



GOV. MSG. NO. 1146

EXECUTIVE CHAMBERS  
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA

June 1, 2023

The Honorable Ronald D. Kouchi  
President of the Senate,  
and Members of the Senate  
Thirty-Second State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki  
Speaker, and Members of the  
House of Representatives  
Thirty-Second State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 1, 2023, the following bill was signed into law:

SB211 SD2 HD2 CD1

RELATING TO THE EMPLOYEES' RETIREMENT  
SYSTEM.  
**ACT 046**

Sincerely,

Josh Green, M.D.  
Governor, State of Hawai'i

on JUN 1 2023

THE SENATE  
THIRTY-SECOND LEGISLATURE, 2023  
STATE OF HAWAII

S.B. NO. 211  
S.D. 2  
H.D. 2  
C.D. 1

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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 purpose of this Act is to ensure that  
2 employment, work, and pay eligibility for the purpose of  
3 calculating retirement benefits includes retroactive  
4 reinstatement, retroactive rescission of suspension, and  
5 retroactive payments that are restored to an employee as part of  
6 a judicial, administrative, or arbitral proceeding, or pursuant  
7 to a settlement of claims, subject to certification by the  
8 system that the retroactive reinstatement, retroactive  
9 rescission of suspension, and retroactive payments that are  
10 restored otherwise satisfy the requirements of chapter 88,  
11 Hawaii Revised Statutes, including:

12           (1) The definition of "service" in section 88-21, Hawaii  
13 Revised Statutes;

14           (2) The calculation of credit for a year of service in  
15 section 88-50, Hawaii Revised Statutes;

16           (3) The definition of "compensation" in section 88-21.5,  
17 Hawaii Revised Statutes, to prevent significant  
18 non-base pay increases;



- 1 (4) Compliance with the employer reporting requirements of
- 2 section 88-103.7, Hawaii Revised Statutes;
- 3 (5) Payment of the actuarial value of employee
- 4 contributions; and
- 5 (6) Payment of the actuarial value of employer
- 6 contributions.

7 SECTION 2. Chapter 88, Hawaii Revised Statutes, is amended  
8 by adding a new section to part II, subpart B, to be  
9 appropriately designated and to read as follows:

10 "§88- Retroactive reinstatement; retroactive rescission  
11 of suspension; retroactive payments. (a) Upon certification by  
12 the system, the retroactive reinstatement, retroactive  
13 rescission of suspension, and retroactive payment provided to an  
14 employee pursuant to a final resolution of claims shall be  
15 considered service under section 88-21, compensation under  
16 section 88-21.5, or both; provided that:

17 (1) For the reinstatement, rescission of suspension, or  
18 payment to be considered:

19 (A) Service under section 88-21, the employee shall  
20 appeal the employee's involuntary termination or  
21 unpaid suspension, be retroactively reinstated to



1 employment or have the suspension rescinded in  
2 whole or in part, and be provided back pay,  
3 pursuant to a final resolution of claims;  
4 provided further that:

5 (i) The dates of retroactive employment or  
6 retroactive rescission of suspension for  
7 which back pay is provided pursuant to a  
8 final resolution of claims and paid by the  
9 State or county do not precede or succeed  
10 the dates the employee would have provided  
11 service if the employee had not been  
12 suspended or terminated;

13 (ii) A final resolution of claims specifies the  
14 dates of retroactive employment or  
15 retroactive rescission of suspension, and  
16 the amount, purpose, and nature of  
17 retroactive payments for each monthly period  
18 in which the employee would have provided  
19 service if the employee had not been  
20 suspended or terminated;



1                    (iii) The dates of retroactive employment or  
2                    retroactive rescission of suspension  
3                    provided pursuant to a final resolution of  
4                    claims would otherwise have been considered  
5                    service as provided in this chapter; and

6                    (iv) The service shall be credited to the extent  
7                    it would otherwise have been credited as  
8                    provided in this chapter; and

9                    (B) Compensation under section 88-21.5, the employee  
10                   shall challenge an involuntary termination,  
11                   unpaid suspension, or the employee's compensation  
12                   and be subsequently provided a retroactive  
13                   payment pursuant to a final resolution of claims;  
14                   provided further that:

15                   (i) The amount, purpose, nature, and duration of  
16                   a retroactive payment provided pursuant to a  
17                   final resolution of claims and paid by the  
18                   State or county do not exceed the amount,  
19                   purpose, nature, and duration of  
20                   compensation available to comparable  
21                   employees (including but not limited to



