agreement with the Department of Transportation, the Coast Guard.

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9. 32 C.F.R. sec. 45.3(b)(2).
10. ERS booklet, p. 4.
11. Ibid.
12. Ibid., p. 3.
13. Hawaii Rev. Stat., sec. 88-45 (1992 Supp.), for contributory plan members, provides 7.8 percent contribution for general employees, and 12.2 percent for such employees as police, firefighters, and investigators.
14. Hawaii Rev. Stat., sec. 88-59(1) and (2) (1992 Supp.).
15. ERS booklet, p. 3.
16. Ibid., p. 4. Regarding the cited rates, ERS booklet p. 3 explains:

If the military service occurred prior to July 1, 1961, the contribution rate will be 6.0% instead of 7.8% or 10.4% instead of 12.2%. In the event military service spans years prior to and after July 1, 1961, the appropriate percentage would be applied to each period.

Section 88-45, Hawaii Revised Statutes (1992 Supp.), as amended by 1989 Haw. Sess. Laws, Act 100 (effective July 1, 1989), provides that:

The contribution rates provided for in section 88-45 shall be reduced by one and eight-tenths percent for any service being claimed that was rendered prior to July 1, 1961.
17. Ibid., p. 7 (discussion of question, "Is acquisition of military service a 'one shot deal?'").
18. Interview with Stanley Siu, Administrator, Employees' Retirement System of the State of Hawaii, September 24, 1992. ("Siu interview September 24, 1992").
19. ERS booklet, p. 9 (discussion of question, "Is there a deadline to acquire military service?").
20. Hawaii Rev. Stat., sec. 88-61 (1985)(contributory plan); Hawaii Rev. Stat., sec. 88-273 (1992 Supp.)(noncontributory plan).
21. House Bill No. 2891, Fifteenth Legislature, 1990, State of Hawaii, enacted as 1990 Haw. Sess. Laws, Act 141. The Fifteenth Legislature also enacted Hawaii Rev. Stat., sec. 88-50.5 which allows retirants, who return for three years' membership service, to acquire credit for mandatory maternity leave.
22. ERS booklet, p. 2.
23. Ibid., p. 3.
24. Ibid., p. 2 (Emphasis in the original).
25. Ibid. (Emphasis in the original).
26. Hawaii Rev. Stat., sec. 88-73(1) (1992 Supp.). These are contributory plan members.

THE MILITARY SERVICE CREDIT

27. Ibid. See also ERS booklet, p. 6 (discussion, by analogy, of a corrections officer with eight years of membership service who acquires two years of credit for military service: question no. 4).
28. By acquiring two years' credit, that member has ten years of credited service, of which only eight were in actual state or county employment; with ten more years' employment, the member receives credit for one additional year of military service, and therefore needs only four more years' employment to have twenty-five years' credited service. The same calculation would apply for a noncontributory plan member, with the same numbers of years of state or county employment and of prior military service.
29. Hawaii Rev. Stat., sec. 88-281(a) (1992 Supp.).
30. Hawaii Rev. Stat., sec. 88-132.5(d) (1992 Supp.).
31. ERS booklet, p. 3 (discussion from question no. 3).
32. Ibid., p. 6 (discussion from questions nos. 2 and 3). The age reduction penalty, section 88-74(1), Hawaii Rev. Stat. (1992 Supp.), is as follows:

If the member has not attained the age of fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary [...]
33. "Policy" in this context refers to "a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions" or "a high-level overall plan embracing the general goals and acceptable procedures esp. of a governmental body". Merriam-Webster, Inc., Webster's Ninth New Collegiate Dictionary (Springfield, Mass.: 1988) (second definition).
34. Senate Standing Committee Report No. 360 on Senate Bill No. 1551, Fifteenth Legislature, 1989, State of Hawaii.
35. Senate Standing Committee Report No. 763 [Senate Committee on Ways and Means]; House Standing Committee Report No. 962 [House Committees on Labor and Public Employment and Judiciary], Fifteenth Legislature, 1989, State of Hawaii.

The first is Senate Standing Committee Report No. 360; the fourth report is House Standing Committee Report No. 1165 [House Committee on Finance].
36. Senate Standing Committee Report No. 763, and House Standing Committee Report No. 962, and Senate Standing Committee Report No. 360. World War I (section 88-57(4), discussed in Chapter 2 at endnote 8) is omitted, perhaps because the ERS membership began January 1, 1926 (see Chapter 2, endnote 5).
37. Senate Standing Committee Report No. 360.
38. House Conference Committee Report No. 115 on Senate Bill No. 1551, and Senate Conference Committee Report No. 87 on Senate Bill No. 1551, Fifteenth Legislature, 1989, State of Hawaii.
39. The original draft of the bill provided for "the purchase of two years of service [credit] if the member has at least 15 years of credited public service at the time of purchase". Senate Standing Committee Report No. 360.
40. Ibid. [Senate Bill No. 1551 was amended as Senate Bill No. 1551, S.D. 1].

"NATIONAL SERVICE" AS CREDITED SERVICE FOR PUBLIC RETIREMENT: ISSUES AND DISCUSSION

41. House Standing Committee Report No. 962 [no explanation or rationale is provided for this change; these Committees received Senate Bill No. 1551 from the Senate Committee on Ways and Means, which amended the bill to provide for a penalty provision; per Senate Standing Committee Report No. 763, this amended version was Senate Draft 2].
42. House Standing Committee Report No. 1165.
43. Conference Committee Reports Nos. 87 (House) and 115 (Senate).
44. House Bill No. 2891, Fifteenth Legislature, 1990, State of Hawaii, enacted as 1990 Haw. Sess. Laws, Act 141. [Section 2 of this bill pertains to Hawaii Rev. Stat., sec. 88-132.5.]
45. Testimony by Yukio Takemoto, Director, Department of Budget and Finance, State of Hawaii, hearings on House Bill No. 2891, before the House Committee on Labor and Public Employment on February 13, 1990; before House Committee on Finance on February 23, 1990 (House Bill No. 2891, H.D. 1), and Senate Committee on Labor and Employment on March 19, 1990 (House Bill No. 2891, H.D. 2).
46. Ibid.:

Section 3 of [House Bill No. 2891] in keeping with the concept of 'noncontributory' membership, amends section 88-272, [Hawaii Revised Statutes], to enable noncontributory members to acquire active military service, as well as other previous service, at no cost. (Emphasis added).

Hence, House Bill No. 2891 also provided that contributions made "after June 30, 1989" by noncontributory plan members, to acquire military service credit, would be refunded. [The effective date of 1989 Haw. Sess. Laws, Act 385, enacting section 88-132.5, is July 1, 1989]

47. House Standing Committee Reports Nos. 225-90 [Labor and Public Employment] and 521-90 [Finance]; Senate Standing Committee Reports Nos. 2751 [Labor and Employment] and 3075 [Ways and Means]; Conference Committee Report No. 206 on House Bill No. 2891, Fifteenth Legislature, 1990, State of Hawaii.
48. Senate Standing Committee Report No. 2751.
49. ERS booklet, pp. 6 - 7 (discussion regarding questions nos. 5 and 6).
50. ERS booklet, p. 7 (discussion regarding question no. 7: "Can a retirant acquire military service?").

ERS answer is:

No. Only a member can acquire military service. Section 88-21, [Hawaii Revised Statutes], defines a retirant as a "member who has retired and becomes a beneficiary of the System." [sic] therefore, membership status with the System is forfeited at retirement. (Emphasis in the original.)

51. The section 88-21 definitions of "member" and "retirant" apply to the noncontributory plan, under section 88-261(a), Hawaii Rev. Stat. (1985). Unlike section 88-98, section 88-273(c) and (d) Hawaii Rev. Stat. (1992 Supp.), state no length of reemployment.
52. The discussion in this and the following paragraph is from an interview and telephone interview with Mr. Stanley Siu, Administrator of the ERS, on September 24, 1992, and December 10, 1992, respectively.

THE MILITARY SERVICE CREDIT

The credit for mandatory maternity leave is section 88-50.5, Hawaii Rev. Stat. (1992 Supp.), discussed further on in this chapter at endnotes 70-72; its provisions parallel, to a certain extent, the provisions of the military service credit as amended in 1990. In discussing "purchased" credits, Mr. Siu refers to both credits, indistinguishably.

According to Mr. Siu, many retirants were upset, in 1989, about being ineligible to acquire military service credit, and inquired whether they could become eligible by returning to state or county employment for one month. Section 88-132.5, as amended in 1990, requires retirants to return to membership service for three years, in order to prevent, in Mr. Siu's words, the "abuse" to the system of returning to work for, e.g., only one month, solely to apply for the credit.

53. Mr. Siu distinguished the military service and mandatory maternity leave credits from cost-of-living adjustments to retirants: although the latter result in post-retirement changes to retirement benefits, cost-of-living adjustments were intended to benefit retirants, whereas the credits were intended to benefit active members.
54. For example, protections of the Veterans' Reemployment Rights Act are not limited to times of war or emergency, and extend to members of the reserve components of the Armed Forces, and the National Guard. 38 U.S.C.A. sec. 4301 et seq. (1993 Supp.)(see discussion in Chapter 2); 38 U.S.C.A. sec. 4301(b)(3); sec. 4304(b)(2), (c)(1993 Supp.); 38 U.S.C.A. sec. 4304(f)(1993 Supp.).
55. Hawaii, Att'y Gen. Op. No. 91-04 (September 24, 1991).

The issue was whether a Hawaii Air National Guard member, who had the required years of membership service in the ERS, was entitled to credit under section 88-132.5 for a period of active duty for training. The Guard member was ordered to active duty on May 15, 1966, and was discharged or released--under honorable conditions, according to the member's DD Form 214--to the State guard on October 26, 1966.

The ERS questioned (1) whether this member's service was "honorable active military service in the armed forces of the United States" and (2) whether this member "went to war" as stated in section 88-132.5.

The opinion concluded that, applying federal law, this member was called to federal active duty for training, during a "period of war" known as the Vietnam Era; hence, the member qualified for military service credit, since all other conditions of section 88-132.5 were met.

56. Ibid.

Section 101 of Title 38, United States Code (1991), ("Veterans") lists among the following as periods of war:

World War I - April 6, 1917 to November 11, 1918; for United States military forces in Russia, April 6, 1917 to April 1, 1920

World War II - December 7, 1941 to December 31, 1946

Korean Conflict - June 27, 1950 to January 31, 1955

Vietnam Era - August 5, 1964 to May 7, 1975

Persian Gulf War - August 2, 1990 to (ending date to be prescribed by Presidential proclamation or by law)

57. See Chapter 6, text at endnotes 19 - 65.
58. Telephone interview with Mr. Stanley Siu, December 10, 1992. The exclusion of Title 32 service from the military service credit is discussed in Chapter 6, text at endnotes 27 - 31, 43 - 49.
59. See Chapter 2, text at endnote 13.
60. 50 App. U.S.C.A. sec. 467(c)(1990). The text of this section is cited in Chapter 2, in endnote 20.
61. Alabama Power Co. v. Davis, 431 U.S. 581, 593, 97 S. Ct. 2002, 2009 (1977).
62. Hawaii Rev. Stat., sec. 88-281(c)(1992 Supp.).
63. Hawaii Rev. Stat., sec. 88-281(b)(1992 Supp.); sec. 88-73(1)(1992 Supp.).
64. Hawaii Rev. Stat., sec. 88-73(1) (1992 Supp.).

The Wisconsin Retirement System (West's Wisconsin Statutes Annotated sec. 40.01 et seq. (1992)) credits military service on a graduated scale as follows:

... any person who is credited with 5, 10, 15 or 20 or more years of creditable service, not counting any previously granted creditable [intervening] military service, may receive creditable military service at the time of retirement for not more than 1, 2, 3 or 4 years, respectively, of active service which meets the standards under par.(a)5, provided:

1. This paragraph applies only to active military service served prior to January 1, 1974.

(Section 40.02(15)(c)(1992)). Paragraph (a)(5) requires that participants be "discharged from the U.S. armed forces under conditions other than dishonorable."

Of the retirement systems listed in both endnote 12 and the Summary in Chapter 7, this Wisconsin system appeared to be the only system--other than the ERS--that credited military service on a graduated basis.

65. Mr. Siu stated that the military service credit enabled employees to vest--and was not necessarily intended to encourage them to retire earlier. Siu interview September 24, 1992.
66. See above, text at endnote 38.
67. See above, text at endnotes 39-40.
68. 5 C.F.R. sec. 831.301(2); 5 C.F.R. sec. 842.306(b). Exceptions are retirement pay (1) for service-connected disability or (2) allowed under Chapter 67 of Title 10, United States Code.
69. Examples are described in the Summary in Chapter 7. "Intervening" military service is described in Chapter 2, endnote 8 and accompanying text. "Generally" because the prohibition against "double-dipping" (being credited toward pension benefits in two or more systems for the same service) is stated in various ways. For example, South Carolina Code Annotated sec. 9-1-1140 (1992 Supp.) provides that:

In no event may any benefits payable under the system duplicate benefits being paid under any other retirement system for the same period of service.

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North Dakota Century Code sec. 54-52.17.4.-1. (1991 Supp.) provides only that a system member may be allowed to purchase credit "for years of service and prior service for which the participating member is not presently receiving credit."

70. Senate Standing Committee Report No. 2751 on House Bill No. 2891 (1990). See quotation in the text at endnote 48.
71. See Chapter 2, text at endnotes 5-7.
72. Hawaii, House Standing Committee Report No. 859-90 on Senate Bill No. 3101, Fifteenth Legislature, 1990, State of Hawaii. Senate Bill No. 3101 was enacted as 1990 Haw. Sess. Laws, Act 104, and the new section codified as Hawaii Rev. Stat. sec. 88-50.5 (1992 Supp.).
73. Hawaii, House Standing Committee Report No. 1134-90 on Senate Bill No. 3101, Fifteenth Legislature, 1990, State of Hawaii.

Chapter 4

UNITED STATES PEACE CORPS

The findings in House Resolution No. 315 are adopted, in part, from the written testimony of two former Peace Corps volunteers in support of a bill proposing to extend membership service credit to volunteer service in the Peace Corps, submitted for a hearing on February 11, 1992, before the House Committee on Labor and Public Employment¹ (relevant portions of the Resolution and the corresponding sections of testimony are reproduced in the endnotes.²). As the model or "example of such national service", as described by that Committee in its report on House Resolution No. 315,³ Peace Corps volunteer service involves the following:⁴

(1) Personal hardship

...Peace Corps volunteers routinely face disease and deprivation on an order rarely experienced by today's military personnel, except under prolonged field exercises or combat situations;...

(2) Youthful contribution to world peace

...selflessly contributed years of their youth in national service to help foster world peace...[; and]

(3) Personal growth and contributions to the community

...a renewed understanding of the rights and responsibilities that come with living in a democracy, as evidenced by the high level of social commitment and community service on the part of these volunteers upon returning home to the United States.

These aspects of Peace Corps service are discussed in this chapter.

The Institution

The Peace Corps was created as an agency in the Department of State, by executive order of President John F. Kennedy in March of 1961; its enabling legislation, the Peace Corps Act of 1961, was passed by Congress in September, 1961.⁵ In 1971, the Peace Corps was placed within the ACTION agency, created by President Richard M. Nixon to incorporate various federal voluntary organizations.⁶ As of December 29, 1981, however, the Peace Corps is an independent agency within the executive branch, with its Director appointed by the President, with the advice and consent of the Senate, and the Secretary of State is "responsible for the continuous supervision and general direction of" Peace Corps programs.⁷

The Peace Corps' organizational structure is described in 22 C.F.R. Part 302.⁸ Peace Corps employees and volunteers alike are required to undergo a security investigation.⁹ However, the Peace Corps is not a military organization.¹⁰

UNITED STATES PEACE CORPS

The goals of the Peace Corps are:

[t]o promote world peace and friendship by making available to interested countries U.S. Volunteers, who are willing to help the people of these countries meet their needs for trained men and women;

[t]o promote a better understanding of the American people among people served; and

[t]o promote a better understanding of other peoples among the American people.¹¹

Hence, the Peace Corps recruits persons who wish to "make a difference".¹² On the occasion of the Peace Corps' thirtieth anniversary, former volunteers recalled being inspired by President Kennedy's idealism and their own idealistic expectations; in the words of one volunteer, who served in Tanzania in the mid-1960's, "[w]e're the Kennedy kids. We thought we could change the world, and continue to try".¹³ Currently, the Peace Corps still appeals to a sense of idealism: for example, in 1992, the Peace Corps' planned expansion to former Soviet states is described as "creating the kind of frontier excitement the Peace Corps generated in the early 1960s".¹⁴

The Peace Corps estimates that "more than 130,000 Peace Corps [v]olunteers have served in more than 100 countries" since the Peace Corps' inception.¹⁵ As to whether this Peace Corps volunteer service should be credited as state or county employment, the Peace Corps' selection and training of prospective volunteers is a relevant consideration.

Selection and Training

Eligibility requirements for Peace Corps volunteers are set by federal regulation.¹⁶ Volunteers must be at least eighteen years old and be United States citizens or have made satisfactory arrangements to be naturalized prior to becoming a volunteer. Their medical status must be such as to permit them, depending on the nature of their assignments, to complete their "tour of service--ordinarily two years--without unreasonable disruption due to health problems". Volunteers may not be on parole or on probation, and may have no financial or other legal obligations that cannot be satisfied prior to, or postponed until completion of, their tour of service. If married volunteers will not be serving together, then the spouse who remains in the United States must acknowledge in writing that the volunteer is expected to be away for two years or more. Divorced applicants must provide all legal documents related to the divorce, and married applicants who are separated must provide documentation concerning other legal or financial arrangements. Married couples with more than two children or children under two years of age generally are not eligible. Previous employment by United States intelligence agencies may disqualify an applicant.

As described by the Peace Corps, the selection process¹⁷ takes from six to eighteen months, depending on the prospective volunteer's skills and on whether any host country currently requests those skills. After a regional office reviews the application and interviews the applicant, that prospective volunteer may then be nominated for an open request by a host country for a volunteer with the applicant's skills. At this point, the applicant's references are contacted, and the application is forwarded to the Peace Corps' Evaluation

Division in Washington, D.C. This Division reviews the application, references, medical history and legal information (e.g., financial obligations, dependents under age eighteen, current obligations with the Armed Forces, National Guard or Reserves).

If the applicant is qualified, that person's file is forwarded to the Placement Office, which reviews the applicant for skills and the personality qualities necessary for success with particular assignments. The Placement Office decides whether to invite an applicant for training.

Certain qualities required of Peace Corps volunteers--by regulation--are:¹⁸

- (1) Motivation. This includes the desire to carry out Peace Corps goals and the commitment to serve the full term as a volunteer.
- (2) Productive competence. The applicant must have the intelligence and background necessary for the assignment.
- (3) Emotional maturity/adaptability. The applicant must be able to adapt to life in another culture, and to communicate/interact with people of other cultures.

In 1988, Moskos wrote that the Peace Corps "is highly selective in choosing its participants" and that "[o]nly about one in five applicants is accepted".¹⁹ The Peace Corps' statistics for 1989 show this selectivity in the above selection process:²⁰

Applications	14,396
Nominations	6,592
Qualifications	5,265
Invitations	4,243
Trainees	3,233

By the end of training, Peace Corps trainees are required by regulation to have: (1) language skills, (2) technical skills needed for the assignment, and (3) knowledge of the culture and history of the host country and awareness of the history and government of the United States.²¹ Peace Corps training sessions are usually eight to fourteen weeks long, and usually are held in the host country.²²

Assignments and Retirement Credit

Peace Corps assignments are normally for two years, although they may be shorter or longer.²³ Assignments may be extended in order to complete a project or activity.²⁴ Peace Corps volunteer service is credited by the federal government as though it were civilian employment:

Any period of satisfactory service of a volunteer under [the Peace Corps] chapter shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government--

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(A) for the purposes of section 816(a) of the Foreign Service Act of 1980 [22 U.S.C.A. [sec.] 4056(a)], and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(B) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under [laws governing terms and conditions of service of federal civilian employees]...²⁵

As explained by the Peace Corps, a volunteer's time, but not including time in training:

...is counted as time in service for the purpose of accruing years employed by the federal government only if the Volunteer is employed by the federal government after his or her Volunteer service is completed.²⁶

Also, the former volunteer must work for the federal government for one of his or her last two years, in order to receive retirement credit.²⁷ Service is credited based upon the number of months served; the former Peace Corps volunteer applies with the Office of Personnel Management in Philadelphia to claim the credit, and pays in an amount for the credit purchased;²⁸ however, there appears to be no requirement that the volunteer complete a tour of service.²⁹

The Degree of "Deprivation"

Thumb-nail sketches of the experiences of 1960's Peace Corps volunteers suggest that volunteers live under extreme conditions:³⁰

Just out of college, [Sandy Heaney, a Peace Corps volunteer in 1963] moved to Bangladesh to teach in a girls' school. She shared a sleeping mat with bedbugs. Her floor was mildew-covered cement. She looked up at a thatched roof and saucer-size spiders. The bathroom was a bucket in the corner.

* * *

[Nancy] Ashkar joined the Peace Corps in 1962 and taught in a mud-block elementary school in Liberia. The principal spent recess adding a roof. Her home was surrounded by palm trees and rubber plantations, high in the hills.

Kennedy inspired a whole generation of Americans to reach high, she says.

* * *

[Fred Stottlemeyer] lives in West Virginia and works for the public waterworks. His idealistic days in 1962 building bridges in Bangladesh, getting rained on for six months of the year, living in a shack with goats and cows and chickens ambling through, were the happiest days of his life, he says.

However, the above experiences are not necessarily typical. The Peace Corps' response to the question, "Will I live in a Mud Hut"³¹ is:

Living situations vary enormously from one country to another and from one program to another. Many volunteers live in cement, brick or adobe houses. Generally the more rural the program, the more basic the housing will be. In urban areas, there is often running water and electricity. Most volunteers live comfortably, but very modestly.

By law, the Peace Corps pays for a volunteer's health care.³² Applicants invited to begin training receive necessary immunizations and dental care, and former volunteers receive health examinations six months after completing their assignment.³³ According to the Peace Corps, medical care is readily available. During their volunteer service, volunteers receive health care either through medical staff maintained by the Peace Corps, or by local fully-trained health professionals in equipped medical facilities.³⁴ For medical problems that cannot be treated locally, volunteers are sent immediately to another country's facility or are returned to the United States.³⁵

Also by law, the Peace Corps pays a volunteer's travel, housing, vacation (forty-five days during two years), transportation, supplies, equipment, subsistence and clothing.³⁶ At the completion of their service, volunteers receive approximately \$200 for each month of training and service; the available literature does not characterize these living allowances as "deprivational" amounts.³⁷ Peace Corps recruitment literature also describes career benefits (language and skills training; hands-on experience); various educational benefits (scholarships, assistantships, fellowships; academic credit; partial forgiveness and deferment of Perkins Loans made after July 1, 1987; deferment of payment on other educational loans); and non-competitive eligibility for federal jobs.³⁸

Service by More Than "Youth"

There is no upward age limit for Peace Corps volunteers, and their average age has varied. In 1965, ninety percent of the volunteers were twenty-six years of age or younger; in 1970's, the Peace Corps began to recruit older persons for their special skills, and by around 1980, volunteers of that age bracket dropped to forty percent.³⁹ For fiscal year 1991, the Peace Corps estimated the average age of volunteers to be 31.5 years, with "the median age just over 26".⁴⁰ In 1992, the proportion of older volunteers was seen to be at "its highest level", with one in every ten volunteers age fifty or older, compared with one in 121 volunteers in 1964.⁴¹

This change in age profile has been attributed to shifts in recruitment.⁴² In its earliest years, the Peace Corps recruited "generalists" to perform "community development" work.⁴³ According to the United States General Accounting Office ("GAO"), host countries are now more developed and, being able to identify their own needs, are requesting volunteers with

more specialized skills, to assist with long-term development plans.⁴⁴ Examples of such "scarce-skill" volunteers include doctors, veterinarians, education specialists, and crop extensionists.⁴⁵

During the period 1981-1989, fifty-four percent to sixty-three percent of the total requests by host countries were for scarce-skill volunteers.⁴⁶ During 1986-1988, eighty-four percent of host country requests for scarce-skill volunteers were filled; ninety-eight percent of the requests for "generalists" were filled.⁴⁷ According to Peace Corps recruitment materials directed toward college students, certain majors are "most often requested by host countries".⁴⁸

The "model" Peace Corps volunteer of the 1960's may not represent the typical Peace Corps volunteer of the 1990's, as programs and countries change.⁴⁹ A recent example of change is the Peace Corps' intention to send, by the end of 1992, five hundred volunteers to the states of the former Soviet Union, to "help establish private business ventures, teach English, and address environmental concerns".⁵⁰ Targeted for recruitment as Peace Corps volunteers for this program are, business executives with at least five years' experience.⁵¹

Personal Growth and Contributions to the Community

Former Peace Corps volunteers ("Returned Peace Corps Volunteers" or "RPCV's") testifying in support of House Bill No. 2682 (1992) describe their volunteer service as educational and personally enriching.⁵² The finding of House Resolution No. 315, apparently based on this testimony,⁵³ is that RPCV's display a "high level of social commitment and community service...upon returning home to the United States". Moskos and the GAO, by way of comparison or contrast, have differing perspectives of the Peace Corps experience.

Moskos says the following of Peace Corps volunteers and of the "typical" volunteer experience:

The defining quality of Peace Corps volunteers is that they are on their own almost all of the time. Although few Peace Corps volunteers live in the proverbial "mud hut" in the remote back country, they do nevertheless fend for themselves in the everyday life of a Third World country, taking care of their own food, shelter, laundry, and transportation. Most will live in a town or city and have a life-style similar to that of the lower-middle class in the host country. Except for fellow Peace Corps volunteers, they avoid other Americans and think of themselves as a special breed.

* * *

In the course of their overseas tours, Peace Corps volunteers typically go through three phases. The initial period "in country" is one of idealism and eagerness. This gives way to a phase characterized by disenchantment with the local culture and society, along with a feeling that they are not accomplishing very much. The awareness comes quickly that the Third World's gargantuan developmental problems are rooted in cultural, social,

and natural resource realities as well as international relations. The final phase, and most volunteers reach it, is a realistic assessment of their personal impact at individual and local levels combined with a basic sense of individual accomplishment. Almost all volunteers who complete their tours look back at their time in the Peace Corps as one of immense personal growth. The inevitable periods of frustration and loneliness are compensated by the rewards of learning about one's self while helping people in another culture help themselves.⁵⁴

However, Moskos' source is a limited sample,⁵⁵ and his sketches are preceded by this caveat:

There is no way to express the diversity packed into the term "Peace Corps volunteers"; tasks and locales are too varied to allow easy characterizations.⁵⁶

The GAO, on the other hand, focuses on the Peace Corps' organizational operation; it finds that "[u]ntil recently, the Peace Corps had no centrally managed policy for evaluating and monitoring assignments".⁵⁷ It also finds "that, historically, the Peace Corps lacked an adequate agency-wide program planning, evaluation, and follow-up system".⁵⁸ Assignment programming, "the planning and development of volunteer assignments and projects", among posts is described as "uneven", a problem that "has persisted for many years".⁵⁹

Hence, finds the GAO, volunteers might arrive in their host country and find no assignment waiting for them. Or, a volunteer might not find the assignment that was promised. The GAO finds three kinds of results in such instances: where volunteers were highly motivated and fluent in the host country's language, they developed their own assignments quickly. Volunteers who are less-proficient in the host language or less motivated might require six to twelve months to develop their own assignments; other volunteers might spend the entire tour of service unproductively or terminate before the two-year period ended.⁶⁰ Although required by statute to be reasonably proficient in the language of their assigned country or area,⁶¹ volunteers--the GAO finds--"often graduate from training and are placed at their work site with only rudimentary understanding of the local language".⁶²

One must infer that some Peace Corps volunteers have unsatisfactory experiences. The GAO states:⁶³

Weak programming contributes significantly to the number of volunteers who return before the end of their 2-year assignments. While there is no standard by which attribution can be judged, it is generally agreed by the Peace Corps that the current rates of attrition--33 percent overall and over 50 percent for older volunteers--are costly. ...Interviews with numerous volunteers indicate that early returns not only hurt the volunteers, who may feel a sense of failure at not being able to complete their tours, but also the host government, which may have been counting on a volunteer to perform a specific task, and the Peace Corps, which is seen as unreliable.

The GAO does not cite the size of its sampling in the above survey. The Report notes that the Peace Corps at that time had the names and addresses of 42,000 returned volunteers; this left approximately 80,000 volunteers whose addresses were not known to the Peace Corps.⁶⁴ It may be that such information may become available in the future as the Peace Corps implements the GAO's recommendations.⁶⁵

Summary

The Peace Corps has been in existence since 1961; it is currently an independent agency within the State Department. Peace Corps volunteers serve overseas, and are required, as a prerequisite to such service, to know the language of the country or area to which they are assigned. Although this discussion does not focus on the agency-functions of the Peace Corps, such as its staff organization, the success of any volunteer's tour of service is dependent on support from the agency. Peace Corps volunteers are civilians, and may receive federal retirement credit for their volunteer service if they subsequently are employed by the federal government.

ENDNOTES

1. Joint Committee Hearing of the House Committees on Labor and Public Employment, Health, and Judiciary on House Bill No. 2862, Sixteenth Legislature, State of Hawaii, February 11, 1992.
2. House Resolution No. 315 and corresponding sections of written testimony submitted to the House Committee on Labor and Public Employment on House Bill No. 2862, Sixteenth Legislature, February 11, 1992, State of Hawaii:

HR 315: "WHEREAS, Peace Corps volunteers often gain a renewed understanding of the rights and responsibilities that come with living in a democracy, as evidenced by the high level of social commitment and community service on the part of these volunteers upon returning home to the United States [...]"

Testimony (John H. Southworth, who identifies himself as a Peace Corps volunteer 1963-1965 Malaya IV with over twenty years' service as a state employee at the University of Hawaii): "Serving as a science and math teacher in Malaya was an experience that gave me perspective on my job and life in Hawaii as nothing else I have ever done. [...] Peace Corps volunteers often gain a renewed understanding of rights and responsibilities that come with living in a democracy as seen by the high level of social commitment and community service many have shown upon return to this country."

HR 315: "WHEREAS, in many instances, individuals who were denied enlistment into the military because of a physical disability chose instead to serve with the United States Peace Corps as an alternative form of national service; and

"WHEREAS, although Peace Corps service is not usually seen as life-threatening in the same sense as military service, Peace Corps volunteers routinely face disease and deprivation on an order rarely experienced by today's military personnel, except under prolonged field exercises or combat situations; and

"WHEREAS, it is also appropriate that Hawaii residents who selflessly contributed years of their youth in national service to help foster world peace while serving in organizations like the United States

Peace Corps also be given the same opportunity as those involved in military service to purchase membership service credit [...]"

Testimony (Dr. Craig D. MacDonald, who identifies himself as Ocean Resources Development Manager for the Department of Business, Economic Development and Tourism and a Peace Corps volunteer in Palau, Micronesia 1969-71): "The current provisions of Chapter 88[, Hawaii Revised Statutes,] relating to service credit are overly restrictive and inequitable. For one thing, they discriminate against those individuals such as myself, who were denied enlistment into the military because of a physical disability and who instead chose the Peace Corps as an alternative form of national service.

As currently construed, Chapter 88[, Hawaii Revised Statutes,] infers that Peace Corps service is somehow inferior to military service. Although not life-threatening, Peace Corps volunteers routinely face disease and deprivation on an order rarely experienced by today's military personnel, except under prolonged field exercises or combat situations.

It is right and proper that Chapter 88[, Hawaii Revised Statutes,] enables persons who have served to help defend our nation and who have worked in the State system to credit their years in the military towards retirement. But it is also right and proper that other Hawaii residents who have selflessly contributed years of their youth in national service to help foster world peace also be credited likewise. (emphasis added)

Written testimony in the committee file at the State Archives was submitted by a total of sixteen persons: by Stanley Siu, Secretary of the ERS; joint testimony from five Returned Peace Corps Volunteers ("RPCV's") at Leeward Community College; an RPCV who identifies herself as currently a state social worker with 22 years' state employment; joint testimony of a couple who served as volunteers in Chuuk (formerly Truk), Micronesia 1974 - 1976; an RPCV who served in Fiji from 1978-1981; an RPCV who served in Liberia from 1965-1967; also, from three persons who stated that they were personally acquainted with RPCV's who worked for the State of Hawaii.

Dr. MacDonald's written testimony (above) also lists four persons, unable to be present at the hearing, who shared Dr. MacDonald's sentiments (volunteer service in Sarawak, Malaysia 1966-1969; India 1968-1970; Fiji 1972-1975; Palau, Micronesia 1973-1975).

3. Hawaii, House Standing Committee Report No. 1117-92 on House Resolution No. 315, Sixteenth Legislature, 1992, State of Hawaii.
4. House Resolution No. 315 also describes the Peace Corps as an "alternative form of national service" for persons "who were denied enlistment into the military because of a physical disability." However, Charles C. Moskos, A Call to Civic Service: National Service for Country and Community (New York: Twentieth Century Fund, 1988), pp. 50-51, states:

There is no denying that, during the Vietnam War, the Peace Corps was defensive about being considered a draft evader's haven. Peace Corps membership, however, never gave statutory exemption from conscription; local draft boards decided what to do with Peace Corps volunteers. A few men were drafted out of the Peace Corps, but most were granted deferments while serving in the Peace Corps, and some were drafted after Peace Corps service.

