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# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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PART I

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SECTION 1. Section 88-74, Hawaii Revised Statutes, is

3

amended as follows:

4

1. By amending subsection (f) to read:

5

"(f) If a member, who becomes a member after June 30,

6

2012, has attained age sixty, the member's maximum retirement

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allowance shall be one and three-fourths per cent of the

8

member's average final compensation multiplied by the total

9

number of years of the member's credited service as a class A

10

and class B member, excluding any credited service as a judge,

11

elective officer, or legislative officer, plus a retirement

12

allowance of one and one-fourth per cent of the member's average

13

final compensation multiplied by the total number of years of

14

prior credited service as a class C member, plus a retirement

15

allowance of one and three-fourths per cent of the member's

16

average final compensation multiplied by the total number of

17

years of prior credited service as a class H member; provided

18

that:



- 1 (1) If the member has at least ten years of credited  
2 service of which the last five or more years prior to  
3 retirement is credited service as a firefighter,  
4 police officer, or an investigator of the department  
5 of the prosecuting attorney;
- 6 (2) If the member has at least ten years of credited  
7 service of which the last five or more years prior to  
8 retirement is credited service as a corrections  
9 officer;
- 10 (3) If the member has at least ten years of credited  
11 service of which the last five or more years prior to  
12 retirement is credited service as an investigator of  
13 the department of the attorney general;
- 14 (4) If the member has at least ten years of credited  
15 service of which the last five or more years prior to  
16 retirement is credited service as a narcotics  
17 enforcement investigator;
- 18 ~~(5) If the member has at least ten years of credited~~  
19 ~~service of which the last five or more years prior to~~  
20 ~~retirement is credited service as a water safety~~  
21 ~~officer;~~

1       ~~(6)~~ (5) If the member has at least ten years of credited  
2           service, of which the last five or more years prior to  
3           retirement is credited service as a public safety  
4           investigations staff investigator;

5       ~~(7)~~ (6) If the member:

6           (A) Has at least ten years of credited service as a  
7           firefighter;

8           (B) Is deemed permanently medically disqualified due  
9           to a service related disability to be a  
10          firefighter by the employer's physician; and

11          (C) Continues employment in a class A or class B  
12          position other than a firefighter; and

13       ~~(8)~~ (7) If the member:

14          (A) Has at least ten years of credited service as a  
15          police officer;

16          (B) Is deemed permanently medically disqualified due  
17          to a service related disability to be a police  
18          officer by the employer's physician; and

19          (C) Continues employment in a class A or class B  
20          position other than a police officer,

21 then for each year of service as a firefighter, police officer,  
22 corrections officer, investigator of the department of the



1 prosecuting attorney, investigator of the department of the  
2 attorney general, narcotics enforcement investigator, [~~water~~  
3 ~~safety officer,~~] or public safety investigations staff  
4 investigator, the retirement allowance shall be two and one-  
5 fourth per cent of the member's average final compensation. The  
6 maximum retirement allowance for those members shall not exceed  
7 eighty per cent of the member's average final compensation. If  
8 the member has not attained age sixty, the member's retirement  
9 allowance shall be computed as though the member had attained  
10 age sixty, reduced for age as provided in subsection (i)."

11 2. By amending subsection (i) to read:

12 "(i) Except as provided in subsections (f), (g), and (h),  
13 if a member, who becomes a member after June 30, 2012, has not  
14 attained age sixty at the date of retirement, the member's  
15 retirement allowance shall be reduced, for each month the  
16 member's age at the date of retirement is below age sixty, as  
17 follows:

18 (1) 0.4166 per cent for each month below age [~~fifty-nine~~  
19 sixty and above age fifty-four and eleven months; plus

20 (2) 0.3333 per cent for each month below age fifty-five  
21 and above age forty-nine and eleven months; plus



1 (3) 0.2500 per cent for each month below age fifty and  
2 above age forty-four and eleven months; plus

3 (4) 0.1666 per cent for each month below age forty-five;  
4 provided that no reduction shall be made if the member has  
5 attained the age of fifty-five and has at least twenty-five  
6 years of credited service as a firefighter, police officer,  
7 corrections officer, investigator of the department of the  
8 prosecuting attorney, investigator of the department of the  
9 attorney general, narcotics enforcement investigator, public  
10 safety investigations staff investigator, sewer worker, water  
11 safety officer, or emergency medical technician, of which the  
12 last five or more years prior to retirement is credited service  
13 in these capacities."

