

STAND. COM. REP. NO.

1313

Honolulu, Hawaii

MAR 17 , 2023

RE: S.B. No. 211  
S.D. 2  
H.D. 1

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirty-Second State Legislature  
Regular Session of 2023  
State of Hawaii

Sir:

Your Committee on Labor & Government Operations, to which was referred S.B. No. 211, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM,"

begs leave to report as follows:

The purpose of this measure is to ensure that employment, work, and pay eligible for the purpose of computing retirement benefits include retroactive reinstatement, retroactive rescission of suspension, retroactive pay differentials, and back pay that are restored to an employee as part of an administrative, arbitral, or judicial proceeding, subject to certification by the Employees' Retirement System.

Your Committee received testimony in support of this measure from the Department of Human Resources of the City and County of Honolulu; State of Hawaii Organization of Police Officers; Hawaii Fire Fighters' Association; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Hawaii State Teachers Association; University of Hawaii Professional Assembly; and United Public Workers, AFSCME Local 646, AFL-CIO. Your Committee received comments on this measure from the Employees' Retirement System.

2023-2524 SB211 HD1 HSCR HMSO-1



Your Committee finds that when employees or their unions avail themselves of their right to challenge employee suspensions, terminations, or compensation through the judicial, administrative, or arbitral process, the issues are frequently resolved with awards or settlements. These awards and settlements may require that the employee be "made whole".

Your Committee further finds that, according to the City and County of Honolulu, in such cases the employer remits its employer contribution and the employee contribution, which is deducted from the back pay, to the Employees' Retirement System, with the understanding that the Employees' Retirement System would include the employee's retroactive service as creditable service and the back pay as compensation for the purpose of determining the employee's pension eligibility and benefits. On December 17, 2021, the Employees' Retirement System issued a memorandum advising the state and county employers that "ERS benefit eligibility determinations and calculations may not be made, and ERS benefits may not otherwise be provided, pursuant to awards and settlement agreements that resolve claims between employees and employers". This measure is intended to amend the law to specifically accommodate the crediting of awards and settlements for service credits and benefits determination purposes in a way that is acceptable to the Employees' Retirement System and state and county employers and preserves the Employees' Retirement System's tax-exempt status.

Your Committee notes that it considered several amendments proposed by the Employees' Retirement System in its written testimony, but had concerns that the City and County of Honolulu's Department of Human Resources and other state and county departments had not had the chance to adequately review and opine on these proposed amendments. At the time this committee report was filed, the Employees' Retirement System also did not provide sufficient justification for its claims that these amendments were necessary under Internal Revenue Service rules and regulations.

Your Committee has amended this measure by making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

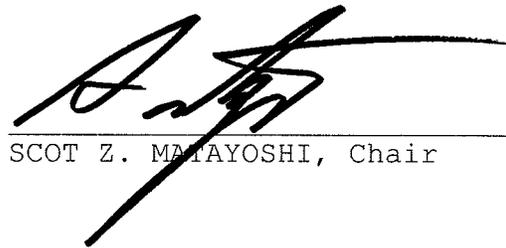
Your Committee respectfully requests your Committee on Judiciary & Hawaiian Affairs, should it deliberate on this measure, to consider language to:



- (1) Include settlement agreements made in good faith without any kind of final adjudication by a court of competent jurisdiction; and
- (2) Allow second or third good faith opportunities, if correct information is not included in the court order or settlement agreement, to conform to the requirements of the Employees' Retirement System.

As affirmed by the record of votes of the members of your Committee on Labor & Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 211, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 211, S.D. 2, H.D. 1, and be referred to your Committee on Judiciary & Hawaiian Affairs.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor & Government  
Operations,



---

SCOT Z. MATAYOSHI, Chair



