S.B. NO. ²¹¹ S.D. 2 H.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTI	ON 1. The purpose of this Act is to ensure that
2	employment	, work, and pay eligibility for the purpose of
3	calculatin	g retirement benefits includes retroactive
4	reinstatem	ent, retroactive rescission of suspension, and
5	retroactiv	e payments that are restored to an employee as part of
6	a judicial	, administrative, or arbitral proceeding, or pursuant
7	to a settl	ement of claims, subject to certification by the
8	system tha	t the retroactive reinstatement, retroactive
9	rescission	of suspension, and retroactive payments that are
10	restored c	therwise satisfy the requirements of chapter 88,
11	Hawaii Rev	ised 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;
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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	SECT	ION 2. Chapter 88, Hawaii Revised Statutes, is amended
8	by adding	a new section to part II, subpart B, to be
9	appropria	tely designated and to read as follows:
10	" <u>§88</u>	- <u>Retroactive reinstatement; retroactive rescission</u>
11	of suspen	sion; retroactive payments. (a) Upon certification by
12	the syste	m, the retroactive reinstatement, retroactive
13	rescissio	n of suspension, and retroactive payment provided to an
14	employee	pursuant to a final resolution of claims shall be
15	considere	d service under section 88-21, compensation under
16	section 8	8-21.5, 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

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1	empl	oyment or have the suspension rescinded in
2	whol	e or in part, and be provided back pay,
3	purs	uant to a final resolution of claims;
4	prov	ided further that:
5	<u>(i)</u>	The dates of retroactive employment or
6		retroactive recission 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	<u>(iii)</u>	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	<u>(iv)</u>	The service shall be credited to the extent
7		it would otherwise have been credited as
8		provided in this chapter; and
9	(B) Comp	ensation under section 88-21.5, the employee
10	shal	l challenge an involuntary termination,
11	unpa	id suspension, or the employee's compensation
12	and	be subsequently provided a retroactive
13	paym	ent pursuant to a final resolution of claims;
14	prov	ided further that:
15	<u>(i)</u>	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

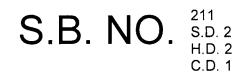
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1	employees with similar positions, class,
2	title, pay range or wage scale, step,
3	bargaining unit, contract type, function,
4	job category, and pay rate code through the
5	same employer, department, or agency,
6	available by pay schedule, or comparable 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			<pre>employees;</pre>
3		<u>(ii)</u>	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 requi	rements of section 88-103.7 and this chapter
17		shall be	satisfied with respect to any retroactive
18		reinstate	ment, retroactive rescission of suspension,
19		<u>retroacti</u>	ve pay differential, or back pay pursuant to
20		<u>a final r</u>	esolution of claims and paid by the State and
21		county, i	ncluding but not limited to an allocation of

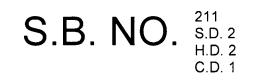
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1		the amount, purpose, and nature of a retroactive
2		payment for each monthly period in which it would have
3		been earned had the employee not been suspended or
4		terminated, or had the employee received the
5		compensation available to comparable 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,

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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

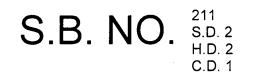


1		cert	ified pursuant to this section, shall be returned
2		to ti	he employer;
3	(6)	<u>An ei</u>	mployee who appeals an involuntary termination, is
4		retro	oactively reinstated to employment pursuant to a
5		fina	l resolution of claims, and has:
6		(A)	Been paid their accumulated contributions or
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		<u>(B)</u>	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

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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:	
11 12	<u>means:</u> (1)	The final decision of a court, an administrative
		The final decision of a court, an administrative proceeding, or an arbitration proceeding from which
12		
12 13		proceeding, or an arbitration proceeding from which
12 13 14		proceeding, or an arbitration proceeding from which either no appeal may be filed or no appeal has been
12 13 14 15	(1)	proceeding, or an arbitration proceeding from which either no appeal may be filed or no appeal has been filed within the time allowed;
12 13 14 15 16	(1)	proceeding, or an arbitration proceeding from which either no appeal may be filed or no appeal has been filed within the time allowed; A stipulated judgment;
12 13 14 15 16 17	(1)	<pre>proceeding, or an arbitration proceeding from which either no appeal may be filed or no appeal has been filed within the time allowed; A stipulated judgment; A settlement of claims, including but not limited to a</pre>

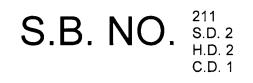
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1	(4)	A settlement adopted by court order or referenced in
2		an order of dismissal;
3	(5)	A third-party arbitrator's decision from which either
4		no appeal may be filed or no appeal has been filed
5		within the time allowed; or
6	(6)	A settlement 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	SECT	ION 3. Section 88-21, Hawaii Revised Statutes, is
10	amended b	y amending the definition of "service" to read as
11	follows:	
12	""Se	rvice": service as an employee paid by the State or
13	county, a	nd 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[, unless] <u>:</u>
15	(1) Unless a different meaning is plainly required by
16	context, "compensation" as used in this part[,
17	"compensation"] means:
18	$\left[\frac{(1)}{(A)}\right]$ (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;

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1		[(2)] <u>(B)</u> Overtime, differentials, and supplementary
2		payments;
3		[(3)] <u>(C)</u> Bonuses and lump sum salary supplements;
4		[and]
5		[(4)] <u>(D)</u> Elective salary reduction contributions
6		under sections 125, 403(b), and 457(b) of the
7		Internal Revenue Code of 1986, as amended[-]; and
8		(E) Retroactive payments of those purposes and nature
9		authorized in subparagraphs (A) through (D), and
10		certified as compensation pursuant to section
11		<u>88- ;</u>
12	(2)	Bonuses and lump sum salary supplements shall be
13		deemed earned when payable; provided that bonuses or
14		lump sum salary supplements in excess of one-twelfth
15		of compensation for the twelve months [prior to]
16		before the month in which the bonus or lump sum salary
17		supplement is payable, exclusive of overtime, bonuses,
18		and lump sum salary supplements, shall be deemed
19		earned:

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1		[-(1)-]	(A) During the period agreed-upon by the
2			employer and employee, but in any event over a
3			period of [not] <u>no</u> 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] <u>before</u> the date on which the bonus or
7			lump sum salary supplement is payable[-]; and
8	(3)	Retr	pactive payments shall be deemed earned when it
9		woul	d have been earned, as determined by the system
10		purs	uant to section 88
11	(b)	For	a member who becomes a member after June 30, 2012,
12	unless a	diffe	rent meaning is plainly required by context,
13	"compensa	tion"	as used in this part:
14	(1)	Mean	s:
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]

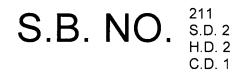
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1		(D) Twelve-month differentials for employees of the
2		department of education; and
3		(E) Retroactive payments of those purposes and nature
4		of payments authorized in subparagraphs (A)
5		through (D), and certified as compensation
6		pursuant 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	SECT	ION 5. Statutory material to be repealed is bracketed
21	and stric	ken. New statutory material is underscored.

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



Report Title:

City and County of Honolulu Package; Retirement Benefits; Employees' Retirement System

Description:

Ensures that employment, work, and pay eligibility for the purpose of calculating retirement benefits includes retroactive reinstatement, retroactive rescission of suspension, and retroactive payments that are restored to an employee as part of a judicial, administrative, or arbitral proceeding, or pursuant to a settlement of claims. (CD1)

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