14 SECTION 2. Section 88-335, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "§88-335 Ordinary disability retirement allowance. (a)  
17 Upon retirement for ordinary disability, a class H member who  
18 became a member before July 1, 2012, shall receive a maximum  
19 retirement allowance equal to the higher of either:

20 (1) Two per cent of the average final compensation  
21 multiplied by the number of years of class H credited  
22 service unreduced for age, plus one and one-fourth per



1 cent of the member's average final compensation  
2 multiplied by the number of years of class C credited  
3 service unreduced for age; or

4 (2) Twenty-five per cent of the member's average final  
5 compensation.

6 (b) Upon retirement for ordinary disability, a class H  
7 member who becomes a member after June 30, 2012, shall receive a  
8 maximum retirement allowance equal to the higher of either:

9 (1) One and three-fourths per cent of the average final  
10 compensation multiplied by the number of years of  
11 class H credited service unreduced for age, plus one  
12 and one-fourth per cent of the member's average final  
13 compensation multiplied by the number of years of  
14 class C credited service unreduced for age; or

15 (2) Twenty-five per cent of the member's average final  
16 compensation."

17 SECTION 3. Section 88-338, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19 "(a) Upon receipt by the system of proper proof of a class  
20 H member's death occurring in service or while on authorized  
21 leave without pay and if no pension is payable under section



1 88-339, there shall be paid to the member's designated  
2 beneficiary an ordinary death benefit as follows:

3 (1) [~~If the member had less than five years of credited~~  
4 ~~service at the time of death, the~~] The member's  
5 accumulated contributions shall be paid to the  
6 member's designated beneficiary[+] if:

7 (A) The member became a member before July 1, 2012,  
8 and had less than five years of credited service  
9 at the time of death; or

10 (B) The member became a member after June 30, 2012,  
11 and had less than ten years of credited service  
12 at the time of death;

13 (2) [~~If the member had five or more years of credited~~  
14 ~~service at the time of death, an~~] An amount equal to  
15 the member's hypothetical account balance shall be  
16 paid to the member's designated beneficiary[+] if:

17 (A) The member became a member before July 1, 2012,  
18 and had five or more years of credited service at  
19 the time of death; or

20 (B) The member became a member after June 30, 2012,  
21 and had ten or more years of credited service at  
22 the time of death;



- 1           (3) If the member had ten or more years of credited  
2           service at the time of death, the member's designated  
3           beneficiary may elect to receive in lieu of any other  
4           payment provided in this section, the allowance that  
5           would have been payable as if the member had retired  
6           on the first day of a month following the member's  
7           death, except for the month of December when  
8           retirement on the first or last day of the month shall  
9           be allowed. Benefits payable under this paragraph  
10          shall be calculated under option 3 of section 88-83  
11          and computed on the basis of section 88-332, unreduced  
12          for age; or
- 13          (4) If the member was eligible for service retirement at  
14          the time of death, the member's designated beneficiary  
15          may elect to receive in lieu of any other payment  
16          provided in this section, the allowance that would  
17          have been payable as if the member had retired on the  
18          first day of a month following the member's death,  
19          except for the month of December when retirement on  
20          the first or last day of the month shall be allowed.  
21          Benefits payable under this paragraph shall be





1 calculated under option 2 of section 88-83 and  
2 computed on the basis of section 88-332."

3 PART II

4 SECTION 4. Chapter 88, Hawaii Revised Statutes, is amended  
5 by adding a new section to part II to be appropriately  
6 designated and to read as follows:

7 "§88- Payment by employers of costs associated with  
8 spiking. (a) The contribution payable in each year to the  
9 pension accumulation fund by the State and each county shall  
10 include the actuarial present value, as determined by the  
11 system, of the excess maximum retirement allowance, payable over  
12 the employee's or former employee's actuarial life expectancy,  
13 resulting from spiking for each employee or former employee who  
14 became a member of the system prior to July 1, 2012, and retired  
15 in the previous year.

16 (b) The last employer of the employee or former employee  
17 shall pay the contribution calculated under subsection (a).

18 (c) An excess maximum retirement allowance resulting from  
19 spiking occurs when:

- 20 (1) The employee's or former employee's average non-base  
21 pay, divided by the employee's or former employee's  
22 average base pay, is greater than ten per cent; and



1       (2) The employee's or former employee's average final  
2           compensation non-base pay ratio divided by the  
3           comparison period non-base pay ratio is greater than  
4           or equal to one-hundred twenty per cent.