1 employees with similar positions, class,  
2 title, pay range or wage scale, step,  
3 bargaining unit, contract type, function,  
4 job category, and pay rate code through the  
5 same employer, department, or agency,  
6 available by pay schedule, or comparable to  
7 the employee's own history of compensation),  
8 less any compensation actually paid to the  
9 employee and reported to the system by the  
10 State or county, where applicable; do not  
11 exceed the compensation attributable to the  
12 number of workdays for which retroactive  
13 payment is owed; and when added to the  
14 compensation actually paid to the employee  
15 by the State or county and reported to the  
16 system, if any, results in compensation to  
17 the employee that does not exceed the  
18 compensation that the employee would have  
19 earned had the employee not been suspended  
20 or terminated, or had the employee received



1                   the compensation available to comparable  
2                   employees;  
3           (ii) Retroactive payments provided pursuant to a  
4                   final resolution of claims would otherwise  
5                   have been considered compensation, as  
6                   provided in section 88-21.5(a) or (b),  
7                   respectively, depending on when the employee  
8                   became a member, and this chapter; and  
9           (iii) Any amounts provided to the employee for  
10                   damages, attorney's fees, interest or  
11                   penalties, payments for failure to hire, or  
12                   payments made as part of an agreement for  
13                   the employee to resign or otherwise  
14                   terminate employment shall not be considered  
15                   compensation for purposes of the system;  
16   (2) The requirements of section 88-103.7 and this chapter  
17                   shall be satisfied with respect to any retroactive  
18                   reinstatement, retroactive rescission of suspension,  
19                   retroactive pay differential, or back pay pursuant to  
20                   a final resolution of claims and paid by the State and  
21                   county, including but not limited to an allocation of



1           the amount, purpose, and nature of a retroactive  
2           payment for each monthly period in which it would have  
3           been earned had the employee not been suspended or  
4           terminated, or had the employee received the  
5           compensation available to comparable employees,  
6           subject to the retroactive payments provided pursuant  
7           to a final resolution of claims and paid by the State  
8           or county as set forth in paragraphs (1) (A) and (B);  
9        (3) The employer has made a lump sum payment to the system  
10       in the amount of the actuarial present value, as  
11       determined by the system, of contributions that the  
12       employee would have contributed, as provided in this  
13       chapter, for the service and compensation to be  
14       certified pursuant to this section, which shall  
15       include compound interest thereon at the assumed rate  
16       of return; provided further that:  
17        (A) Class C service shall be credited at no cost; and  
18        (B) Any portion of the lump sum payment in excess of  
19        the actuarial present value, as determined by the  
20        system, of contributions that the employee would  
21        have contributed, as provided in this chapter,





1                   for the service and compensation certified  
2                   pursuant to this section, shall be returned to  
3                   the employer;

4       (4) As a condition of the employer's obligation under  
5           paragraph (3), the employee has paid to the employer  
6           the contributions the employee would have contributed,  
7           as provided in this chapter, for the service and  
8           compensation to be certified pursuant to this section;

9       (5) The employer has made a lump sum payment to the system  
10           in the amount of the actuarial present value, as  
11           determined by the system, of contributions that the  
12           employer would have contributed, as provided in this  
13           chapter, for the service and compensation to be  
14           certified pursuant to this section, which shall  
15           include compound interest thereon at the assumed rate  
16           of return; provided further that any portion of the  
17           lump sum payment in excess of the actuarial present  
18           value, as determined by the system, of contributions  
19           that the employer would have contributed, as provided  
20           in this chapter, for the service and compensation



1 certified pursuant to this section, shall be returned  
2 to the employer;

3 (6) An employee who appeals an involuntary termination, is  
4 retroactively reinstated to employment pursuant to a  
5 final resolution of claims, and has:

6 (A) Been paid their accumulated contributions or  
7 hypothetical account balance after the  
8 involuntary termination date and as a result of  
9 the involuntary termination, has made a lump sum  
10 payment to the system in the amount of the  
11 actuarial present value, as determined by the  
12 system, of the accumulated contributions or  
13 hypothetical account that were paid to the  
14 employee; or

15 (B) Received an allowance on service retirement,  
16 ordinary disability retirement, or  
17 service-connected disability retirement after the  
18 involuntary termination date and as a result of  
19 the involuntary termination, has made a lump sum  
20 payment to the system in the amount of the  
21 actuarial present value, as determined by the



1                    system, of any allowance on service retirement,  
2                    ordinary disability retirement, or  
3                    service-connected disability retirement received  
4                    by the employee; and

5            (7) Notwithstanding this section, if the system determines  
6                    that a contribution exceeds the limits of any Internal  
7                    Revenue Code requirements that apply to the system,  
8                    the system shall not accept the contributions and  
9                    shall return the contributions.

