

# S.B. NO. 2750

JAN 25 2012

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## A BILL FOR AN ACT

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RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1           SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended  
2 by adding a new section to part II to be appropriately  
3 designated and to read as follows:

4           "§88-    Payment by employers of costs associated with  
5 spiking. (a) The contribution payable in each year to the  
6 pension accumulation fund by the State and each county shall  
7 also include the actuarial present value, as determined by the  
8 system, of the excess maximum retirement allowance, payable over  
9 the employee's or former employee's actuarial life expectancy,  
10 resulting from spiking for each employee or former employee who  
11 became a member of the system prior to July 1, 2012 and retired  
12 in the previous year.

13           (b) The last employer of the employee or former employee  
14 shall pay the contribution required by subsection (a).

15           (c) An excess maximum retirement allowance resulting from  
16 spiking occurs when:

S.B. NO. 2750

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

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

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

16       SECTION 2. Section 88-21, Hawaii Revised Statutes, is  
17       amended by adding new definitions to be appropriately inserted  
18       and to read as follows:

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

22       "Average final compensation non-base pay ratio" means the  
23       average non-base pay divided by the average base pay.

S.B. NO. 2750

1       "Average non-base pay" means the total non-base pay  
2 included in a member's average final compensation divided by the  
3 number of years used to determine the member's average final  
4 compensation.

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

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

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

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

21       SECTION 3. Section 88-21.5, Hawaii Revised Statutes, is  
22 amended to read as follows:

1           "§88-21.5 Compensation. (a) Unless a different meaning  
2 is plainly required by context, as used in this part,  
3 "compensation" means normal periodic payments of money for  
4 service the right to which accrues on a regular basis in  
5 proportion to the service performed; overtime[~~7~~] and  
6 differentials [~~7~~, ~~and supplementary payments~~]; bonuses and lump  
7 sum salary supplements; and elective salary reduction  
8 contributions under sections 125, 403(b), and 457(b) of the  
9 Internal Revenue Code of 1986, as amended. Bonuses and lump sum  
10 salary supplements shall be deemed earned when payable; provided  
11 that bonuses or lump sum salary supplements in excess of one-  
12 twelfth of compensation for the twelve months prior to the month  
13 in which the bonus or lump sum salary supplement is payable,  
14 exclusive of overtime, bonuses, and lump sum salary supplements,  
15 shall be deemed earned:

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

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

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

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

9        (2) "Non-base pay" means all compensation that is not  
10 "base pay." "Non-base pay" includes overtime, non-  
11 recurring differentials, bonuses, and lump-sum salary  
12 supplements."

13        SECTION 4. Section 88-81, Hawaii Revised Statutes, is  
14 amended to read as follows:

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

19        (b) The average final compensation of members shall be  
20 calculated as follows:

21        (1) For employees who become members before January 1,  
22        1971:

S.B. NO. 2750

1 (A) During the member's five highest paid years of  
2 credited service, including vacation pay, or the  
3 three highest paid years of credited service  
4 excluding vacation pay, whichever is greater; or

5 (B) If the member has fewer than three years of  
6 credited service, during the member's actual  
7 years of credited service;

8 (2) For employees who become members after December 31,  
9 1970, but before July 1, 2012:

10 (A) During the member's three highest paid years of  
11 credited service, excluding vacation pay; or

12 (B) If the member has fewer than three years of  
13 credited service, during the member's actual  
14 years of credited service; and

15 (3) For employees who become members after June 30, 2012:

16 (A) During the member's five highest paid years of  
17 credited service, excluding vacation pay; or

18 (B) If the member has fewer than five years of  
19 credited service, during the member's actual  
20 years of credited service.

21 (c) In computing the compensation of a judge, the  
22 compensation paid to the judge by the United States as well as  
23 by the Territory shall be included.