5       (d) The amount of the "excess maximum retirement allowance  
6           resulting from spiking" is the amount by which an employee or  
7           former employee's maximum retirement allowance exceeds what the  
8           employee or former employee's maximum retirement allowance would  
9           be if the employee or former employee's average final  
10           compensation was equal to the employee's or former employee's  
11           average base pay multiplied by the sum of one and the employee's  
12           or former employee's comparison period non-base pay ratio."

13       SECTION 5. Section 88-21, Hawaii Revised Statutes, is  
14       amended by adding seven new definitions to be appropriately  
15       inserted and to read as follows:

16       "Average base pay" means the total base pay included in a  
17       member's average final compensation, divided by the number of  
18       years used to determine average final compensation.

19       "Average final compensation non-base pay ratio" means the  
20       average non-base pay divided by the average base pay.

21       "Average non-base pay" means the total non-base pay  
22       included in a member's average final compensation divided by the



1 number of years used to determine the member's average final  
2 compensation.

3 "Comparison period" means those years in the ten years of  
4 credited service prior to termination of service that are not  
5 included in the period for determining a member's average final  
6 compensation or, if the member has less than ten years of  
7 credited service prior to termination of service, the years of  
8 the member's credited service that are not included in the  
9 determination of the member's average final compensation.

10 "Comparison period average base pay" means the total base  
11 pay for the comparison period divided by the number of years in  
12 the comparison period.

13 "Comparison period average non-base pay" means the total  
14 non-base pay for the comparison period divided by the number of  
15 years in the comparison period.

16 "Comparison period non-base pay ratio" means the comparison  
17 period average non-base pay divided by the comparison period  
18 average base pay."

19 SECTION 6. Section 88-21.5, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§88-21.5 Compensation. (a) Unless a different meaning  
22 is plainly required by context, as used in this part,



1 "compensation" means normal periodic payments of money for  
2 service the right to which accrues on a regular basis in  
3 proportion to the service performed; overtime[~~7~~] and  
4 differentials [~~7, and supplementary payments~~]; bonuses and lump  
5 sum salary supplements; and elective salary reduction  
6 contributions under sections 125, 403(b), and 457(b) of the  
7 Internal Revenue Code of 1986, as amended. Bonuses and lump sum  
8 salary supplements shall be deemed earned when payable; provided  
9 that bonuses or lump sum salary supplements in excess of one-  
10 twelfth of compensation for the twelve months prior to the month  
11 in which the bonus or lump sum salary supplement is payable,  
12 exclusive of overtime, bonuses, and lump sum salary supplements,  
13 shall be deemed earned:

14 (1) During the period agreed-upon by the employer and  
15 employee, but in any event over a period of not less  
16 than twelve months; or

17 (2) In the absence of an agreement between the employer  
18 and the employee, over the twelve months prior to the  
19 date on which the bonus or lump sum salary supplement  
20 is payable.

21 (b) Unless a different meaning is plainly required by  
22 context, as used in this part:



1       "Base pay" means normal periodic payments of money for  
 2 service, the right to which accrues on a regular basis in  
 3 proportion to the service performed; recurring differentials;  
 4 and elective salary reduction contributions under sections 125,  
 5 403(b), and 457(b) of the Internal Revenue Code of 1986, as  
 6 amended.

7       "Non-base pay" means all compensation that is not base pay.  
 8 Non-base pay includes overtime, non-recurring differentials,  
 9 bonuses, and lump-sum salary supplements."

10       SECTION 7. Section 88-81, Hawaii Revised Statutes, is  
 11 amended to read as follows:

12       **"§88-81 Average final compensation.** (a) Average final  
 13 compensation is the average annual compensation, pay, or salary  
 14 upon which a member has made contributions as required by parts  
 15 II, VII, and VIII of this chapter.

16       (b) The average final compensation of members shall be  
 17 calculated as follows:

18       (1) For employees who become members before January 1,  
 19 1971:

20       (A) During the member's five highest paid years of  
 21 credited service, including vacation pay, or the



- 1 three highest paid years of credited service  
2 excluding vacation pay, whichever is greater; or
- 3 (B) If the member has fewer than three years of  
4 credited service, during the member's actual  
5 years of credited service;
- 6 (2) For employees who become members after December 31,  
7 1970, but before July 1, 2012:
- 8 (A) During the member's three highest paid years of  
9 credited service, excluding vacation pay; or
- 10 (B) If the member has fewer than three years of  
11 credited service, during the member's actual  
12 years of credited service; and
- 13 (3) For employees who become members after June 30, 2012:
- 14 (A) During the member's five highest paid years of  
15 credited service, excluding vacation pay; or
- 16 (B) If the member has fewer than five years of  
17 credited service, during the member's actual  
18 years of credited service.
- 19 (c) In computing the compensation of a judge, the  
20 compensation paid to the judge by the United States as well as  
21 by the Territory shall be included.