10           (b) As used in this section, "final resolution of claims"  
11 means:

12           (1) The final decision of a court, an administrative  
13                    proceeding, or an arbitration proceeding from which  
14                    either no appeal may be filed or no appeal has been  
15                    filed within the time allowed;

16           (2) A stipulated judgment;

17           (3) A settlement of claims, including but not limited to a  
18                    settlement of a labor grievance, that is in writing,  
19                    signed, and dated by the parties to the settlement,  
20                    and a court-approved settlement;



1       (4) A settlement adopted by court order or referenced in  
2             an order of dismissal;

3       (5) A third-party arbitrator's decision from which either  
4             no appeal may be filed or no appeal has been filed  
5             within the time allowed; or

6       (6) A settlement or other final resolution of an appeal or  
7             challenge from which either no appeal may be filed or  
8             no appeal has been filed within the time allowed."

9       SECTION 3. Section 88-21, Hawaii Revised Statutes, is  
10       amended by amending the definition of "service" to read as  
11       follows:

12       ""Service": service as an employee paid by the State or  
13       county, and also: [~~service~~]

14       (1) Service during the period of a leave of absence or  
15             exchange if the individual is paid by the State or  
16             county during the period of the leave of absence or  
17             exchange; [~~and service~~]

18       (2) Service during the period of an unpaid leave of  
19             absence or exchange if the individual is engaged in  
20             the performance of a governmental function or if the  
21             unpaid leave of absence is an approved leave of



1 absence for professional improvement; provided that,  
2 for the period of the leave of absence or exchange  
3 without pay, the individual makes the same  
4 contribution to the system as the individual would  
5 have made if the individual had not been on the leave  
6 of absence[-]; and

7 (3) Service pursuant to section 88- .

8 Cafeteria managers and cafeteria workers shall be considered as  
9 paid by the State, regardless of the source of funds from which  
10 they are paid."

11 SECTION 4. Section 88-21.5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 "§88-21.5 Compensation. (a) For a member who became a  
14 member before July 1, 2012[~~7-unless~~]:

15 (1) Unless a different meaning is plainly required by  
16 context, "compensation" as used in this part[~~7~~  
17 "~~compensation~~"] means:

18 [~~11~~] (A) Normal periodic payments of money for  
19 service the right to which accrues on a regular  
20 basis in proportion to the service performed;





1           ~~[(1)]~~ (A) During the period agreed-upon by the  
2           employer and employee, but in any event over a  
3           period of ~~[not]~~ no less than twelve months; or  
4           ~~[(2)]~~ (B) In the absence of an agreement between the  
5           employer and the employee, over the twelve months  
6           ~~[prior to]~~ before the date on which the bonus or  
7           lump sum salary supplement is payable~~[-]~~; and  
8           (3) Retroactive payments shall be deemed earned when it  
9           would have been earned, as determined by the system  
10           pursuant to section 88- .

11           (b) For a member who becomes a member after June 30, 2012,  
12 unless a different meaning is plainly required by context,  
13 "compensation" as used in this part:

14           (1) Means:

15           (A) The normal periodic payments of money for  
16           service, the right to which accrues on an hourly,  
17           daily, monthly, or annual basis;  
18           (B) Shortage differentials;  
19           (C) Elective salary reduction contributions under  
20           sections 125, 403(b), and 457(b) of the Internal  
21           Revenue Code of 1986, as amended; ~~[and]~~



- 1 (D) Twelve-month differentials for employees of the  
2 department of education; and
- 3 (E) Retroactive payments of those purposes and nature  
4 of payments authorized in subparagraphs (A)  
5 through (D), and certified as compensation  
6 pursuant to section 88- ;
- 7 (2) Shall not include any other additional or extra  
8 payments to an employee or officer, including  
9 overtime, supplementary payments, bonuses, lump sum  
10 salary supplements, allowances, or differentials,  
11 including differentials for stand-by duty, temporary  
12 unusual work hazards, compression differentials, or  
13 temporary differentials, except for those expressly  
14 authorized pursuant to [~~subsection (b)(1)(B),~~  
15 ~~(b)(1)(C), and (b)(1)(D).~~] paragraphs (1)(B) through  
16 (1)(E); and
- 17 (3) Retroactive payments shall be deemed earned when it  
18 would have been earned, as determined by the system  
19 pursuant to section 88- ."

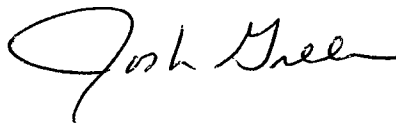
20 SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.





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

APPROVED this 1st day of June, 2023



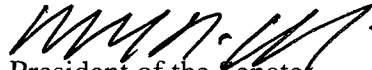
GOVERNOR OF THE STATE OF HAWAII




**THE SENATE OF THE STATE OF HAWAI'I**

Date: May 2, 2023  
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.

  
President of the Senate

  
Clerk of the Senate

SB No. 211, SD 2, HD 2, CD 1

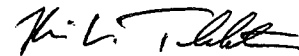
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives