
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

SECTION 1. Section 88-74, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:
"(f) If a member, who becomes a member after June 30, 2012, has attained age sixty, the member's maximum retirement allowance shall be one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of the member's credited service as a class A and class B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class C member, plus a retirement allowance of one and three-fourths per cent of the member's average final compensation multiplied by the total number of years of prior credited service as a class H member; provided 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 88-81, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) Average final compensation is the average annual
18 compensation, pay, or salary upon which a member has made
19 contributions as required by parts II, VII, and VIII of this
20 chapter."

21 2. By amending subsection (f) to read:



1 "(f) If a member, who becomes a member after June 30,
2 2012, has credited service rendered as an elective officer or as
3 a 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 SECTION 3. Section 88-335, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-335 Ordinary disability retirement allowance. (a)**

4 Upon retirement for ordinary disability, a class H member who
5 became a member before July 1, 2012, shall receive a maximum
6 retirement allowance equal to the higher of either:

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

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

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

18 (1) One and three-fourths per cent of the average final
19 compensation multiplied by the number of years of
20 class H credited service unreduced for age, plus one
21 and one-fourth per cent of the member's average final



1 compensation multiplied by the number of years of
2 class C credited service unreduced for age; or
3 (2) Twenty-five per cent of the member's average final
4 compensation."

5 SECTION 4. Section 88-338, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) Upon receipt by the system of proper proof of a class
8 H member's death occurring in service or while on authorized
9 leave without pay and if no pension is payable under section
10 88-339, there shall be paid to the member's designated
11 beneficiary an ordinary death benefit as follows:

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

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

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



- 1 (2) ~~[If the member had five or more years of credited~~
2 ~~service at the time of death, an]~~ An amount equal to
3 the member's hypothetical account balance shall be
4 paid to the member's designated beneficiary[+] if:
5 (A) The member became a member before July 1, 2012,
6 and had five or more years of credited service at
7 the time of death; or
8 (B) The member became a member after June 30, 2012,
9 and had ten or more years of credited service at
10 the time of death;
- 11 (3) If the member had ten or more years of credited
12 service at the time of death, the member's designated
13 beneficiary may elect to receive in lieu of any other
14 payment provided in this section, the allowance that
15 would have been payable as if the member had retired
16 on the first day of a month following the member's
17 death, except for the month of December when
18 retirement on the first or last day of the month shall
19 be allowed. Benefits payable under this paragraph
20 shall be calculated under option 3 of section 88-83
21 and computed on the basis of section 88-332, unreduced
22 for age; or



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

PART II

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

16 **"§88- Payment by employers of costs associated with**
 17 **spiking.** (a) The contribution payable in each year to the
 18 pension accumulation fund by the State and each county shall
 19 also include the actuarial present value, as determined by the
 20 system, of the excess maximum retirement allowance, payable over
 21 the employee's or former employee's actuarial life expectancy,
 22 resulting from spiking for each employee or former employee who



1 became a member of the system prior to July 1, 2012, and retired
2 in the previous year.

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

5 (c) An excess maximum retirement allowance resulting from
6 spiking occurs when:

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

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

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



1 SECTION 6. Section 88-21, Hawaii Revised Statutes, is
2 amended by adding seven new definitions to be appropriately
3 inserted and to read as follows:

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

7 "Average final compensation non-base pay ratio" means the
8 average non-base pay divided by the average base pay.

9 "Average non-base pay" means the total non-base pay
10 included in a member's average final compensation divided by the
11 number of years used to determine the member's average final
12 compensation.

13 "Comparison period" means those years in the ten years of
14 credited service prior to termination of service that are not
15 included in the period for determining a member's average final
16 compensation or, if the member has less than ten years of
17 credited service prior to termination of service, the years of
18 the member's credited service that are not included in the
19 determination of the member's average final compensation.

20 "Comparison period average base pay" means the total base
21 pay for the comparison period divided by the number of years in
22 the comparison period.



1 "Comparison period average non-base pay" means the total
2 non-base pay for the comparison period divided by the number of
3 years in the comparison period.

4 "Comparison period non-base pay ratio" means the comparison
5 period average non-base pay divided by the comparison period
6 average base pay."

7 SECTION 7. Section 88-21.5, Hawaii Revised Statutes, is
8 amended to read as follows:

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



1 exclusive of overtime, bonuses, and lump sum salary supplements,
2 shall be deemed earned:

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

6 (2) In the absence of an agreement between the employer
7 and the employee, over the twelve months prior to the
8 date on which the bonus or lump sum salary supplement
9 is payable.