1 (d) For service rendered as a member of the legislature  
2 from and after November 5, 1968, the actual annual salary of a  
3 member shall be the only amount used for determining the  
4 member's average final compensation. For service rendered as a  
5 member of the legislature prior to November 5, 1968, and after  
6 admission of this State into the Union, the annual compensation  
7 of a member shall be computed, for the purpose of determining  
8 the member's average final compensation, as follows:

9 (1) During a year in which a general session was held, it  
10 shall be deemed to have been an amount equal to four  
11 times the salary of a member of the legislature for a  
12 general session; and

13 (2) During a year in which a budget session was held, it  
14 shall be deemed to have been an amount equal to six  
15 times the salary of a member of the legislature for a  
16 budget session.

17 For service rendered as a member of the legislature prior to the  
18 admission of this State into the Union, the annual compensation  
19 of a member shall be deemed to have been four times the salary  
20 of a member of the legislature for a regular session for each  
21 year during the member's term of office.



1 (e) If a member, who became a member before July 1, 2012,  
2 has credited service rendered as an elective officer or as a  
3 legislative officer, the member's average final compensation  
4 shall be computed separately for each category of service as  
5 follows:

- 6 (1) For the three highest paid years of credited service  
7 as an elective officer, or if the member has fewer  
8 than three years of credited service in that capacity,  
9 then the member's actual years of credited service;
- 10 (2) For the three highest paid years of credited service  
11 as a legislative officer, or if the member has fewer  
12 than three years of credited service in that capacity,  
13 then the member's actual years of credited service;
- 14 (3) For the three highest paid years of credited service  
15 as a judge, or if the member has fewer than three  
16 years of credited service in that capacity, then the  
17 member's actual years of credited service; and
- 18 (4) For the three highest paid years of credited service  
19 not included in paragraph (1), (2), or (3), or if the  
20 member has fewer than three years of credited service  
21 in that capacity, then the member's actual years of  
22 credited service.





1 (f) If a member, who becomes a member after June 30, 2012,  
2 has credited service rendered as an elective officer or as a  
3 legislative officer, the member's average final compensation  
4 shall be computed separately for each category of service as  
5 follows:

6 (1) For the five highest paid years of credited service as  
7 an elective officer, or if the member has fewer than  
8 five years of credited service in that capacity, then  
9 the member's actual years of credited service;

10 (2) For the five highest paid years of credited service as  
11 a legislative officer, or if the member has fewer than  
12 five years of credited service in that capacity, then  
13 the member's actual years of credited service;

14 (3) For the five highest paid years of credited service as  
15 a judge, or if the member has fewer than [~~three~~] five  
16 years of credited service in that capacity, then the  
17 member's actual years of credited service; and

18 (4) For the five highest paid years of credited service  
19 not included in paragraph (1), (2), or (3), or if the  
20 member has fewer than five years of credited service  
21 in that capacity, then the member's actual years of  
22 credited service.



1        (g) If:

2        (1) A member's average non-base pay, divided by the  
3        member's average base pay, is greater than ten per  
4        cent; and

5        (2) The member's average final compensation non-base pay  
6        ratio divided by the comparison period non-base pay  
7        ratio is greater than or equal to one-hundred twenty  
8        per cent,

9        the amount by which the member's total compensation, pay, or  
10       salary during the period used to calculate average final  
11       compensation, divided by the number of years used to determine  
12       average compensation, exceeds the member's average base pay,  
13       multiplied by the sum of one and the member's comparison period  
14       non-base pay ratio, shall be excluded from the calculation of  
15       the member's average final compensation. Except as provided in  
16       subsection (h), this subsection shall apply to members who  
17       become members of the system after June 30, 2012.

18       (h) Subsection (g) shall apply, commencing July 1, 2015,  
19       to members who became members of the system before July 1, 2012;  
20       provided that:

21       (1) A member's average final compensation shall not be  
22       less than what the member's average final compensation





**Report Title:**

Employees' Retirement System

**Description:**

Corrects errors; harmonizes ordinary disability and ordinary death benefits for new members of the employees' retirement system with their service retirement benefits. Prevents unexpected increases in pension benefits and in the unfunded actuarial accrued liability of the employees' retirement system by limiting the amount of compensation included in "average final compensation" and requiring employers to pay the additional costs resulting from spiking. Effective 07/01/50.  
(SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

