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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 compensation eligible for the purpose of calculating retirement  
3 benefits and service time includes pay and service that are  
4 restored to an employee as part of an administrative, arbitral,  
5 or judicial proceeding.

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

9           "§88-           Service credit and compensation; back pay. (a)  
10 Service or compensation awarded to an employee pursuant to the  
11 final adjudication of a court of competent jurisdiction shall be  
12 considered service under section 88-21 or compensation under  
13 section 88-21.5, respectively, under the following conditions:

14           (1) For:

15                   (A) Service, the employee appeals an involuntary  
16                   termination or unpaid suspension and is  
17                   subsequently awarded back pay and is



1           retroactively reinstated to employment or has the  
2           suspension rescinded in whole or in part pursuant  
3           to the final adjudication of a court of competent  
4           jurisdiction; provided that:

5           (i) The service credit shall be for the period  
6           of retroactive employment for which back pay  
7           is awarded; and

8           (ii) The amount of service credited to the  
9           employee shall not exceed the period of  
10           absence that the employee would have worked  
11           but for their suspension or termination; or

12           (B) Compensation, the employee challenges  
13           compensation and is subsequently awarded:

14           (i) A retroactive pay differential pursuant to  
15           the final adjudication of a court of  
16           competent jurisdiction, then the pay  
17           differential that is awarded shall  
18           constitute compensation; or

19           (ii) Back pay pursuant to the final adjudication  
20           of a court of competent jurisdiction, then  
21           the amount of back pay that constitutes



1                   compensation shall include normal salary  
2                   adjustments and shall be based on the number  
3                   of workdays between the date the employee's  
4                   absence began until the employee's date of  
5                   reinstatement and shall not exceed what the  
6                   employee would have received had the  
7                   employee not been suspended or terminated;

8           (2) The employee makes contributions to the system based  
9                   on the applicable rate set forth in section 88-45 and  
10                   in the amount that the employee would have contributed  
11                   had the employee's employment not been suspended or  
12                   terminated;

13           (3) The employer makes contributions to the system based  
14                   on the contribution rate or rates in effect for the  
15                   plan during the period of service covered by the back  
16                   pay award, and in the amount the employer would have  
17                   contributed had the employee's employment not been  
18                   suspended or terminated along with compound interest  
19                   at the actuarial valuation rate for contributions  
20                   payable from the date the contribution was due until  
21                   paid; and



1        (4) If the employee was terminated, the employee repays:

2            (A) Any amount in employee contributions that were  
3            refunded to the employee; and

4            (B) Any service or disability allowance that was paid  
5            to the employee,  
6            at the time of the employee's termination.

7        (b) Upon satisfaction of the requirements under subsection  
8        (a), the employee shall be entitled to all the membership rights  
9        and service credit that would have accrued but for the member's  
10       challenged suspension or involuntary termination upon receipt by  
11       the system of the full amount due."

12        SECTION 3. Section 88-21, Hawaii Revised Statutes, is  
13        amended by:

14        1. Adding a new definition to be appropriately inserted  
15        and to read as follows:

16        "Final adjudication of a court of competent jurisdiction"  
17        means:

18            (1) The final decision of a court, an administrative  
19            proceeding, or an arbitration proceeding from which no  
20            appeal may be filed or which no appeal has been filed  
21            within the time allowed;



- 1        (2) A stipulated judgment
- 2        (3) A court-approved settlement;
- 3        (4) A settlement adopted by court order or referenced in
- 4                an order of dismissal;
- 5        (5) A third-party arbitrator decision from which no appeal
- 6                may be filed or from which no appeal has been filed
- 7                within the time allowed; or
- 8        (6) Other final resolution of an appeal or challenge from
- 9                which no appeal may be filed or from which no appeal
- 10               has been filed within the time allowed."

11        2. Amending the definition of "base pay" and "service" to  
 12 read as follows:

13        ""Base pay" means the normal periodic payments of money for  
 14 service, the right to which accrues on a regular basis in  
 15 proportion to the service performed; recurring differentials;  
 16 [~~and~~] elective salary reduction contributions under sections  
 17 125, 403(b), and 457(b) of the Internal Revenue Code of 1986, as  
 18 amended[~~-~~]; back pay pursuant to section 88- ; and pay  
 19 differential pursuant to section 88- ;

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



1        (1) Service during the period of a leave of absence or  
2        exchange if the individual is paid by the State or  
3        county during the period of the leave of absence or  
4        exchange; [~~and service~~]

5        (2) Service during the period of an unpaid leave of  
6        absence or exchange if the individual is engaged in  
7        the performance of a governmental function or if the  
8        unpaid leave of absence is an approved leave of  
9        absence for professional improvement; provided that,  
10       for the period of the leave of absence or exchange  
11       without pay, the individual makes the same  
12       contribution to the system as the individual would  
13       have made if the individual had not been on the leave  
14       of absence[-]; and

15       (3) Service pursuant to section 88- .

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

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



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

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

6           [~~(1)~~] (A) Normal periodic payments of money for  
7 service the right to which accrues on a regular  
8 basis in proportion to the service performed;

9           [~~(2)~~] (B) Overtime, differentials, and supplementary  
10 payments;

11           [~~(3)~~] (C) Bonuses and lump sum salary supplements;  
12 [and]

13           [~~(4)~~] (D) Elective salary reduction contributions  
14 under sections 125, 403(b), and 457(b) of the  
15 Internal Revenue Code of 1986, as amended[~~7~~]; and

16           (E) Back pay or pay differential considered as  
17 compensation pursuant to section 88- ; and

18           (2) Bonuses and lump sum salary supplements shall be  
19 deemed earned when payable; provided that bonuses or  
20 lump sum salary supplements in excess of one-twelfth  
21 of compensation for the twelve months prior to the



1 month in which the bonus or lump sum salary supplement  
2 is payable, exclusive of overtime, bonuses, and lump  
3 sum salary supplements, shall be deemed earned:

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

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

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) Back pay or pay differential considered as  
4 compensation pursuant to section 88- ; and

5 (2) Shall not include any other additional or extra  
6 payments to an employee or officer, including  
7 overtime, supplementary payments, bonuses, lump sum  
8 salary supplements, allowances, or differentials,  
9 including differentials for stand-by duty, temporary  
10 unusual work hazards, compression differentials, or  
11 temporary differentials, except for those expressly  
12 authorized pursuant to subsection (b) (1) (B),  
13 (b) (1) (C), [~~and~~] (b) (1) (D) [~~-~~], and (b) (1) (E) ."

14 SECTION 5. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 6. This Act shall take effect upon its approval.  
17

INTRODUCED BY: Stan  
By Request  
JAN 17 2023



# H.B. NO. 101

**Report Title:**

City and County of Honolulu Package; Retirement Benefits; ERS

**Description:**

Clarifies that service and compensation awarded as part of an administrative, arbitral, or judicial proceeding are included in the calculation of retirement benefits and service time for the Employees' Retirement System.

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

