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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. 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 calculated under subsection (a).

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



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 thirty-five 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 seven new definitions to be appropriately  
18      inserted 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.



1       "Average final compensation non-base pay ratio" means the  
2 average non-base pay divided by the average base pay.

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

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

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

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

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



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

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

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

21 (2) In the absence of an agreement between the employer  
22 and the employee, over the twelve months prior to the



1 date on which the bonus or lump sum salary supplement  
2 is payable.

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

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

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

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

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

21 (b) The average final compensation of members shall be  
22 calculated as follows:



- 1           (1) For employees who become members before January 1,  
2           1971:
  - 3           (A) During the member's five highest paid years of  
4           credited service, including vacation pay, or the  
5           three highest paid years of credited service  
6           excluding vacation pay, whichever is greater; or
  - 7           (B) If the member has fewer than three years of  
8           credited service, during the member's actual  
9           years of credited service;
- 10          (2) For employees who become members after December 31,  
11          1970, but before July 1, 2012:
  - 12          (A) During the member's three highest paid years of  
13          credited service, excluding vacation pay; or
  - 14          (B) If the member has fewer than three years of  
15          credited service, during the member's actual  
16          years of credited service; and
- 17          (3) For employees who become members after June 30, 2012:
  - 18          (A) During the member's five highest paid years of  
19          credited service, excluding vacation pay; or
  - 20          (B) If the member has fewer than five years of  
21          credited service, during the member's actual  
22          years of credited service.



1 (c) In computing the compensation of a judge, the  
2 compensation paid to the judge by the United States as well as  
3 by the Territory shall be included.

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

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

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

20 For service rendered as a member of the legislature prior to the  
21 admission of this State into the Union, the annual compensation  
22 of a member shall be deemed to have been four times the salary



1 of a member of the legislature for a regular session for each  
2 year during the member's term of office.

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

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

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

20 (4) For the three highest paid years of credited service  
21 not included in paragraph (1), (2), or (3), or if the  
22 member has fewer than three years of credited service





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

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

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

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

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

20 (4) For the five highest paid years of credited service  
21 not included in paragraph (1), (2), or (3), or if the  
22 member has fewer than five years of credited service



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

3 (g) If:

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

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

11 the amount by which the member's total compensation, pay, or  
12 salary during the period used to calculate average final  
13 compensation, divided by the number of years used to determine  
14 average compensation, exceeds the member's average base pay,  
15 multiplied by the sum of one and the member's comparison period  
16 non-base pay ratio, shall be excluded from the calculation of  
17 the member's average final compensation. This subsection shall  
18 apply to members who become members of the system after June 30,  
19 2012.

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



- 1        (1) A member's average final compensation shall not be
- 2        less than what the member's average final compensation
- 3        would have been if the member had retired on June 30,
- 4        2015; and
- 5        (2) Compensation, pay, or salary earned during the period
- 6        used to calculate average compensation shall not be
- 7        subject to the exclusion required by subsection (g),
- 8        if the compensation, pay, or salary was earned before
- 9        July 1, 2015."

10        SECTION 5. If any provision of this Act, or the

11 application thereof to any person or circumstance, is held

12 invalid, the invalidity does not affect other provisions or

13 applications of the Act that can be given effect without the

14 invalid provision or application, and to this end the provisions

15 of this Act are severable.

16        SECTION 6. Statutory material to be repealed is bracketed

17 and stricken. New statutory material is underscored.

18        SECTION 7. This Act shall take effect on July 1, 2012.



**Report Title:**

Employees' Retirement System

**Description:**

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 requires employers to pay the additional costs resulting from spiking. Effective July 1, 2012. (SB2750 HD1)

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

