
A BILL FOR AN ACT

RELATING TO DISABILITY RETIREMENT.

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

1 SECTION 1. Section 88-75, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§88-75 Ordinary disability retirement.** (a) Upon
4 application of a member in service or on leave without pay, or
5 the person appointed by the family court as guardian of an
6 incapacitated member, any member who has ten or more years of
7 credited service shall be retired by the board of trustees on an
8 ordinary disability retirement allowance if the medical board,
9 after a medical examination of the member, certifies that:

10 (1) The member is mentally or physically incapacitated for
11 the further performance of duty at the time of
12 application;

13 (2) The incapacity is likely to be permanent; and

14 (3) The member should be retired.

15 (b) Upon approval by the board, the member shall be
16 eligible to receive an ordinary disability retirement benefit no
17 earlier than thirty days from the date the application was filed



1 or the date the member terminated service, whichever is later.
2 Retirement shall be effective on the first day of a month,
3 except for the month of December when retirement on the first or
4 last day of the month shall be allowed. A member whose
5 application for an ordinary disability retirement allowance is
6 approved by the board while the member is still in service may
7 terminate service and retire at any time following such
8 approval; provided that retirement shall become effective on the
9 first day of the month following the month the applicant
10 terminates employment or goes off the payroll, except for the
11 month of December when retirement on the first or last day of
12 the month shall be allowed.

13 (c) A member who has retired with ten or more years of
14 credited service and who became permanently mentally or
15 physically incapacitated from the further performance of duty
16 prior to retirement may, within two years from the date of
17 retirement, apply and be eligible for an ordinary disability
18 retirement allowance if after medical examination, the
19 requirements of subsection (a) (1) through (3) are met; provided
20 that a person appointed by the family court as guardian of such
21 a member who is incapacitated shall be allowed to apply on



1 behalf of the member. The ordinary disability retirement
2 benefit shall commence thirty days from the date of retirement."

3 SECTION 2. Section 88-79, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§88-79 Service-connected disability retirement.** (a)

6 Upon application of a member, or the person appointed by the
7 family court as guardian of an incapacitated member, any member
8 who has been permanently incapacitated for duty as the natural
9 and proximate result of an accident occurring while in the
10 actual performance of duty at some definite time and place, or
11 as the cumulative result of some occupational hazard, through no
12 wilful negligence on the member's part, may be retired by the
13 board for service-connected disability; provided that:

14 (1) In the case of an accident occurring after July 1,
15 1963, the employer shall file with the system a copy
16 of the employer's report of the accident submitted to
17 the director of labor and industrial relations;

18 (2) An application for retirement is filed with the system
19 within two years of the date of the accident, or the
20 date upon which workers' compensation benefits cease,
21 whichever is later;



1 (3) Certification is made by the head of the agency in
2 which the member is employed, stating the time, place,
3 and conditions of the service performed by the member
4 resulting in the member's disability and that the
5 disability was not the result of wilful negligence on
6 the part of the member; and

7 (4) The medical board certifies that the member is
8 incapacitated for the further performance of duty at
9 the time of application and that the member's
10 incapacity is likely to be permanent.

11 (b) In the case of firefighters, police officers, and
12 sewer workers, the effect of the inhalation of smoke, toxic
13 gases, chemical fumes, and other toxic vapors on the heart,
14 lungs, and respiratory system shall be construed as an injury
15 received or disease contracted while in the performance of their
16 duty and as the result of some occupational hazard for the
17 purpose of determining occupational disability retirement under
18 this section.

19 Notwithstanding any other law to the contrary, any
20 condition of impairment of health caused by any disease of the
21 heart, lungs, or respiratory system, resulting in permanent



1 incapacity to a firefighter, police officer, or sewer worker,
2 shall be presumed to have been suffered in the actual
3 performance of duty at some definite time and place through no
4 wilful negligence on the firefighter's, police officer's, or
5 sewer worker's part, and as a result of the inherent
6 occupational hazard of exposure to and inhalation of smoke,
7 toxic gases, chemical fumes, and other toxic vapors, unless the
8 contrary be shown by competent evidence; provided that such
9 firefighter, police officer, or sewer worker shall have passed a
10 physical examination on entry into such service or subsequent to
11 such entry, which examination failed to reveal any evidence of
12 such condition.

13 (c) The board may waive strict compliance with the time
14 limits within which a report of the accident and an application
15 for service-connected disability retirement must be filed with
16 the board if it is satisfied that the failure to file within the
17 time limited by law was due to ignorance of fact or law,
18 inability, or to the fraud, misrepresentation, or deceit of any
19 person, or because the applicant was undergoing treatment for
20 the disability or was receiving vocational rehabilitation
21 services occasioned by the disability.



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1 (d) The board may determine whether or not the disability
2 is the result of an accident occurring while in the actual
3 performance of duty at some definite time and place and that the
4 disability was not the result of wilful negligence on the part
5 of the member. The board may accept as conclusive:

6 (1) The certification made by the head of the agency in
7 which the member is employed; or

8 (2) A finding to this effect by the medical board.

9 (e) Upon approval by the board, the member shall be
10 eligible to receive a service-connected disability retirement
11 benefit after the member has terminated service. Retirement
12 shall become effective on the first day of a month, except for
13 the month of December when retirement on the first or last day
14 of the month shall be allowed.

15 (f) A member who has retired and who became permanently
16 mentally or physically incapacitated for duty prior to
17 retirement as the natural and proximate result of an accident
18 occurring while in the actual performance of duty at some
19 definite time and place, or as the cumulative result of some
20 occupational hazard, through no wilful negligence on the
21 member's part, may, within two years from the date of



1 retirement, apply and be eligible for a service-connected
2 disability retirement allowance if the requirements of
3 subsection (a) (3) and (4) are met; provided that a person
4 appointed by the family court as guardian of such a member who
5 has become incapacitated shall be allowed to apply on behalf of
6 the member. The service-connected disability retirement benefit
7 shall commence thirty days from the date of retirement."

8 SECTION 3. Section 88-284, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§88-284 Ordinary disability retirement.** (a) Upon
11 application of a member in service or on leave without pay, or
12 the person appointed by the family court as guardian of an
13 incapacitated member, any member who has ten or more years of
14 credited service shall be retired by the board of trustees on an
15 ordinary disability retirement allowance if the medical board,
16 after a medical examination of the member, certifies that:

- 17 (1) The member is mentally or physically incapacitated for
18 the further performance of duty at the time of
19 application;
- 20 (2) The incapacity is likely to be permanent; and
- 21 (3) The member should be retired.



1 (b) Upon approval by the board, the member shall be
2 eligible to receive an ordinary disability retirement benefit no
3 earlier than thirty days from the date the application was filed
4 or the date the member terminated service, whichever is later.
5 Retirement shall be effective on the first day of a month,
6 except for the month of December when retirement on the first or
7 last day of the month shall be allowed. A member whose
8 application for an ordinary disability retirement allowance is
9 approved by the board while the member is still in service may
10 terminate service and retire at any time following the approval;
11 provided that retirement shall become effective on the first day
12 of the month following the month the applicant terminates
13 employment or goes off the payroll, except for the month of
14 December when retirement on the first or last day of the month
15 shall be allowed.

16 (c) A member who is determined to be permanently
17 incapacitated for the further performance of duty pursuant to
18 subsection (a) and eligible to receive an ordinary disability
19 retirement allowance shall receive a maximum retirement
20 allowance of one and one-fourth per cent of the average final



1 compensation multiplied by the number of years of credited
2 service unreduced for age.

3 (d) A member who has retired with ten or more years of
4 credited service and who became permanently mentally or
5 physically incapacitated from the further performance of duty
6 prior to retirement may, within two years from the date of
7 retirement, apply and be eligible for an ordinary disability
8 retirement allowance if after medical examination, the
9 requirements of subsection (a)(1) through (3) are met; provided
10 that a person appointed by the family court as guardian of such
11 a member who is incapacitated shall be allowed to apply on
12 behalf of the member. The ordinary disability retirement
13 benefit shall commence thirty days from the date of retirement."

14 SECTION 4. Section 88-334, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§88-334 Ordinary disability retirement.** (a) Upon
17 application of a class H member in service or on leave without
18 pay, or the person appointed by the family court as guardian of
19 an incapacitated member, any member who has ten or more years of
20 credited service shall be retired by the board on an ordinary



1 disability retirement allowance if the medical board, after a
2 medical examination of the member, certifies that:

3 (1) The member is mentally or physically incapacitated for
4 the further performance of duty at the time of
5 application;

6 (2) The incapacity is likely to be permanent; and

7 (3) The member should be retired.

8 (b) Upon approval by the board, the member shall be
9 eligible to receive an ordinary disability retirement benefit no
10 earlier than thirty days from the date the application was filed
11 or the date the member terminated service, whichever is later.
12 Retirement shall be effective on the first day of a month,
13 except for the month of December when retirement on the first or
14 last day of the month shall be allowed. A member whose
15 application for an ordinary disability retirement allowance is
16 approved by the board while the member is still in service may
17 terminate service and retire at any time following the approval;
18 provided that retirement shall become effective on the first day
19 of the month following the month the applicant terminates
20 employment or goes off the payroll, except for the month of



1 December when retirement on the first or last day of the month
2 shall be allowed.

3 (c) A member who has retired with ten or more years of
4 credited service and who became permanently mentally or
5 physically incapacitated from the further performance of duty
6 prior to retirement may, within two years from the date of
7 retirement, apply and be eligible for an ordinary disability
8 retirement allowance if after medical examination, the
9 requirements of subsection (a) (1) through (3) are met; provided
10 that a person appointed by the family court as guardian of such
11 a member who is incapacitated shall be allowed to apply on
12 behalf of the member. The ordinary disability retirement
13 benefit shall commence thirty days from the date of retirement."

14 SECTION 5. Section 88-336, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§88-336 Service-connected disability retirement. (a)**
17 Upon application of a class H member, or the person appointed by
18 the family court as guardian of an incapacitated member, any
19 class H member who has been permanently incapacitated for duty
20 as the natural and proximate result of an accident occurring
21 while in the actual performance of duty at some definite time



1 and place, or as the cumulative result of some occupational
2 hazard, through no wilful negligence on the member's part, may
3 be retired by the board for service-connected disability;
4 provided that:

5 (1) In the case of an accident occurring after July 1,
6 1963, the employer shall file with the system a copy
7 of the employer's report of the accident submitted to
8 the director of labor and industrial relations;

9 (2) An application for retirement is filed with the system
10 within two years of the date of the accident, or the
11 date upon which workers' compensation benefits cease,
12 whichever is later;

13 (3) Certification is made by the head of the agency in
14 which the member is employed, stating the time, place,
15 and conditions of the service performed by the member
16 resulting in the member's disability and that the
17 disability was not the result of wilful negligence on
18 the part of the member; and

19 (4) The medical board certifies that the member is
20 incapacitated for the further performance of duty at



1 the time of application and that the member's
2 incapacity is likely to be permanent.

3 (b) In the case of sewer workers, the effect of the
4 inhalation of smoke, toxic gases, chemical fumes, and other
5 toxic vapors on the heart, lungs, and respiratory system shall
6 be construed as an injury received or disease contracted while
7 in the performance of their duty and as the result of some
8 occupational hazard for the purpose of determining occupational
9 disability retirement under this section.

10 Notwithstanding any other law to the contrary, any
11 condition of impairment of health caused by any disease of the
12 heart, lungs, or respiratory system resulting in permanent
13 incapacity to a sewer worker shall be presumed to have been
14 suffered in the actual performance of duty at some definite time
15 and place through no wilful negligence on the sewer worker's
16 part, and as a result of the inherent occupational hazard of
17 exposure to the inhalation of smoke, toxic gases, chemical
18 fumes, and other toxic vapors, unless the contrary be shown by
19 competent evidence; provided that the sewer worker shall have
20 passed a physical examination on entry into such service or



1 subsequent to such entry, which examination failed to reveal any
2 evidence of such condition.

3 (c) The board may waive strict compliance with the time
4 limits within which a report of the accident and an application
5 for service-connected disability retirement must be filed with
6 the board if it is satisfied that the failure to file within the
7 time limited by law was due to ignorance of fact or law,
8 inability, or the fraud, misrepresentation, or deceit of any
9 person, or because the applicant was undergoing treatment for
10 the disability, or was receiving vocational rehabilitation
11 services occasioned by the disability.

12 (d) The board may determine whether the disability is the
13 result of an accident occurring while in the actual performance
14 of duty at some definite time and place and that the disability
15 was not the result of wilful negligence on the part of the
16 member. The board may accept as conclusive:

17 (1) The certification made by the head of the agency in
18 which the member is employed; or

19 (2) A finding to this effect by the medical board.

20 (e) Upon approval by the board, the member shall be
21 eligible to receive a service-connected disability retirement



1 benefit after the member has terminated service. Retirement
2 shall be effective on the first day of a month, except for the
3 month of December when retirement on the first or last day of
4 the month shall be allowed.

5 (f) A member who has retired and who became permanently
6 mentally or physically incapacitated for duty prior to
7 retirement as the natural and proximate result of an accident
8 occurring while in the actual performance of duty at some
9 definite time and place, or as the cumulative result of some
10 occupational hazard, through no wilful negligence on the
11 member's part, may, within two years from the date of
12 retirement, apply and be eligible for a service-connected
13 disability retirement allowance if the requirements of
14 subsection (a) (3) and (4) are met; provided that a person
15 appointed by the family court as guardian of such a member who
16 has become incapacitated shall be allowed to apply on behalf of
17 the member. The service-connected disability retirement benefit
18 shall commence thirty days from the date of retirement."

19 SECTION 6. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



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1 SECTION 7. New statutory material is underscored.

2 SECTION 8. This Act shall take effect upon its approval.

3

INTRODUCED BY:

Kel Abner

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Report Title:

Disability Retirement; Service-connected Disability Retirement

Description:

Expands eligibility of ordinary and service-connected disability retirement benefits to retired members who became mentally or physically incapacitated from the further performance of duty.

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