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

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

18 (2) "Non-base pay" means all compensation that is not base
19 pay. Non-base pay includes overtime, non-recurring
20 differentials, bonuses, and lump-sum salary
21 supplements."



1 SECTION 8. Section 88-81, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§88-81 Average final compensation.** (a) Average final
4 compensation is the average annual compensation, pay, or salary
5 upon which a member has made contributions as required by parts
6 II, VII, and VIII of this chapter.

7 (b) The average final compensation of members shall be
8 calculated as follows:

9 (1) For employees who become members before January 1,
10 1971:

11 (A) During the member's five highest paid years of
12 credited service, including vacation pay, or the
13 three highest paid years of credited service
14 excluding vacation pay, whichever is greater; or

15 (B) If the member has fewer than three years of
16 credited service, during the member's actual
17 years of credited service;

18 (2) For employees who become members after December 31,
19 1970, but before July 1, 2012:

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



1 (B) If the member has fewer than three years of
2 credited service, during the member's actual
3 years of credited service; and

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

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

7 (B) If the member has fewer than five years of
8 credited service, during the member's actual
9 years of credited service.

10 (c) In computing the compensation of a judge, the
11 compensation paid to the judge by the United States as well as
12 by the Territory shall be included.

13 (d) For service rendered as a member of the legislature
14 from and after November 5, 1968, the actual annual salary of a
15 member shall be the only amount used for determining the
16 member's average final compensation. For service rendered as a
17 member of the legislature prior to November 5, 1968, and after
18 admission of this State into the Union, the annual compensation
19 of a member shall be computed, for the purpose of determining
20 the member's average final compensation, as follows:

21 (1) During a year in which a general session was held, it
22 shall be deemed to have been an amount equal to four



1 times the salary of a member of the legislature for a
2 general session; and

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

7 For service rendered as a member of the legislature prior to the
8 admission of this State into the Union, the annual compensation
9 of a member shall be deemed to have been four times the salary
10 of a member of the legislature for a regular session for each
11 year during the member's term of office.

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

17 (1) For the three highest paid years of credited service
18 as an elective officer, or if the member has fewer
19 than three years of credited service in that capacity,
20 then the member's actual years of credited service;

21 (2) For the three highest paid years of credited service
22 as a legislative officer, or if the member has fewer



1 than three years of credited service in that capacity,
2 then the member's actual years of credited service;

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

7 (4) For the three highest paid years of credited service
8 not included in paragraph (1), (2), or (3), or if the
9 member has fewer than three years of credited service
10 in that capacity, then the member's actual years of
11 credited service.

12 (f) If a member, who becomes a member after June 30, 2012,
13 has credited service rendered as an elective officer or as a
14 legislative officer, the member's average final compensation
15 shall be computed separately for each category of service as
16 follows:

17 (1) For the five highest paid years of credited service as
18 an elective officer, or if the member has fewer than
19 five years of credited service in that capacity, then
20 the member's actual years of credited service;

21 (2) For the five highest paid years of credited service as
22 a legislative officer, or if the member has fewer than



1 five years of credited service in that capacity, then
2 the member's actual years of credited service;
3 (3) For the five highest paid years of credited service as
4 a judge, or if the member has fewer than three years
5 of credited service in that capacity, then the
6 member's actual years of credited service; and
7 (4) For the five highest paid years of credited service
8 not included in paragraph (1), (2), or (3), or if the
9 member has fewer than five years of credited service
10 in that capacity, then the member's actual years of
11 credited service.

12 (g) If:

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

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

20 the amount by which the member's total compensation, pay, or
21 salary during the period used to calculate average final
22 compensation, divided by the number of years used to determine



1 average compensation, exceeds the member's average base pay,
2 multiplied by the sum of one and the member's comparison period
3 non-base pay ratio, shall be excluded from the calculation of
4 the member's average final compensation. This subsection shall
5 apply to members who become members of the system after June 30,
6 2012.

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

10 (1) A member's average final compensation shall not be
11 less than what the member's average final compensation
12 would have been if the member had retired on June 30,
13 2015; and

14 (2) Compensation, pay, or salary earned during the period
15 used to calculate average compensation shall not be
16 subject to the exclusion required by subsection (g),
17 if the compensation, pay, or salary was earned before
18 July 1, 2015."

19 **PART III**

20 SECTION 9. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

22 SECTION 10. This Act shall take effect on July 1, 2050.



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.
(SD1)

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