Section 2520, 22 U.S.C.A. (1990), expressly provides that service in the Peace Corps as a volunteer does not exempt one from military service.

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5. 22 U.S.C.A. sec. 2501 et seq. (1990). The Executive Order is No. 10924, Mar. 1, 1961, 26 F.R. 1789, as amended.
6. Charles C. Moskos, A Call to Civic Service: National Service for Country and Community (New York: Twentieth Century, Fund, 1988), p. 51 (hereinafter, "Moskos"); Executive Order No. 11603, June 30, 1971, 36 F.R. 12675, as amended.
7. 22 U.S.C.A. sec. 2501-1 (1990) "Independent agency status of Peace Corps" (U.S. Peace Corps, "Peace Corps Historical Chronology" (undated) (photocopied) cites the date as February 1982; 22 U.S.C.A. sec. 2503(a)(c)(3) (1990).
8. The following is an outline of the organization described in 22 C.F.R. sec. 302.2 (this regulation also briefly describes functions of these offices):
 1. Central Organization
 - (i) Director
 - (A) Office of the General Counsel
 - (B) Office of Congressional Relations
 - (C) Office of Public Affairs
 - (D) Private Sector Relations/Development Education
 - (E) Executive Secretariat
 - (ii) Office of the Associate Director for International Operations
 - Regional Offices for:
 - Africa
 - Inter-America
 - North Africa, Near East, Asia and Pacific
 - Office of Training and Program Support
 - (iii) Office of the Associate Director for Management
 - (A) Office of Medical Services
 - (B) Office of Special Services
 - (C) Office of Personnel Policy and Operations
 - (D) Office of Finance Management
 - (E) Office of Planning and Policy Analysis
 - (F) Office of Administrative Services
 - (G) Office of Information Resources Management
 - (H) Office of Compliance
 - (iv) Office of the Associate Director for Volunteer Recruitment and Selection
 - (A) Office of Recruitment
 - (B) Office of Placement
 2. Domestic Field Organization
 - Regional Peace Corps Recruitment Offices
 - (i) Chicago Regional Office
 - (ii) New York Regional Office
 - (iii) San Francisco Regional Office
 3. Foreign Field Organization
 - (i) Africa Region [24 centers]

- (ii) Inter-America Region [11 centers]
- (iii) North Africa, Near East Asia and Pacific Region [19 centers]

9. 22 U.S.C.A. sec. 2519 (1990); 22 C.F.R. sec. 305.3.
10. 22 U.S.C.A. sec. 2501 et seq. (1990); 22 C.F.R. Parts 301-311 (re Peace Corps). For a discussion of what constitutes a military organization, see Chapter 6 discussion regarding 32 C.F.R. Part 47. See also endnote 4, above.
11. Peace Corps of the United States, "Budget Presentation to the U.S. House of Representatives, Fiscal Year 1993" ("prepared by the Office of Planning, Budget and Finance"), for U.S., Congress, House, Subcommittee on Appropriations, Hearings on Foreign Operations, Export Financing, and Related Programs Appropriations for 1993, 102nd Cong., 2d Sess., 1992, Part I, p. 899 (hereinafter "Peace Corps 1993 Budget Presentation"). These goals are codified in section 2501(a), Title 22, United States Code Annotated (1990).
12. For example, Paul Coverdell, then-Director of the Peace Corps, writes:

As the Peace Corps enters a period of historic growth, we are reminded of Peace Corps' rich history and of its challenging future. We are reminded of the earliest Volunteers who accepted the challenge of a young president to give up two years of their lives to live in Africa, Asia, or Latin America. They joined Peace Corps because they wanted to make a difference--and they did. And since those days that some call Camelot, many have followed in their footsteps.

In "Days of Miracle & Wonder", Peace Corps' Future Volunteer News, Winter 1990-91, vol. 1, No. 3, p. 2. Also, Peace Corps 1993 Budget Presentation, p. 899.

13. The Washington Post, August 5, 1991, pp. B1, B6 (by Laura Blumenfeld, "The End of the Innocence - On Peace Corps Anniversary, 'Kennedy Kids' Wistfully Recall the Start") (hereinafter, "Washington Post, Blumenfeld article").
14. The Washington Post, April 21, 1992, p. D11 (by Colman McCarthy, "Peace Corps Embarks on a New Frontier"):

One prospective Peace Corps candidate, one Nicholle Lavallee, is described as having been inspired, in part, by words of a commencement address by Marian Wright Edelman in a clipping that she keeps in her wallet:

"Service is the rent each of us pays for living, not something you do in your spare time or after you have achieved your goals."

The article continues,

With the encouragement of a few teachers at Anna Maria College, Lavallee knows the truth of Edelman's statement. She has been a volunteer for two years at Abby's House, a local shelter for battered women. Last year, after teaching reading in her spare time, she earned a certificate as a literacy tutor.

High-quality candidates like that keep coming to the Peace Corps.

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Also, Honolulu Star-Bulletin, November 20, 1992, p. A-1 (article entitled, "Peace Corps capitalists carry concept to Kremlin"): "[t]hey have the traditional Peace Corps idealism."

15. Peace Corps 1993 Budget Presentation, p. 899.
16. 22 C.F.R. sec. 305.2. This paragraph summarizes the requirements in this regulation.
17. U.S., Peace Corps, Future Volunteer News, Winter 1990-91, Vol. 1, No. 3 (hereinafter, Future Volunteer News), pp. 8-9 (article entitled, "Applying to the Peace Corps: What to Expect"). Note that this is only a summary.
18. 22 C.F.R. sec. 305.4(a)-(c).
19. Moskos, p. 50.
20. Future Volunteer News, p. 11.
21. 22 C.F.R. sec. 305.4(d). 22 U.S.C.A. sec. 2521 (1990) provides: "No person shall be assigned to duty as a volunteer...unless at the time of such assignment he possesses such reasonable proficiency as his assignment requires in speaking the language of the country or area to which he is assigned." The regulations also provide for penalties: for failure to disclose information, or for misrepresentation of information requested by the Peace Corps, the penalty is disqualification or separation from the Peace Corps (22 C.F.R. sec. 305.2(g)); for failure to meet selection standards (i.e., 22 C.F.R. sec. 305.4) by the end of training, the penalty is disqualification from Peace Corps service (22 C.F.R. sec. 305.4(e)).
22. U.S., Peace Corps, "Peace Corps of the United States of America - The toughest job you'll ever love," (informational pamphlet) PC 7004 RMB-31 2/91 (hereinafter, "Peace Corps brochure"), p. 17.
23. Ibid.
24. Ibid. This publication states that the Peace Corps also plans shorter lengths of service--three to fifteen months--for scarce skills projects.
25. 22 U.S.C.A. sec. 2504(f)(1)(A) and (B) (1990).
26. U.S., Peace Corps, "Commonly Asked Questions by Peace Corps Applicants Age 50 and Over," undated (mimeographed), received from Peace Corps, San Francisco Area Recruitment Office.
27. Ibid.
28. Telephone interview with Peace Corps, San Francisco Area Recruitment Office Staff, September 22, 1992.
29. E.g., 22 U.S.C.A. sec. 2504(f)(1)(1990) states, "[a]ny period of satisfactory service of a volunteer under this chapter..." (emphasis added); 22 C.F.R. Parts 301-311 (Chapter III-Peace Corps).
30. Washington Post, Blumenfeld article, p. B6.
31. Peace Corps brochure, p. 22.

32. 22 U.S.C.A. sec. 2504(e) (1990).
33. Ibid.
34. Peace Corps brochure, p. 21.
35. Ibid.
36. 22 U.S.C.A. sec. 2504(b) (1990); Peace Corps brochure, p. 20.
37. 22 U.S.C.A. sec. 2504(c) (1990) (the readjustment allowance is to be "not less than \$125 for each month of satisfactory service as determined by the President"); Peace Corps brochure, p. 20; however, Moskos (p. 50) does describe the "stipend" as "penurious".
38. Peace Corps brochure, p. 18; U.S., Peace Corps, "African Americans Making a Difference For The World And For Themselves In The Peace Corps of The United States of America," "Asian & Pacific Americans Making a Difference for the World and for Themselves in the U.S. Peace Corps," and "Hispanic Americans Making a Difference for the World and for Themselves in the U.S. Peace Corps," undated (fold-out brochures), received from Peace Corps San Francisco Area Recruitment Office (sections in each entitled "Benefits to Your Education" and "A Boost to Your Career"); Future Volunteer News, p. 15.
39. Moskos, pp. 51-52.
40. Peace Corps 1993 Budget Presentation, p. 899.
41. Honolulu Star-Bulletin, June 25, 1992, p. D-14 (article entitled, "Graying Peace Corps more alluring to volunteers, hosts").
42. Moskos, pp. 51-52.
43. U.S., General Accounting Office, Peace Corps: Meeting the Challenges of the 1990s, Report to the Chairman, Legislation and National Security Subcommittee of the Committee on Government Operations, House of Representatives, 101st Cong., 2d Sess., 1990 (Washington, D.C.: 1990) (hereinafter, "GAO Report"), p. 19.

Chapter 4 of the GAO Report (pp. 31-39) is entitled, "Peace Corps Can Improve Attainment of Its First Goal by Strengthening Assignment Programming," Chapter 5 (pp.40-47) is entitled, "The Peace Corps Can Better Achieve Its Second Goal Through Recruiting More Minorities," and Chapter 6 (pp.48-51) is entitled, "Peace Corps Can Better Achieve Its Third Goal".

Moskos states that originally, nearly all Peace Corps volunteers were "generalists" or "untrained youth"; he also states that "generalist" also "really meant recent liberal arts graduates" (pp. 51-52).

44. Ibid.
45. Ibid., p. 23.
46. Ibid.
47. Ibid.

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48. U.S., Peace Corps, "Undergrads - Would You Like to Be a Peace Corps Volunteer?," undated (mimeographed), received from Peace Corps San Francisco Area Recruitment Office. The majors listed are Biology, Botany, Chemistry, Physics, Mathematics, General Science, Watershed Management, Forestry, Agriculture (any), Fisheries, Soil Science, Industrial Arts, Civil or Structural Engineering, Accounting, Nutrition, Nursing, Health, Home Economics, Elementary Education, and Special Education. The sheet also lists the skills and experience that might be desirable for a graduate with a degree in any major.
49. Also, the Peace Corps will attempt to recruit more minorities as volunteers: The Peace Corps 1993 Budget Presentation, p. 905. The GAO Report (p. 40) notes that the Peace Corps "has historically experienced great difficulty attracting sufficient numbers of minorities to serve as volunteers". Various factors are discussed, including minorities' "perception that the Peace Corps is a white, middle-class agency" (GAO Report p. 42; also, p. 41).
50. The Washington Post, December 31, 1991, p. A11 (by Bill McAllister, "Peace Corps Plans to Send 500 to Ex-Soviet States").
51. Ibid. The Peace Corps 1993 Budget Presentation, p. 903, mentions this expansion, briefly. According to the Honolulu Star-Bulletin, November 20, 1992, p. A-1, the first 102 Peace Corps volunteers to serve in Russia were to arrive in Moscow on that date.
52. The testimony relating to the educational value of Peace Corps volunteer service (House Bill No. 2682, on February 11, 1992, described in endnote no. 3, above) consists of the following passages:

"...My RPCV time was invaluable as a major factor which shaped my interest in helping people."

"There are many other people who are RPCVs contributing their skills and wide perspective about people in State government service. ..."

Ethel Nana Fleming, state social worker with twenty-two years in state employment.

"...Peace Corps experience profoundly affects the volunteer, and continues throughout the RPCV's professional life. ..."

Karen Knudsen, Member, Hawaii State Board of Education, Community Relations Officer, East-West Center, and Greg Knudsen, Vice President, Hawaii Returned Peace Corps Volunteers, Administrative Assistant, Office of International Relations; Peace Corps volunteers, Chuuk, Micronesia, 1974-76.

"...Serving as a science and math teacher in Malaya was an experience that gave me perspective on my job and life in Hawaii as nothing else I have ever done. ..."

John H. Southworth (see note 3, above).

"...Host countries benefit greatly from the Peace Corps; volunteers also benefit from their service experience."

"Peace Corps enriched my life and has helped me and my students in my [twenty-three] years of being a teacher in Hawaii. ..."

Peter W. Baker, Peace Corps, Liberia 1965-67.

53. Aside from these RPCV's having chosen to enter public service employment, no other forms of "social commitment and community service" are referenced in this testimony.

54. Moskos, pp. 52-53.
55. Ibid., p. 52. No statistics are cited.
56. Ibid.
57. GAO Report, p. 31. According to the Report (p. 33), the Peace Corps in January of 1990 "instituted the Integrated Planning and Budgeting System (IPBS) and Program and Training System (PATs)".
58. Ibid.
59. Ibid., pp. 33-34.
60. Ibid., p. 35.
61. 22 U.S.C.A. sec. 2521 (1990) (see endnote no. 21).
62. GAO Report, p. 36.
63. Ibid., p. 38.
64. Ibid., pp. 49-50.
65. I.e., the Peace Corps will generate data, e.g., on which assignments are successfully implemented, and why. On the other hand, there is the possibility that such data may not address the Hawaii Legislature's concerns; for example, Chapter 6 of the GAO Report focuses on what the Peace Corps has done to ensure that volunteers upon returning home teach the American People what the volunteers had learned in the Peace Corps, and not on RPCV's (in the words of House Resolution No. 315) "high level of social commitment and community service...upon returning home to the United States".

Chapter 5

NATIONAL SERVICE

What are "organizations rendering national service"?¹ The phrase "national service" itself has had no single generally accepted meaning. For example, in *Webster's Third New International Dictionary of the English Language*, the entry "national service" appears solely as a British synonym for "selective service".² *Black's Law Dictionary* and *Webster's Ninth New Collegiate Dictionary* have no entry for "national service".³

Black's and *Webster's Third New International Dictionary* have entries for "national service life insurance", insurance intended for veterans of World War II,⁴ and House Resolution No. 315 (1992) appears to use the phrase "national service" as a synonym for "military service":

WHEREAS,...individuals who were denied enlistment in the military chose instead to serve with the United States Peace Corps as an alternate form of national service...(Emphasis added)

In contrast, the Peace Corps volunteers are civilians, and the Peace Corps itself refers to its mission as "citizen service".⁵

According to Charles C. Moskos, A Call to Civic Service - National Service for Country and Community, three forms of service historically may be deemed "national service": (1) military service by "citizen soldiers"--in colonial militias which ultimately evolved into the present-day state militias and National Guard; (2) alternate service by conscientious objectors during times of war; and (3) various conservation and human services "corps", the first being President Franklin D. Roosevelt's Civilian Conservation Corps of 1933.⁶ In Moskos' view, "national service" is a "civic sharing" that:

...entails the full-time undertaking of public duties by young people--whether as citizen soldiers or civilian servers--who are paid subsistence wages. "National" is used here in the broadest sense. It encompasses youth service performed at the state, local, and community levels for both governmental agencies and nonprofit organizations. Common to all such service is the performance of socially needed tasks that the market cannot effectively handle and that would be too expensive for government employees to carry out.⁷

Source of a Definition of "National Service"

The *Congressional Digest* of May 1990, devoted to the issue of then-pending national service legislation, provides this similarly expansive definition of "national service":

National service is broadly defined as a way of strengthening civic ideals of public service and community spirit through voluntary participation in activities designed to meet social needs.⁸

Later that year, Congress passed the National and Community Service Act of 1990 ("NCS Act"),⁹ which provided no new definition of "national service"¹⁰ but expanded some existing volunteer service programs.¹¹ The Act established the Commission on National and Community Service,¹² which was authorized to make grants for various kinds of programs servicing the community, state, or nation.

Existing federal national service organizations cited by the legislative history of the NCS Act as originally enacted (grouped by that report in terms of the benefits received by participants in lieu of compensation) are: the military, the Peace Corps, and Volunteers in Service to America ("VISTA"), which provide volunteers with living support and education benefits such as grants and loan deferral; "fifty conservation and youth service corps across the country" whose participants work full-time and receive living expenses; and federal programs then-known as the Older American Volunteer Programs for part-time volunteers over age 60, two of the programs paying their volunteers stipends.¹³

The NCS Act acknowledges four existing national service organizations:

- (A) The VISTA and older American volunteer programs [now known as National Senior Volunteer Corps programs] (established under the Domestic Volunteer Service Act of 1973 (49 U.S.C. 4950 et seq.));
- (B) each regular component of the Armed Forces (as defined in section 101(4) of Title 10);
- (C) each of the reserve components of the Armed Forces (as described in section 216(a) of Title 5 [sic]); and
- (D) the Peace Corps (as established by the Peace Corps Act (22 U.S.C. 2501 et seq.))¹⁴

The NCS Act's objectives include the continued support for these existing organizations:

...attracting a greater number of citizens to public service, including service in the active and reserve components of the Armed Forces, the National Guard, the Peace Corps...and the VISTA and older American volunteer programs [now known as National Senior Volunteer Corps]...¹⁵ (Emphasis added)

Of these four organizations, the regular components of the Armed Forces are already fully recognized for retirement credit under section 88-132.5, *Hawaii Revised Statutes*. The Peace Corps was discussed in Chapter 4. Chapter 6 describes the reserve components, including the National Guard. This chapter will discuss those civilian programs including: (1) VISTA and programs or organizations established under the Domestic Volunteer Service Act of 1973; (2) other federal organizations describe in the article, "Federal Volunteer Programs," in the May 1990 issue of *Congressional Digest*, and by Moskos; (3) past service programs described in the legislative history (Senate Report No. 101-176) as examples for the NCS Act ("proto-type organizations"); and a general overview of the NCS Act as recently amended by the National and Community Service Trust Act of 1993.

"Proto-Type Organizations"

Three early programs--the Civilian Conservation Corps ("CCC"), the Youth Conservation Corps ("YCC"), and the Young Adult Conservation Corps ("YACC")--are discussed in Senate Report No. 101-176 as models of youth corps service programs.¹⁶ The goals of the CCC were to relieve unemployment, restore depleted natural resources, and be a public works program.¹⁷ According to Moskos,¹⁸ unemployed single males aged 18 to 25 years, with no criminal record, enrolled in the CCC for six-month periods, renewable up to two years. Participants--nearly 3 million when the program ended in 1942--lived in camps and received food, shelter, uniforms and a monthly payment of \$30. The 1,500 camps were administered by the Army, the work projects were managed by the Interior Department and the Forest Service, and recruitment was handled by the Labor Department.

Like the CCC, the YCC and YACC were intended to reduce youth unemployment and carry out conservation projects.¹⁹ The YCC--created in 1970 and federally funded through 1981²⁰--was a summer residential program for youths ages fifteen through eighteen.²¹ The YACC--which existed from 1977 to 1981--enrolled persons ages sixteen through twenty--three for twelve-month periods.²² The jobs were intended to "diminish the backlog of relatively labor intensive projects" and to be suited to young persons, as well as being of educational or developmental value.²³

Another early national service program, cited by Moskos, is the New Deal's National Youth Administration ("NYA").²⁴ The NYA, which lasted from 1935 to 1943, enrolled men and women ages 18 to 24, who were on relief (later, the unemployed were eligible). The program was urban; activities included "work training programs, education classes from unemployed youth, upgrading of public facilities, and filling jobs in government agencies".²⁵ Part-time work was included and most participants lived at home or at school. Moskos states that:

In a forerunner of what would later be called work-study programs, an estimated one in eight college students received part-time work from the NYA. ...

Although its civic content was shallow, the NYA set important organizational precedents in national service. It marked the first time that federal aid was offered to college students.²⁶

These two New Deal and two 1970's youth corps programs, therefore, have elements of what Moskos, the *Congressional Digest*, and the NCS Act require for "national service". For example, "national service" must bring some tangible benefit to the community and nation;²⁷ it must educate the youth, imbuing sense of civic responsibility²⁸ (the "civic content" that Moskos feels should be an element of any form of national service).²⁹ However, "national service" may also be quite unlike the full-time military model suggested by House Resolution No. 315 (e.g., deprivational lifestyle, away from home). As described in the next section (regarding VISTA and other existing domestic programs until recently under the ACTION agency), "national service" may be part time, take various forms, and also involve older Americans.

VISTA and Other Domestic Volunteer Service

The term often used to refer to civic service ("national service") is "voluntarism"³⁰ or "volunteerism". As an example, this is the statement of policy, added by Congress in 1986, for the ACTION agency:

- (a) Because of the long-standing importance of volunteerism throughout American history, it is the policy of the Congress to foster the tradition of volunteerism through greater involvement on the part of both young and older citizens.
- (b) The purpose of ACTION, the Federal domestic volunteer agency, is to foster and expand voluntary citizen service in communities throughout the Nation in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly...³¹

1. VISTA

Volunteers in Service to America ("VISTA") was originally enacted through the Economic Opportunity Act of 1964³² as part of President Lyndon Johnson's Great Society program,³³ and had been under ACTION since 1971.³⁴ VISTA enabling legislation is Part A of Subchapter I, Domestic Volunteer Service Act of 1973.³⁵ The purpose of volunteer service under this Part is to "alleviate poverty and poverty-related problems in the United States", and VISTA volunteers are assigned "to work in appropriate projects and programs sponsored by [public or nonprofit private] organizations".³⁶

Such projects may include working with "the mentally ill, developmentally disabled, and other handicapped individuals"; with problems of the homeless, the jobless, the hungry; in alcohol and drug abuse prevention and education; and "addressing significant health care problems".³⁷ A project must involve active participation by the low-income community in its development, planning and implementation; the project must also intend the eventual phase-out of the assigned VISTA volunteer, with the volunteer's functions being assumed by local citizens.³⁸

VISTA was originally conceived as a domestic equivalent of the Peace Corps.³⁹ There remain some general similarities between VISTA and the Peace Corps, but there are also significant differences.⁴⁰ Initially, according to Moskos:

The early VISTA was patterned after the Peace Corps. The 2,000 or so VISTA volunteers all received a six-week training course, then were given assignment away from their homes.... Most of the volunteers, like their Peace Corps counterparts, were liberal arts college graduates from well-to-do backgrounds. In fact, many VISTA volunteers were unsuccessful Peace Corps applicants.⁴¹

VISTA volunteers are still "required to make a full-time personal commitment to combatting poverty", and the statute provides that:

To the maximum extent practicable, the requirement for full-time commitment shall include a commitment to live among and at the economic level of the people served, and to remain available for service without regard to regular working hours, at all times during their periods of service, except for authorized periods of leave.⁴²

However, Moskos states that in 1969 "Congress authorized the recruitment of low-income individuals to work in their home communities", so that by the late 1970's, two-thirds of the VISTA volunteers were low-income persons.⁴³ According to Moskos, nearly all volunteers by 1987 were in that category.⁴⁴ In its appropriations presentations for fiscal 1992 and 1993, ACTION described VISTA volunteers as "[coming] from all walks of life, all geographical areas, all economic levels, and all age groups" (emphasis added).⁴⁵ However, no supporting data is presented regarding economic levels of VISTA volunteers.⁴⁶

Selection and Training

The minimum age for VISTA volunteers, as for Peace Corps volunteers, is eighteen, and there is also no upper age limit.⁴⁷ Unlike Peace Corps volunteers, VISTA volunteers may be either United States citizens or permanent residents.⁴⁸ Grounds for "deselection" of VISTA trainees and for termination of VISTA volunteers are provided in 45 C.F.R. §§1210.2-1 and 1210.3-1, respectively.⁴⁹ A trainee may be "deselected" for:

- (a) Failure to meet training selection standards which includes, but is not limited to, the following conduct:
 - (1) Inability or refusal to perform training assignments;
 - (2) Disruptive conduct during training sessions;
- (b) Conviction of any criminal offense under Federal, State or local statute or ordinance;
- (c) Violation of any provision of the Domestic Volunteer Service Act of 1973, as amended, or any ACTION policy, regulation, or instruction;
- (d) Intentional false statement, omission, fraud or deception in obtaining selection as a Volunteer; or
- (e) Refusal to accept Volunteer Placement.⁵⁰

A volunteer may be terminated or suspended for the grounds described in subsections (b) through (d) above.⁵¹ Further grounds for termination or suspension are:

- (c) Failure [sic] refusal or inability to perform prescribed project duties as outlined in the Project Narrative and/or volunteer assignment description and as directed by the sponsoring organization to which the Volunteer is assigned;

- (d) Involvement in activities which substantially interfere with the Volunteer's performance of project duties;

* * *

- (f) Any conduct on the part of the Volunteer which substantially diminishes his or her effectiveness as a VISTA Volunteer; or

- (g) Unsatisfactory performance of [sic] Volunteer assignment.⁵²

Compared to Peace Corps training and selection regulations,⁵³ these VISTA regulations do not contain affirmative requirements, i.e., the regulations instead describe what volunteers may not do.

In contrast to the Peace Corps' training program, VISTA's original six-week training program became, by the 1980's, what Moskos describes as "a pro forma 'orientation' session given by the sponsoring agencies".⁵⁴ A VISTA informational card describes pre-service training as a "two-to-three-day session" that consists of "an orientation to VISTA policy, procedures and general background", with additional training during service "which will concentrate more specifically on the skills [that the volunteer will] need for [a] particular assignment".⁵⁵

In fiscal year 1991, ACTION planned to improve training of VISTA volunteers by implementing "[s]tandardized four-day regional pre-service orientations" for all new VISTA trainees.⁵⁶ No change in this type of "pre-service orientation" was contemplated for fiscal year 1993.⁵⁷

When questioned on the ratio of persons who applied to become VISTA volunteers to the number of persons who were actually accepted, ACTION could only roughly estimate that for 1991, this ratio was two-to-one.⁵⁸ For fiscal year 1992, ACTION anticipated implementation of a VISTA program evaluation.⁵⁹ For fiscal year 1993, however, ACTION stated that the evaluation, to "assess VISTA's achievement of stated goals and the program's impact on the communities in which the volunteers serve", needed additional follow-up.⁶⁰

Assignments, Retirement Credit, and Subsistence Benefits

VISTA volunteers serve for a minimum of one year.⁶¹ They may re-enroll to serve for periods of not more than two years, but may not serve for more than a total of five years.⁶² By statute, VISTA volunteers are "deemed civil employees of the United States"⁶³ and, like Peace Corps volunteers, may receive federal civilian retirement credit. Federal law provides:

Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of subchapter I of this chapter ["VISTA" provisions],...shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government...

- (1) for the purposes of any Act establishing a retirement system for civilian employees of any United States Government agency...⁶⁴

Whether VISTA volunteers actually benefit from retirement credits in subsequent federal service is not shown in the data presented by ACTION for its 1992 and 1993 appropriations.⁶⁵ One may query whether the lower-income status (according to Moskos) of many VISTA volunteers means that they may be less likely subsequently to enter federal civilian employment. Many volunteers are older, a factor that Moskos attributes to the increase in VISTA's percentage of lower-income volunteers.⁶⁶ ACTION had been required by law to maintain a minimum percentage of older volunteers,⁶⁷ a requirement with which ACTION was in compliance:

Twenty-two percent of all volunteers are 55 years of age or older, and nearly 20 percent are between the ages of 18 and 27. The median age of the volunteers is 36, and nearly 12 percent of the volunteers are recent college graduates.⁶⁸

By law, volunteers are to receive a subsistence allowance that is set at not less than 95 percent of the poverty lines for a single individual for each fiscal year; the average subsistence, excluding allowances for Hawaii, Guam, American Samoa and Alaska, is no less than 105 percent of the poverty line.⁶⁹ VISTA volunteers receive, upon completion of their periods of service, a stipend, originally set at \$50 per month, then raised in 1975 to \$75 per month.⁷⁰ Section 4955(a), as amended in 1989, provided that the stipend was not to "exceed \$75 per month in fiscal year 1990, \$90 per month in fiscal year 1991, and \$95 per month in subsequent fiscal years" during the volunteer's service, and as amended in 1993, provides that after October 1, 1994, the stipend is to be a minimum \$100 per month, and a maximum \$125 per month, assuming availability of funds.⁷¹

Available to volunteers are loan deferment and forgiveness opportunities under the Higher Education Act of 1965.⁷² A benefit available to low-income volunteers is "an individual plan for job advancement or for transition to a situation leading to gainful employment".⁷³

2. Other Subchapter I Programs

Of the federal programs mentioned in the NCS Act, only Subchapter I "National Volunteer Antipoverty Programs"--VISTA, "University Year for VISTA" (formerly known as "Student Community Service Programs"),⁷⁴ and "Special Volunteer Programs"⁷⁵ --allow federal retirement system credit "in connection with subsequent employment by the United States Government".⁷⁶ To be eligible for retirement credit, volunteers must serve for periods of one year or longer. Grants or contracts may be made for these latter two types of programs.⁷⁷ Unlike VISTA volunteers, volunteers under these latter two types of programs are not required to live at the poverty level.

The purpose of University Year for VISTA ("Part B") is to:

...assist students, through service-learning and community service programs, to undertake volunteer service in such a way as to enhance the educational value of the service experience, through participation in activities that strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems.⁷⁸

The University Year for VISTA ("UYV") program permits students to perform volunteer service, possibly for academic credit, at participating institutions of higher learning.⁷⁹

"Special Volunteer Programs" under Part C of Title I are intended as "special emphasis and demonstration volunteer programs".⁸⁰ Such programs are to "encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part" and to identify segments of "the poverty community" that could benefit from these efforts; the assignment of and provision for the support of volunteers, as well as the establishment of priorities for grants and contracts under this part are to be determined by the assistant director ("the Director") of the Corporation for National and Community Service ("the Corporation") assigned to VISTA.⁸¹

3. Subchapter II--"National Older American Volunteer Programs"

The programs under Subchapter II of the Domestic Volunteer Service Act of 1973 are: the "Retired and Senior Volunteer Program" ("RSVP"),⁸² "Foster Grandparent Program"⁸³ and "Senior Companions Program".⁸⁴ Under these programs, the Director makes grants to or enters into contracts with public and nonprofit private agencies (under RSVP, grants are also made to the states), for volunteer projects; RSVP volunteers must be age 55 or older, while Foster Grandparents and Senior Companions must be age 60 or older.⁸⁵

As described in section 5000, "Statement of purposes", this subchapter is to:

...empower older individuals to contribute to their communities through volunteer service, enhance the lives of the volunteers and those whom they serve, and provide communities with valuable services[.]⁸⁶

The purposes of the Subchapter II programs are as follows:⁸⁷

RSVP: "to utilize the vast talents of older individuals willing to share their experiences, abilities and skills in responding to a wide variety of community needs"

Foster Grandparents: "to afford low-income older individuals an opportunity to provide supportive, individualized services to children with exceptional or special needs"

Senior Companions: "to afford low-income older individuals the opportunity to provide personal assistance and companionship to other older individuals through volunteer service".

RSVP volunteers receive reimbursement for transportation, meals and other out-of-pocket expenses incident to performing volunteer service.⁸⁸ Foster Grandparents and Senior Companions programs volunteers, as low-income individuals,⁸⁹ receive similar reimbursement plus an allowance, stipend or other financial support for their service.⁹⁰ Section 5001(d) provides that RSVP volunteer service "shall not be deemed employment for any purpose . . . not fully consistent with the provisions and in furtherance of the purpose of this part".⁹¹ No reference is made to employee status in the other two parts.

Other Programs

Loan repayment programs are another variety of "national service" that do not fit the "youth corps" or "Peace Corps" image of "national service" described in House Resolution No. 315. Examples described by Moskos and the article "Federal Volunteer Programs"⁹² are the National Health Service and educational loan programs.

The National Health Service Corps is a unit of the Public Health Service within the Department of Health and Human Services. It was established in 1970⁹³ "to recruit doctors and other health professionals to serve in designated 'Health Manpower Shortage Areas', mainly isolated rural communities".⁹⁴ The Corps provides financial support for a student's professional medical training in exchange for the student's agreement to serve in such a shortage area for a minimum of two years.⁹⁵

Federal educational loan programs named in "Federal Volunteer Programs" are Perkins and Stafford loan programs under the federal Department of Education: these provide for deferment of payment while the student performs community service or service in the military.⁹⁶ According to Moskos, GI bills and ROTC scholarships "set basic patterns for associating educational aid and military service"; and when the Soviet Union surprised the United States in 1957 by launching the world's first artificial satellite, Congress responded by passing the National Defense Education Act of 1958, which linked educational aid to civilian service.⁹⁷

Perkins Loans were formerly known as National Direct Student Loans which, in 1972, replaced the National Defense Student Loan program.⁹⁸ Under this program, borrowers may have up to half their loans cancelled after graduation if they "teach in either elementary or secondary schools in low-income areas or in schools serving handicapped children".⁹⁹ With Stafford loans, formerly known as Guaranteed Student loans ("GSL"), the federal government subsidizes lenders to make low-interest loans to students, reimbursing the lenders if the student defaults on the loan. Moskos, however, contends that under such kinds of loans, "citizen obligation became disconnected from such support".¹⁰⁰

Another educational loan program--the National Teacher Corps--is mentioned by Moskos¹⁰¹ and apparently has also generated some renewed interest. Described in a 1989 New York Times article as "a teacher-recruiting program first developed by the Kennedy Administration",

The Teacher Corps of the 1960's, which was modeled on the Peace Corps, recruited students who agreed to teach low-income children in inner-city and rural schools in exchange for stipends and tuition payments. In 1981[,] it was folded into an education block grant, part of an effort to trim the Federal budget.¹⁰²

The article states that "[m]ore than 25 states have established similar programs in recent years", and describes three bills then-introduced in the U.S. Senate to revive the corps. Moskos describes the original "National Teacher Corps," as having been "public-spirited", but cites no material evaluating the corps' actual effectiveness.¹⁰³ He cites 38 states in 1987 as having teacher corps programs to recruit for "a pending general shortage of teachers" nationwide.¹⁰⁴

National and Community Service Act of 1990

The NCS Act as originally enacted¹⁰⁵ did not set up a cadre of volunteers such as, e.g., VISTA volunteers; rather, it set out a statutory framework, including funding criteria, for categories of programs. These original programs included "Programs for Students and Out-of-School Youth" (Title I, Part B); "American Conservation and Youth Service Corps" (Title I, Part C); and "National and Community Service" (Title I, Part D), plus "Innovative and Demonstrative Programs and Projects" (Title I, Part E). The Commission on National and Community Service was empowered to make grants and to enter into contracts for these projects and programs.

In 1992, the NCS Act was amended by the National Defense Authorization Act for Fiscal Year 1993¹⁰⁶ to authorize establishment of a "Civilian Community Corps Demonstration Program", a pilot "residential program" which includes a "permanent cadre of supervisors and training instructors" appointed "without regard to the provisions of Title 5 governing appointments in the competitive service".¹⁰⁷ As of September 21, 1993, the NCS Act has been further amended by the National and Community Service Trust Act of 1993, which restructures the administration of national service programs, adds provisions for national service education awards, and amends certain programs.¹⁰⁸

Programs under the NCS Act are now to be administered by the Corporation for National and Community Service.¹⁰⁹ The NCS Trust Act legislative history explains:¹¹⁰

With the enactment of the National and Community Service Act of 1990, the Federal Government created a second primary stream of Federal support for service alongside the programs of the ACTION agency. Together, the Commission on National and Community Service and ACTION offer limited but significant Federal support for service initiatives. ...

In combining the ACTION agency and the Commission into the Corporation for National Service [sic], the [NCS Trust] Act aims to retain what is strongest in both agencies for the purposes set out in the statute.

The NCS Trust Act repeals authorities of the ACTION agency and transfers ACTION's functions to the Corporation effective as of that Act's enactment.¹¹¹

Subtitle C, "National Service Trust Program", and Subtitle D, "National Service Trust and Provision of National Service Education Award", Title I of the NCS Act, are new.¹¹² Subtitle C has three parts, "Part I--Investment in National Service", "Part II--Application and Approval Process", and "Part III--National Service Participants".¹¹³ Part I authorizes the Corporation to make grants to "States, subdivisions of States, Indian tribes, public or private nonprofit organizations, and institutions of higher education" to support or carry out national service programs;¹¹⁴ fifteen categories of eligible national service programs are described in section 122(a) of that Part.¹¹⁵ This Part also sets out, for example, types of national service positions qualifying for national service educational awards, the kinds of program assistance that the Corporation may offer, and the training programs that the Corporation may conduct either "directly or by grant or contract".¹¹⁶

Part III describes the minimum qualifications required for persons to qualify as participants of programs receiving assistance under Part I (for example, participants must be seventeen years of age or older, and be a citizen, national or lawful permanent resident alien of the United States, in addition to meeting eligibility requirements directly related to the tasks to be accomplished).¹¹⁷ Section 139 defines "terms of service" as either full-time, "not less than 1,700 hours during a period of not less than [nine] months and not more than [one] year", or part-time, which means "not less than 900 hours" during a period of not more than two years (or three years if a person is concurrently enrolled in an institution of higher learning).¹¹⁸ This section provides that a person may be released from completing a term of service for either "compelling personal circumstances" or "for cause".¹¹⁹ If released for the former reason, then that person may receive a portion of the national service education award proportionate to the period of completed service, or be allowed to return to the program in two years; a person released for cause is entitled to no educational award.

The recruitment and selection of persons to serve in national service programs receiving assistance under Part I, above,¹²⁰ is to be conducted by the entity receiving assistance ("State, subdivision of a State, Indian tribe, public or private nonprofit organization, institution of higher education, Federal agency"). This Part also provides for living allowances; for example, a full-time participant is to receive "an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers" under the Domestic Volunteer Service Act of 1973.¹²¹

Subtitle D of Title I establishes the National Service Trust as an account in the United States Treasury, funds from which are to pay national service educational awards.¹²² This subtitle sets out criteria to be met if an individual is to be eligible to receive an educational award from the Trust. For example, the individual must have been seventeen years of age at the time this person "began serving in the approved national service position" or else be "an out-of-school youth serving in an approved national service position with a youth corps program described in section 122(a) or a program described in section 122(a)(9)".¹²³ Also, the person must have served "not less than the full- or part-time term of service specified in section 139(b)" of the NCS Act. No more than two terms of service may qualify, and a recipient has seven years in which to use the award.¹²⁴

The amount of the award is described by reference to provisions of Title 38 of the United States Code (Chapter 30--"All-Volunteer Force Educational Assistance Program").¹²⁵ The cited sections currently translate into a maximum "value...equal to 90 percent of" \$125 monthly over a period of 36 months, less \$50 per month for the first twelve months.¹²⁶ The award may be used to pay (1) outstanding educational loans, (2) costs of attending an institution of higher education, (3) expenses for participation in approved school-to-work programs, and (4) interest expenses "during a period for which [an eligible] individual has obtained forbearance in the payment of a qualified student loan".¹²⁷

In addition to the foregoing National Service Trust provisions, the NCS Act as amended by the 1993 Act provides for other "corps" programs. Discussed below as examples are the Civilian Community Corps, mentioned earlier, and the American Conservation and Youth Service Corps (formerly Part C, now Subtitle I, of Title I); the NCS Trust Act adds an "Urban Youth Corps" and also amends the Youth Conservation Corps Act by adding Title II, the "Public Lands Corps Act of 1993".¹²⁸

The purpose of the Civilian Community Corps Demonstration Program is "to provide a basis for determining": whether such residential programs "can significantly increase the

support for national service and community service by the people of the United States" and expand opportunities for community service; whether retired and former members of the Armed Forces, including those members discharged or released from active duty because of reduced defense spending, can provide guidance and training in such programs, and

... whether domestic national service programs can serve as a substitute for the traditional option of military service in the Armed Forces of the United States which, in times of reductions in the size of the Armed Forces, is a diminishing national service opportunity for young Americans.¹²⁹

Members of its two "program components" (a national service program and a summer national service program) are required to "reside with other members of the Corps in Corps housing during the periods of the members' agreed service".¹³⁰

This subtitle provides for organization of the Corps (into units, which are assigned to camps), and for standards of conduct which are to be enforced by sanctions.¹³¹ The secretaries of Agriculture, Interior, and Housing and Urban Development are specifically designated to develop proposals for Corps projects.¹³² Members are allowed a living allowance and may be eligible for national service educational awards.¹³³

The subtitle "American Conservation and Youth Service Corps"¹³⁴ provides authority for creating or expanding full-time or summer youth corps programs for persons ages 16 to 25 years old (for summer programs, ages 15 to 21 years).¹³⁵ "Conservation corps programs" may focus on such activities, among others, as "conservation, rehabilitation, and the improvement of wildlife habitat, rangelands, parks, and recreational areas"; "road and trail maintenance and improvement"; and "wetlands protection and pollution control"; "youth service corps programs" may focus on nursing homes, hospices, senior centers, hospitals, local libraries, parks, recreational facilities, child and adult day care centers, as well as law enforcement agencies and penal and probation systems.¹³⁶

An "Urban Youth Corps" is established by section 106 of the NCS Trust Act in the Departments of Housing and Urban Development and of Transportation,¹³⁷ and their secretaries are also "authorized to enter into contracts and cooperative agreements with any qualified urban youth corps" for projects described under this section.¹³⁸ The term "qualified urban youth corps" is defined as "any program established by a State or local government or by a nonprofit organization" that, among other criteria,¹³⁹

... is capable of offering meaningful, full-time, productive work for individuals between the ages of 16 and 25, inclusive, in an urban or public works or transportation setting ...

A "Public Lands Corps" is established in the Departments of Interior and of Agriculture.¹⁴⁰ Secretaries of these departments are permitted to use this Corps or "any qualified youth or conservation corps to carry out appropriate conservation projects" allowed on public lands,¹⁴¹ as well as on Indian lands and Hawaiian home lands.¹⁴² The definition for "qualified youth or conservation corps" is identical to the definition of "qualified urban youth corps", above, except that the "productive work" is to be "in a natural or cultural resource setting".¹⁴³

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Provisions of the NCS Act regarding, for example, living allowances, eligibility for educational awards, and nondisplacement of existing workers apply to both the Urban Youth Corps and Public Lands Corps programs.¹⁴⁴ In the selection of service projects for these two Corps as well as for the American Conservation and Youth Service Corps, preference is required to be given to those programs which:

- (1) will provide long-term benefits to the public;
- (2) will instill a work ethic and a sense of public service in the participants;
- (3) will be labor intensive, and involve youth operating in crews;
- (4) can be planned and initiated promptly; and
- (5) will enhance skills development and educational level and opportunities for the participants.¹⁴⁵

A participant or crew leader in programs under the American Conservation and Youth Corps subtitle

... shall not be considered a Federal employee and shall not be subject to the provisions of law relating to Federal employment.¹⁴⁶

These persons are, however, deemed federal employees for purposes of federal law relating to compensation for work-related injuries and to federal tort claims procedure.¹⁴⁷ The Civilian Conservation Corps subtitle contains a similar section concerning federal employment status;¹⁴⁸ the Urban Youth and Public Lands Corps provisions, in contrast, are silent on this topic. No provision is made under any of these four youth corps sections for the award of retirement credit.

General Comments

If the National and Community Service Act is adopted by the Legislature as a standard for the contemplated "national service" credit, then "national service" may mean: (1) service in any of four existing "national service" organizations or groups of organizations (the Armed Forces, the Reserves and National Guard, VISTA and related programs, and the Peace Corps), national service programs under that Act, and/or (2) "voluntarism". Under "voluntarism", Congress encourages all persons--young and old--to perform volunteer service meeting "civic" needs, whether at federal ("national" in the literal sense), state, or local levels, and whether or not funded under that Act.¹⁴⁹ Volunteers may receive living allowances or educational assistance, but no formal compensation¹⁵⁰ and they must not displace currently employed workers¹⁵¹ or duplicate services provided by a state or local government agency.¹⁵²

The NCS Act contains no mechanism for certifying any service for retirement credit,¹⁵³ since retirement credit is not one of the Act's benefits.¹⁵⁴ The NCS Act does not define the "civic" content of its programs,¹⁵⁵ but this "civic" aspect appears to be a required element of "national service." This appears to be a "gray area" if one is seeking to identify or define, with some certainty, a standard for what is or is not "national service". For example, in furtherance of the NCS Act's multiple purposes, there may be programs which afford their

participants to a kind of job-training.¹⁵⁶ Yet an established federal program having that objective is not named in the Act as an existing "national service" program: this is the Job Corps, presently part of the Job Training Partnership Act, which the NCS Act mentions only briefly.¹⁵⁷

If any distinction is to be drawn, it might be that the Job Corps directly helps only its enrollees, not the community as a whole.¹⁵⁸ The Job Corps statute otherwise describes a youth corps, like those under the NCS Act: it provides for eligibility standards, selection and screening requirements, term limitations (two years), allowances and support.¹⁵⁹ Job Corps Centers have included "Civilian Conservation Centers," providing "programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest."¹⁶⁰ The Congressional declaration of purpose provides that the Job Corps is to assist young persons "to become more responsible, employable, and productive citizens," and that this should be done "in a way that contributes, where feasible, to the development of national, State, and community resources".¹⁶¹

Further Note Regarding the Job Training Partnership Act: the Comprehensive Employment and Training Act of 1973

ERS law makes reference to one program discussed by Moskos in his "national service" study: the Comprehensive Employment and Training Act of 1973 ("CETA"), a job program merged in 1983 into the Job Training Partnership Act.¹⁶² The Hawaii statute is section 88-49.3, Hawaii Revised Statutes (1985), enacted in 1978, providing that CETA participants are ineligible for ERS membership.¹⁶³ As reported by the Senate Committee on Ways and Means, this measure affected temporary public service employment provisions and was enacted to avoid the state's losing CETA funds.¹⁶⁴ According to the ERS,¹⁶⁵ section 88-49.3 was enacted because the state and employer governments--including the federal government--were required to make retirement contributions for participants despite the temporary nature of their employment; when participants' employment ended, employer governments wanted such contributions refunded to them. The solution was to make CETA participants ineligible henceforth for ERS membership. This experience with CETA appears to provide no guidance as to what programs might qualify as "national service,"¹⁶⁶ but it suggests possible administrative concerns.¹⁶⁷

Summary

There are any number of programs that may be described as "national service." This is seen in the National and Community Service Act of 1990, which acknowledges existing "national service" programs (e.g., the Peace Corps, VISTA and related programs, and the active and reserve components (i.e., Reserve and National Guard) of the military) and which borrows concepts derived from, for example, the Civilian Conservation Corps of the 1930's and more recent youth corps programs. Some programs may have long been cancelled. It would require a much larger study to arrive at an inventory of the kinds of federal, state or local programs meeting Congress' concept of "national service", and to analyze each program for those elements singled out by House Resolution No. 315 (1992)(e.g., "deprivation" and youthful service) as being embodied by the Peace Corps. Of the federal programs described in this chapter, only VISTA and certain other types of volunteers under

the Domestic Volunteer Services Act may claim federal civilian retirement credit for their service.

ENDNOTES

1. House Resolution No. 315, Sixteenth Legislature, Regular Session of 1992, State of Hawaii.
2. G. & C. Merriam Company, Webster's Third New International Dictionary of the English Language (Springfield, Mass.: 1967), p. 1505 (hereinafter "Webster's Third New International Dictionary").
3. Black, Henry Campbell, Black's Law Dictionary (St. Paul, Minn.: West Publishing Co., 1990), p. 1025 (hereinafter "Black's"); Merriam-Webster, Inc., Webster's Ninth New Collegiate Dictionary (Springfield, Mass.: 1988), p. 788.
4. Webster's Third New International Dictionary, p. 1505; Black's p. 1025.
5. The Peace Corps as civilian service is discussed in Chapter 4, text and endnotes nos. 10 and 25.

U.S., Peace Corps, "Budget Presentation to the U.S. House of Representatives, Fiscal Year 1993" ("prepared by the Office of Planning, Budget and Finance"), for U.S., Congress, House, Subcommittee on Appropriations, Hearings on Foreign Operations, Export Financing, and Related Programs Appropriations for 1993, 102nd Cong., 2d Sess., 1992, Part I, P. 899:

For over 30 years, Volunteers of the Peace Corps of the United States of America have proven that citizen service to others does make a difference. (Emphasis added)

6. Charles C. Moskos, A Call to Civic Service - National Service for Country and Community (New York, N.Y.: Twentieth Century Fund, 1988), pp. 13-19, 31-36 generally (hereinafter "Moskos").

Moskos' study includes some discussion of conscientious objection. For example, he devotes approximately five pages (pp. 44-48) to alternative service since 1951 (after the re-institution of the draft in 1948 and through the current all-volunteer force (p. 47)):

In 1951, an alternative-service option under civilian direction was allowed for conscientious objectors. It was not the civilian-camp program of World War II, however; instead, alternative service was defined as work "in the public interest" for civilian employers that met the guidelines of the Selective Service System.

Alternative service was limited to public employment by federal, state, or local governmental agencies or nonprofit organizations engaged in activities benefitting the public. [...]

Conscientious objection is not discussed in this chapter because it is not mentioned in the Congressional Digest article and the National and Community Service Act of 1990 (see the next section of this chapter on "Source of a Definition of 'National Service'"), and because Moskos mentions no recent federal organization, other than the Selective Service, as being involved with conscientious objection since 1951.

7. Ibid., p. 1.
8. Congressional Digest, May 1990, "National Service--Pros and Cons", Foreword, p. 131.

9. Pub. L. 101-610, 104 Stat. 3127 (Nov. 16, 1990), codified as 42 U.S.C.A. sec. 12501 et seq. (1993 Supp.) (hereinafter, "NCS Act"). The NCS Act was most recently amended by the National and Community Service Trust Act of 1993, Pub. L. 103-82, 107 Stat. 785, 103d Cong., 1st Sess. (Sept. 21, 1993) (these amendments will be referred to in the endnotes as "NCS Trust Act" amendments), discussed in this chapter in the text following endnote 105.
10. Section 12511 of the NCS Act contains "Definitions". Although these definitions do not include one for "national service" per se, the wide-ranging purpose of the NCS Act (42 U.S.C. sec. 12501, as amended by the NCS Trust Act, 107 Stat. 787) is to:
 - (1) meet the unmet human, educational, environmental, and public safety needs of the United States, without displacing existing workers;
 - (2) renew the ethic of civic responsibility and the spirit of community throughout the United States;
 - (3) expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training;
 - (4) encourage citizens of the United States, regardless of age, income, or disability, to engage in full-time or part-time national service;
 - (5) reinvent government to eliminate duplication, support locally established initiatives, require measurable goals for performance, and offer flexibility in meeting those goals;
 - (6) expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and community;
 - (7) build on the existing organizational service infrastructure of Federal, State, and local programs and agencies to expand full-time and part-time service opportunities for all citizens; and
 - (8) provide tangible benefits to the communities in which national service is performed.

However, the "definitions" of the NCS Act (NCS Act sec. 111, 42 U.S.C. sec. 12511, as amended by the NCS Trust Act), include a new term, "national service laws":

The term "national service laws" means [the NCS] Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.).

11. U.S., Congress, Senate, Committee on Labor and Human Resources, Senate Report No. 101-176 on National and Community Service Act of 1990, 101st Cong., 2d Sess., 1990, p. 35, reprinted in 1990 U.S. Code Congressional and Administration News 4446, 4449 (hereinafter "Senate Report No. 101-176").
12. This was codified as section 12651, 42 U.S.C.A. (1993 Supp.). Section 12651 was amended by section 202 of the NCS Trust Act, which establishes a Corporation for National and Community Service to administer programs under the NCS Act. See text at endnotes 110-111.
13. Senate Report No. 101-176, p. 33, 1990 U.S. Code Congressional and Administrative News, p. 4447. U.S., Congress, House, Committee on Education and Labor, Report No. 103-155 [on the National Service Trust Act of 1993], 103rd Cong., 1st Sess. (hereinafter, House Report No. 103-155), p. 85, discusses stipended and non-stipended service, concluding that "[n]on-stipended, voluntary service will likely remain important for years to come".

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14. Section 179(a) of the NCS Act, 42 U.S.C.A. sec. 12639(a) (1993 Supp.). This requires the Corporation for (prior to the NCS Act's amendment by the NCS Trust Act, "the Commission on") National and Community Service to "provide, through grants or contracts, for the continuing evaluation of programs receiving assistance under the national service laws", including the ability of these organizations to recruit individuals in the state to serve in their programs. Title 5, U.S.C.A. (1977 and 1993 Supp.), contains no section "216". The "Reserve Components" are 10 U.S.C.A. sec. 261 et seq. (1983).
15. NCS Act sec. 179(g)(9), 42 U.S.C.A. sec. 12639(g)(9) (1993 Supp.).
16. Senate Report No. 101-176, pp. 32-33, 40-41, 1990 U.S. Code Congressional and Administrative News, pp. 4447, 4454-4455.
17. Civilian Conservation Corps Reforestation Relief Act, Pub. L. No. 5, 48 Stat. 22, 73d Cong., 1st Sess., Ch. 17 (March 31, 1933).
18. Moskos, p. 32. Factual discussion in the remainder of this paragraph is from Moskos, p. 32.
19. Senate Report No. 101-176, p. 40, in 1990 U.S. Code Congressional and Administrative News, p. 4455.
20. Ibid. It is codified as 16 U.S.C.A. sec. 1701 et seq. (1985), and has been amended by the NCS Trust Act as described in endnotes 128 and 140-144 below and accompanying text.
21. Ibid.
22. Youth Employment and Demonstration Projects Act of 1977, Pub. L. No. 95-93, 91 Stat. 627-628, 95th Cong., 1st Sess., 1977 ("Sec. 803" of the new "Title VIII--Young Adult Conservation Corps") in 1977 U.S. Code Congressional and Administrative News. A note at 29 U.S.C.A. sec. 991 (1985), "Subchapter VIII - Young Adult Conservation Corps", indicates that this subchapter (sections 991-999) were repealed by Pub. L. 97-300, Title I, sec. 194(a)(1), Oct. 13, 1982, 96 Stat. 1357.
23. Ibid., 91 Stat. 628-629. "The Corps shall perform work on projects in such fields as--
 - (1) tree nursery operations, planting, pruning, thinning, and other silviculture measures;
 - (2) wildlife habitat improvements and preservation;
 - * * *
 - (6) forest insect and disease prevention and control;
 - (7) road and trail maintenance and improvements
 - * * *Projects, among other factors, should:
 - (5) be likely to have a lasting impact both as to the work performed and the benefit to the youths participating;
 - (6) provide work experience to participants in skill areas required for the projects...

91 Stat. 629.

24. Moskos, p. 34. Factual discussion of the NYA in the remainder of this paragraph is from Moskos, pp. 33-34.

25. Ibid.

26. Ibid.

27. For example, a factor noted by the House Committee on Education and Labor in recommending passage of the Youth Conservation Corps Act, Pub. L. 93-408, making "permanent" the YCC after a "successful three-year trial period" was the Department of Agriculture's reporting that:

...enrollees completed \$4,464,000 worth of high-priority conservation work on Federal lands during the first two years of the program. For each dollar spent, an estimated 79 cents was returned to the Government in the form of conservation work and improvements on public lands.

U.S., House Report No. 93-1223, in 1974 U.S. Code Congressional and Administrative News, p. 5191 (hereinafter "House Report No. 93-1223").

As another example, Senate Report No. 101-176, pp. 32-33, states:

Today[,] we continue to benefit from the work of the [Civilian Conservation] Corps, which erected 3,400 fire lookout towers, built untold numbers of National Park facilities, and hand-planted more than two billion trees.

28. House Report No. 93-1223, in 1974 U.S. Code Congressional and Administrative News at p. 5193, states:

The hearings [on the bill] produced evidence that youths participating in the program have benefitted from learning to live with other young people representing all walks of life and all economic backgrounds, discovering what it means to do a day's work for a day's pay, and being involved with the problems facing the nation's environment.

* * *

Mr. Jeff Sager, a 1973 enrollee at Harpers Ferry, W. Va., testified:

"I have gained a lifetime of knowledge in such matters as ecology, public service, public relations and community welfare."

29. For example, Moskos comments that the NYA's "civic content was allow" and that "[i]n the glow of memory, the depth of the civic content of the CCC has probably become more pronounced than it actually was". Moskos, p. 34 and p. 33, respectively.

30. Congressional Digest, May 1990, "Federal Volunteer Programs", p. 132:

Federal efforts to encourage voluntarism are not new. In fact, the Federal Government supports several programs that have features in common with some of the [national service] bills proposed in the 101st Congress.

31. 42 U.S.C.A. sec. 4950 (1993 Supp.). Even earlier, in the message accompanying Reorganization Plan No. 1 of 1971, establishing ACTION, President Richard M. Nixon stated:

The American tradition of voluntary involvement--of freely committing one's time and talents in the

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search of civic improvement and social progress--gives an extra dimension to the meaning of democracy. In the past decade, the Federal Government has built on this tradition by developing channels for joining the spirit of voluntary citizen service in America with public needs, both domestically and abroad.

Title 5--Appendix 1, U.S.C.A. (1993 Supp.), p. 123: Eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, as amended Pub. L. 93-313, Title IV, sec. 601(a), Oct. 1, 1973, 87 Stat. 416. ACTION is mentioned in Chapter 4, endnote 6 and accompanying text.

32. Pub. L. 88-452, Title VIII, codified as 42 U.S.C.A. sec. 2991 (1973). A note to 42 U.S.C.A. sec. 2991 (1993 Supp.) states that "[a] prior section 2991, Pub. L. 88-452 [citations and amendments omitted] relating to Congressional statement of purpose, was repealed by Pub. L. 93-113, Title VI, §603, Oct. 1, 1973, 87 Stat. 417 [the Domestic Volunteer Service Act of 1973]. See section 4951 of this title".
33. Moskos, p. 53.
34. See note 31, above, regarding the creation of ACTION. Section 203(c) of the NCS Trust Act transfers functions of ACTION to the Corporation for National and Community Service. See also endnote 111.
35. 42 U.S.C.A. sec. 4951 et seq. (1993 Supp.), as amended by NCS Trust Act, secs. 311 et seq. (subtitle, "Domestic Volunteer Service Act Amendments of 1993").
36. 42 U.S.C.A. secs. 4951 and 4953(a) (1993 Supp.), as amended by sections 321 and 323 respectively, of the NCS Trust Act.
37. 42 U.S.C.A. sec. 4953(a), as amended by section 323 of the NCS Trust Act.
38. U.S., VISTA, "Becoming a VISTA Volunteer" (VISTA #320, undated).
39. Moskos, p. 53; Congressional Digest, May 1990, "Federal Volunteer Programs," p. 132.
40. For example, unlike the Peace Corps, VISTA's stated goals do not include "fostering world peace"; VISTA volunteers are not required to know or learn a foreign language, or to study foreign customs.
41. Moskos, p. 54.
42. 42 U.S.C.A. sec. 4954(a) (1993 Supp.).
43. Moskos, pp. 54-55. Moskos' sources regarding VISTA are dated between 1978 and 1984; he states (p. 199, note 18), "literature on VISTA is relatively sparse".
44. Ibid., p. 55. No sources are cited for this data, however.
45. U.S., Congress, House, Subcommittee on the Departments of Labor, Health and Human Services, Education and Related Agencies, Hearings before a Subcommittee of the Committee on Appropriations, 102nd Cong., 1st Sess., 1991, Part 7, p. 66 (hereinafter "ACTION appropriations presentation for 1992"); U.S., Congress, House, Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies, Hearings before a Subcommittee of the Committee on Appropriations, 102nd Cong., 2nd Sess., 1992, Part 7, p. 110 (hereinafter, "ACTION appropriations presentation for 1993"). "Fiscal year 1991" means October 1, 1990, through September 30, 1991.

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46. ACTION appropriations presentation for 1992, pp. 1-196; ACTION appropriations presentation for 1993, pp. 35-142.
47. U.S., ACTION, News: "Fact Sheet - VISTA" ("Information current as of December 31, 1991") (hereinafter "VISTA information sheet"), received September 24, 1992, from ACTION's Honolulu office, p. 1.
48. Ibid.
49. These regulations have been in effect since 1981.
50. 45 C.F.R. sec. 1210.2-1(a) to (e).
51. These are identified as subsections (a), (b), and (e) of 45 C.F.R. sec. 1210.3-1. The remainder of 45 C.F.R. Subpart C--VISTA Volunteer Early Termination, secs. 1210.3-2 through 1210.3-11, set forth procedures for removal of a volunteer from a project, suspension, the manner in which termination is initiated, procedure for appeal of a termination, and related matters.
52. 45 C.F.R. sec. 1210.3-1(c), (d), (f), and (g).
53. See Chapter 4, endnotes 16-22 and accompanying text.
54. Moskos, p. 55.
55. VISTA #320.
56. ACTION appropriations presentation for 1992, p. 67.
57. ACTION appropriations presentation for 1993, p. 112.
58. ACTION appropriations presentation for 1992, p. 16. Compare this to the Peace Corps' statistical information concerning its selection of applicants (Chapter 4, text at endnote 20).
59. Ibid., p. 68.
60. ACTION appropriations presentation for 1993, p. 112.
61. 42 U.S.C.A. sec. 4954(b) (1983 and as amended by section 324, NCS Trust Act, which adds a new subsection permitting "a program for the summer months only"); shorter periods are permitted if "necessary to meet a critical scarce-skill need".
62. Ibid.
63. 42 U.S.C.A. sec. 5055(b) (1983). This portion of section 5055(b) was not affected by NCS Trust Act amendments.
64. 42 U.S.C.A. sec. 5055(c) (1983).
65. See endnote 46, above.
66. Moskos, p. 54, states: "as more low-income persons joined, the average age of members rose. The proportion of those aged twenty-six and older--negligible in the 1960s--increased to more than half by the late 1970s".

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67. 42 U.S.C.A. sec. 4953(c)(5) (1993 Supp.), repealed by section 322(c)(2) of the NCS Trust Act, had provided:

The Director [of ACTION] shall ensure that not less than 20 percent of all volunteers under this part are 55 years of age or older and that, by the beginning of fiscal year 1991 and for each fiscal year thereafter, not less than 20 percent of all such volunteers are between 18 and 27 years of age, (inclusive).

68. ACTION appropriations presentation for 1992, p. 66.
69. 42 U.S.C.A. sec. 4955(b)(2) (1993 Supp.) (the "poverty line" is defined in section 9902(2) of Title 42).
70. "Historical note" re 1975 amendment, in 42 U.S.C.A. sec. 4955(a) (1983).
71. 42 U.S.C.A. sec. 4955(a) (1993 Supp.), and section 325 of the NCS Trust Act, respectively.
72. 42 U.S.C.A. sec. 4953(c)(1)(E) (1993 Supp.).
73. 42 U.S.C.A. sec. 4953(d) (1993 Supp.).
74. 42 U.S.C.A. sec. 4971 et seq. (1993 Supp. and as amended by sections 329-330 of the NCS Trust Act), also referred to in Congressional Digest, May 1990, "Federal Volunteer Programs," pp. 132-133.
75. 42 U.S.C.A. sec. 4991 et seq. (1993 Supp. and as amended by sections 331-332 of the NCS Trust Act).
76. 42 U.S.C.A. sec. 5055(c) (1983); this subsection provides, in addition to service under the VISTA provisions of the chapter (see endnote 64, above), that "any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of subchapter I of this chapter" is eligible for federal civilian retirement credit.
77. 42 U.S.C.A. secs. 4972, 4992(a)(1), 4993(a) (1993 Supp. and as amended by sections 330, 331 and 332, respectively, of the NCS Trust Act).
78. 42 U.S.C.A. sec. 4971(a) (1993 Supp.).
79. 42 U.S.C.A. sec. 4971(b) (1993 Supp. and as amended by section 330 of the NCS Trust Act).
80. 42 U.S.C.A. sec. 4991 (1993 Supp.).
81. 42 U.S.C.A. sec. 4992, as amended by section 331 of the NCS Trust Act.

Prior to its amendment by the NCS Trust Act, 42 U.S.C.A. (1993 Supp.) sec. 4992(a)(1) described, as examples, programs:

To provide alternatives to the incarceration of youthful offenders

To promote educational opportunities for veterans

To provide community-based peer group outreach and counseling for drug abusers

To provide technical and management assistance to distressed communities

Designed to provide personal and group financial counseling to low-income and fixed-income individuals

A Helping Hand program

A "Helping Hand" program is defined in section 4992(a)(2) (1983) as "a program utilizing person-to-person services to reduce the necessity for institutionalization...and to ameliorate residential isolation...of older persons"

Section 194, 42 U.S.C. 12651e, added by section 202a of the NCS Trust Act, provides for four assistant directors of the Corporation, one of whom is responsible for programs under this Title. See also endnote 111.

82. 42 U.S.C.A. sec. 5001 et seq. (1993 Supp. and as amended by section 343, NCS Trust Act.).
83. 42 U.S.C.A. sec. 5011 et seq. (1993 Supp. and as amended by sections 344-346, NCS Trust Act.).
84. 42 U.S.C.A. sec. 5013 et seq. (1993 Supp. and as amended by section 347, NCS Trust Act.).
85. 42 U.S.C.A. secs. 5001(a)(1), as amended by section 343 of the NCS Trust Act, and 5011(a), 5013(a) (1993 Supp.). Prior to its amendment by the NCS Trust Act, section 5001(a)(2) required volunteers to be "aged sixty or over". There appears to be no section, comparable to NCS Trust Act sec. 322 with respect to VISTA, designating the respective assistant director (see endnote 81 above) as "director" for purposes of this program.
86. 42 U.S.C.A. sec. 5000(1) (1993 Supp. and as amended by sections 341 and 342, NCS Trust Act.). [This section was added in 1989].
87. 42 U.S.C.A. sec. 5000(2) to (4) (1993 Supp. and as amended by sections 341 and 342, NCS Trust Act.).
88. 42 U.S.C.A. sec. 5001(a)(1) (1983 and as amended by section 343, NCS Trust Act.).
89. 42 U.S.C.A. sec. 5011(e) (1993 Supp.) defines "low-income person" and "person of low income" to mean:
 - (1) any person whose income is not more than 125 per centum of the poverty line defined in section 9902(2) of this title and adjusted [. . .] in the manner described in such section; and
 - (2) any person whose income is not more than 100 per centum of such poverty line, as so adjusted and determined [. . .] after taking into consideration existing poverty guidelines as appropriate to local situations.
90. 42 U.S.C.A. sec. 5011(d)(f), (1993 Supp. as amended by section 345, NCS Trust Act) and sec. 5013(b) (1993 Supp.), respectively. Persons who are not low-income may serve as volunteers--if this does not displace low-income persons from service--but do not receive any allowance, stipend or financial assistance, per section 5011(f)(1)(B) and (C), 42 U.S.C.A. (1993 Supp.).
91. 42 U.S.C.A. sec. 5001(d) (1983).
92. Congressional Digest, May 1990, pp. 132-133, 160; Moskos, pp. 104-106.

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93. Emergency Health Personnel Act of 1970, Pub. L. No. 91-623; "National Health Service Corps" is currently codified as 42 U.S.C.A. sec. 254(d)(1991).
94. Moskos, p. 106. U.S., Congress, Senate, Committee on Labor and Human Resources, Senate Report No. 100-108, on Public Health Service Amendments of 1987, Pub. L. No. 100-177, 100th Cong., 1st Sess. 1987 (U.S. Code Congressional and Administrative News, p. 960).
95. Congressional Digest, May 1990, "Federal Volunteer Programs", p. 133. An article in the Sunday Star-Bulletin and Advertiser, Honolulu, August 2, 1992, p. D-1 (by Associated Press: "Meet the real doc of 'Northern Exposure'") describes a Dr. Sam Hunkler who "works in a remote Alaska village to pay off his student loans, just like the main character in the CBS series 'Northern Exposure', but adds, "[t]he similarity ends there". Dr. Hunkler is quoted as saying "I wish I had it that good", adding that "[the fictional doctor] has a social life...I have none. There are no restaurants, no movies, no distractions". Dr. Hunkler has one more year of his three-year obligation to the Indian Health Service [which comes under the Public Health Service].
96. Congressional Digest, May 1990, p. 160.
97. Moskos, p. 104.
98. Ibid.
99. Ibid., p. 105.
100. Ibid., p. 107.
101. Ibid., p. 105.
102. The New York Times, November 5, 1989, p. 12 of sec. 4A (by Christopher J. Georges, "The Teacher Corps: Once More Unto the Breach").
103. Moskos, p. 105. Moskos states, "[t]he story of the National Teacher Corps--its impact on the teachers and those whom they taught--remains to be written."
104. Ibid.
105. The NCS Act as originally enacted is cited at endnote 9, above.
106. Pub. L. 102-484, 106 Stat. 2522 (Oct. 23, 1992).
107. Section 159(c)(2) of the NCS Act, as amended by section 104(e) of the NCS Trust Act (formerly 42 U.S.C.A. sec. 12653h (1993 Supp.), and re-designated 42 U.S.C. sec. 12619(c)(2)).
108. As one example, Subtitle B of Title I, NCS Act, is now "School-Based and Community-Based Service Learning Programs" and the definition for "service-learning" has been expanded. "Service-learning" is now defined, in part, as a method:

...under which students or participants learn and develop through active participation in thoughtfully organized service that--

- (i) is conducted in and meets the needs of a community;

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- (ii) is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; and
- (iii) helps foster civic responsibility ...

NCS Act sec. 101, codified as 42 U.S.C. sec. 12511(23) (formerly, subsection (22)), as amended by section 111 of the NCS Trust Act.

- 109. New Subtitle G to Title I of the NCS Act is "Corporation for National and Community Service", added by section 202 of the NCS Trust Act (which indicates that this is to be codified as 42 U.S.C. sec. 12651 et seq.).
- 110. House Report No. 103-155, p. 87.
- 111. Subsections (b), (c), and (d) of section 203 of the NCS Trust Act. The ACTION sections repealed are 5041 and 5042 of Title 42, United States Code. Section 202(a) of the NCS Trust Act adds a new section 194, "Officers", to the NCS Act (codified as 42 U.S.C. 12651e), which provides for assistant directors of the Corporation to be assigned to administer, VISTA respectively, and other Title I programs under the Domestic Volunteer Service Act of 1973; Retired Senior Volunteer Program; Foster Grandparents Program; and Senior Companion Program.
- 112. These are added by section 101(b) and section 102(a) of the NCS Trust Act. Citations in the following endnotes 116-144 are from the NCS Trust Act.
- 113. Part I consists of sections 121-126 of the NCS Act, 42 U.S.C. sec. 12571 et seq.; Part II, of sections 129-133, 42 U.S.C. sec. 12581 et seq., and Part III, of sections 137-141, 42 U.S.C. sec. 12591 et seq.
- 114. Section 121(a) of the NCS Act, 42 U.S.C. sec. 12571(a).
- 115. Section 122(a) of the NCS Act, 42 U.S.C. sec. 12572(a).
- 116. Sections 123, 124, and 125 of the NCS Act, 42 U.S.C. secs. 12573-12575.
- 117. Section 137(a) of the NCS Act, 42 U.S.C. sec. 12591(a).
- 118. Section 139(b) of the NCS Act, 42 U.S.C. sec. 12593(b).
- 119. Section 139(c) of the NCS Act, 42 U.S.C. sec. 12593(c).
- 120. Under section 121 of the NCS Act; the recruitment and selection provision is section 138 of the NCS Act, 42 U.S.C. sec. 12592.
- 121. Section 140(a) of the NCS Act, 42 U.S.C. sec. 12594(a).
- 122. Section 145 of the NCS Act, 42 U.S.C. sec. 12601(a).
- 123. Section 146(a) of the NCS Act, 42 U.S.C. sec. 12602. "Section 122(a)" is in Part I of the NCS Act.
- 124. Section 146(c) and (d) of the NCS Act, 42 U.S.C. sec. 12602(c), (d).

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125. Section 147 of the NCS Act, 42 U.S.C. sec. 12603. Title 38 pertains to "Veterans"; chapter 30 is 38 U.S.C.A. sec. 3001 et seq..
126. Section 147(a)(1) states with respect to full-time service, 90% of the value of "one-half of an amount equal to the aggregate basic educational assistance allowance provided in section 3015 [of Title 38; subsection 3015(b)(1), U.S.C.A. (1991) states a monthly rate of \$250] for the period referred to in section 3013(a)(1) [this subsection says "36 months"]], and this is less "one-half of the aggregate basic contribution required to be made by the member in section 3011(b) [of Title 38]".

Section 3011(b), 38 U.S.C.A. (1991) states:

The basic pay of any individual described in subsection (a)(1)(A) of this section who does not make an election [not to receive educational assistance under that chapter] shall be reduced by \$100 for each of the first 12 months that such individual is entitled to such pay.

Section 147, NCS Act, does not state whether "basic pay" under section 3011 translates into the living allowance under the NCS Act.

127. Section 148(a) of the NCS Act, 42 U.S.C. sec. 12604(a). Section 148(b)(7) defines "qualified student loans".
128. Sections 106 and 105, respectively, of the NCS Trust Act. The Youth Conservation Corps Act is cited at endnote 20, above.
129. Section 151 of the NCS Act, now 42 U.S.C. sec. 12611 et seq. See section 104(d)-(f) of the NCS Trust Act.
130. Section 152(b),(c) of the NCS Act, 42 U.S.C. sec. 12612(b),(c).
131. Section 155(c), (d), (f) of the NCS Act, 42 U.S.C. sec. 12615(c), (d), (f).
132. Section 157(b) of the NCS Act, 42 U.S.C. sec. 12617(b).
133. Section 158(b) and new subsection (f), added by the NCS Trust Act, 42 U.S.C. sec. 12618(b), (f).
134. Formerly, 42 U.S.C.A. sec. 12541 et seq. (1993 Supp.); see NCS Trust Act sec. 101(a), 107 Stat. 788.
135. Formerly, 42 U.S.C.A. sec. 12541(a) (1993 Supp.); re-designated as section 199 of the NCS Act by the NCS Trust Act (as Pub. L. 103-82, cited at endnote 9, it provides no codification information as to the re-designated Subtitle I. Therefore, references in endnotes 136, 145-147 relating to Subtitle I, as re-designated, are to sections of the amended NCS Act).
136. NCS Act sec. 199D(a)(1), naming three of the total thirteen listed categories of conservation corps activities, and NCS Act sec. 199D(a)(2) re youth service, respectively.
137. NCS Trust Act sec. 106(d).
138. Ibid.
139. NCS Trust Act sec. 106(c).
140. Section 204(a) of the Public Land Corps Act, 16 U.S.C. sec. 1723(a), in NCS Trust Act sec. 105.

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141. Section 204(c) of the Public Land Corps Act, 16 U.S.C. sec. 1723(c).
142. Section 204(d) of the Public Land Corps Act, 16 U.S.C. sec. 1723(d), subject to necessary approvals.
143. Section 203(9) of the Public Land Corps Act, 16 U.S.C. sec. 1722(9).
144. Sections 106(e), (g), (h) of the NCS Trust Act, and sections 207, 208, and 209 of the Public Land Corps Act, respectively.
145. NCS Act sec. 199I, formerly 42 U.S.C.A. sec. 12549(a)(1993 Supp.); NCS Trust Act sec. 106(d)(4); section 204(e) of the Public Lands Corps Act. The activities described in section 12549 resemble the "Activities of the Corps" described for the Young Adult Conservation Corps in Pub. L. No. 95-93 (U.S. Code Congressional and Administrative News, 91 Stat. 628-629) 95th Cong., 1st Sess. 1977.
146. NCS Act sec. 199M(b)(1), 42 U.S.C. 12668, as re-designated by the NCS Trust Act, formerly 42 U.S.C.A. sec. 12555(b)(1) (1993 Supp.).
147. NCS Act sec. 199M(b)(2), (3), 42 U.S.C. 12668, as re-designated by the NCS Trust Act. Certain conditions, stated in this subsection, apply with respect to federal workers compensation.
148. NCS Act sec. 160, 42 U.S.C. 12620, as re-designated by the NCS Trust Act, formerly 42 U.S.C.A. sec. 12653i (1993 Supp.).
149. Senate Report No. 101-176, p. 69, 1990 U.S. Code Congressional and Administrative News p. 4484:

The Committee believes that one of the effects of this legislation will be to encourage millions of Americans to become engaged in service to their communities, whether or not they participate in a program funded under this Act. One way to encourage this result is to make clear the high value that the nation places on service.

Hawaii, Department of Labor and Industrial Relations, Youth Voluntary Service Programs, Report to the Legislature, 1990 - January, evaluated a sampling from youth service and conservation corps in 60 states, cities and counties, both year-round and summer programs. It found (p. 4) that:

...all programs provide meaningful long-lasting public services, develop employable youth, and instill social values such as citizenship and a sense of community.

Under Congress' view of "national service", these corps do provide "national service". House Report No. 103-155, pp. 85-86, describes the wide variety of existing volunteer service.

150. For example, see text accompanying endnote 13, above:

Moskos, p. 146, states:

For any national service program to work, it must perform tasks that neither the marketplace nor government can provide.

Moskos objects to the concept of the All-Volunteer Force ("AVF") ("... the all-volunteer force (AVF) was at cross-purposes with the ideal of the citizen soldier") because he sees the AVF as "based on a marketplace mentality of recruitment and retention". (Moskos, p. 43) He notes:

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Recruitment for the AVF has persistently stressed material allures--the pay that could be earned, the skills that could be learned.

Moskos' discussion (p. 43) cites the philosophy of the "Gates Commission" (The President's Commission on an All-Volunteer Force, Report of the President's Commission on an All-Volunteer Force (Washington, D.C.: Government Printing Office, 1970).

The statutory citation for establishment of the AVF is at endnote 20, Chapter 2.

House Report No. 103-155, p. 91, notes that "the national service program is importantly different from means-tested education aid and job training".

151. NCS Act sec. 177, 42 U.S.C.A. sec. 12637 (1993 Supp.), contains provisions re "Nonduplication" (subsec. (a)), "Nondisplacement" (subsec. (b)). The NCS Trust Act sec. 117 (107 Stat. 864) makes only one amendment to this section: it amends subsection (b)(3)(B) and (C) to clarify that the prohibition against supplantation of hiring includes a prohibition against performing work with respect to which an individual has, e.g., recall rights.
152. Senate Report No. 101-176, p. 66, 1990 U.S. Code Congressional and Administrative News p. 4481:

The Committee believes that it would be highly inappropriate to use volunteer service programs such as those funded under this Act to replace paid workers or to duplicate the functions of state or local government.

House Report No. 103-155, p. 88, states, "national service must meet needs that would not otherwise be met by the Government or the private sector".

153. For example, the ERS relies on the DD214 to verify military service for purposes of the military service credit. See Chapter 3, text at endnotes 6 - 9.

Similarly, the ERS relies on State form SF-5, which employees submitted when taking maternity leave, to verify mandatory maternity leave for purposes of section 88-50.5, Hawaii Rev. Stat. (1992 Supp.). Telephone interview with Mr. Stanley Siu, Administrator, ERS, on December 10, 1992.

If a participant is eligible for an educational award or other post-service benefits for full- or part-time service under the NCS Act, as amended (see endnotes 122 - 127 above and accompanying text), then any verification of that eligibility might suffice to verify any retirement credit, if allowed, for that service. This is mentioned only as one possibility.

154. The NCS Trust Act sec. 371 makes certain amendments to the federal Civil Service Retirement System and Federal Employees Retirement System statutes with respect to the manner and time in which a Peace Corps volunteer or volunteer leader and volunteers under parts A, B, and C of Title I of the Domestic Volunteer Service Act of 1973 (see endnotes 63-64, 76 above) must make contributions to the retirement system in order to receive retirement credit for that service. National service programs under the NCS Act are not mentioned.
155. One of the purposes of the NCS Act is to "renew the ethic of civic responsibility ... in the United States" (section 12501(b), endnote 10, above); a training program conducted by or through grant or contract with the Corporation for National and Community Service includes the goal to "build an ethic of civic responsibility" (NCS Act sec. 125(a)(3), 42 U.S.C. sec. 12575(a)(3), as amended by the NCS Trust Act (107 Stat. 794)).

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156. For example, one type of "eligible national service program" is a youth corps program whose participants will include "out-of-school youths and other disadvantaged youths (such as youths with limited basic skills . . . [etc.])" who will be provided with "crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services ..." Section 122(a)(2), NCS Act, as amended by the NCS Trust Act.

157. Section 1692, 29 U.S.C.A. (1985), provides for "a Job Corps" under that part of the Job Training Partnership Act, 29 U.S.C.A. sec. 1501 et seq., (1985). The Job Corps was originally established under Title I, Part A, of the Economic Opportunity Act of 1964, 78 Stat. 508 (1964). (U.S. Code Congressional and Administrative News, p. 586 ff., Aug. 20, 1964).

E.g. section 177(d) of the NCS Act, 42 U.S.C.A. 12637(d)(1993 Supp.), "Treatment of benefits", states:

Section 142(b) of the Job Training Partnership Act [29 U.S.C.A. sec. 1552(b)] shall apply to the projects conducted under this subchapter as such projects were conducted under the Job Training Partnership Act [29 U.S.C.A. sec. 1501 et seq.].

158. Moskos, p. 93 states: "[t]he Job Corps is exclusively a job-training program with no civic content".

Section 1691, 29 U.S.C.A. (1985), states that Job Corps enrollees "will participate in intensive programs of education, vocational training, work experience, counseling and other activities".

159. These are sections 1693, 1694, 1695, 1696, and 1699, respectively, of Title 29, U.S.C.A. (1985).

160. 29 U.S.C.A. sec. 1697 (1985). A note at 29 U.S.C.A. sec. 1697 (1993 Supp.) describes amendments to subsection (a)(2) and a new subsection (c) added to this section by Pub. L. 102-367 [remainder of citation omitted] effective July 1, 1993).

161. 29 U.S.C.A. sec. 1691 (1985).

162. Moskos, p. 92; he states:

CETA was created by the Nixon administration with the purpose of consolidating existing Great Society programs under one umbrella within the Department of Labor. ... [CETA] created summer jobs for as many as one million young people a year; it also funded short-term positions and training programs for hundred of thousands more. As the program progressed, however, its emphasis shifted from offering job training to providing local public-service employment. ...

The Reagan administration replaced CETA with the Job Training Partnership Act (JTPA) of 1983. (...)

163. Section 88-49.3 provides, in pertinent part, that:

... a participant in a work-experience, on-the-job training, or a temporary public service employment position whose salary is paid in whole or in part from federal funds provided under the Comprehensive Employment and Training Act of 1973 (Public Law 93-203; 87 Stat. 839), as amended, shall not be eligible for membership in the system from and after July 1, 1978, except as provided for in this section.

164. Hawaii, Senate Standing Committee Report No. 649-78, on House Bill No. 2727, Ninth Legislature, 1978, State of Hawaii.

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165. Interview with Mr. Stanley Siu, Administrator, ERS, on September 24, 1992.

This is reflected in the legislative history. Hawaii, House Standing Committee Report No. 119-78, on House Bill No. 2727, Ninth Legislature, 1978, State of Hawaii (Committee on Public Employment and Government Relations), states in pertinent part:

... federal rules and regulations effective October 1, 1977, discourage State and local agencies from making retirement contributions on behalf of CETA participants. The rules restrict the use of CETA funding to those cases in which a participant either obtains unsubsidized employment or obtains vesting in the retirement system. When participants leave the CETA program for reasons other than entering unsubsidized employment with the State or county, contributions made on their behalf may not be retained in the system.

(Hawaii, House Standing Committee Report No. 482-78, on this bill for this legislative session (Committee on Finance) contains nearly-identical language).

166. For example, the exclusion of CETA participants is not based, apparently, on the "civic" content, or lack of civic content, of the program.
167. These are beyond the scope of this study.

Chapter 6

OTHER MILITARY NATIONAL SERVICE

In 1990, the Reserve Officers Association of the United States, Hawaii Department, testified before the Legislature that the military service credit¹ should be amended to include active service by members of the Reserve and National Guard:²

As the active military forces of the U.S. are drawn down due to the changing world conditions, the security of the U.S. will be placed in greater degree on the reserve components. Reserve and guard units that are low in strength, however, will be subject to deactivation, and recruiting and retention of members will be vital to the economic, defense, and community service interests of this state. The exclusion of active reservists and guardsmen from the credit for military service will affect our ability to recruit and retain valuable personnel, and will affect the State in lost revenues, elimination of civic action and community service projects, and a ready force for emergency and contingency missions.

The "exclusion"³ was not repealed; the 1990 amendments to the military service credit in fact added a requirement that military service be "in the armed forces of the United States".⁴

Under federal law, "military" is broader than that service that qualifies for credit under Hawaii retirement law. Before the Legislature considers extending the military service credit to other civilian forms of "national service", it should re-evaluate the scope of the existing law, particularly since such legislation will most likely rely upon federal law for definitions or precedents for "national service".⁵ Described in this chapter are the Reserves, National Guard, and examples of such other military service under federal law.

The Reserves and the National Guard

Introduction

Congress has stated that:

...the National Guard and Reserve forces of the United States are an integral part of the total force policy of the United States for national defense....

It continues to be the sense of Congress that the citizen-military volunteers who serve the Nation as members of the National Guard and Reserve require and deserve public recognition of the essential role they play in national defense....⁶

However, under section 88-132.5(c),⁷ this service in the Reserves or National Guard (collectively referred to as the "reserve components") does not qualify for military service credit "unless in time of war or declared national or state emergency". The Employees'

Retirement System ("ERS") staff initially interpreted this to mean that a member of the Reserve could not qualify for credit if that member's active duty was merely for training.⁸

Hawaii's Attorney General disagreed, citing federal law.⁹ Some relevant federal law relating to the Reserves and National Guard is described, as background, in the next section. This is followed by a discussion of the conclusions reached in the Attorney General's Opinion regarding the military service credit.

Background

The purpose of the Reserve is:

... to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency and at such other times as the national security requires, to fill the needs of the armed forces [...]¹⁰

Each of the United States Armed Forces--Army, Navy, Air Force, and Marines--as well as the Coast Guard--has a reserve component.¹¹ A member of a reserve component may be ordered to active duty for annual or full-time training, special work, or full-time duty;¹² this may be ordered at any time, even in the absence of an emergency.¹³

The National Guard, which originated and still functions as the militia for its respective states, is also organized and trained to function as a reserve component. These two functions are classified separately, by statute. As the "Army National Guard" or "Air National Guard", the National Guard is "part of the organized militia of the several States", governed under Title 32 ("National Guard") of the United States Code.¹⁴ As the "Army National Guard of the United States" or the "Air National Guard of the United States", the National Guard is a reserve component of the Army and Air Force, respectively.¹⁵

Since 1916, the National Guard is equipped and trained like regular Army, "subject to federal standards and capable of being 'federalized' by units, rather than by drafting individual soldiers".¹⁶ Since 1933, persons who join the state National Guard are required simultaneously to enlist in the federal National Guard of the United States ("NGUS"). When ordered to active duty in the NGUS pursuant to Title 10 ("Armed Forces") of the United States Code, National Guard members "lose their status as members of the State militia during their period of active duty".¹⁷

However, according to the Opinion, when members of the National Guard serve as the state militia, they are not "in the armed forces of the United States", and therefore not eligible for military service credit. A discussion of this analysis follows.

The Hawaii Attorney General's Opinion

At issue in the Opinion was the situation where a member of the Hawaii Army National Guard, who was ordered to active duty for training on May 15, 1966, was then discharged or released to the Guard on October 26, 1966.¹⁸ His DD214, Report of Transfer or Discharge,¹⁹ certified that this service was honorable, and he had the minimum length of state or county service to otherwise qualify for military service credit. The ERS believed, however, that this active duty failed to meet two criteria under section 88-132.5(c), since the member "did not 'go to war' and his active service in the United States armed forces was limited to training".

The Opinion decides both these issues in the member's favor. As to the first issue, active duty is found to be "a federally defined status",²⁰ which as "a formal status within the military establishment [...] is 'not dependent on the called-up individual's activities while on such duty'".²¹ Hence, the Opinion concludes that "active duty for training is active military service in the armed forces of the United States".²²

Because this active duty took place during a "period of war" known as "the Vietnam Era", the second criterion was also met.²³ The Opinion declines to interpret section 88-132.5(c) as requiring a formal declaration of war by Congress; it cites instead to those conflicts and hostilities, following World War II, listed as "periods of war" in Title 38 ("Veterans") of the United States Code.²⁴

Despite its more-expansive interpretation of section 88-132.5(c), the Opinion does not eliminate the "exclusion" complained of by the Reserve Officers Association. For example, no "period of war" occurs between May 7, 1975 (the end of the "Vietnam Era"), and the beginning of the "Persian Gulf War" on August 2, 1990, when the reserve components were ordered to active duty for Desert Shield/Desert Storm.²⁵ Therefore, absent any orders to active duty during an emergency, no active duty by a Reservist during that fifteen-year period qualifies for military service credit.

Moreover, because the definition of "active duty" expressly "does not include full-time National Guard duty" (a separate definition is provided for "full-time National Guard duty"),²⁶ the Opinion states that:

...any service classified as "National Guard Duty"...would not qualify as active military service in the armed forces of the United States for purposes of section 88-132.5.²⁷

Hence, National Guard service rendered pursuant to orders of the Governor of the State of Hawaii does not qualify for military service credit.²⁸ According to the ERS, if such National Guard service is ordered, however, in response to a declared state of emergency, then the service qualifies for military service credit.²⁹ As an example, a state of emergency was declared by Governor John Waihee for the island of Kauai in 1992 after Hurricane Iniki struck;³⁰ Hawaii National Guard units--which included the 293rd Combat Communications Squadron (shoveling debris in streets and house lots), 297th Supply and Service Battalion (providing food at distribution and disaster assistance centers), and 298th Engineer Detachment (providing carpenters repairing roofs on houses)--were ordered to Kauai.³¹

National Guard Duty

Although the National Guard has been regulated by Congress for some time,³² the definitional distinction between "active duty" and "full-time National Guard duty"³³ was enacted relatively recently. In day-to-day operations, any distinction between the two statuses may be difficult to perceive. For purposes of certain federal laws, the distinction is disregarded. Hence, one may question, particularly if civilian "national service" becomes eligible for ERS retirement credit, whether Title 32 (National Guard) service should also qualify for military service credit.

(1) Definitional distinction

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The distinction between "active duty" and "full-time National Guard duty" had its origin in the "Active Guard and Reserve" ("AGR") program, created in 1980.³⁴ The AGR program was established to provide for increased full-time support of the reserve components, but within existing organizational parameters.³⁵ AGR personnel are reserve component members who perform full-time active military service

... for the purpose of organizing, administering, recruiting, instructing or training [reserve component units].³⁶

Initially, all AGR personnel, whether with the Reserves or with the National Guard, were on active duty in the United States Armed Forces.³⁷ In 1984, it was decided that AGR personnel serving under Title 32 authorizations should serve "in conventional National Guard status, i.e., under State control as opposed to service in the active military service of the United States ..."³⁸ To the definitional sections of Titles 10 and 32, the Department of Defense Authorization Act of 1985³⁹ added a new paragraph entitled "full-time National Guard duty", and amended the definition of "active duty" to exclude this National Guard duty.⁴⁰

Despite the distinction in status, AGR members on National Guard duty, like their federal active duty counterparts, carry a green identification card indicating full-time military status.⁴¹ They serve on full-time military duty and are subject to military discipline on a daily basis.⁴²

(2) State of Hawaii Department of Defense

In day-to-day operations, Title 32 AGR personnel may serve alongside federal personnel, civilian and military. Consider the personnel of the State of Hawaii Department of Defense ("the Department"), of which the Hawaii Army National Guard and Hawaii Air National Guard are two divisions.⁴³ The Department describes its full-time staff as representing "a varied mixture of federal, state, active duty and drill-status [part-time] National Guard members".⁴⁴ For example, the Office of the Adjutant General, which is organized into six offices, is authorized the following types of personnel:⁴⁵

1. Administrative Services Office: eighteen full-time state employees;
2. U.S. Property and Fiscal Office for Hawaii: 83 full-time federal technicians;⁴⁶
3. Support Personnel Management Office: sixteen federal technicians and three AGR soldiers;
4. Engineering Office: 48 state, seven federal, and two AGR positions;
5. Staff Judge Advocate Office: a judge advocate (AGR) supported by a shared state employee clerk-typist;
6. Public Affairs Office: four full-time state employees as staff.

Because Title 32 service is not "active duty", the "military" personnel within the same Department office may not all qualify for military service credit. For example, the Department's Special Staff⁴⁷ includes the Senior Army Advisor, who is an active Army colonel, and the Inspector General, who is an active Army lieutenant colonel.⁴⁸ Their active duty service is eligible for military service credit for the duration of the "Persian Gulf War",

assuming these persons are later employed by the state or county for the qualifying length of service. In contrast, another Special Staff member, the Command Sergeant Major who serves as Senior Enlisted Advisor, is an AGR soldier under state status,⁴⁹ and is therefore ineligible.

(3) Other Federal Law

The definitional distinction between "active duty" and "full-time national guard duty" is disregarded for purposes of some federal laws relating to the military and to veterans. For example,⁵⁰

- (a) for purposes of laws providing benefits for members of the National Guard of the United States, full-time National Guard duty by these members "shall be deemed to be active duty in Federal service as a Reserve of the Army";⁵¹
- (b) for purposes of section 976 of Title 10, which prohibits the military from collective bargaining, a National Guard member serving on full-time National Guard duty is deemed to be a "member of the armed forces";⁵² and
- (c) for purposes of employment protections under the Veterans' Reemployment Rights Act, "full-time training or other full-time duty performed by a member of the National Guard under [specified sections] of title 32 is considered active duty for training".⁵³

Federal retirement benefits for service in both the Reserves and National Guard are set out in Title 10, under Chapter 67, entitled "Retired Pay for Non-Regular Service".⁵⁴ One point is earned for each day of either active service or National Guard duty performed as annual training duty or as attendance at prescribed courses of instruction at designated schools.⁵⁵ A year of service is each one-year period in which the member has been credited with 50 points.⁵⁶ Personnel must perform twenty years' service (there is no "vesting") and be at least sixty years of age, to qualify.⁵⁷

Distinguishing between the state and federal status of the National Guard is not the issue addressed by the court decisions cited in the Opinion.⁵⁸ In fact, to the contrary, two of the cited cases--*Peel* and *Hedden*--involve members of the National Guard in its role as the state militia.

Peel involved a Guard member who had been fired by his employer for taking leave to serve under Title 32 orders.⁵⁹ The court ruled that the Veterans' Reemployment Rights Act protected that member, because full-time training or other full-time duty under Title 32 is considered by the Act to be active duty for training, and because this duty was an obligation of that person as a member of a reserve component of the Armed Forces.⁶⁰

Hedden is cited by the Opinion as saying that "active duty for training" constitutes "active service" because this service is credited toward retirement pay,

... as the national guard member was paid from federal funds, was subject to the command of officers of the regular Army, and was stationed at regular Army installations.⁶¹

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The excerpt, however, describes the National Guard in its state capacity: the National Guard as the state militia has been "federally recognized".⁶² In that decision, the plaintiff's field training as a member of the National Guard of Indiana was credited toward his military retirement pay.⁶³

General Comments

The Hawaii Attorney General's Opinion indicates that federal law should guide the interpretation of a Hawaii statute intended to benefit persons who served in the military.⁶⁴ If this principle were to guide any enactment of a "national service" credit, then the Legislature might give deference, for example, to the National and Community Service Act of 1990, which lists as [national] service organizations, along with the Peace Corps and VISTA, the Reserve Components of the United States Armed Forces and the National Guard.⁶⁵ This in turn would appear to call for amendment of the military service credit with respect to active service in the Reserves and National Guard.

Other Commissioned Corps

The legislative history and sponsoring testimony for the 1990 amendments to the military service credit⁶⁶ make no mention of a reason for the addition of the qualifying phrase, "in the armed forces of the United States".⁶⁷ Under section 88-132.5, "military service" is more limited than the intervening military service credited, for example, under section 88-57(4).⁶⁸

In contrast, under federal civilian retirement systems, credited "military service" includes, in addition to service in the Armed Forces, service in the Regular or Reserve Corps of the Public Health Service and as a commissioned officer of the National Oceanic and Atmospheric Administration ("NOAA").⁶⁹

Section 204 of Title 42, United States Code, provides in the Public Health Service for:

...a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. (...) Commissioned officers of the Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training and active duty for the purpose of determining their fitness for appointment in the Regular Corps. (...) ⁷⁰

Section 857, Title 33 of the United States Code, provides that active service by commissioned officers of NOAA:

...shall be deemed to be active military service for the purposes of all laws administered by the Secretary of Veterans Affairs....⁷¹

Years of active service in the Commissioned Corps of the Public Health Service and NOAA are credited toward retirement under chapter 67 of Title 10, United States Code.⁷² If the federal retirement systems are looked to for guidance as to which "national service"

programs should be eligible for ERS retirement credit, then consideration should be given to the federal retirement systems' definition of "military service".

Veterans' Status for Civilians

As noted in the Opinion, a layperson's perception of what constitutes the "military" may not reflect what is "military" for purposes of federal law. One can see a somewhat similar disparity between what House Resolution No. 315 cites as "military" characteristics--hardship conditions⁷³--and the indicia of "military" set out in a federal regulation. This regulation, 32 C.F.R. Part 47 ("Part 47") is also an example of new developments in federal law that the Legislature should be prepared to monitor, if it chooses to enact any retirement credit for any forms of federal service.⁷⁴

Part 47 provides a procedure and criteria whereby the Secretary of the Air Force determines

... if an established group of civilian employees or contract workers provided service to the U.S. Armed Forces in a manner considered active military service for Department of Veterans Affairs (VA) benefits.⁷⁵

A determination that service by such a group is

... equivalent to active military service is made on the extent to which the group was under the control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict.⁷⁶

Seven categories of "incidents favoring equivalency [to military service]" are listed in the regulation.⁷⁷ For example, one category is "subjection to military discipline", which involves restrictions--such as curfew, requirements to work extended hours or unusual shifts, restrictions upon travel, and dress and grooming standards--upon the rights or liberties of civilians as though they were members of the military.⁷⁸ In contrast, an example of an incident not favoring equivalency is the ability of members to resign at will and without penalty.⁷⁹

If veterans' status is conferred, then members of the civilian organization or contractual group receive a DD Form 214 and DD Form 256, "Honorable Discharge Certificate".⁸⁰ In August of 1992, it was reported that Pan American World Airways employees who served outside the continental limits of the United States under military contract between December 14, 1941, and August 14, 1945, have become eligible for veterans' benefits.⁸¹

Hawaii Revised Statutes: Inconsistent Treatment of Military Service

As noted in Chapter 2, sections 88-132 and 88-132.5, *Hawaii Revised Statutes*, are somewhat inconsistent.⁸² The former credits only "involuntary" military service rendered during war or national or state emergency; the latter has no war-or-emergency requirement

except for the Reserves and National Guard. Inconsistent approaches toward what constitutes "military" is not limited to ERS law. The following are other examples.

Section 304-14.6(a), *Hawaii Revised Statutes*, provides a waiver of:

...all tuition fees for any qualified enlisted person, warrant or company grade officer (0-1 through 0-3) in the Hawaii national guard or in the reserve components of the army, navy, air force, marine corps, and coast guard of the United States of America [who is a Hawaii resident...]⁸³

This section retains the definition of military service found in section 88-132, prior to its amendment in 1987.

Section 304-14.7, enacted in 1986 and which is repealed, by its own terms, on June 30, 1994, provides for a tuition waiver to any veteran "of the armed forces of the United States of America" who "[s]erved in the Southeast Asia theater of conflict during the Vietnam era" and who "[w]as discharged...under conditions other than dishonorable".⁸⁴ "Other than dishonorable" is not a synonym for "honorable"; "dishonorable" is four grades below an "honorable" discharge,⁸⁵ and can only be imposed through criminal proceedings.

Finally, veterans' preference points⁸⁶ are awarded, in competition for civil service positions, to "honorably separated veterans who served on active duty in the armed forces of the United States", but only if service was rendered during periods commencing December 7, 1941 through July 1, 1955, and "[f]or more than one hundred eighty consecutive days since January 31, 1955...through October 14, 1976".⁸⁷

There also appears to be no consistent legislative policy with respect to the National Guard. Presently, section 79-20, *Hawaii Revised Statutes* (1985), allows officers and employees of the State and counties up to fifteen days' paid leave annually for service in the Hawaii national guard, air national guard, naval militia, and organized reserves, whether under call of the President or the governor of the state. The Fourteenth Legislature requested the state Department of Defense to recommend means for increasing the recognition for Hawaii National Guard members. In its ensuing Report, the Department of Defense recommended the continuance and expansion of state-provided benefits, "to recognize and sustain the value of the Hawaii National Guard, and its contribution to the people of the State".⁸⁸ Three proposals were made: (1) a Hawaii National Guard Community Recognition Program, (2) Higher Education Tuition Waiver Benefits for family members of Guard personnel killed or disabled while on State Active Duty, and (3) preference points on state and county civil service applications for Hawaii National Guard service.⁸⁹ Yet when the Reserves Officers Association in 1990 requested that section 88-132.5 be amended to credit Reserve and National Guard service,⁹⁰ no such amendment resulted.

Summary

Before enacting a credit for "national service", the Legislature should re-evaluate the existing military service credit, particularly its "exclusion" of the Reserves and National Guard. If "national service" is synonymous with "military" service, one might also logically expect that credit would be allowed for service in the commissioned corps, and even perhaps those civilian groups that become recognized for active military service. This re-evaluation

should also include an analysis of relevant federal law, since in dealing with the military and with "national service", one can expect to be dealing with federal law.

ENDNOTES

1. Hawaii Rev. Stat., sec. 88-132.5 (1992 Supp.), referred to in this chapter as "the military service credit".
2. Testimony of Eugene Imai, President, Reserve Officers Association of the United States, Hawaii Department, hearing on House Bill No. 2891, before the Senate Committee on Labor and Employment on March 19, 1990. He identifies the organization as "comprised of active and retired reserve-component officers of the Army, Navy, Air Force, Marine and Coast Guard Reserves, and of the National Guard". Membership numbers "700+".

The Department's Annual Report for 1992 (cited at endnote 43 below) shows, however, both the Hawaii Army National Guard and Air National Guard to be below strength as of September 30, 1992:

	<u>Army</u>	<u>Air</u>	<u>Total</u>
Authorized Strength	4,258	2,222	6,480
Actual Strength	3,500	2,165	5,665
Gains (enlistments)	+ 444	+ 251	+ 695
Losses (discharges)	- 504	- 156	- 660

Ibid., p. 33 ("Table 1: Strength").

3. Hawaii Rev. Stat., sec. 88-132.5(c) (1992 Supp.). This subsection is quoted in Chapter 3, in the text preceding endnote 54.
4. 1990 Hawaii Session Laws, Act 141: see Chapter 3, text at endnotes 44 and 45.
5. See Chapter 5; for example, text at endnotes 8-15.
6. Pub. L. No. 99-290, 100 Stat. 413 (May 2, 1986), cited in a note under 38 U.S.C.A. sec. 4301 (1993 Supp.), the Veterans' Reemployment Rights Act, which protects the reemployment rights of Reservists called to active duty under specified situations. See text at endnotes 59 - 60.
7. Hawaii Rev. Stat. (1992 Supp.). This is the "exclusion" referred to in endnote 3, above.
8. Hawaii, Att'y. Gen. Op. No. 91-04 (September 24, 1991)(hereinafter, "the Opinion") at p. 1.
9. Ibid. At pages 3 - 4, the Opinion states:

The legislative history [of the military service credit] shows that the legislature made no distinction among types of active military service which the member renders. In view of the statutory language to provide a benefit to certain ERS members and evident legislative intent that such benefit should derive from active service in the U.S. military, the definition of "active military service" should be consistent with the federal definition of active military service in relation to the national guard.

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10. 10 U.S.C.A. sec. 262 (1983).
11. The reserve components are the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, Coast Guard Reserve, Army National Guard of the United States, and Air National Guard of the United States. 38 U.S.C.A. sec. 101(27) (1991); 32 C.F.R. Part 102--Uniform Reserve, Training and Retirement Categories, 57 F.R. 3541 (January 30, 1992) (hereinafter "Part 102")--Appendix C.
12. Part 102, section 102.4(e), sets out five categories of active duty for reserve component members, summarized as follows:
 - (1) Initial active duty training - basic military training and technical skills training for enlistees.
 - (2) Annual training - may be required for all Ready Reserve members. National Guard units perform 15 days each year in either "active duty [i.e., federal] or full-time National Guard duty [i.e., state] status".
 - (3) Active duty training - full-time attendance at, e.g., organized and planned specialized skill training, flight training, combat crew training, professional development education programs "for providing [reserve component] members with necessary skills and disciplines supporting [reserve component] missions".
 - (4) Active duty for special work - for projects supporting active or reserve component programs, "such as annual screening, operation of training camps, training ships, and unit conversions to new weapons systems".
 - (5) Active duty, other than for special work, including full-time National Guard duty - in support of reserve component missions.
13. Part 102, section 102.4(e), states that:

At any time, an authority designated by the Secretary [of the armed forces] concerned may order a member of the [reserve component] under his or her jurisdiction to [active duty] or retain him or her on [active duty] with the consent of the member under the authority of 10 U.S.C. 672(d). [For members of the federal National Guard of the United States, the governor or other state authority must consent.] (Emphases added)

Other authority for such orders are:

10 U.S.C.A. sec. 672(a)(1983) - during war or national emergency declared by Congress.

10 U.S.C.A. sec. 673(a)(1983) - for national emergency declared by President (for that reserve component category known as the Ready Reserve).

10 U.S.C.A. sec. 673b (1983 and 1993 Supp.) - when President determines the necessity of augmenting active forces for any operational mission (for that reserve component category known as the Selected Reserve).
14. The "Army National Guard" or "Air National Guard" as "part of the organized militia of the several States[...]" (10 U.S.C.A. sec. 101 ((c)(2), (4)(1993 Supp.)):

* * *

- (B) is trained, and has its officers appointed, under the sixteenth clause of section 8, article I, of the Constitution;
 - (C) is organized, armed, and equipped wholly or partly at Federal expense; and
 - (D) is federally recognized.
15. The "Army National Guard of the United States" or the "Air National Guard of the United States" means, respectively, "the reserve component of the Army all of whose members are members of the Army National Guard" and "the reserve component of the Air Force all of whose members are members of the Air National Guard". 10 U.S.C.A. sec. 101(c)(3), (5) (1993 Supp.).
16. In Peel v. Florida Department of Transportation, 443 F. Supp. 451, 457 (N.D. Fla. 1977) [also discussed at endnotes 59, 60], the District Court notes:
- Although Art. I, [sec.] 8, cl. 16 [the militia clause of the United States Constitution] reserves certain responsibilities concerning the National Guard to the respective States, there is little question that the broad power under Art. I, [sec.] 8, cl. 12 [to "raise and support Armies"] bestows upon Congress the authority to regulate the National Guard as an essential reserve component of the Armed Forces. [citations omitted]
- In reaching its conclusion that plaintiff's National Guard duty under Title 32 in that case was protected under the Veterans' Reemployment Rights Act, "an extension of Congress' plenary power under Art. I, [sec.] 8, cl. 12" (Peel at 457), the Court cited (*Id.*):
- The National Defense Act of 1916 (39 Stat. 166) [which] authorized the National Guard to be equipped and trained like the regular army, "subject to federal standards and capable of being 'federalized' by units, rather than by drafting individual soldiers".
- and
- ...the dual enlistment concept [adopted by Congress in 1933] whereby an incoming guardsman joined both the National Guard of his home state and the National Guard of the United States, a reserve component of the U.S. Army. The express purpose of the dual enlistment concept was to avoid the limitations of the militia clause and to organize the National Guard under the broader power to raise and support armies. [citations omitted.] (Emphasis added by the District Court.)
17. Perpich v. Department of Defense, 496 U.S. 334, 347, 110 S.Ct. 2418, 2426 (1990). This decision provides a brief history of the National Guard and its evolving regulation by Congress (496 U.S. at 341-346, 110 S.Ct. at 2423-2426).
18. Opinion, p. 1, for the discussion in this entire paragraph.
19. The "DD214" is discussed in Chapter 3, text at endnotes 6 - 9.
20. Opinion, p. 4.
21. Ibid., pp. 5 - 6 [citation omitted].

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22. Ibid., p. 6.

23. Ibid.

24. Ibid. It states,

If "war" is deemed solely to mean a war declared by Congress in accordance with Constitutional strictures, then section 88-132.5 would have little meaning or application.

In a footnote, the Opinion then adds,

Note that various conflicts and hostilities after World War II have usually not been "wars" within the constitutional meaning. Although commonly denoted as the "Korean War" and the "Vietnam War", no congressional declaration of war was made in either conflict. Both of these conflicts are defined as "periods of war" in 38 U.S.C.A. [secs.] 101 and 501 (West 1979)[renumbered as section 1501, 38 U.S.C.A. (1991)]....

25. 38 U.S.C.A. sec. 101(33) (1991) states:

The term 'Persian Gulf War' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

No Executive Order has been issued ending this war.

26. 10 U.S.C.A. sec. 101(d), subsections (1) and (5)(formerly sec. 101(22) and (42) (1992 Supp.), respectively) (1993 Supp.) read in their entirety:

(1) The term "active duty" means full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.

(5) The term "full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 [the National Guard title] for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

These definitions are also 32 U.S.C.A. sec. 101(12) and (19) (1993 Supp.) respectively, except that the second sentence of section 101(12) begins, "[i]t includes such Federal duty as full-time training duty, [etc.] ..."

27. Opinion, p. 4.

28. Telephone interview, Mr. Stanley Siu, Administrator, Employees' Retirement System of the State of Hawaii, December 10, 1992.

29. Telephone interview, Mr. Stanley Siu, Administrator, Employees' Retirement System of the State of Hawaii, December 27, 1993. This assumes that all other conditions of eligibility have been met.

30. Telephone interview with Mr. Roy Price, Vice Director of Civil Defense for the State of Hawaii, January 13, 1993.
31. On Guard--The National Guard, Vol. XX, No. 2 (Nov. 1992) (by Capt. Phil Blahut, ed., "Hawaii National Guard provides relief for hurricane victims") p. 16. Units of the Air National Guard of Alaska, Oklahoma, and Washington also assisted.
32. See, for example, the historical discussion in Perpich, cited in endnote 17, above.
33. Compare the two definitions cited in endnote 26, above, and discussion in the Opinion, p. 4.
34. Maj. Thomas Frank England, "The Active Guard/Reserve Program: A New Military Personnel Status," 106 Military Law Review 1, 11 (1984) (hereinafter, "England"), citing Department of Defense Authorization Act of 1980, Pub. L. No. 96-107, sec. 401(b), 93 Stat. 807 (1979).
35. England, p. 10. England describes the following parameters (Ibid.):

While the [military] services recognized that full-time support for the Reserve components should be provided by active-duty soldiers, provision in the United States Code for active-duty military personnel to support the Reserve components was limited to certain types of "statutory tours". These tours could not easily be used to build a large-scale support program. Nor could Regulars and Reserves on active duty, other than for training, support the Reserve components without detracting from the accomplishment of the active forces missions. [citations omitted].

Initially, the term "special active duty for training" was used to classify Reserve recruiting duties, but this was deemed unsatisfactory ("it is inappropriate to characterize these reservists [recruiters] as on active duty for training when their function is operational in substance"). Ibid. England's source is H.R. Rep. No. 1402, 95th Cong., 2d Sess. 48 (1978).

36. Ibid., p. 11, citing H.R. Rep. No. 166, 96th Cong., 1st Sess. 121 (1979). See also Part 102, Appendix C--Definitions Explained, "2. Active Guard Reserve [sic] (AGR)".
37. Ibid., p. 20. Statutory sections cited by England are 10 U.S.C. sec. 672(d) and 32 U.S.C. sec. 502(f), respectively.
38. Ibid., citing H.R. Rep. No. 943, 97th Cong., 2nd Sess. 31 (1982).
39. Department of Defense Authorization Act, 1985, Pub. L. 98-525, 98 Stat. 2518-2519, 98th Cong. 2d Sess., sec. 414, October 19, 1984 (hereinafter, "DOD Authorization Act, 1985").
40. See endnote 26, above.
41. See U.S. ex rel. Karr v. Castle, 746 F. Supp. 1231, 1237 (D. Del. 1990), footnote 5. The District Court queries why Karr should be carrying a green identification card if he is on National Guard duty.
42. Stinson v. Hornsby, 821 F.2d 1537, 1539 (11th Cir.) cert. denied 488 U.S. 959, 109 S.Ct. 402 (1988). The Eleventh Circuit Court of Appeals notes that plaintiff "was on full-time military duty with the Alabama National Guard pursuant to section 502(f) [Title 32, U.S.C.] during the period of misconduct [alleged racially discriminatory employment practices] alleged in this case". 821 F.2d at 1539.

The Court rules that plaintiff therefore had no claim for Title VII violations, since "military service differs

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materially from civilian employment, whether public or private, and is not appropriately governed by Title VII". Ibid. [citations omitted]

43. Annual Report Fiscal Year 1992, Department of Defense, State of Hawaii (hereinafter, "Department Annual Report"), p. 2. The third division is State Civil Defense; the fourth division, the Hawaii State Defense Force, is "currently inactive". Ibid.
44. Ibid.
45. Ibid., pp. 3, 22-30.
46. The "military technician" performs, on a full-time basis, the same job that he or she performs as a member of a military unit; thus, a military technician must be a member of the National Guard unit where he or she is employed,

...in a military specialty which is compatible with his/her full-time job, and maintain the proper military rank established for the full-time position.

Uniform Services Almanac, Inc., National Guard Almanac (Falls Church, Virginia: 1990), pp. 74-75. The military technicians are described in Part 102 as:

Drilling Reservists [defined as "[t]rained unit members participating in unit training activities on a part-time basis] who are also Federal civilian employees providing [full-time support] for administration, training, and maintenance in a Selected Reserve unit. [Military Technicians] must maintain their status as drilling Reservists in the same unit they support as civilian employees.... They are dual status in that they are both civilian employees and drilling Reservists of a Guard or Reserve unit....

If a military technician ceases to be a member of his or her National Guard unit, or no longer holds the rank established for that position as a technician, then he or she may no longer be employed as a technician.

Ibid. Also, National Guard Technicians Act of 1968, Pub. L. 90-486, 82 Stat. 755, 90th Cong., 2d Sess. sec. 2, August 13, 1968.

47. Department Annual Report, p. 3 (organizational chart).
48. Ibid., pp. 30-32.
49. Ibid., p. 31; see King v. St. Vincent's Hospital, 498 U.S. 1002, 112 S.Ct. 570 (1991), discussed at endnote 60, below.
50. Note that no attempt was made to make any comprehensive analysis of federal military law. These are, however, examples for purposes of discussion.
51. Section 414(a)(7)(A) of the DOD Authorization Act, 1985, amended section 3686, Title 10 of the United States Code, which now (1993 Supp.) provides that "[f]or the purposes of laws providing benefits for members of the Army National Guard of the United States and their dependents and beneficiaries--

...full-time National Guard duty performed by a member of the Army National Guard of the United States shall be deemed to be active duty in Federal service as a Reserve of the Army...

Section 414(a)(7)(B) similarly amended section 8686(2), the companion provision of Title 10 pertaining to the Air National Guard.

52. 10 U.S.C.A. sec. 976(a)(1) (1993 Supp.), as amended by section 414(a)(6) of the DOD Authorization Act, 1985.

Additionally, "full-time National Guard duty" is referenced also in sections, as amended by the DOD Authorization Act, 1985, pertaining to authorized strengths (10 U.S.C.A. secs. 517(b), 524(a) (1993 Supp.)), and certain exclusions for the Reserve (10 U.S.C.A. secs. 523(b), 641(1) (1993 Supp.)).

53. 38 U.S.C.A. sec. 4301 et seq. (1993 Supp.) (this Act is discussed in Chapter 2, text at endnotes 15-201); section 4304(f), 38 U.S.C.A. (1993 Supp.), states:

...full-time training or other full-time duty performed by a member of the National Guard under section 316, 502, 503, 504, or 505 of title 32 is considered active duty for training....(Emphasis added)

54. 10 U.S.C.A. sec. 1331 et seq. (1983 and 1993 Supp.).

The retirement provisions of chapter 67 are somewhat unique: section 1336 provides that if any service in the armed forces is credited toward retirement under chapter 67, civilian retirement credit for that same service cannot be denied on the grounds that the service has already been credited toward a pension. According to the Ninth Circuit Court of Appeals, section 1336 affirmatively allows "double-dipping." Cantwell v. County of San Mateo, 631 F.2d 631, 635 (9th Cir. 1980), U.S. cert. denied in 450 U.S. 998, 101 S.Ct. 1703 (1981) (hereinafter "Cantwell").

One of the specific inducements [by Congress] to these part-time servicemen [i.e., reserve personnel] (many of whom worked for the Federal Government) was to allow them to count concurrent periods of federal civilian service and of military duty for both civilian and military retirement.

In Cantwell, a reservist, whose active duty service in the United States Navy during World War II was credited toward pension benefits under chapter 67, claimed credit for the same wartime service under the California County Employees Retirement Law. The county had disagreed, and the Ninth Circuit found for the reservist.

As further support for this interpretation of section 1336, the Ninth Circuit noted that the federal civilian retirement system does not credit military service "if an employee is awarded retired pay on account of the military service", but makes an exception for military service credited under chapter 67. Regulations are 5 C.F.R. sec. 842.306(b)(3) (Federal Employees' Retirement System) and 5 C.F.R. sec. 831.301(a)(2) (Federal Civil Service Retirement System).

55. 10 U.S.C.A. sec. 1332(a)(2)(A) and (B) (1983). For example, section 502 of Title 32 provides that National Guard members are required to assemble for drill and instruction at least 48 times each year, and to participate "in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year". 32 U.S.C.A. sec. 502(a)(1993 Supp.).
56. 10 U.S.C.A. sec. 1332(a)(2) (1983).
57. 10 U.S.C.A. sec. 1331(a)(1), (2) (1983).
58. The Opinion cites the Veterans' Reemployment Rights Act and four cases--Kaya v. State of Hawaii,

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Department of Defense, 72 Haw. 157, [809] P.2d 1136 (1991) (hereinafter, "Kaya"), Perpich v. Department of Defense, 496 U.S. [334], 110 S.Ct. 2418 (1990) (hereinafter, "Perpich"). Peel v. Fla. Dept. of Transportation, 443 F. Supp. 451 (N.D. Fla. 1977) (hereinafter, "Peel"), and Hedden v. United States, 153 F. Supp. 459 (Ct. Cl. 1955) (hereinafter, "Hedden")--for the apparent proposition that active duty for training by a member of the National Guard is federal service. Perpich was discussed in the text at endnote 17, above.

Regarding Perpich, the Opinion (p. 5) states:

The [United States Supreme] Court further noted that 10 U.S.C.A. [sec.] 672(f) equates a training mission by the [National Guard of the United States] to active duty.

However, this characterization is incorrect. As the Hawaii Supreme Court points out in Kaya (72 Haw. at 162, 809 P.2d at 1139):

Perpich primarily concerned the peacetime authority of the President of the United States to activate the national guard into federal active duty without gubernatorial consent.

Section 672(f), 10 U.S.C.A. (1993 Supp.), states, in its entirety:

The consent of a Governor described in subsections (b) and (d) [regarding orders of active status reserve components to active duty] may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty.

Of the four cases, only Kaya involved an individual Guard member on "federal active duty" (Opinion, p. 5), since the order to active duty for training was issued "by the Secretary of the Air Force...pursuant to 10 U.S.C. [sec.] 672(d)". Kaya, 72 Haw. at 158, 809 P.2d at 1137.

59. Plaintiff guard member in Peel was ordered, "pursuant to 32 U.S.C. sec. 505", to "Full Time Training Duty with the National Guard" for a period of approximately two months. Ibid., p. 453.

The Opinion (p. 5) cites Peel as stating that full-time training performed by a national guard member is active duty for training, and that "[s]uch 'active duty for training' orders calls [sic] the guardsman into the service of the United States".

60. The District Court noted that: "[f]or purposes of [section] 2024(d) [now renumbered 4304(d)], full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. [sec.] 505 is considered active duty for training. 38 U.S.C. [sec.] 2024(f) [now, renumbered 4304(f) (1993 Supp.)]." The Court found that "both [section] 2021(b)(3) [now renumbered 4301(b)(3): person not to be denied retention in employment, etc., "because of any obligation as a member of a Reserve component of the Armed Forces"] and 2024(d) [4304(d)] are applicable to plaintiff". Ibid., p. 454; also, p. 456.

A more recent case pertaining to rights of state National Guard members under the Veterans' Reemployment Rights Act is King v. St. Vincent's Hospital, 498 U.S. 1002, 112 S.Ct. 570 (1991) (hereinafter, "King"). Plaintiff in King sought to become "Command Sergeant Major in the Active Guard/Reserve (AGR) program" of the Alabama National Guard, "a militia under state control". Ibid., 112 S.Ct., p. 572 and footnote 2, and this would entail a three-year absence from his civilian employment. The Court (Souter, J.) ruled that this length of service was protected under that Act.

61. The Opinion (at p. 5) states:

In Hedden v. United States, 153 F. Supp. 459 (Ct. Cl. 1955), the court found active duty training constituted "active service" for the purpose of computing retirement service as the national guard member was paid from federal funds, was subject to the command of officers of the regular Army, and was stationed at regular Army installations.

62. Plaintiff in that case had received field training during three summer encampments (in 1911, 1912, and 1913, respectively, for ten days each) with the National Guard of Indiana. From 1920 to 1945, and from August 13, 1946 to September 12, 1946, he served as a Regular Army officer, and earned retirement pay. The issue in the case was whether his National Guard field training could be credited as "active service" toward his military retirement pay.

The Court's decision states, in pertinent part:

At the time of plaintiff's field training as a member of the National Guard, the training was authorized under the Dick Act of 1903 [citations omitted]. The Secretary of War was to have a State-organized militia inspected once a year. If found to be sufficiently armed, uniformed and equipped for active duty in the field, the Secretary was authorized to pay out so much of the State's Federal militia allotment as was necessary for the payment, subsistence and transportation of these units engaged in actual field or camp service instruction.

Ibid., p. 461. Because the National Guard of Indiana had been "federally recognized" under the 1903 act, the Court stated (ibid.):

...we here conclude that active duty training by National Guard units pursuant to that act constitutes "active service" within the meaning of [the provision governing plaintiff's entitlement to military retirement pay].

63. Hedden, p. 461.
64. Opinion, pp. 3 - 4. This is quoted in endnote 9, above.
65. 42 U.S.C.A. sec. 12639(g)(9) (1993 Supp.) with a technical amendment by section 118, National Service Trust Act of 1993, Pub. L. 103-82, 107 Stat. 865, 103d Cong. 1st Sess. (September 21, 1993), for example. See Chapter 5.
66. This is discussed in Chapter 3, text at endnotes 44 - 48.
67. 10 U.S.C.A. sec. 101(a)(4) (1993 Supp.) states, "'armed forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard".
68. Section 88-57(4), Hawaii Rev. Stat. (1985), is discussed in Chapter 2, text following endnote 8.
69. 5 C.F.R. sec. 831.301(a) et seq. for the Federal Civil Service Retirement System; 5 C.F.R. sec. 842.301 et seq. for the Federal Employees Retirement System.
70. 42 U.S.C.A. sec. 204 (1991).

The grades of commissioned officers of the Public Health Service correspond to grades of officers in the Army; for example, "officers of the assistant grade" in the commissioned corps correspond to "first lieutenant": 42 U.S.C.A. sec. 207(a)(1991).

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71. 33 U.S.C.A. sec. 857 (1993 Supp.). Similarly, section 857-3(a), 33 U.S.C.A. (1993 Supp.) provides in part that:

Active service of officers of [NOAA] shall be deemed to be active military service in the armed forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided by--

(1) laws administered by the Secretary of Veterans Affairs....

72. 10 U.S.C.A. sec. 1332(a)(3) and (4) (1983).

73. This is discussed in Chapter 4, text at endnote 4 (as "(1) Personal hardship"), and endnote 4.

As another example of the distinction drawn between "military" and "civilian" systems, this is the contrast made by the federal Department of Defense between military and civilian retirement:

Unlike the majority of retirement programs in the civilian sector, the military retirement system is not an old-age income maintenance plan. Rather, it is designed and intended to operate as an element of the military compensation structure and as an element of the personnel management system. Retired pay has been characterized by the Supreme Court as reduced pay for reduced military service on the basis that members retain their military status, remain subject to the Uniform Code of Military Justice, and are subject to recall to military duty. Indeed, contingency mobilization plans include the recall of retired members to supplement the active standing force and reserve force.

U.S., Congress, House, Committee on Armed Services, House Report No. 99-513 [to accompany Pub. L. No. 99-348, "Military Retirement Reform Act of 1986"], 99th Cong., 2d Sess., 1986. (U.S. Code Congressional and Administrative News, p. 1680).

74. 54 F.R. 39993, September 29, 1989. Section 47.1(a) states that this "[r]evises 32 [C.F.R.] part 47 and implements Public Law 95-202".

75. 32 C.F.R. sec. 47.1(b).

76. 32 C.F.R. sec. 47.4(b).

77. 32 C.F.R. sec. 47.4(b)(1). These categories are:

- (i) Uniqueness of service.
- (ii) Organizational authority over the group.
- (iii) Integration into the military organization.
- (iv) Subjection to military discipline.
- (v) Subjection to military justice.
- (vi) Prohibition against members of the group joining the armed forces.
- (vii) Receipt of military training and/or achievement of military capability.

78. 32 C.F.R. sec. 47.4(b)(1)(v).

79. 32 C.F.R. sec. 47.4(b)(2)(ii).

80. 32 C.F.R. sec. 47.5(c)(4).

81. Sunday Star-Bulletin and Advertiser, Honolulu, August 2, 1992, p. E-1 (by Bob Krauss: "Veterans' benefits awaiting certain Pan Am employees").
82. Text at endnote 26, in Chapter 2.
83. Hawaii Rev. Stat., sec. 304-14.6(a) (1992 Supp.) Persons must be candidates for an undergraduate degree at the University of Hawaii.
84. Hawaii Rev. Stat., sec. 304-14.7 (1992 Supp.).
85. 32 C.F.R. sec. 45.3(9), regarding Block 24 of the DD Form 214, lists grades of discharge as:
 - Honorable
 - Under Honorable Conditions (General)
 - Other than Honorable Conditions
 - Bad Conduct
 - Dishonorable
 - Uncharacterized
86. Hawaii Rev. Stat., sec. 76-103(1985).
87. State Personnel Rules 14-3.01-13(b)(1) states, in its entirety, as follows:
 - (1) Five points preference shall be awarded to honorably separated veterans who served on active duty in the armed forces of the United States during any of the following periods:
 - (A) During World War II (December 7, 1941 - April 28, 1952);
 - (B) During the period April 28, 1952 thru [sic] July 1, 1955;
 - (C) In any campaign or expedition for which a campaign badge or service medal has been authorized;
 - (D) For more than one hundred eighty consecutive days since January 31, 1955 (an initial period of active duty for training under the "six-month" reserve or national guard programs does not count), through October 14, 1976.

A separate subsection governs disabled veterans.
88. Hawaii, Department of Defense, Report to the Fourteenth Legislature, Regular Session of 1988, on Increasing Recognition for Hawaii National Guard Members, p. 2.
89. Ibid., pp. 3-5.
90. See text for endnote 2.

Chapter 7

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House Resolution No. 315 (1992) contemplates the allowance of retirement credit for a category of non-state or out-of-state service¹ that it refers to as "national service".² If one turns to other state public employee retirement systems ("PERS"),³ one will probably not find in any system a category of service termed "national service".⁴ One will, however, find among the various PERS statutes a range of approaches toward the crediting of out-of-state service. There are, on the one hand, systems that credit no such service, military or otherwise.⁵ On the other hand, some systems credit federal government or out-of-state public service, including educational employment;⁶ one system even allows credit for any previous employment.⁷

The sample of twenty-five PERS⁸ presented in this chapter ("the sample") is intended to illustrate this range of approaches to out-of-state credits. As summarized on the chart "Service Credits" that follows this discussion, credits are grouped under two headings, "military" and "other (civilian) out-of-state" service. "Military service credit" provisions are categorized as "intervening service" (which is actually a leave of absence),⁹ "restricted" credits (i.e., allowed only to persons who serve in specified periods of war), and "unrestricted" provisions (an example is Section 88-132.5, *Hawaii Revised Statutes* (1992 Supp.), which imposes no such restrictions).

"Other out-of-state service" categories shown on the chart are federal government service, educational employment, and state (some PERS for state employees include county or municipal employees) government service in other states. Also shown on the chart are states that credit no such service and states that may credit types of service that do not appear limited to the above three categories.

Statutory citations and further discussion for these categories is provided in the Summary for each PERS in the sample.¹⁰ No conclusion can be drawn from this general overview as to which systems have "better" statutory formulations,¹¹ although this may suggest topics for further study.¹² Nevertheless, this limited analysis seems to indicate that there is no "standard" approach for crediting--or not crediting--out-of-state service (i.e., the fact that Rhode Island and Michigan credit Peace Corps volunteer service does not necessarily mean that Hawaii should now follow suit; this fact also means that forty-eight systems do not expressly credit Peace Corps service¹³).

Because some states do credit federal government and other public service, one may anticipate that any national service credit enacted by the Legislature will be cited as precedent for the further expansion of ERS service credits. For example, if a "national service" credit were enacted, it would likely (as suggested by House Resolution No. 315 (1992)) credit Peace Corps volunteer service. Although the resolution analogizes it to military service, Peace Corps volunteer service is civilian service, and is credited by the federal retirement systems as federal civilian service.¹⁴ Peace Corps service is also a form of educational service.¹⁵ Hence, a national service credit, if enacted, would be cited as precedent for legislation crediting federal government service and out-of-state educational employment.

SERVICE CREDITS

Public Employees ¹ Retirement System	MILITARY				OTHER OUT-OF-STATE				
	Intervening only	Intervenig ²	"Military Service Credit" Restrictions? ³		None ⁴	United States Government	State ⁵ Government	Education ⁶	Other ⁷
			Yes	No					
ALASKA		x		x	x				
ARKANSAS		x	x ⁸	x	x				
COLORADO	x					x ⁹	x ⁹	x ⁹	x ⁹
DELAWARE			x ¹⁰	x			x ¹¹	x ¹²	
GEORGIA			x ¹³	x ¹⁴	x				
[HAWAII ¹⁵		x		x	x]				
IDAHO	x				x				
INDIANA	x				x				
KANSAS		x		x				x ¹⁶	
LOUISIANA		x		x	x				
MARYLAND ¹⁷		x	x ¹⁸			x	x ¹⁹	x ²⁰	
MICHIGAN		x		x ²¹		x	x		x ²²
MISSISSIPPI			x ²³				x	x ²⁴	
MONTANA		x		x					x ²⁵
NEVADA		x ²⁶	x ²⁷		x ²⁸				
NEW JERSEY		x		x ²⁹		x	x ³⁰		
NEW YORK		x	x ³¹	x ³²		x			
NORTH DAKOTA		x	x ³³		x				
OKLAHOMA		x	x ³⁴		x				
PENNSYLVANIA		x		x ³⁵				x ³⁶	
SOUTH CAROLINA		x	x ³⁷			x			
TENNESSEE		x	x ³⁸				x	x ³⁹	
UTAH		x		x		x	x		
VIRGINIA		x		x		x	x	x	
WEST VIRGINIA	x				x				
WYOMING	x					x	x		

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NOTES TO THE CHART

1. For system names, statutory citations and discussion, see Summary.
2. Member must have been a system employee, when called to military service, and must return to such employment within a specified time after separating from the military; functionally, a credited leave of absence, it is included in this overview only because statutes generally do not distinguish between "intervening" and other (usually, pre-employment) military service credits. The five states having "intervening [military service credit] only" actually, therefore, credit no "out-of-state" military service.
3. Some systems restrict eligibility to persons who served, e.g., in time of war, or to persons who joined the system by a date certain (note: this does not refer to any minimum lengths of membership service required for eligibility to acquire credit).
4. The statute provides no credit for out-of-state civilian employment.
5. This may include, e.g., out-of-state municipal or county government service.
6. Credit for service in other states' educational systems or institutions; this may overlap with "state" service, and may include schools operated by federal agencies or privately operated schools.
7. Statutory descriptions did not permit the credit to be included in any of the above.
8. Separate section for elected county constitutional officers on February 23, 1979, who must have applied by May 24, 1979, to receive credit.
9. "[F]or any period of previous employment with any public or private employer in the United States or its territories".
10. Persons who first became an employee before July 1, 1976; for full-time active duty in the armed services during time of war or national emergency.
11. Full-time employment for another state, a political subdivision of another state.
12. For persons who first became an employee before July 1, 1976.
13. "[P]rior service during World War I, World War II, or the Korean Conflict." Also, "Vietnam conflict."
14. Service in the Georgia National Guard or Georgia State Guard ("future such service").
15. Hawaii is one of the "odd-numbered states."
16. Public school system of another state; foreign teaching service in an overseas dependents' school.
17. Actually two retirement systems: see Summary: "Maryland".
18. "Military service" defined to include active service 4/6/17 - 11/11/18, 12/7/41 - 12/31/46, 6/25/50 - 1/31/55, 12/22/61 - 5/7/75; includes Public Health Service and NOAA or predecessor organization.
19. Out-of-state municipality.
20. The earlier of the two systems also credits [out-of-state] nonpublic school teaching service.
21. Appears to be effective January 1, 1978.
22. VISTA volunteer service or service as a Peace Corps volunteer, volunteer leader, or employee.
23. Must have entered state service upon member's discharge from the military; note that retirement system board of trustees is to report to the Legislature not later than January 5, 1993, on the military service credit, including in that report the board's recommendation whether that credit should be "continued, terminated, broadened or restricted".
24. Another state's public education system as well as U.S. Armed Forces' American overseas dependent schools.
25. "[P]ublic service employment . . ."
26. For service during the Persian Gulf Crisis.
27. "[F]ree military credit as of May 19, 1975": not clear if the requirements referred to are for intervening or other military service (with restriction of "May 19, 1975").
28. Section allowing "[c]redit for free prior service" does not specify if this includes out-of-state service.
29. "Veterans" (service in wars, uprisings, emergencies, etc.) receive additional years' credit.
30. Public employment in other states if that employment would be creditable if rendered with a public employer in this state.
31. World War II service for persons in employment as of March 31, 1970 or who enter or reenter state employment between April 1, 1970 and April 1, 1972.

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- 32. In the same subsection as civilian federal government service.
- 33. Purchase of credit must be made within 180 days after beginning eligible employment or by December 31, 1991, whichever is later.
- 34. In time of war or national emergency.
- 35. Also, service in the Cadet Nurse Corps is credited in a separate subsection.
- 36. Includes service in education for "any agency or department of the Federal Government ..."
- 37. No credit for military service after December 31, 1975.
- 38. Must have served during a period of armed conflict.
- 39. Includes teaching "in an overseas facility owned or operated by the United States department of defense ..."

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SUMMARY

STATUTORY EXCERPTS AND/OR DISCUSSION REGARDING TWENTY-FIVE PUBLIC EMPLOYEE RETIREMENT SYSTEMS

ALASKA

System: Public Employees' Retirement System of Alaska
Source: Alaska Statutes sec. 39.35.010 et seq. (1992)

Credits

Military Service

A maximum of five years, in the aggregate, of "active military service in the armed forces of the United States", may be credited pursuant to Alaska Stat. sec. 39.35.340, if the member received a "discharge under honorable conditions and is not entitled to receive retirement benefits from the United States government for the same service". Also, the member cannot have used the credit under [the Alaska teachers' retirement system]. If the military service was intervening service, no "retroactive contributions" are required.

Military service includes service as a foreign service officer, foreign service reserve officer, or limited foreign service reserve officer with the United States Department of State in Vietnam, Cambodia or Laos from August 4, 1964 through November 7, 1975, and as a member of the United States Merchant Marine Service from December 7, 1941 through September 30, 1945.

Section 39.35.340(b) provides the formula for calculating a member's "indebtedness" for retroactive contributions, if the member elects to be credited for the member's military service.

Retirees and "deferred vested employees" [persons no longer employed by the system but who earned the five years necessary to vest] as of July 1, 1976 are eligible to claim the credit if they follow the requirements of section 39.35.140.

This credit "may not be used to satisfy the credited service requirements for normal retirement" (section 39.35.340(d)).

Other State Service

None

Note, however, that the following may possibly constitute "out-of-state" service: Alaska Stat. sec. 39.35.360(a)(2) (1992 Supp.) credits service before January 1, 1961 (this retirement system's effective date is January 1, 1961), as an employee of the United States in Alaska, excluding service in the armed forces of the United States. Alaska Stat. sec. 39.35.360(i) provides that

An employee who completes three years of credited service with an employer, for which the employee makes contributions required by this chapter, is entitled to credited service on a year-for-year basis for service credited in the Civil Service Retirement System, rendered as an employee of an Alaska Bureau of Indian Affairs (BIA) school, other than service as teacher.

Alaska Stat. sec. 39.35.154 extends system membership to employees of the "North Pacific Management Council" appointed under 16 U.S.C. 1852(f)(1)([section] 302(f)(1) of P.L. 94-265), paid from federal funds, if the council pays the employer's contributions.

ARKANSAS

System: Arkansas Public Employees' Retirement System
Source: Arkansas Code Annotated sec. 24-4-101 et seq. (1992)

Credits

Military Service

Intervening military service in the armed forces of the United States from September 16, 1940 until December 31, 1946 (Ark. Code Ann. sec. 24-4-503(a)).

Section 24-4-504 allows credit, not to exceed two years, for "any person who was an elected county constitutional officer on February 23, 1979, and who served as a member of the armed forces of the United States prior to his or her election" to that position, if that person had a minimum of six years from January 1, 1954 to December 31, 1961, with at least twelve years' credited service in the system, to convert two years of military service to credit in the system; eligible persons must have applied by May 24, 1979.

With respect to "[a]ny person who is or was a member of a state-supported retirement system in this state and who is not receiving benefits under the system on July 9, 1975", section 24-2-502 allows credit for a maximum of three years' service in the Armed Forces of the United States rendered prior to being employed in a position covered by the retirement system; to qualify, the person must:

- have ten years' credited service with the retirement system;
- have received an honorable discharge;
- not be "receiving federal military service retirement pay based on nineteen (19) or more years of active duty" (disability retirement pay does not disqualify the member, however); and
- make the contribution required under subsection (4). The contribution represents the amount the member would have contributed if that person had been a member during the term of military service (based on the monthly contribution made when first becoming a member of the system), plus the employer's contribution, plus interest.

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Subsection 24-2-502(c) provides that this section supplements "any other laws relating to state-supported retirement systems in this state". The maximum credit allowed under all such laws is five years. Subsection 24-2-502(d) prohibits duplicate service credit among state systems.

Other State Service

None

COLORADO

System: Public Employees' Retirement Association
Source: Colorado Revised Statutes sec. 24-51-101 et seq. (1988)

Credits

Military Service

Intervening military service only (Colo. Rev. Stat. sec. 24-51-507).

Other Out-of-State Service

Credit may be purchased "for any period of previous employment with any public or private employer in the United States or its territories" (Colo. Rev. Stat. sec. 24-51-505(1) (1993 Supp.)). To qualify, the employee must:

- have one year of earned service credit with the Association;
- provide certification from the previous employer of the dates of employment and salary; and
- provide certification from any retirement program covering that previous employment that the service credit has not vested.

One year of credit may be purchased for each year of full-time "noncovered employment" at full salary (no maximum is specified in this section). If employment was less than full time, the credit may be calculated on a pro rata basis. (Section 24-51-505(2)). Cost to the employee is determined by the board of the Association (subsection (3)).

DELAWARE

System: State Employees' Pension Plan
Source: Delaware Code Annotated sec. 5501 et seq. (1991)

Credits

Military Service

Persons who first became an employee before July 1, 1976; who had "full-time active duty...in the armed services of the United States during time of war or national emergency"; and who became an employee [in the system] within five years of completing that military tour of duty--or if receiving vocational or professional education after completing that military tour of duty, then within five years of completing that education are allowed a maximum credit of five years (Del. Code Ann. sec. 5501(b)(4)). The five-year period "shall not apply to full-time officers and members of the National Guard of the State who were active members of the State Employees' Pension Plan on June 1, 1970".

See also discussion of subsection 5501(b)(8), below.

Other Out-of-State Service

A person who first became an employee before July 1, 1976, may purchase credit for "service in professional educational employment...performed for another state, a municipality in another state, the federal government or an accredited private school or college anywhere in the world", as long as this person is employed in certain described positions in education, and makes the payment described in that subsection (5501(b)(5)). The maximum credit under this subsection is four years.

Del. Code Ann. sec. 5501(b)(8) allows an employee to purchase:

...(i) up to [five] years of credited service for full-time active duty in the armed services of the United States, and/or (ii) up to [five] years of credited service for full-time employment performed for another state, a political subdivision of another state [for which the employee "will not receive pensionable credit" in any other retirement system]...

Ten years is the maximum credit allowable, in the aggregate, under subsections (4), (5) and (8), above; service credit under subsection 5501(b)(8) "shall not be used to determine eligibility for benefits under this chapter". (Section 5501(b)(8)).

GEORGIA

System: Employees' Retirement System of Georgia
Source: Official Code of Georgia Annotated (Michie)(1986)

Credits

Military Service

A maximum ten years for "prior service during World War I, World War II, or the Korean Conflict", service in the Georgia National Guard or Georgia State Guard; or a combination of such service and "future such service", "notwithstanding that more than ten

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years of such service may have been rendered", may be credited pursuant to section 47-2-95, Ga. Code Ann.

Section 47-2-90(c) allows one year of creditable service for each year of service in the Georgia National Guard and Georgia State Guard (as well as General Assembly); to qualify, one must have already been a member of the retirement system. The maximum credit for this service is five years.

Section 47-2-96 provides credit for service "on active duty in the armed forces of the United States" under three subsections (three periods of time):

- (e) "prior to January 1, 1954";
- (f) "during the period of the Vietnam Conflict", defined in this subsection as extending "from August 5, 1964 through May 7, 1975".
- (g) "at any time from January 1, 1954, until August 5, 1964": this credit must have been purchased before January 1, 1988.

Subsections (f) and (g) require the member to purchase this credit (cost is not mentioned in subsection (e)). Contributions are calculated as a percentage of the member's compensation immediately prior to entering military service or first paid to the member as an employee after returning from military service, plus interest compounded annually.

However, military service is not creditable if that service is used toward a member's eligibility:

...for benefits or allowances from any other state or federal retirement program, excluding federal social security and retirement programs under Public Law 810, 80th Congress, as amended.

(Ga. Code Ann. sec. 47-2-96(e), (f), (g)).

Subsections (e) and (g) exclude "reserve service". In subsection (g), the last two lines above read, "excluding social security and those retirement programs covered under the provisions of Title 10 of the United States Code, Public Law 810, 80th Congress, as amended". Army and Air Force Vitalization and Retirement Equalization Act of 1948, Pub. L. No. 810, 80th Cong., 2nd Sess. (June 29, 1948). Title III of this Act is "Retirement With Pay of Officers and Enlisted Personnel of the National Guard and Reserve Corps of the Army of the United States, the Reserve Components of the Air Force of the United States, the United States Naval and Marine Corps Reserve, and the United States Coast Guard Reserve", in U.S. Code Congressional and Administrative News, pp. 773-777.

Other State Service

None

IDAHO

System: Public Employees Retirement System
Source: Idaho Code sec. 59-1301 et seq. (1976)

Credits

Military Service

Intervening military service only (Idaho Code sec. 59-1302(22) and (23) (1993 Supp.)).

Note that this definition of "military service" includes "active duty service in the armed forces of the United States including the national guard and reserves, under the provisions of title 10, title 32, and title 37, United States Code".

Other Out-of-State Service

None

INDIANA

System: Public Employees' Retirement Fund
Source: Burns Indiana Statutes Annotated sec. 5-10.3-1-1 et seq. (1987)

Credits

Military Service

Intervening military service only (Ind. Code Ann. sec. 5-10.3-7-5 (Burns 1992 Supp.)).

Note that credit is conditioned upon, e.g., being "entitled to service credit for military service under the Veterans Reemployment Rights Act (38 USC [sec.] 2021 et seq.)..."

Other Out-of-State Credits

None

KANSAS

System: Kansas Public Employees Retirement System
Source: Kansas Statutes Annotated sec. 74-4901 et seq. (1992)

Credits

Military Service

Intervening military service (Kan. Stat. Ann. sec. 74-4902(22) (1992), defining "military service").

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Any "active contributing member" that "does not qualify for credit for military service" under the above subsection may purchase credit "for periods of active service in the armed forces of the United States and for periods of service required to fulfill the requirements of section 651 of title 10, United States code [sic]" (Kan. Stat. Ann. sec. 74-4919h (1992)):

- periods of service must not be otherwise creditable;
- all creditable military service must not exceed six years; for each year of service rendered per section 651, Title 10 of the United States Code, a member may purchase one quarter of retirement system credit;
- purchase (8 and 12 percent of member's compensation) is by payroll deduction and must be completed five years prior to the member's retirement; however, military service may be purchased by a lump-sum payment, the amount to be determined by the actuary under the formula described in subsection 74-4919h(4).

Section 651(a), 10 U.S.C.A. (1993 Supp.), states that "[e]ach person who becomes a member of an armed force ... shall serve in the armed forces for a total initial period of not less than six years nor more than eight years ... "

Other Out-of-State Service

Any member "who was previously employed in a teaching position with a public school system of another state, in a foreign teaching service in an overseas dependents' school [and teacher-exchanges]" may purchase credit for those periods of service, per section 74-4936a. The purchase price, whose calculation is described in this section, must be paid in a lump-sum; the member's employer is prohibited from paying "the cost, or any part thereof, of any additional benefits authorized to be purchased by a member under this section".

LOUISIANA

System: Louisiana State Employees Retirement System
Source: Louisiana Statutes Annotated sec. 11:401 et seq. (West 1992 Supp.)

Credits

Military Service

Intervening military service credit only is "allowable" for "persons who become members of ["all public state, parochial, and municipal retirement systems established by state law"] after January, 1982". (La. Rev. Stat. Ann. sec. 11:152 (West 1992 Supp.)).

An employee with eighteen months' creditable service in various Louisiana public retirement systems may purchase up to four years of credit for military service (La. Rev. Stat. Ann. sec. 11:153B (West 1993 Supp.)); the employee must have been honorably discharged (section 11:153C). No military service credit is allowed (section 11:153D, E):

- "for service in any state national guard or in the reserve forces of the United States";

- "for service for which a member is drawing a regular retirement benefit based on military service calculated on the basis of age and service" (but not a benefit based on disability received from military service); and
- for service already credited "in any other public retirement system or pension fund, including any retirement plan for members of the armed forces of the United States, from which plan the member is drawing a regular retirement benefit, based on age and service".

Also, the credit may be used only to meet eligibility requirements for normal retirement benefits; however, in those retirement systems which allow retirement after twenty years' service, the credit is not computed until "after the completion of twenty full years of service", and "such military service credit cannot be used to meet the minimum eligibility requirement of any regular retirement of less than twenty years". (Section 11:153F).

Other Out-of-State Service

None

MARYLAND

System: Employees' Retirement System of the State of Maryland; Pension System for
Employees of the State of Maryland

Source: Annotated Code of Maryland, Article 73B, sec. 2-101 et seq. and sec. 4-102 et seq.,
respectively (1992 Supp.)

Credits

Military Service

Intervening military service credit is allowed under Article 65 relating to "Militia". (Md. Code Ann. Article 65 sec. 88 (1992 Supp.)).

A member who attains ten years' creditable service but does not meet certain requirements under section 88 (above) may be awarded up to five years' credit for military service (section 88(e)). No credit is allowed

. . . if [the member] has received credit for a period of service under another retirement system, for which retirement benefits have been or will be received by him; however, this exclusion does not apply to any such credit provided through Federal Old Age and Survivors Insurance (Social Security), the National Railroad Retirement Act, or to any disability payments from any pension or retirement system or to members eligible for benefits under Title 3 or Title 10, Chapter 67, [sections] 1331 through 1337 of the U.S. Code.

(Section 88(f)).

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Members who retired prior to July 1, 1975 are eligible to receive this credit; contributions are paid by the employer. (Section 88(g), (h)).

Section 88(i) further provides that:

For purposes of this section, the term "military service" includes active service between April 6, 1917 and November 11, 1918, December 7, 1941 and December 31, 1946, June 25, 1950 and January 31, 1955, or December 22, 1961 and May 7, 1975 with the commissioned corps of the Public Health Service or of the National Oceanic and Atmospheric Administration or its predecessor organization, the Coast and Geodetic Survey.

See also section 4-301(c), Md. Code Ann. Article 73B (1992 Supp.).

Other Out-of-State Service

A member of the Employees' Retirement System of the State of Maryland (i.e., persons employed through December 31, 1979) "may receive credit at the time of retirement" (by paying, "at the time of retirement...an amount equal to the reserves required to fund the additional allowance") for "out-of-state public school teaching service or nonpublic school teaching service" (maximum credit ten years) and for "federal or out-of-state municipal service" (maximum credit ten years) (Md. Code Ann. Article 73B sec. 2-305 (1992 Supp.)). Members claiming federal or out-of-state municipal service may purchase the credit through payroll deduction. (Section 2-305(c)).

A member of the Pension System for Employees of the State of Maryland (i.e., persons employed on or after January 1, 1980) may (under similar terms) purchase "eligibility service" for up to ten years' service (Md. Code Ann. Article 73B sec. 4-301(g)):

- (8) With an out-of-state school as a teacher;
- (10) With the federal government;
- (11) With an out-of-state municipality; . . .

MICHIGAN

System: State Employees' Retirement System
Source: Michigan Compiled Laws Annotated sec. 38.1 et seq. (West 1985)

Credits

Military Service

Intervening military service (Mich. Comp. Laws Ann. sec. 38.18(1) (West 1993 Supp.)).

"On or after January 1, 1978", persons who do not come within the above subsection and who served on "active duty with the military or other armed service of the United States

government" may purchase up to five years' credit for that service. (Section 38.18(2)(1993 Supp.)). This subsection provides that service may not be credited until a member has vested, and that:

Service shall not be credited if it is or would be credited under any other federal, state, or local publicly supported retirement system, but this restriction shall not apply to those persons who have or will have acquired retirement eligibility under the federal government for service in the reserve.

Other Out-of-State Service

A member may purchase credit for up to five years' "full-time service with the federal government, or as a state employee with another state" (Mich. Comp. Laws Ann. sec. 38.17i (1993 Supp.)). No credit is allowed "if the member is eligible to receive a pension or annuity for the same service from another retirement system". (Section 38.17i(3)) The credit may not be used to meet the minimum length of service in order to qualify for a retirement allowance. (Section 38.17i(2)) The maximum credit after June 23, 1987 allowed under section 38.17i and other sections (but not section 38.17f) is ten years. (Section 38.17j)

Section 38.17f (1993 Supp.), "VISTA or peace corps [sic] volunteer service", provides that a member with ten years' credited service may:

...purchase service credit for not more than 5 years of full-time service as a volunteer in the VISTA program provided for under sections 101 to 108 of title I of Public Law 93-113, 42 U.S.C. 4951 to 4958, or as a volunteer, volunteer leader, or employee in the peace corps under sections 5 to 7 of title I of Public Law 87-293, 22 U.S.C. 2504 to 2506....

MISSISSIPPI

System: Public Employees' Retirement System
Source: Mississippi Code Annotated sec. 25-11-1 et seq. (1992 Supp.)

Credits

Military Service

Up to four years' credit, unless "positive proof" is furnished that the member was detained in the military service for reasons beyond the member's control, is allowed for "active duty in the Armed Forces of the United States" or "maritime service during periods of hostility in World War II" (Miss. Code Ann. sec. 25-11-109(6)). The member must have entered state service upon discharge from the military or maritime service. From July 1, 1993, no credit will be allowed if the member qualifies for a retirement allowance, based on that service, in another retirement system administered by that board. No credit is allowed if a member received a dishonorable discharge.

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This subsection also provides that:

The board of trustees shall conduct a study of the creditable service granted for military service at no cost to the member in this subsection to determine that actuarial cost to the system of granting such creditable service. The board shall report its findings to the Legislature not later than January 5, 1993, and shall include in such report its recommendations on whether granting such creditable service for military service should be continued, terminated, broadened or restricted.

Other Out-of-State Service

A member who has five years' "continuous state service at the time of retirement" may purchase up to five years' credit for service rendered in another state as a public employee of that state or its political subdivision, public education system, or other governmental instrumentality as well "as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States" (Miss. Code Ann. sec. 25-11-109(7)). The member must present satisfactory proof of this service, must not be receiving nor be entitled to receive a retirement allowance for those services, and must pay the actuarial cost of the credit, as determined by the actuary.

MONTANA

System: Public Employees' Retirement System
Source: Montana Code Annotated sec. 19-3-101 et seq. (1991)

Credits

Military Service

Intervening military service during war or other national emergency (Mont. Code Ann. sec. 19-3-502).

Any member with ten or more years' state service who is "not otherwise eligible" to purchase credit under section 19-3-502, above, may purchase credit up to a maximum of five years for active service in the armed forces of the United States. This includes "the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941 to August 15, 1945". (Section 19-3-503(1)(a))

However, any member who retired from active duty "with a normal service retirement benefit" does not qualify (the prohibition does not apply to "a member who is serving or has served in the military reserves with the expectation of receiving a military service pension" if the active duty "is not more than 25 percent of the total sum of all years of military service including reserve and active duty time". (Section 19-3-503(2)) The member's contribution is calculated under section 19-3-503(1)(b).

Other Out-of-State Service

Section 19-3-512(1) permits a member with five or more years' service in the system to purchase up to five years of credit for:

...public service employment covered under a public retirement system other than a system provided for in Title 19 [Montana retirement system title] for which he received a refund of his membership contribution....

Subsections (2) and (3) provide for calculation of the contributions required of the member to qualify the service. Subsection (4) provides that the service cannot be used to qualify a member to purchase military service credit and cannot be credited in any other Montana retirement system. Subsection (5) provides that "[s]ervice qualified under this section may not be used in calculating a member's retirement allowance" unless the member's last five years of creditable service were earned under this system.

NEVADA

System: Public Employees' Retirement System
Source: Nevada Revised Statutes sec. 286.010 et seq. (1991)

Credits

Military Service

Section 286.303, Nev. Rev. Stat., "Free credit for military service", states:

A member who met all requirements for free military credit as of May 19, 1975, but who did not have 5 years of consecutive service credit after his return from the armed forces, is entitled to free credit for military service as soon as he attains 5 years of consecutive service credit under the system.

The provision to which the above section appears to refer is not identified.

Section 286.479 provides for "free service credit for military service" during the "Persian Gulf Crisis" for a member with five or more years of service credit if the active military duty began "within [six] months after the last date of employment or leave of absence without pay with a participating public employer" and the person "[r]eturned to employment...within [one] year after being honorably discharged or released from active duty".

Other Out-of-State Service

None is expressly mentioned. However, subsection 2 of section 286.300 states,

...any member who has [five] years of creditable service may purchase up to [five] years of service. The member must pay the

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full actuarial cost of the service as determined by an actuary of the system.

Neither this statute nor the annotations clarify whether the five years of purchased credit may have actually been served with another system.

Section 286.486 provides, however:

Except as specifically otherwise provided in this chapter, a member shall not receive credit in the system for service that entitled such member to credit for retirement purposes in any other retirement system operated by the federal or a state government, or any of their agencies or political subdivisions, including the Social Security Act [citation omitted].

Note that section 286.301 allows "[c]redit for free prior service" but does not specify if this includes out-of-state service.

NEW JERSEY

System: Public Employees' Retirement System of New Jersey
Source: New Jersey Statutes Annotated sec. 43:15A-6 et seq. (1991)

Credits

Military Service

N.J. Stat. Ann. sec. 43:15A-12.1 (1991) allows "[a]ny public employee veteran member who terminated service with the State Police to enter active military or naval service of the United States [and returned to State service]" to purchase intervening service credit.

"Veteran" is defined as "any honorably discharged" personnel of specifically enumerated "wars, uprisings, insurrections, expeditions, or emergencies", including Lebanon peacekeeping mission, Grenada peacekeeping mission, Panama peacekeeping mission, and "Desert Shield/Desert Storm" as well as "any honorably discharged member of the American Merchant Marine who served during World War II" and is eligible for federal veterans' benefits. (Section 43:15A-6(p) (1993 Supp.))

For other military credit, see below:

Other Out-of-State Service, Including Military Service

Section 43:15A-73.1 (1993 Supp.) provides that:

A member may file a detailed statement of public employment in other states or with the United States Government which would be eligible for credit in a State-administered retirement system if the employment was with a public employer in this State, or of military service in the Armed Forces of the United States, rendered prior to becoming a member...

The maximum credit that may be purchased for this employment is ten years; five additional years are allowed for military service qualifying the member as a "veteran" (defined in section 43:15A-6, described above). A member may not apply for credit on any service if, at the time of application, the member has a vested right to retirement benefits in another retirement system based on that service. This section provides a formula for calculating the cost to the member for purchase of the credit, and provides that a member's employer is not liable for any of these costs.

NEW YORK

System: New York State Employees' Retirement System
Source: McKinney's Consolidated Laws of New York Annotated, Retirement and Social Security Law sec. 2, et seq. (1987)

Credits

Military Service

Intervening military service during "the Korean conflict", in "[e]mergency service on or after October [1, 1961]" which includes active duty (other than for training) in the United States Armed Forces, during World War II (N.Y. Retirement and Social Security Law (McKinney 1987 and 1993 Supp.), subsections 29, 29-a, 31 of section 2). An honorable discharge is required.

World War II service includes service with certain specified government agencies, and as a merchant seaman, and "as a crew member [between December 7, 1941 and August 15, 1945] aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service [etc. ...] and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense ..."

Section 41k allows credit, for World War II service as defined in section 2 (31) above, for persons in state employment as of March 31, 1970, and persons who enter or reenter state employment between April 1, 1970 and April 1, 1972 (persons entering or reentering had one year in which to apply for credit), and describes how payment for such credit is calculated. The credit does not increase the service retirement benefit for persons retiring with less than ten years' credit, or persons retiring with less than three years rendered after the last reentry into state employment (in which case, the member's deposit plus accrued interest is refunded). Subsection 31(2) of section 2 (1993 Supp.) provides for a maximum of three years' credit, with no restrictions on time of application, for active duty between July 1, 1940 and December 31, 1946 (but no credit is allowed where a member is receiving a federal pension based on twenty years' service or a military pension, disability pensions excepted), including the forms of service defined, above, as "World War II service".

See also, section 41b.4, below.

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Other Out-of-State Service

Subsection 41b allows credit for the following, if all the payments required pursuant to section 42 are made:

4. Civil service in any capacity as an officer or employee of the federal government, or military duty in the armed forces of the federal government and not otherwise creditable, rendered or performed by a member prior to the time he last became a member....

The statute mentions no "cap" upon the number of years' credit that may be purchased. However, the payment--made monthly or in a lump sum--includes sums to the annuity savings fund (an amount that would have been in the fund to the member's credit had the member been contributing "during the entire period of federal service, computed on the basis of his present salary, regular interest and tables as adopted by the controller", plus "a sum computed to be sufficient to provide the full cost of an annuity at retirement ... which would be provided out of the pension reserve fund if such federal service had been government service") and to the pension accumulation fund (an amount "computed upon the rate of contribution necessary to provide the full cost of all benefits, other than service retirement benefits ... if such federal service had been government service"). (Section 42.d.).

NORTH DAKOTA

System: Public Employees Retirement System
Source: North Dakota Century Code sec. 54-52-01 et seq. (1989)

Credits

Military Service

Intervening military service is credited (N.D. Cent. Code sec. 54-52-17.4(3) (1991 Supp.) (service must be "qualified military service pursuant to the Veterans' Reemployment Rights Act [citation omitted]").

A member may purchase up to four years' credit for "[a]ctive employment in the armed forces of the United States", but the purchase must be made within 180 days after beginning eligible employment or by December 31, 1991, whichever is later [intervening military service, above, is excepted]; a condition for eligibility is that the "member is not presently receiving credit" (subsections 1 and 1a of section 54-52-17.4; subsection 2 states the formula for computing the contribution).

Other Out-of-State Service

None

OKLAHOMA

System: Oklahoma Public Employees Retirement System
Source: 74 Oklahoma Statutes Annotated sec. 901 et seq. (1987)

Credits

Military Service

Intervening military service is credited (Okla. Stat. Ann. sec. 913(2)(c) (1993 Supp.)).

"Military service" is defined as service "in the Armed Forces of the United States in time of war or national emergency, as defined in Section 67.13a ..., from which the member was honorably discharged". (Section 902(23) (1993 Supp.)).

Section 67.13a (1993 Supp.) lists eight periods of service (subsections (a) - (h)), including September 16, 1940 to December 7, 1941, for persons who served "as members of the 45th Division" in the Armed Forces of the United States, and "a period of ninety (90) days or more ... during the period of time in which the United States participated in a war, campaign or battle, but excluding any person who shall have served on active duty for training only, unless discharged from active duty for service-connected disability" (subsections (b) and (e), respectively). Also included are persons who were awarded service medals during the Vietnam Conflict.

Section 913(1)(d) (1993 Supp.) allows "[a]ny member who served in the Armed Forces of the United States ... prior to membership in [that retirement system]" up to five years' credit "for those periods of active military service during which [the member] was a war veteran". However, no credit is allowed:

...to any person receiving military retirement benefits other than service-connected disability benefits established by either the military service or the Veterans Administration.

Other Out-of-State Service

None

PENNSYLVANIA

System: State Employees' Retirement System
Source: 71 Purdon's Pennsylvania Statutes Annotated sec. 5101 et seq. (1990)

Credits

Military Service

See Other Out-of-State Service, below. "Military service" is defined as "[a]ll active military service for which a member has received a discharge other than undesirable, bad conduct, or dishonorable discharge". (71 Purdon's Pa. Stat. Ann. sec. 5102 (1990), which also defines "intervening service".)

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Section 5304(f), Purdon's Pa. Stat. Ann. (1993 Supp.), "Temporary expansion of intervening military service", credits active military service rendered between August 2, 1990, and August 5, 1991; persons entitled to claim the credit include the Reserve components of the armed forces ordered "into active military service, other than active duty to meet periodic training requirements".

Other Out-of-State Service

"Creditable nonstate service" includes (section 5304(c) (1993 Supp.):

- (1) intervening military service
 - (2) military service other than intervening military service...not exceeding five years...
 - (3) [for persons in state educational employment], the total amount of service creditable...shall not exceed the lesser of ten years or the number of years of active membership [in such employment],...nonstudent service as an academic administrator, teacher or instructor [in out-of-state education and] education for any agency or department of the Federal Government....
- * * *
- (6) service in the Cadet Nurse Corps [citations omitted]...if the total period of training under such plan was at least two years, the credit for such service not to exceed three years....

Section 5304(b) (1990) limits eligibility to persons who are "not entitled to receive, eligible to receive now or in the future, or is receiving benefits for such service under [various kinds of retirement systems]".

The formulas for determining the contributions required for "nonintervening military service", "intervening military service", and other (nonmilitary) nonstate service are provided respectively in subsection (b), (c) and (d) of Section 5505 ("Contributions for the purchase of credit for creditable nonstate service").

SOUTH CAROLINA

System: South Carolina Retirement System
Source: Code of Laws of South Carolina sec. 9-1-10 et seq. (1986)

Credits

Military Service

Intervening and other military service are credited under section 9-1-1140, S.C. Code Ann. (1986 and 1992 Supp.), for a maximum of six years' credit; cost to the member is calculated upon the member's compensation immediately prior to entering military service (intervening) or when first becoming a member of the system (other military).

For other military service, a member must have two or more years' creditable service, and must not have a dishonorable discharge. One year of military service may be credited for each two years of creditable [system] service excluding the period of military service. Active military service after December 31, 1975 "may not be considered creditable service". (S.C. Code Ann. sec. 9-1-1140 (1992 Supp.))

Military service credit under the above provision may also be claimed by:

Merchant marine seamen who served in active ocean-going service from December 7, 1941, to August 15, 1947, and civil service crew members aboard United States Army Transport Service and Naval Transportation Service vessels in ocean-going service in foreign waters during the same period...

Other Out-of-State Service

Section 9-1-1140 (1992 Supp.) allows credit for federal service by:

Any former employee of the United States employed in this State by an employer covered by the system, and who is currently a contributing member....

The member is required to pay the "actuarial cost as determined by the board" for this credit, within the formula described in this section. The total credit "may not exceed the total creditable service, exclusive of federal service, which [the member] would have [by remaining] in service until completion of the eligibility requirements for an unreduced service retirement allowance".

Section 9-1-1140 (1992 Supp.) also provides that the benefits may not duplicate benefits paid under any other retirement system for the same period of service.

TENNESSEE

System: Tennessee Consolidated Retirement System
Source: Tennessee Code Annotated sec. 8-34-101 et seq. (1988)

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Credits

Military Service

Intervening military service credit; military service during a period of armed conflict is credited at no charge to the member. (Tenn. Code Ann. sec. 8-34-605(a), (b) (1992 Supp.))

Any member or retired member who served in the Armed Forces of the United States during a period of armed conflict may purchase credit not exceeding four years in the aggregate; the credit "cannot be established in any other retirement system" and the member's discharge must be "under conditions other than dishonorable". (Section 8-34-605(c))

Section 8-34-605(g) allows the maximum credit of four years in the aggregate to any member or retired member who served in the armed forces from October 15, 1940, to and including May 7, 1975; under this subsection, the member is allowed one day of creditable service for each two days of military service.

