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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:**

1           SECTION 1. The legislature finds that overtime and sick  
2 leave are matters that shall be excluded from the subjects of  
3 collective bargaining in public employment.

4           The purpose of this Act is to remove overtime and sick  
5 leave credits from the calculation of credited service for  
6 members of the employees' retirement system for public employees  
7 who have less than five years of credited service as of January  
8 1, 2012.

9           SECTION 2. Section 78-23, Hawaii Revised Statutes, is  
10 amended to read as follows:

11           "**§78-23 Leaves of absence.** (a) Employees shall be  
12 eligible for vacation leave, sick leave, and other leaves of  
13 absence, with or without pay, as negotiated under chapter 89 or  
14 adjusted under chapter 89C, as applicable.

15           (b) When an employee is transferred from one department to  
16 another within the same jurisdiction or to another jurisdiction  
17 within the State, the employee shall be given credit for the  
18 vacation earned or accumulated in the department from which the



1 employee transferred, and the director of finance of the State  
2 or the equivalent officers of the several jurisdictions shall  
3 make the appropriate transfer of funds to implement the employee  
4 transfer. Moneys received from any such transfer of funds by a  
5 state agency financed by the general fund of the State shall be  
6 deposited with the director of finance of the State to the  
7 credit of the general fund of the State; provided that, when an  
8 employee is transferred from one department to another within  
9 the same jurisdiction, the transfer of funds shall not be made  
10 if the employee's salary is paid from the same fund.

11 Compensation for any period of vacation allowance shall be paid  
12 at the rate to which the employee is entitled at the time the  
13 allowance is granted.

14 (c) Upon discharge, an employee shall be entitled to all  
15 of the employee's accumulated vacation allowance plus the  
16 employee's current accrued vacation allowance to and including  
17 the date of discharge, notwithstanding that the current accrued  
18 vacation allowance may not have been recorded at the time. If  
19 any employee dies with accumulated or current accrued vacation  
20 earned but not taken, an amount equal to the value of the  
21 employee's pay over the period of such earned vacation, and any  
22 earned and unpaid wages, shall be paid to the person or persons



1 who may have been designated as the beneficiary or beneficiaries  
2 by the employee during the employee's lifetime in a verified  
3 written statement filed with the comptroller or other disbursing  
4 officer who issues warrants or checks to pay the employee for  
5 the employee's services as a public employee, or, failing the  
6 designation, to the employee's estate.

7 (d) Whenever an employee is to be discharged, voluntarily  
8 or involuntarily, the employee, at the option of the appointing  
9 authority, may be discharged and paid forthwith, in lieu of the  
10 employee's vacation allowance, the amount of compensation to  
11 which the employee would be entitled or which the employee would  
12 be allowed during the vacation period if the employee were  
13 permitted to take the employee's vacation in the normal manner,  
14 and in such case the employee's position may be declared vacant  
15 and may be permanently filled by a new appointee before the  
16 expiration of any vacation period following the date of the  
17 discharge. For an employee hired after June 30, 1997, who is to  
18 be discharged, voluntarily or involuntarily, the amount of  
19 compensation to be paid in lieu of vacation allowance under this  
20 section shall be computed using the rate of pay and amount of  
21 accumulated and accrued vacation on the date the employee is  
22 discharged. Prompt notice upon such forms and in such manner as



1 may be required shall be given by the department head of any  
2 action taken under this provision.

3 (e) Payments of vacation allowance paid pursuant to  
4 subsections (c) or (d) shall be subject to the provisions of  
5 chapter 88D.

6 (f) No public employee who has less than five years of  
7 credited service as of January 1, 2012, and who thereafter  
8 retires with any unused sick leave shall be entitled to  
9 additional service credit for that unused sick leave in the  
10 employees' retirement system."

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

13 "**§88-21.5 Compensation.** (a) Unless a different meaning  
14 is plainly required by context, and except as provided in  
15 subsection (b), as used in this part, "compensation" means  
16 normal periodic payments of money for service the right to which  
17 accrues on a regular basis in proportion to the service  
18 performed; overtime, differentials, and supplementary payments;  
19 bonuses and lump sum salary supplements; and elective salary  
20 reduction contributions under sections 125, 403(b), and 457(b)  
21 of the Internal Revenue Code of 1986, as amended. Bonuses and  
22 lump sum salary supplements shall be deemed earned when payable;



1 provided that bonuses or lump sum salary supplements in excess  
2 of one-twelfth of compensation for the twelve months prior to  
3 the month in which the bonus or lump sum salary supplement is  
4 payable, exclusive of overtime, bonuses, and lump sum salary  
5 supplements, shall be deemed earned:

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

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

13 (b) For members who have less than five years of credited  
14 service as of January 1, 2012, "compensation" shall have the  
15 meaning ascribed to the term under subsection (a), provided that  
16 "compensation" shall not include any overtime or sick leave  
17 credits."

18 SECTION 4. Section 88-63, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§88-63[+] Credit for unused sick leave. [A] (a)  
21 Unless as provided in subsection (b), a public employee who  
22 retires or leaves government service in good standing with sixty



1 days or more of unused sick leave shall be entitled to  
2 additional service credit in the retirement system as follows:

3 (1) An employee with sixty days of unused sick leave to  
4 the employee's credit shall have the employee's years  
5 of service increased by three months for the purpose  
6 of computing the employee's retirement allowance.

7 (2) For each additional twenty days or major fraction  
8 thereof of unused sick leave in excess of sixty days  
9 that the employee has to the employee's credit the  
10 employee shall have the employee's years of service  
11 increased by one month for the purpose of computing  
12 the employee's retirement allowance.

13 The allowance on service retirement of section 88-74 and  
14 the service benefit limitation therein shall not apply to  
15 retirement allowances which exceed such limitations by virtue of  
16 the application of this section in the computation of retirement  
17 allowances and no reduction in such retirement allowances shall  
18 be made on account of such limitations.

19 (b) This section shall not apply to members who have less  
20 than five years of credited service as of January 1, 2012."

21 SECTION 5. Section 88-323, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           " ~~§~~88-323 ~~§~~ Class H credited service. Class H credited  
2 service includes:

3           (1) Service by an employee rendered since becoming a class  
4           H member;

5           (2) Service credited under part II as a class A member or  
6           a class B member and converted to class H credited  
7           service pursuant to section 88-322(b);

8           (3) Service credited under part VII as a class C member  
9           and converted to class H credited service pursuant to  
10           section 88-322(a);

11           (4) Service in the armed forces as provided by subpart E  
12           of part II;

13           (5) Mandatory maternity leave as provided in part II; and  
14           (6) Unused sick leave as provided in section 88-63;

15           provided that any additional service credit shall not  
16           be used in determining eligibility for retirement or  
17           for any other purpose as a class H member ~~[-]~~; provided  
18           further that for members who have less than five years  
19           of credited service as of January 1, 2012, unused sick  
20           leave shall not be creditable under any component of  
21           benefit calculation of this part."



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1 SECTION 6. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon its approval.

7

INTRODUCED BY:



JAN 21 2011





**Report Title:**

Employees' Retirement System

**Description:**

Removes overtime and sick leave as part of the compensation upon which public employees retirement benefits is based for public employees who have less than five years of credited service as of 1/1/12.

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