S.B. NO. 2750

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

22 (e) If a member, who became a member before July 1, 2012,  
23 has credited service rendered as an elective officer or as a

1 legislative officer, the member's average final compensation  
2 shall be computed separately for each category of service as  
3 follows:

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

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

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

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

21 (f) If a member, who becomes a member after June 30, 2012,  
22 has credited service rendered as an elective officer or as a  
23 legislative officer, the member's average final compensation



S.B. NO. 2750

1 shall be computed separately for each category of service as  
2 follows:

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

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

11 (3) For the five highest paid years of credited service as  
12 a judge, or if the member has fewer than three years  
13 of credited service in that capacity, then the  
14 member's actual years of credited service; and

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

20 (g) If:

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

1       (2) The member's average final compensation non-base pay  
2       ratio divided by the comparison period non-base pay  
3       ratio is greater than or equal to one-hundred twenty  
4       per cent,  
5       the amount by which the member's total compensation, pay or  
6       salary during the period used to calculate average final  
7       compensation, divided by the number of years used to determine  
8       average compensation, exceeds the member's average base pay,  
9       multiplied by the sum of one and the member's comparison period  
10      non-base pay ratio, shall be excluded from the calculation of  
11      the member's average final compensation. This subsection shall  
12      apply to members who become members of the system after June 30,  
13      2012.

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

17      (1) A member's average final compensation shall not be  
18      less than what the member's average final compensation  
19      would have been if the member had retired on June 30,  
20      2015; and

21      (2) Compensation, pay or salary earned during the period  
22      used to calculate average compensation shall not be  
23      subject to the exclusion required by subsection (g),

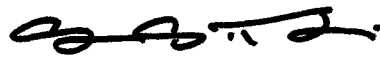
S.B. NO. 2750

1           if the compensation, pay or salary was earned before  
2           July 1, 2015."

3           SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 6. This Act shall take effect on July 1, 2012.

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INTRODUCED BY: 

BY REQUEST

S.B. NO. 2750

**Report Title:**

Employees' Retirement System

**Description:**

To prevent 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.

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

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE  
EMPLOYEES' RETIREMENT SYSTEM

PURPOSE: To prevent unexpected increases in benefits of members of the Employees' Retirement System and in the unfunded liability of the Employees' Retirement System by limiting the amount of compensation included in the "average final compensation" of new members and requiring employers of current members to pay the costs attributable to additional benefits resulting from "spiking" by the members.

MEANS: Add a new section to chapter 88, Hawaii Revised Statutes, and amend sections 88-21, 88-21.5, and 88-81, Hawaii Revised Statutes.

JUSTIFICATION: Public employers and Employees' Retirement System members provide contributions that fund a member's retirement benefits over the member's anticipated employment period, so that there will be sufficient money to pay the member's retirement benefit. For the career government employee, this could entail a span of between 25 or 30 years of service. If an employee's pay suddenly increases substantially in the final years of employment, the employee's retirement benefits (which are based on the employee's three or five highest paid years) can be increased dramatically without the years of contributions required to fund the increase. This, in turn, increases

the unfunded actuarial accrued liability of the Employees' Retirement System which is at \$7.1 billion as of June 30, 2010. For employees who become members of the Employees' Retirement System after June 30, 2012, this bill limits the amount of compensation that can be included in the calculation of the member's retirement benefits if the member's non-base pay (such as overtime or bonuses) during the member's "high-five" years exceeds limits based on the average of the member's non-base pay during the last ten years (excluding the high-five years) of the member's service. For existing members, the bill requires the member's last employer to pay the additional costs resulting from sudden increases in the member's non-base pay during the member's final years of employment. If the employers of ERS members with "spiked" benefits do not pay the additional cost resulting from spiking, the costs would be borne by all employers as part of the increase in the unfunded accrued liability of the Employees' Retirement System.

Impact on the public: None.

Impact on the department and other agencies: Potentially increases the retirement contributions of departments and agencies that allow "spiking" while potentially reducing the retirement contributions of departments and agencies that do not allow "spiking."

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BUF-141/Retirement.

Page 3

**SB. NO. 2750**

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2012.