Other Out-of-State Service

Section 8-34-620 (1992 Supp.) provides:

For the purpose of determining eligibility for service retirement benefits, any teacher or state employee may establish retirement credit for previous service rendered as a public school teacher or full-time state employee in a state other than Tennessee or as a teacher in an overseas facility owned or operated by the United States department of defense...

That previous service must not exceed the number of creditable years of service in Tennessee. The member must not be receiving, "and is not and will not be entitled to receive", retirement credit for that service under another retirement system. The credit may be used only to establish eligibility for retirement, and no benefit is paid, based on that service. Purchase must be made in a lump sum, which includes employer contributions and interest, calculated under section 8-34-620(6).

UTAH

System: Public Employees' Retirement System

Public Employees' Noncontributory Retirement System

Source: Utah Code Annotated sec. 49-2-101 et seq. (1992) and sec. 49-3-101 et seq. (1992); the chapter governing both systems is the Utah State Retirement Act, sec. 49-1-101 et seq. (1992)

Credits

Military Service

Intervening military service is credited (Utah Code Ann. sec. 49-1-402(2)).

Members with "full-time military service" not otherwise qualifying for credit under that chapter may purchase up to four years' credit for that service. The military service does not qualify for credit if it is the "basis for the receipt of a federal pension other than Social Security". (Utah Code Ann. sec. 49-1-402(1))

Note that section 49-1-402(2)(f) states,

In no case may a retirement allowance or other benefit be granted under this chapter which is based upon the same service as has been the basis for retirement benefits under some other state retirement system.

Other Out-of-State Service

Members with full-time public service from another state, from federal employment, or military service and who do not qualify for a retirement benefit for that service may purchase "credit equal to that public service" (Utah Code Ann. sec. 49-2-407 (Contributory Act) and sec. 49-3-407 (Noncontributory Act)). Both sections state, "[t]otal payment must be completed prior to retirement or service [credit] will be prorated in accordance with the amount paid".

VIRGINIA

System: Virginia Retirement System

Source: Code of Virginia Annotated sec. 51.1-101 et seq. (Michie 1991)

Credits

Military Service

Intervening military service (Va. Code Ann. sec. 51.1-142(D)(4) (Michie 1993 Supp.); section 51.1-142 is "Prior service...").

Other military service: see section 51.1-143, below.

Other Out-of-State Service

Va. Code Ann. sec. 51.1-143.A (Michie 1993 Supp.) provides:

Any member in service...credited with five or more years of membership service may purchase all or part of the following:

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1. Active duty service in the armed forces of the United States not otherwise creditable [under section 51.1-142(D)(4)].
2. Certified creditable service in the retirement system of another state or of a political subdivision or public school system of this or another state.
3. Civilian service of the United States.

Section 51.1-143.A provides that the credit "may not be considered in the calculation of any retirement benefit by another retirement system". This section also sets out the formula for determining the cost to the member. No maximum credit is stated.

Section 51.1-143.B provides that "[s]ervice purchased under this section shall not be considered in determining the actuarial equivalent for early retirement".

WEST VIRGINIA

System: West Virginia Public Employees Retirement System
Source: West Virginia Code Annotated sec. 5-10-1 et seq. (Michie 1990)

Credits

Military Service

Intervening military service only (W. Va. Code sec. 5-10-15).

Other Out-of-State Service

None

WYOMING

System: Wyoming Retirement System
Source: Wyoming Statutes Annotated sec. 9-3-401 et seq. (1991)

Credits

Military Service

Intervening military service only (Wyo. Stat. sec. 9-3-417(c)).

Other Out-of-State Service

Any member may purchase up to five years' service credit for full-time employment performed for another state or political subdivision of another state, or for the federal government (Wyo. Stat. sec. 9-3-415(d) (1992 Supp.)).

A condition of purchase is that the member pay, not later than four years after becoming an employee, in a lump sum, the actuarial equivalent of such benefits; the credit so purchased may not be used to determine eligibility for vesting. (Section 9-3-415(d))

Note: Section 9-3-415(d) also provides that, for a participant under the Comprehensive Employment and Training Act, 29 USC 801 et seq., who thereafter becomes a state employee, such time as participant becomes creditable service under the employer's retirement plan.

ENDNOTES

1. The phrase "out-of-state" ("non-state") will refer in this chapter to service rendered to another employer--e.g., the federal government or any agency or department of another state--by the member of that state's public employee retirement system. It does not include any employment for which "prior service" credit is given, nor any service comparable to the kinds of service credited under Hawaii's retirement system law, Chapter 88, Hawaii Revised Statutes (hereinafter, "ERS law") prior to the enactment of the military service credit in 1989 (see discussion in Chapter 2). "Intervening military service" functions as a leave of absence for persons in state service and therefore is not considered "out-of-state" service, in this analysis.

Pennsylvania uses the term "nonstate" (section 5304, Purdon's Pa. Stat. Ann. (1990, and 1993 Supp.), "Creditable nonstate service"); Tennessee uses "out-of-state" (section 8-34-620, Tenn. Code Ann. (1992 Supp.), "Out-of-state service."). These two systems are included in the Summary.

Note that the term includes service for the federal government, which in a literal sense could have been physically within the state.

2. None of the retirement systems in the Summary, above, nor in endnote 12 credit a category of service denoted as "national service".

Initial research for this chapter included a preliminary, random search among retirement system statutes for provisions crediting certain "national service" entities discussed in Chapter 5 (specifically, the Peace Corps, Volunteers in Service to America ("VISTA"), National Health Service Corps, Civilian Conservation Corps, National Youth Administration, Youth Conservation Corps, National Guard). What turned up were: the State Employees' Retirement System [of Alabama], allowing credit for two or more years' service between December 7, 1941 and December 31, 1946, in the National Youth Administration; the Public Employees Retirement System [California] which credits various forms of service denominated "public service", but expressly excludes service in the National Youth Administration and Civilian Conservation Corps (providing that work relief recipient time, including but not limited to, Works Progress Administration, Civil Works Administration, Federal Emergency Relief Administration, National Youth Administration, and Civilian Conservation Corps "shall not constitute public service"); the State Employees' Retirement System of Illinois, expressly excluding from the definition of "employee" the enrollees and temporary staff of programs administered by the Department of Conservation under the Youth Conservation Corps Act of 1970, 16 USC [sec] 1701 et seq. The pertinent statutory sections are, respectively, Code of Alabama sec. 36-27-15.1 (1991); West's Ann. Gov. Code sec. 20930(d)(1993 Supp.); and Smith-Hurd Annotated 40 Illinois Compiled Statutes sec. 5/14-103.05(7) (1993 Supp.). These systems are not found in the Summary. Because "national service" potentially describes a wide range of service activities (see Chapter 5), pursuing this avenue of research appeared to be of very limited application, given the scope of this study.

3. This refers to retirement systems whose members are employees and/or officers of that state, its agencies,

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departments, boards, commissions, and the like; some state systems, like the Employees' Retirement System of the State of Hawaii, include county government employees. The exact definitions vary from system to system.

4. As mentioned in Chapter 5 (text at endnotes 1-3), "national service" has no generally accepted meaning. If "national service" were ultimately defined to be synonymous with federal government service, then that category is already credited by certain PERS: see the chart.

The Teachers' and State Employees' Retirement System of North Carolina allows a member, "upon completion of five years of membership service" to "purchase creditable service for periods of federal employment ..." (General Statutes of North Carolina sec. 135-4(w) (1992 Supp.)). This subsection also allows members to

... purchase creditable service for periods of employment with public community service entities within the State funded entirely with federal funds, other than the federal government . . . under the same terms and conditions that are applicable to the purchase of creditable service for periods of federal employment in accordance with this subsection. "Public community service entities" as used in this subsection shall mean community action, human relations, manpower development, and community development programs as defined in [other articles of the North Carolina statutes](Emphasis added).

This appears to allow creditable service for activities that might be funded via loans or grants obtained under the National and Community Service Act, discussed in Chapter 5. The title of this subsection is "Credit at Full Cost for Federal Employment".

5. For example, the West Virginia Public Employees' Retirement System, Indiana's Public Employees' Retirement System, in the Summary.
6. An example is the Pension System for Employees of the State of Maryland. See the Summary.
7. Public Employees' Retirement Association [Colorado], in the Summary.
8. The states of the United States were listed in alphabetical order. The PERS that make up the "sample" are from the even-numbered states in that listing. Each state has statutes governing its public employees retirement system; the information obtained for the discussion is limited to whatever is available in these state statutes.

Where state statutes provided for separate county, municipal, teachers', judges', firefighters', or police retirement systems, then only the state employees' retirement system statute was consulted.

9. Intervening military credit is allowed for person who are already employed members of their PERS. It is nevertheless included in the chart, since the distinction between varieties of "credit" for "military service" is discussed in Chapter 2.
10. Out of what is available in PERS statutes, the Summary attempts to provide, where available, the maximum out-of-state credit allowable and the years of service in the system necessary to qualify a member to acquire credit for out-of-state service. Since Senate Standing Committee Report No. 2751 on House Bill No. 2891, Fifteenth Legislature, 1990, State of Hawaii (see text accompanying endnote 48 of Chapter 3) questioned the propriety of prohibiting "double-dipping", any prohibitions of double-dipping among these PERS that allow out-of-state credit are noted.

Where a PERS requires a member to pay for the acquired service credit, the Summary states that the member may "purchase" the credit. Terms and conditions of the "purchase" vary. For example, a member of the Pension System for the Employees of the State of Maryland must pay (Md. Code Ann. Article 73B sec. 4-301 (1992 Supp.) for "eligibility service" only):

... an amount equal to the reserves required to fund the additional allowance, which may be paid on an installment basis by contributing not less than 2 percent of compensation per year with appropriate final adjustments being made in the year in which the member retires ...

The Public Employees' Retirement System of New Jersey calculates a member's cost (N.J. Stat. Ann. sec. 43:15A-73.1 (1993 Supp.)):

... by applying the factor, supplied by the actuary, as being applicable to the member's age at the time of the purchase, to the member's salary at that time, or to the highest annual compensation for service in this State for which contributions were made during any prior fiscal year of membership, whichever is greater.

For non-military out-of-state credit, Section 8-34-620(6), Tenn. Code Ann. (1992 Supp.), provides that:

The member [of the Tennessee Consolidated Retirement System] shall make a lump sum payment equal to:

- (A) The sum the member would have contributed had the member been a member during such period of out-of-state service; plus
- (B) The employer contributions which would have been made in accordance with the contribution rates in effect during the period in which the service was rendered; plus
- (C) Interest in both at the rate provided by [section] 8-37-214.

On the other hand, under the Administration's policy that all noncontributory system credit should be allowed without cost to the member because of the lower benefits under the noncontributory plan (Hawaii, Employees' Retirement System of the State of Hawaii, Military Service Credit (Honolulu: August 1990), p. 4), the question of the relative costs of purchased out-of-state credit in other state retirement systems might not be considered a relevant factor.

11. Without more data on each of these retirement systems, one cannot draw any definitive conclusions about any "model" system. In their chapter, "Promise Them Anything: The Incentive Structures of Local Public Pension Plans" (in David A. Wise (ed.), Public Sector Payrolls (Chicago: The University of Chicago Press, 1987)), Howard L. Frant and Herman B. Leonard (Section 9.7 "What Remains to Be Done?") caution (pp. 215, 235):

There are several areas in which further investigation of public sector plans is likely to be fruitful. First, one could simply expand the universe of plans examined [Frant and Leonard had examined 94 local employee public pension plans from thirty-three states, which had been previously investigated by another author] to get a better statistical picture of public plans in general. We urge great care in doing so, however. Differences in plans are often more subtle than one would realize from a mere list of parameters--whether a plan permits vesting of accelerated retirement rights, for instance. Examining a large number of plans properly is a very tedious task. (Emphasis added).

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Although Frant and Leonard deal with a different aspect of public retirement systems, their advice regarding differences in plans is applicable to this discussion of retirement credits.

12. For example, one might expand the sample so that it included one PERS from each of the fifty states. The additional systems (one PERS from each of the odd-numbered states, in that alphabetical listing referred to in endnote 8) are:

State Employees' Retirement System [Alabama], Code of Alabama sec. 36-27-1 et seq. (1991).

Arizona State Retirement System, Arizona Revised Statutes sec. 38-741 et seq. (1985).

Public Employees' Retirement System [California], West's Annotated Government Code [California] sec. 20000 et seq. (1980).

State Employees Retirement System [Connecticut], Connecticut General Statutes Annotated sec. 5-152 et seq. (1988).

Florida Retirement System, Florida Statutes Annotated sec. 121.011 et seq. (1982).

State Employees' Retirement System of Illinois, Smith-Hurd Annotated 40 Illinois Compiled Statutes sec. 5/14-101 et seq. (1993).

Iowa Public Employees' Retirement System, Code of Iowa sec. 97B.1 et seq. (1993).

Kentucky Employees [sic] Retirement System, Kentucky Revised Statutes sec. 61.510 et seq. (1986).

Maine State Retirement System, Maine Revised Statutes Annotated sec. 17001 et seq. (1989).

State Employees' Retirement System [Massachusetts], 32 Massachusetts General Laws Annotated sec. 1 et seq. (1989).

Public Employees Retirement Association [Minnesota], Minnesota Statutes Annotated sec. 353.01 et seq. and Minnesota State Retirement System, sec. 352.01 et seq. (1990).

Missouri State Employees' Retirement System, Vernon's Annotated Missouri Statutes sec. 104.320 et seq. (1989).

State Employees Retirement System of the State of Nebraska, Revised Statutes of Nebraska sec. 84-1301 et seq. (1987).

New Hampshire Retirement System, New Hampshire Revised Statutes Annotated sec. 100-A:1 et seq. (1990).

Public Employees Retirement Association [New Mexico], New Mexico Statutes Annotated sec. 10-11-1 et seq. (1992).

Teachers' and State Employees' Retirement System of North Carolina, General Statutes of North Carolina sec. 135-1 et seq. (1992).

Public Employees Retirement System [Ohio], Baldwin's Ohio Revised Code Annotated sec. 145.01 et seq.

(1992 Supp.).

Public Employees' [sic] Retirement System [Oregon], Oregon Revised Statutes sec. 237.001 et seq. (1991).

Employees' Retirement System of the State of Rhode Island, General Laws of Rhode Island sec. 36-8-1 et seq. (1990).

South Dakota Retirement System, South Dakota Codified Laws sec. 3-12-46 et seq. (1985).

Employees Retirement System of Texas, Vernon's Texas Codes Annotated sec. 810.001 et seq. (1993 Supp.).

Vermont State Retirement System, Vermont Statutes Annotated sec. 455 et seq. (1985).

Washington Public Employees' Retirement System, Revised Code of Washington Annotated Title 3 sec. 41.40.005 et seq. (1991).

Public Employee [sic] Trust Fund, West's Wisconsin Statutes Annotated sec. 40.01 et seq. and Wisconsin Retirement System, sec. 40.20 et seq. (1992)

13. For example, if one were to focus solely on the United States Peace Corps--the "national service" entity cited by House Resolution No. 315--and review fifty PERS statutes (the twenty-five PERS in the appendix, plus one system for each of the remaining states of the Union), then one would find two state PERS that allow credit for Peace Corps service: Michigan's State Employees' Retirement System (see appendix), and the Employees' Retirement System of the State of Rhode Island, General Laws of Rhode Island sec. 38-9-31.1(A) (1992 Supp.) states:

Any active member who served in the peace corps, teacher corps, or in volunteers in service to America may purchase credit for that service up to a maximum of four (4) years in the aggregate; . . .

Section 38-9-31.1(B) imposes a cost of

... ten percent (10%) of the members [sic] first year earnings as a member of the retirement system multiplied by the number of years and fraction thereof of that service in the peace corps, teacher corps, or VISTA, up to a maximum of four (4) years.

Section 38-9-31.1(C) provides that interest will be charged if members do not make the purchase within five years of enrolling in the system; no interest is charged, however, for members who joined the retirement system prior to July 1, 1980. This section was first enacted in 1985. It is unclear whether "teacher corps" refers to the National Teacher Corps only, or to any state or local teacher corps (see Chapter 5 discussion of the "Teacher Corps").

14. Written testimony submitted to the House Committee on Labor and Public Employment on House Bill No. 2682, Sixteenth Legislature, February 11, 1992, State of Hawaii, by Gregory P. Barbour (who identifies himself as a Tourism Development and Promotion Coordinator with the Office of Tourism, Department of Business, Economic Development and Tourism and a Peace Corps volunteer (tourism planner) in Fiji, 1978-81), states, in part:

This bill will bring Hawaii in line with the Federal government which gives credit in the Federal retirement system for previous Peace Corps service.

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Peace Corps retirement credit is discussed in Chapter 4, text at endnotes 25-29.

15. See endnote 52, to Chapter 4, regarding testimony as to the educational value of Peace Corps volunteer service. Five persons who identified themselves as Leeward Community College Returned Peace Corps Volunteers [John Conner, Liz d'Argy, Cindy Dempsey, Marilyn Bauer, Ed Casey] submitted the following testimony in support of House Bill No. 2682 (1992) for the committee hearing described in the previous endnote:

Certainly, Peace Corps service as U.S. government representatives, [sic] was fundamentally educational, whether in the classroom or through community service. It represents then, [sic] a logical continuum or adjunct of our present role as educators for the Hawaii state government. Years ago, we were working, people-to-people, for the "new world order" now upon us. We believe our contribution as American educators toward that order, [sic] at least deserves equal retirement credit granted to our state counterparts in the military. ...

Chapter 8

COST AND OTHER FACTORS

Besides standards of eligibility for a "national service" credit, House Resolution No. 315 requests:

- (1) Estimates of how many members of the Employees' Retirement System ["ERS"] served in the Peace Corps and other organizations rendering national service and the number of years served by these members;
- (2) The cost implications involved in allowing members who were Peace Corps volunteers or members of another organization rendering national service to purchase membership credit for their service...

Three agencies--the ERS, the Department of Personnel Services of the State of Hawaii ("DPS"),¹ and the Department of Personnel of the City and County of Honolulu ("Honolulu Civil Service")² --were contacted for membership data. These agencies' comments concerning the data requested by the Resolution, as well as the ERS' information regarding cost, are discussed in the first part of this chapter. The remainder of this chapter describes some policy questions that should be resolved by the Legislature before any retirement credit is enacted for "national service".

Data Requested by the Resolution

Both paragraphs of the Resolution, quoted above, apparently pertain to cost. In a hearing on House Bill No. 2862 (1992), proposing retirement credit for Peace Corps service, the ERS testified that "data as to the number of members involved or the number of years to be purchased" was needed to generate "cost figures" for the bill.³ For this study, the ERS stated that the data needed by its actuary, in order to generate actuarial cost projections for the national service credit, were the (1) age, (2) sex, (3) number of ERS members eligible for the credit and (4) number of "national service" credit years to be purchased by eligible members.⁴ For purposes of this study, it is therefore assumed that these three types of information are being sought.

Obtaining Membership Estimates

Presently, the information upon which such membership estimates might be based is not collected. The ERS, DPS and Honolulu Civil Service each questioned what "national service" entailed.⁵ As a practical matter, the data probably cannot be collected until the Legislature enacts a definition of "national service", for purposes of a national service credit.⁶ Even if it were assumed, for discussion purposes, that the Peace Corps were the sole organization concerned, these agencies still could provide no membership data: no statute mandated that the information be kept.

An example of a statute requiring the collection of a type of personnel information is *Hawaii Revised Statutes*, section 76-103 (1985), which requires the DPS to award preference

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points to "veterans".⁷ Preference points are added to a veteran's civil service examination score, when that applicant is competing for a civil service position with the State of Hawaii. The DPS application form for employment asks whether the applicant served in the military, and any affirmative responses are then verified. The DPS therefore has data concerning the number of its members with military service experience.

Honolulu Civil Service explained that it is required to keep (1) collective bargaining costs and (2) Equal Employment Opportunity ("EEO") information.⁸ Examples of costs negotiated through collective bargaining are travel allowances, mileage, and subsidized parking (e.g., building inspectors who use their own vehicles). The EEO requires Honolulu Civil Service to report information on sex, ethnicity, and job category. The eight different job categories are distinct groups of associated or related occupations, professions, specialties, or activities exhibiting a commonality of interest so that "professional" might include persons from personnel management as well as parks and recreation. These two types of information are stored in the computer data base.

This data base will not contain the fact that an employee might once have served, for example, with the Peace Corps. This fact constitutes "work experience", which is retained in individual personnel files. To tabulate such work experience, one must manually review personnel files. Moreover, the file might not mention that fact, if that type of service were somehow not relevant to that particular job or position.

Hence, the estimates described in the Resolution can be obtained only by commissioning an independent survey,⁹ or by somehow collecting the information in-house.¹⁰ DPS suggested that each of the eighteen departments of the State of Hawaii¹¹ could be directed to poll their members as to the number that rendered national service, and the number of years served--whether in national service or in membership service.¹² Such a poll should include ERS members who do not come within the purview of the DPS. The members are teachers, principles, other educational officers, members of the University of Hawaii instructional system, and employees exempt from civil service, as well as employees of the¹³ state judiciary and legislative branches. The ERS does not know what portion of its total membership consists of personnel subject to DPS purview.¹⁴

The disadvantages of a survey are that it is very costly and very time-consuming because it would be directed at all employees entitled to retirement benefits.¹⁵ As for an in-house survey, suggested by the DPS, its implementation may be problematical in the absence of a legislative mandate.¹⁶ Finally, according to the ERS, one doesn't know what a particular member's retirement cost will be until that member actually retires; the truest data will come from actual experience, which is obtained by enacting the credit first and then analyzing the ensuing results.¹⁷

Cost Implications

An unavoidable consequence of allowing members to purchase credit for "national service" is the additional cost.¹⁸ As shown in the ERS example illustrating the member benefit of four years' military service credit, a hypothetical member is seen to receive, under the contributory plan, an additional retirement benefit of \$160 per month, and under the noncontributory plan, an additional \$100 per month.¹⁹ Who pays for the additional benefit?

The cost assessed to contributory plan members, if paid via payroll deduction, will vary depending on the member's salary at the time; if paid in a lump sum, the ERS' illustration shows the hypothetical member, having a current monthly salary of \$2,000, paying \$7,272 for the four years' credit.²⁰ No cost is assessed to noncontributory plan members.²¹ The Resolution does not take issue with this present statutory scheme for allocating--or not allocating--costs of "purchased" credits to members,²² so the ERS examples illustrating the cost to members for military service credit will apply to the proposed "national service" credit.

Under the ERS law, employer contributions are determined on the basis of annual actuarial valuations.²³ The actuarial valuation as of June 30, 1992,²⁴ notes the purchase by 2,378 active members of 4,121 additional years of service, for an "estimated additional actuarial liability" of \$21.7 million in 1992.²⁵ "Actuarial liabilities" are the present value of benefits to current pensioners and beneficiaries and of future benefits to active employees and inactive members.²⁶ According to the ERS, one "must assume" that the "bulk" of this additional \$21.7 million liability was from the purchase of credit for military service and mandatory maternity leave.²⁷

Applying the statutory formula for determining total required employer contribution,²⁸ the actuary determined the total calculated employer contribution as of June 30, 1992 for the fiscal year ending June 30, 1995, to be \$350,985,500, an increase by approximately \$46 million over the contribution as of June 30, 1991.²⁹ This "increase in the total calculated employer contribution rate" is said to reflect, among other factors, the estimated additional actuarial liability for "purchased" credit.³⁰ However, because ERS law requires that the total employer contribution be reduced by investment earnings above eight percent, the resulting "net employer appropriation" as determined for the period ending June 30, 1995, is less than that for the period ending June 30, 1994.³¹

The cost implications for any "purchased" credit will vary depending on statutory variables, actuarial assumptions and actual experience, and existing statutes direct what kind of data is or is not collected.³²

Some Policy Issues

What policy or policies will the Legislature be promoting by enacting a retirement credit for "national service"? The stated intent of any such legislation will probably be phrased in terms of providing a benefit to that class of ERS members who have performed "national service". However, if the legislation merely adopts the terms and conditions of the military service credit, on the assumption that the military service credit is already an established precedent, then certain policy questions will remain unanswered.³³ Three such considerations are discussed in this section.

What Does the Legislature Seek to "Reward" by Enacting a Credit for "National Service"?

House Resolution No. 315 makes certain assumptions. First, it assumes that Peace Corps volunteer service is equivalent to military service.³⁴ Second, the Resolution assumes that "national service" needs no definition, and third, it appears to assume that all "national service" will resemble Peace Corps service. However, these assumptions were questioned in

Chapter 4. For example, the Peace Corps is not a military organization.³⁵ Also, the Peace Corps is not typical of all "national service" programs: under the National and Community Service Act of 1990, as amended ("NCS Act"), "national service" may include a wide-range of volunteer service, essentially-unpaid, directed at "civic" goals.³⁶

Therefore, the fact that ERS law presently allows credit for military service should not, in itself, support the enactment of a credit for "national service". Eligibility requirements for the military service credit suggest that the credit is intended to reward ERS members for long periods of service in state or county government,³⁷ but this articulates no policy as to why members with military experience are singled out to be rewarded for long periods of service.³⁸ One should be reluctant to expand the military service credit to another category of out-of-state activity³⁹ when the policies underlying the specific terms and conditions of that existing credit are somewhat unclear.⁴⁰ The military service credit, while crediting a federal activity, appears not to be harmonious with federal law--for example, by not recognizing the Reserves and National Guard as part of the armed forces.⁴¹ No mechanism is provided for any continuing oversight of federal military policies, should any change in these policies impact the terms or conditions of the military service credit.

Related to this question is whether "national service" should in fact be entitled to state or county compensation. In Congress' view, "national service" receives no formal compensation.⁴² A pension, on the other hand, is a form of "deferred compensation".⁴³ By allowing retirement credit for "national service", the Legislature will, in a sense, be allowing compensation for services that are not or cannot be paid for by state or local government.⁴⁴ This means that a person who, as an unpaid volunteer, is not necessarily accountable to any employer and performs a function that, while of value, cannot be assigned a place on any pay scale because government does not pay for such types of services, will receive retirement credit for that service as though it were state or county government employment.⁴⁵

Based on this analysis, the present military service credit appears to be designed to compensate military service on behalf of the United States anywhere in the world, but to deny compensation for military service on behalf of the people of the State of Hawaii. This would be the apparent reason to expressly exclude most service in the Hawaii National Guard, the only component of the state military forces now active (as compared to the Naval Militia and the Hawaii State Defense Force) from the service credit.

Reciprocity or Portability?

As an alternative to the all-inclusive concept of "national service", referred to above, and promoted by the NCS Act, the Legislature might choose instead to restrict eligibility for retirement credit to service in those existing "national service" organizations which, under federal law, are entitled either to retirement pay (for example, an organization like the Reserves⁴⁶) or to retirement credit (an example is VISTA⁴⁷). An underlying principle or policy of the credit then becomes reciprocity: crediting this service because it is credited by another government system. If the Legislature chooses this approach, it should also articulate a policy as to whether reciprocity will or will not be extended to other federal government service, public service in other states, or to out-of-state teaching service.⁴⁸ Section 88-132.5, *Hawaii Revised Statutes*, gives no indication as to how far the military service credit might be extended in serving as precedent for additional kinds of out-of-state credits.

If the Legislature considers this issue, it might also consider whether credits should in fact be "portable" (transferable). To the extent that retirement systems allow retirement credit for service by their members in other systems, the service credit in these out-of-state systems becomes "portable". Portability is referred to by Siegel as a public policy variable in the structuring of public retirement systems.⁴⁹

How Will a Maximum Cumulative Credit be Determined?

If sections 88-132, 88-132.5, and 88-50.5⁵⁰ show any kind of pattern, it might be that recent legislative policy has been to allow a maximum of four years' credit for each new category of creditable service. These sections, however, provide for no "cap" on the total number of years' service credit allowable. For example, the military service credit is not cumulative with credit allowed under section 88-132 for intervening military service.⁵¹

Hence, a person who served four years in the armed forces, remains a member of the Reserves, enters state or county employment and thereafter is called to active duty would be entitled to apply, under section 88-132.5, for up to four years' military service credit after eight, twenty, and twenty-five years' membership service, and to additional credit for the intervening period of military service.⁵² If the "national service" credit were to adopt the terms and conditions of the military service credit,⁵³ there will be no maximum set for the cumulative number of years'--military and national service--credit that a member could acquire. Because noncontributory plan members may acquire credit at no personal cost, and because the acquired credit counts toward one's length of service, it would appear that a limit upon the aggregate allowable credit is desirable.⁵⁴

There appears to be no standard approach to this issue among those states, sampled in Chapter 7, that credit out-of-state service. For example, Colorado sets no apparent limit on the number of years' credit that a member may acquire.⁵⁵ Delaware allows up to five years' credit for military service and up to five years' credit for "full-time employment" for another state, or ten years in the aggregate.⁵⁶ Michigan allows a maximum of ten years' credit for out-of-state service, but does not permit that credit to count toward length of service.⁵⁷

Summary

The kinds of membership data needed by the ERS' actuary in order to generate actuarial cost projections for the "national service" credit are presently not collected by relevant agencies. ERS law presently does not require the ERS to separate out costs by category of "purchased" credit, and the additional actuarial liability for the existing credits, at least for the 1992 Valuation, does not translate directly into an increased employer contribution. To settle upon, for example, the nature of the "national service" to be credited, however, will require the Legislature first to decide certain policy questions.

ENDNOTES

1. The ERS and DPS were consulted pursuant to House Resolution No. 315.

In this first section of the chapter, references to the ERS are (unless otherwise indicated) to an interview on September 24, 1992, and telephone interviews on August 19, 1992, December 10, 1992, and December 23,

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1992, with Mr. Stanley Siu, Administrator, ERS, as further noted herein ("Siu interview" and "Siu telephone interview"); references to the DPS are to a telephone interview with Mr. Titus Yap, Chief of Administrative Audit, Department of Personnel Services of the State of Hawaii, August 10, 1992 ("Yap interview").

2. Since the DPS does not include all ERS members (see text at endnote 12), this additional agency was selected at random; references to "Honolulu Civil Service" are to a telephone interview with Mr. Mel Kutara, Personnel Management Specialist, Personnel Department of the City and County of Honolulu, December 7, 1992 ("Kutara interview").
3. Testimony by Stanley Siu, then-Secretary of the ERS, before the House Committee on Labor and Public Employment, Joint Committee Hearing, February 11, 1992, on House Bill No. 2682, Sixteenth Legislature, 1992, State of Hawaii (this bill is described in Chapter 2 (endnote 27 and accompanying text) and in Chapter 4 (endnotes 1 and 2)):

Because we have no data as to the number of members involved or the number of years to be purchased, we are unable to provide this Committee with cost figures. However, for your information, the cost to employer governments for the enabling Legislations that allowed members to purchase military service and maternity leave service is approximately 1.7% of gross payroll. The cost based on the total payroll as of March 31, 1991 of \$1.67 billion is approximately \$3 million per year. The employers' cost will fluctuate each year and will depend upon the total payroll amount. (Emphasis added).

"1.7%" may be a typographical error. The 1992 Valuation (see endnote 24) states at page 25 that total payroll as of March 31, 1991 was \$1,676,110,300 and that the Actuarial Valuation as of June 30, 1991, showed a "Total Calculated Employer Contribution Rate for All Employees (percentage of total payroll)" of 18.2% (1992 Valuation page 27). A question regarding the multiplication itself was mentioned at the Siu interview 9/24/92, and discussed with Mr. Siu on December 10, 1992, for follow-up; Mr. Siu's follow-up in the telephone interview of December 23, 1992 cited to the then-just released 1992 Valuation.

4. Siu telephone interview, 8/19/92.
5. Kutara interview, Yap interview; telephone interview with Mr. David Shimabukuro, Assistant Administrator, ERS, on August 10, 1992 ("Shimabukuro interview").
6. "National service" has no generally-accepted meaning (Chapter 5, text at endnotes 1-3); "national service" per se is not a category of service credited in those state retirement systems sampled in Chapter 7 (endnotes 2 and 4).
7. The discussion in this paragraph is from the Yap interview. The regulation implementing section 76-103, Hawaii Rev. Stat., is quoted in part in Chapter 6, endnote 87.

The ERS (Shimabukuro interview) mentioned having obtained data on the number of veterans from the DPS, for purposes of the military service credit of 1989.

8. The discussion in this and the following paragraph is from the Kutara interview.
9. Kutara interview.

By one estimate, there are approximately 500 Returned Peace Corps Volunteers ("RPCV's) in Hawaii: (joint) written testimony of Karen Knudsen, Member, Hawaii State Board of Education, Community

Relations Officer, East-West Center, and Greg Knudsen, Vice President, Hawaii Returned Peace Corps Volunteers, Administrative Assistant, Office of International Relations (see endnote 52, Chapter 4), Joint Committee Hearing of the House Committees on Labor and Public Employment, Health, and Judiciary on House Bill No. 2862, Sixteenth Legislature, State of Hawaii, February 11, 1992.

Note however that this estimate is of the total number of RPCV's residing in Hawaii. The number who are ERS members would presumably be smaller.

10. Yap interview.
11. Ibid. Hawaii Rev. Stat., sec. 26-4 (1992 Supp.), "Structure of Government".
12. Yap interview.
13. Ibid.
14. Siu interview 9/24/92.
15. Kutara interview.
16. For example, who would coordinate the survey, questioned Mr. Siu (telephone interview 12/10/92).
17. These two observations are from Siu interview 9/24/92, and Siu telephone interview 12/23/92, respectively.
18. "Implicate" means "to involve as a consequence, corollary, or natural inference", and "implication" is defined as "a possible significance" (Merriam-Webster, Inc., Webster's Ninth New Collegiate Dictionary (Springfield, Mass.: 1988) p. 608); although these words have other meanings, the above appear to be what the Resolution requests.
19. The example is described in Chapter 3, under "Benefit", following endnote 23. Its source is cited in that chapter at endnotes 4 and 23.
20. This is discussed in Chapter 3, text at endnotes 12 - 16. The governing statutory section is Hawaii Rev. Stat., sec. 88-59 (1992 Supp.).
21. This is discussed in Chapter 3, text at endnotes 10 - 11. The policy for not assessing non-contributory members for costs is cited in that chapter at endnote 46 and accompanying text.
22. Unless the word "purchase" in the Resolution was deliberately chosen to indicate that eligible members should pay for the cost of the credit. However, the ERS actuary uses "purchase" without distinguishing between contributory and noncontributory members. See endnotes 24 and 25.

Other state statutes suggest different approaches, although these are cited with the caveat that their respective systems may be funded in a totally different manner than is the ERS. For example, Kansas (Kansas Stat. Ann. sec. 74-4936a (1992)) expressly prohibits any employer from paying any part of the cost for purchasing credit for out-of-state public school or overseas teaching employment. Mississippi (Mississippi Code sec. 25-11-109(7)(c) (1992 Supp.)) requires the employee to pay, prior to retirement, "the actuarial cost as determined by the actuary for each year of out-of-state creditable service". Other examples are described in endnote 10 of Chapter 7.

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23. Hawaii Rev. Stat., sec. 122(a)(1985) states in pertinent part:

Based on regular interest and such mortality and other tables as are adopted by the board of trustees, the actuary engaged by the board, on the basis of successive annual actuarial valuations, shall determine the employer's normal cost and accrued liability contributions for each fiscal year beginning July 1...

24. Employees' Retirement System of the State of Hawaii, Report of the Trustees on the Sixty-Seventh Actuarial Valuation as of June 30, 1992 (The Segal Company, Inc., New York: December 1992)(hereinafter, "1992 Valuation").

The actuarial valuation as of June 30, 1992, establishes the amount of the state and county contribution for the appropriation year 1994-1995 (1992 Valuation, p. 24 and Table 8, p. 25).

25. Ibid., p. 26. Cited as one of the "factors" reflected in the "increase in the total calculated employer contribution rate", the paragraph reads in its entirety as follows:

For this 1992 actuarial valuation, the estimated additional actuarial liability for years of service purchased by active members is included in the total calculated actuarial liabilities. Based on data provided by the Retirement System, 2,378 active members have purchased a total of 4,121 additional years of service credit. The estimated additional actuarial liability for purchased service increased from approximately \$15.9 million in 1991 to \$21.7 million in 1992.

26. Ibid., p. 28 (Table 9).

27. Siu telephone interview 12/23/92. Mr. Siu cited the data in this paragraph as representing the actual experience, from which cost estimates can be based, concerning the military service credit, which the ERS combines with the credit for mandatory maternity leave. See, e.g., Chapter 3 endnote 52 and accompanying text.

28. As described by the actuary, the formula for determining the total contribution requirement is:

...the normal cost plus the level annual payment required to amortize the unfunded accrued liability over a period of [twenty-four] years from July 1, 1992.

(1992 Valuation, p. 5). The "employer normal cost" is explained as:

...the level percentage of payroll contribution required to pay all future benefits, after subtracting expected future employee contributions, the unfunded accrued liability, and the assets accumulated as of the valuation date. Actuarial gains and losses resulting from differences between actual and assumed experience are reflected in the employer normal cost rates.

(1992 Valuation, p. 23). The 1992 Valuation calculates the cost for two groups of members, as required by ERS law. Hawaii Rev. Stat., sec. 88-122(a)(1985) requires that "the employer's normal cost and accrued liability contributions for each fiscal year beginning July 1" be determined separately for "(1) [p]olice officers, firefighters, and corrections officers; and (2) [a]ll other employees". Section 88-122(c) requires that:

With respect to each of the two groups of employees in subsection (a), the normal cost for each year after June 30, 1976, shall be the percentage of the aggregate annual compensation of employees as of March 31 of the preceding year which, if contributed over each employee's prospective period of service and added to the employee's prospective contributions, will be sufficient to provide for the

payment of all future benefits after subtracting the sum of the unfunded accrued liability as of the beginning of the year and the assets of the pension accumulation fund as of the end of the preceding year.

29. Ibid., p. 25 (Table 8) and p. 29. In Table 8, the "[t]otal actuarial cost" for 1991-92 (i.e., as of June 30, 1991) is \$305,006,000 (as a percentage of total payroll, 18.20 percent); for 1992-93 (i.e., as of June 30, 1992) is \$350,985,500 (as a percentage of total payroll, 19.19 percent).
30. Ibid., p. 26. See paragraph quoted in endnote 25, above.
31. Ibid. p. 29. This shows the total calculated employer contribution of \$305,006,000 as of June 30, 1991 being reduced by \$24,575,700 in investment earnings above eight percent, for a net employer appropriation in appropriation year 1993-94 of \$280,430,300; the total calculated employer contribution of \$350,985,500 as of June 30, 1992, being reduced by \$178,918,500 for a net employer appropriation in appropriation year 1994-95 of \$172,067,000.

The actuary cautions that "[t]he reduction for investment earnings above [eight percent] can vary substantially from year to year". Ibid.

32. The statutory variable is, for example, section 88-122, Hawaii Rev. Stat., described in endnote 28 above, and section 88-107, cited in the 1992 Valuation, p. 29 (endnote 31, above). The 1992 Valuation, p. 1, states:

In addition to utilizing current membership and financial data, an actuarial valuation requires the use of a series of assumptions regarding uncertain future events. The assumptions used in the 1992 actuarial valuation were adopted by the Board of Trustees at the June 12, 1990 meeting, based on our report on the actuarial experience investigation covering the 1985-89 period.

Section 88-122(a), mentioned in endnote 28, above, requires costs to be determined for two groups of members, but no provision of ERS law requires costs to be determined separately for contributory and noncontributory plans, for example. Siu interview 12/20/92.

33. See Chapter 3, endnotes 50 - 70 generally, and accompanying text.
34. Because volunteers faced hardship ("disease and deprivation") and "contributed years of their youth". House Resolution No. 315.
35. See Chapter 4, endnote 4. Some of the qualities distinguishing "military" from "civilian" are described in 32 C.F.R. sec. 47.4(b), discussed in Chapter 6, text at endnotes 76 - 79.
36. See Chapter 5.
37. See Chapter 3, endnote 61 and accompanying text.
38. For example, had the Legislature stated that the purpose of the military service credit was to compensate persons for a certain loss of personal liberty, necessitated by being a member of the military services and being subject to military discipline, then neither House Bill No. 2862 (1992) nor House Resolution No. 315 would have come about: the limitations of the credit would have been clear. These qualities of a "military" organization are from 32 C.F.R. sec. 47.4(b)(see endnote 35, above).

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39. See endnote 1 in Chapter 7, regarding the phrase, "out-of-state".
40. See Chapter 3, text at endnotes 33 - 70.
41. See Chapter 3, text at endnotes 54 - 58; also, Chapter 6.
42. See Chapter 5, endnotes 150 - 152 and accompanying text.
43. Gilbert B. Siegel, Public Employee Compensation and Its Role in Public Sector Strategic Management (New York, New York: Quorum Books, 1992), p. 146 (hereinafter, "Siegel"):

There are several reasons why retirement systems are attractive to public employees--why they attract and retain a public employee work force. First, though there is some mixed evidence, one can reasonably conclude that a wage-pension trade-off exists for public employees [citation omitted]--that is, public employees and potential employees consciously accept a situation of lower wages or salaries in favor of higher deferred compensation. This is characteristic of a risk-averse population. (Emphasis added)

44. The American Federation of State, County and Municipal employees (AFSCME) expressed a concern with the idea of "fulfill[ing] unmet public needs with unpaid workers or workers who receive a minimal stipend without regular employee status". Statement of Stanley Hill, International Vice President of the American Federation of State, County and Municipal Employees (AFSCME) and Executive Director of District Council 37 of AFSCME, New York, New York, April 21, 1989, in U.S., Congress, Senate, Committee on Labor and Human Resources, Hearings on S. 408 To Establish a Corporation of Administer a National Volunteer Service Program, 101st Cong., 1st Sess., March 9, 14 and April 21, 1989 (Washington, D.C.) and March 20, 1989 (Dorchester, MA), pp. 512-513.

These hearings are a portion of the legislative history of the National and Community Service Act of 1990, 42 U.S.C.A. sec. 12501 et seq. (1993 Supp. and as amended by National and Community Service Trust Act of 1993, 107 Stat. 785, Pub. L. 103-82, 103d Cong., 1st Sess. (September 21, 1993)). (Congressional Information Service, CIS/Annual 1990 - Legislative Histories of U.S. Public Laws (Bethesda, Maryland 1990), Item No. 5.14, for National and Community Service Act of 1990, Pub. L. 101 - 610, 104 Stat. 3127, November 16, 1990) A portion of Mr. Hill's remarks from which the above comment is quoted, follows:

AFSCME represents people who serve the public. Our members are child care workers, laborers, sanitation workers, clerks, secretaries, teacher aides, school crossing guards, hospital aides, librarians, lawyers and social workers. By the very nature of their jobs, they have an ingrained sense of community service.

...

We are gratified, therefore, to see in the current dialogue about national service a renewed appreciation of the value of community service. It is time to turn away from the self-centeredness of the last decade and to rediscover the virtues of civic responsibility toward our neighbors and community.

Nonetheless, we urge you to proceed cautiously with community service legislation. While there is no real consensus on what community service means, two principal objectives appear to run through many of the proposals now pending before Congress: (1) addressing unmet domestic needs and (2) restoring a faltering civic spirit.

The apparent appeal of using a community service program to meet unmet social needs is obvious. Over the last eight years, federal aid to state and local governments declined by 45 percent in 1982 dollars. On its face, it seems convenient to provide a labor pool of young people for community service programs while simultaneously achieving other policy objectives such as conditioning federal student aid on community service, providing job training for the disadvantaged and creating opportunities for young people of different socioeconomic backgrounds to learn from each other by working together.

However, it must be emphasized that these objectives cannot be comfortably and successfully combined if the primary goal and major effect of community service is to fulfill unmet public needs with unpaid workers or workers who receive a minimal stipend without regular employee status. ...

45. The issue might be characterized as one of "quality control". For example, what will determine whether a program is sufficiently "civic" to qualify as "national service"? Will a program's being funded by the Commission on National and Community Service "certify" that program as sufficiently "civic"?

In crediting out-of-state service, New Jersey requires a showing that the out-of-state service be such as "would be eligible for credit in a State-administered retirement system if the employment was with a public employer in this State" (New Jersey Statutes Annotated sec. 43:15A-73.1 (1993 Supp.)): out-of-state service is creditable only if New Jersey would have credited (i.e., valued or paid for) the same type of service.

46. See Chapter 6.
47. See Chapter 5 at endnote 63 and accompanying text.
48. See Chapter 7, esp. text that follows endnote 13.

The Michigan and Rhode Island public employees' retirement systems, described in the Summary and in endnote 13, respectively, allow credit for volunteer service in the Peace Corps and in VISTA. Michigan, which allows credit for service in the federal government, also allows credit for employees of the Peace Corps; Rhode Island also credits service in the "Teacher Corps", although, since no citation is provided, it is unknown whether this refers to the National Teacher Corps or to a state or local teacher corps.

49. Discussing federal retirement, Siegel states (p. 147):

The principal reasons for low turnover are the lack of portability of civil service retirement benefits and the fact that the federal work force tends to be older and have more years of service. For federal employees hired before 1984, the civil service retirement system offers benefits only after completion of a specified length of time, thus encouraging long service.

...

Federal employees hired after 1984 are covered by a more portable pension system that is funded partially by Social Security and partly by a defined contribution or thrift-type plan.

The above is cited as an example only; this is not intended to suggest that the ERS experience might be the same. Other public policy variable cited by Siegel are the normal age of retirement and funding provisions of pension plans. (*Ibid.*).

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50. See Chapter 2, endnotes 10 - 13 and accompanying text, Chapter 3, text at endnote 3, and endnotes 71 - 73 and accompanying text.
51. "Intervening military service" is explained, e.g., in Chapter 2, text preceding endnote 8; also, Chapter 7. Mr. Siu confirms that the credit under sections 88-132 and 88-132.5 are not cumulative (Siu telephone interview 12/10/92).
52. Under either section 88-132, Hawaii Rev. Stat. (if during time of war or national or state emergency) or the Veterans' Reemployment Rights Act: see Chapter 2, endnotes 10 - 20 and accompanying text.
53. As House Bill No. 2862 (1992) does, adopting the military service credit text verbatim: Chapter 2, endnote 27 and accompanying text.
54. For example, if House Bill No. 2862 (1992) had been enacted, a noncontributory plan member who had served four years in the armed forces and then two years in the Peace Corps would, upon earning eight years' membership service in the ERS, be entitled to apply for two years' military service credit and two years' Peace Corps' credit--and would then be four years closer to having the minimum number of years needed to retire. This would be at no cost to the member.
55. See Chapter 7 Summary: "Colorado".
56. See Chapter 7 Summary: "Delaware".
57. See Chapter 7 Summary: "Michigan".

Chapter 9

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House Resolution No. 315 (1992) evolved from a bill that proposed to credit Peace Corps volunteer service as though this service were equivalent to military service. Military service, credited to a limited extent under pre-1989 ERS law (Chapter 88, *Hawaii Revised Statutes*, governing the Employees' Retirement System of the State of Hawaii, or "ERS"), is also credited under section 88-132.5, *Hawaii Revised Statutes* (1992 Supp.), enacted in 1989. Section 88-132.5 is ostensibly the precedent cited in the Resolution. This study analyzed section 88-132.5 and various other statutory provisions, state and federal, which are relevant to or might serve as standards for the enactment of a new ERS provision crediting Peace Corps and other "national" service.

Findings

Before 1989, the ERS law credited military service only if rendered by persons who were already state (including its predecessor, the Territory of Hawaii) or county employees at the time they were called to active duty, and if rendered during three separate periods. These periods were World War I (prior to the establishment of the ERS); a period beginning with the United States' entry into, and ending three years after the end of, World War II; and a period beginning with the Korean Conflict and extending through the present. To receive retirement credit during these absences for military service, ERS members were also required to return to their state or county employment upon being discharged from the military (the phrase "intervening military service" has been used in this study when referring to the foregoing type of military service credit, which conceptually is a credited leave of absence).

Since 1987, ERS law (section 88-132, *Hawaii Revised Statutes*) allows intervening service credit during the current period only if that service is rendered "involuntarily" in time of war or national or state emergency; a maximum of four years' service may be credited. By contrast, the federal Veterans' Reemployment Rights Act ("VRRRA") mandates greater rights. The VRRRA is intended to ensure that an individual who leaves public or private employment to serve in the military may return, immediately upon discharge, to that prior employment with no loss of, for example, benefits or seniority. Protected benefits include membership service credits toward retirement. Military service under the VRRRA may be voluntary, need not be rendered in time of war or emergency, and may possibly last longer than four years.

Section 88-132.5, the military service credit enacted in 1989, credits "honorable active military service in the armed forces of the United States" without regard to one's employment status at the time that the service is rendered. To be eligible to acquire credit for up to four years' military service, the veteran must be an active--i.e., currently employed--member of the ERS and have served eight, twenty, and twenty-five years' membership service in order to acquire credit for two, three, and four years' military service, respectively.

However, section 88-132.5(c) states that active service in the Reserves or National Guard "is not considered active military service unless in time of war or declared national or state emergency". This is not consistent with federal law, which deems the Reserves and National Guard to be an integral part of the "total force" policy for national defense. The National Guard, even in its Title 32 role as the state militia, is federally regulated. The

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Reserves and National Guard are recognized under federal law as existing "national service" organizations.

Under federal law, the commissioned corps of the National Oceanic and Atmospheric Administration and of the Public Health Service are also "military" organizations--members of these corps are eligible for military retirement pay, and their service is credited as military service under federal civilian retirement systems. However, this military service is not eligible for credit under section 88-132.5. Section 88-132.5 also makes no provision for civilians whose service under special circumstances is deemed sufficiently "military" to merit veterans' status under federal law. At present, therefore, not all "military" national service is credited under ERS law, and the legislative history for section 88-132.5 is silent as to any public purpose or policy to be promoted by this exclusion.

The legislative history is also silent as to policies underlying specific terms and conditions of section 88-132.5. The policies that may be inferred from certain terms and conditions seem to conflict. For example, credited military service counts toward the minimum length of service needed to retire without any reduction in benefit. Also, credited military service is counted as service rendered in one's occupation; this means that for contributory plan members in certain occupations, military service credit may permit an earlier retirement, since these members' final five years of membership service is required to be in their occupation. Hence, these terms of the military service credit appear intended to promote earlier retirement, a more rapid turnover of personnel. Yet, at apparent cross-purposes, the military service credit also appears structured to reward length of service: members cannot acquire credit for a third and fourth year of military service until they have earned twenty and twenty-five years' membership service, respectively.

For most ERS members, the acquisition of credit for military service will mean an increased monthly benefit at retirement. The benefit to a noncontributory plan member, compared with a contributory plan member of identical age, salary, and length of service, is somewhat less (in one ERS hypothetical, a contributory plan member receives an additional monthly benefit of \$160; the non-contributory plan counterpart receives an additional \$100). The lump-sum cost to that contributory plan member is calculated to be in excess of \$7,000, whereas the cost to the noncontributory plan member is nothing. Lower benefit levels under the noncontributory plan is the cited reason for the allowance of additional credit for military service at no cost to noncontributory members.

A clear understanding of the policies promoted by terms and conditions of section 88-132.5 is needed if this credit is to serve as the model for a "national service" credit. In turn, the policies underlying the terms and conditions of a "national service" credit should be clearly understood, because the enactment of such a credit will likely lead to efforts in the future to legislate credits for other service not rendered to state or county employers.

A review of the statutes for twenty-five other public employee retirement systems ("PERS") shows that while some PERS credit no service unless it is rendered for member-employer, other PERS allow their members to purchase credit for service to the federal government, to the government of other states and their subdivisions, and for out-of-state educational employment. No definite conclusions are being drawn from this review, because of its limited nature (i.e., it relies solely on the creditable service provisions available in published state statutes). However, there appears to be a wide range of approaches toward crediting this "out-of-state" (i.e., like service credited under section 88-132.5, service rendered when an individual was not a member of the ERS i.e., having no

prior system-membership requirement), including the charging of costs for acquiring the additional credit. For example, Kansas prohibits a member's employer from paying any part of the additional cost for acquiring credit for out-of-state teaching. New Jersey provides for the calculation of cost on a case-by-case basis (endnote 10, Chapter 7). The purchase requirements for out-of-state service credits with the contributory and non-contributory pension plans for Utah are identical.

Among those of the twenty-five PERS that credit "out-of-state" service, the ERS is the only system that credits unrestricted military service (for example, qualifying military service is not limited to service during particular periods) and also allows "double-dipping": the ERS credits military service that may already be counted toward benefits under another retirement system, such as federal military retirement. Initially, section 88-132.5 credited military service "for which the member is not receiving or is not eligible to receive a military pension". However, this phrase was deleted in 1990, because the Senate Committee on Labor and Employment was "concerned that state law which restricts a person's right to collect a federal military pension may be subject to challenge as contrary to federal law".

Clearly, however, the deleted phrase did not challenge one's entitlement to a federal pension; it merely prevented that same service to then be counted toward a second pension. One federal statute (Chapter 67, Title 10 of the United States Code, sections 1331 through 1337) expressly allows military service counted toward the retirement pay for part-time reservists under this chapter to be credited toward civilian retirement benefits, if this is otherwise allowed by law. For example, one PERS military service credit (Maryland) cites that statute as an exception to its prohibition against "double-dipping".

Of the PERS reviewed in this study, those that allow credit for out-of-state civilian service similarly disqualify service that counts toward retirement benefits under another retirement system. It would appear that a fundamental goal of "creditable service" legislation is to allow persons to be credited for their employment experience that, because such persons have opted to join state or county employment, will otherwise be lost. On the other hand, if "double-dipping" is not expressly prohibited, then some members stand to receive an unfair benefit: benefits from different pension systems for the same service.

In addition to analyzing the terms and conditions of section 88-132.5, as the precedent for the contemplated "national service" credit, this study reviewed the United States Peace Corps, as the agency named in the Resolution as an example of "national service", and described examples of programs and organizations that are considered "national service" and might therefore be targeted by a the Resolution for retirement credit from the ERS.

The Resolution assumes that Peace Corps volunteer service, and hence, "national service", may be credited as an alternate form of military service. However, the factual bases for this assumption are somewhat tenuous. For example, Peace Corps volunteer service is civilian service; volunteers are not subject to military discipline and are free to quit at any time. Service in the Peace Corps has never exempted anyone from service required under the Selective Service Act. Neither does the Peace Corps promise its volunteers a "deprivational" existence, a characteristic that the Resolution generally equates with "military service".

On the other hand, the Peace Corps is an agency within the State Department. It is unique, being the only established "national service" agency whose volunteers are required to learn a foreign language, are subject to a background investigation, and live overseas. In

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contrast, "national service" under programs receiving federal assistance from the Corporation for National and Community Service may be administered by States, subdivisions of States, Indian tribes, public or private nonprofit corporations, and institutions of higher education. A participant in a program receiving assistance under the National and Community Service Act of 1990 ("NCS Act"), who meets the minimum qualifications under the Act and serves the required term of service, becomes entitled to receive educational assistance (the Act also provides for living allowances; under certain Domestic Volunteer Service Act of 1973 programs, participants earn minimal stipends).

However, "national service" is not necessarily federally funded, since according to Congress, "national service" also refers to activities at federal, state and local levels that are intended to meet unmet human, educational, environmental, and public safety needs and to encourage civic responsibility.

Congress, therefore, does not provide the Legislature with a workable definition of "national service", needed to enact a "national service" credit under ERS law. "National service" in its broadest sense refers to any number of community-service activities, so that certifying such activities for retirement credit is probably not possible.

If the Legislature were to limit retirement credit to "national service" programs receiving assistance under the NCS Act, then a mechanism has been legislated for certifying that certain participants have completed the prescribed terms of service and are therefore eligible for educational assistance. Yet if these persons perform "national service" in hopes of receiving educational benefits, one can question what legislative policy could be furthered by also allowing these persons to claim retirement credit for this service--if at some point they become ERS members (for example, if the earned education qualifies them for a higher-paying state or county position, these persons might at that point be amply "rewarded").

Moreover, "national service" under the NCS Act is neither to duplicate services provided by local government nor to displace existing workers. Hence, enactment of retirement credit for such "national service" might be seen as the allowance of "deferred compensation" (a pension has been viewed as a form of "deferred compensation") for service that state or county government cannot, or chooses not to, provide.

As a third approach, the Legislative might opt to allow retirement credit for service in those existing "national service" organizations, already eligible for retirement credit under federal law. These are the Peace Corps, certain programs under the Domestic Volunteer Service Act of 1973, and, of necessity, the Reserves and National Guard. This will, of course, set the precedent for legislative efforts to enact reciprocal credits for federal civilian service, public service in other states, and out-of-state teaching experience. Because the legislative history of section 88-132.5 merely expresses the legislative intent of allowing a benefit for active service in the United States military, i.e., not limited to wartime service and regardless of whether this service was rendered voluntarily (perhaps even as a career-decision), there exists no policy precluding the institution of retirement credits for other public service activity.

As for cost data, ERS law requires the ERS to submit annually, to the Legislature, an actuarial valuation. However, the statute presently does not require the ERS to account separately for the additional accrued actuarial liability for members' acquired military service credit. In its actuarial valuation for 1992, the ERS did include certain cost figures for "purchased" credits, i.e., combining military service and mandatory maternity leave.

However, although the credit for mandatory maternity leave was enacted in 1990 with reference to the military service credit, the two credits differ conceptually. Mandatory maternity leave was essentially a leave of absence required, prior to 1973, of women who were then already state or county employees.

Also, there is no separate accounting, in this actuarial valuation, for costs under the noncontributory plan. Such a separate accounting is not mandated by ERS law.

As a practical matter, the Legislature must first define qualifying "national service", for purposes of a retirement credit, before agencies like the ERS and Department of Personnel Services ("DPS") may undertake any kind of poll as to members who have rendered "national service" and their years of such service. Data as to past volunteer service experience are not collected for tabulation by the three agencies contacted (ERS, DPS and Department of Personnel of the City and County of Honolulu), because its collection is not mandated to these agencies by statute.

Recommendations

There are a number of matters that the Legislature should address before it considers the specific question of whether any retirement credit should be allowed for "national service". Unless these issues are addressed and resolved, this study cannot recommend the enactment of retirement credit for any forms of service not rendered on behalf of the state or counties, including any form of "national service" credit:

Military Service Credit

Section 88-132. Although apparently not the military service credit provision intended by the Resolution as the precedent for a "national service" credit, the Legislature should amend this section so that the scope of its protections to retirement credit (i.e., a perquisite of employment) are co-extensive to those of the Veterans' Reemployment Rights Act ("VRRRA"). The VRRRA allows states to provide greater employment protections than those it offers, but section 88-132 covers only "involuntary" military service if rendered during time of war or national or state emergency, with no exceptions stated to the maximum allowed credit of four years.

Section 88-132.5. Active service in the United States Armed Forces, as Congress has indicated through various laws pertaining to the military, is performed by the Reserves and National Guard. Title 32 service by members of the Hawaii National Guard is both regulated by Congress and service on behalf of the State of Hawaii. Since the Legislature has not indicated a policy of rewarding military service rendered only in time of war or emergency, the exclusion of the Reserves and National Guard, section 88-132.5(c), should be repealed in entirety.

The legislative history of section 88-132.5 does not indicate what aspects of "military" service were being rewarded (section 88-132.5 does not single out service during war or emergency except where the Reserves and National Guard are concerned). Based on the absence of further clarification by that history, one might query whether every person with work experience in another public employer in another state should not be able to acquire "some credit" for that service.

FINDINGS AND RECOMMENDATIONS

In conjunction with amendments to section 88-132.5, the Legislature should set an overall policy regarding benefits to be allowed under Hawaii law for the military. Various sections of Hawaii law deal with benefits to military personnel, but these do not consistently define what qualifies as "military". For example, section 88-132 appears to follow a "policy" of restricted military benefit, limited to periods of war or emergency (for example, the PERS of Oklahoma and Tennessee allow credit only for military service rendered during periods of war).

Of particular importance, if credit is enacted for civilian "national service", is an all-inclusive definition of "military" for purposes of section 88-132.5. Based on federal precedent, credited "military service" should include, for example, service in the commissioned corps of the National Oceanic and Atmospheric Administration and the Public Health Service. It should also include civilians who receive a "military" discharge (DD Form 214) certifying their entitlement to veterans' benefits. This description of other "military" service is by no means exhaustive.

The prohibition against "double-dipping", contained in section 88-132.5 as originally enacted, should be re-enacted, and expanded to disqualify military service entitled to receive, not only a military pension, but retirement benefits under any pension system, except where otherwise expressly allowed by federal law (e.g., federal law pertaining to Reserves retirement). This principle should preclude, too, for example, the crediting of National Guard service for which the member receives leave under section 79-20, *Hawaii Revised Statutes*.

The recommendations that follow, regarding "out-of-state" credits in general, are also applicable to section 88-132.5.

Crediting service rendered to non-member employers. The Legislature needs to articulate a reasoned statement of the policy to be served by allowing members to acquire credit for out-of-state service, so that the terms and conditions for eligibility treat members fairly. For example, despite discussion in this study on the policies furthered by the military service credit under section 88-132.5, the actual reason for selecting eight, twenty and twenty-five years, as the numbers of years to be served in order to acquire military service, is not known. Therefore, one is unable to determine whether these periods of membership service should also be required for a "national service" credit.

The present military service credit appears to be less than fair to retirees who are excluded from receiving it solely because they retired before the credit was enacted--even though the relevant military service occurred at the same time as those who qualified for the credit. If the military service credit is intended to reward military service, it appears to be unfair, inherently, that retired veterans must return to work in order to qualify, and that veterans who have already reached the maximum benefit under their specific retirement provisions can receive no larger retirement benefit.

Presently, there is no aggregate maximum set under the ERS law for "out-of-state" service, generally. A legislative statement of policy should include whether retirement credit (whether for various types of military service, "national service", or out-of-state service to the government of the United States, or other states or localities) should be "capped" at a maximum number of years in the aggregate, or whether some other limitation (for example, by means of assessing costs upon the member, or not allowing the acquired credit to count towards one's length of service) should be applied.

Also, the Legislature should set a policy regarding payment of the actuarial costs of credit for out-of-state service. This should address, for example, whether such credit should continue to be allowed at no cost to noncontributory plan members. The policy that retirement benefits to noncontributory plan members should be at no cost to the member because of the lower benefit level of the plan, where service was rendered on behalf of the state or county employer, may not necessarily be applicable to acquired out-of-state credits. In the hypothetical, the extra monthly benefit to noncontributory plan members was one hundred dollars, only sixty dollars less than that to contributory plan members. Further review of these costs is warranted, whether or not further credits are enacted for out-of-state service.

Whether or not further out-of-state credits are enacted, the ERS law should also be amended to require an accounting of costs separately, for contributory and noncontributory plans.

If the enactment of a "national service" credit will likely lead to the enactment of credit for federal government service, and out-of-state public and educational service, then the Legislature should consider whether the ERS might become a fully "portable" pension system. At present, the ERS is "portable" in the sense that, for example, an employee of the City and County of Honolulu will lose no retirement credit by quitting to work for the State of Hawaii. If the ERS were to allow its members to purchase credit for any previous employment, persons could enter state or county service without losing, for retirement purposes, their previous service. In some public employee retirement systems, the "trade-off" for the added benefit appears to be in the cost required to be paid by the member to acquire the credit (e.g., the full "actuarial cost", including the employer's contribution and accrued interest, for the amount that the member would have paid if the service had been rendered to an employer with the system). Also, in some of these systems, the acquired credit does not count toward a member's length of service necessary for retirement.

National Service

Only after the foregoing issues have been resolved should the Legislature consider the enactment of retirement credit for "national service". "National service" covers a broad range of activities. Unlike state or county employment, these activities are matters within the purview of Congress. For this reason, the Legislature needs to determine, with specificity, legislative goals it seeks to further and the benefit to be derived to the state and the counties, by enactment of a "national service" credit. Once this determination is made, a definition of the type of "national service" to be credited under the ERS law may be developed.

HOUSE OF REPRESENTATIVES
SIXTEENTH LEGISLATURE, 1992
STATE OF HAWAII

H.R. NO. 315

HOUSE RESOLUTION

REQUESTING A STUDY TO DEVELOP STANDARDS UNDER WHICH MEMBERS OF THE EMPLOYEES' RETIREMENT SYSTEM, WHO PREVIOUSLY RENDERED NATIONAL SERVICE, ARE ELIGIBLE TO PURCHASE MEMBERSHIP SERVICE CREDIT.

WHEREAS, currently individuals who served in the military during times of war or national or state emergencies may purchase membership service credit from the Employees' Retirement System; and

WHEREAS, service with the United States Peace Corps, like military service, is another form of national service; and

WHEREAS, Peace Corps volunteers often gain a renewed understanding of the rights and responsibilities that come with living in a democracy, as evidenced by the high level of social commitment and community service on the part of these volunteers upon returning home to the United States; and

WHEREAS, in many instances, individuals who were denied enlistment into the military because of a physical disability chose instead to serve with the United State Peace Corps as an alternative form of national service; and

WHEREAS, although Peace Corps service is not usually seen as life-threatening in the same sense as military service, Peace Corps volunteers routinely face disease and deprivation on an order rarely experienced by today's military personnel, except under prolonged field exercises or combat situations; and

WHEREAS, it is also appropriate that Hawaii residents who selflessly contributed years of their youth in national service to help foster world peace while serving in organizations like the United States Peace Corps also be given the same opportunity as those involved in military service to purchase membership service credit; now, therefore,

BE IT RESOLVED by the House of Representatives of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1992, that the Legislative Reference Bureau is requested to conduct a study that develops standards under which members of the Employees' Retirement System, who previously rendered national service, are eligible to purchase membership service credit; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau conduct this study in consultation with the Employees' Retirement System and the State Department of Personnel Service; and

BE IT FURTHER RESOLVED that this study include, but not be limited to:

- (1) Estimates of how many members of the Employees' Retirement System served in the Peace Corps and other organizations rendering national service and the number of years served by these members;
- (2) The cost implications involved in allowing members who were Peace Corps volunteers or members of another organization rendering national service to purchase membership credit for their service; and
- (3) Recommendations on whether the members who rendered national service should be allowed to purchase membership service credit and the conditions in which the members would be allowed to purchase membership service credit;

and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau report its findings and recommendations with proposed legislation, if appropriate, to the Legislature at least twenty days before the convening of the Regular Session of 1993; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of the Legislative Reference Bureau, the Administrator of the Employees' Retirement System, and the Director of Personnel Services.

OFFERED BY: *dyb sh*