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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 legislature finds that this Act is  
2       necessary to reduce and control the unfunded liability of the  
3       employees' retirement system of the State of Hawaii and to  
4       prevent future retirement contribution increases. The purpose  
5       of this Act is to clarify that, members of the employees'  
6       retirement system, eligible to claim for service-connected  
7       disability and accidental death benefits, must be beneficiaries  
8       of its Trust.

9       SECTION 2.   Section 88-21 to be amended as follows:

10       "**§88-21 Definitions.** The following words and phrases as  
11       used in this part, unless a different meaning is plainly  
12       required by the context, shall have the following meanings:

13       "Accidental death": death that is the natural and  
14       proximate result of an accident occurring at some definite time  
15       and place while the member, in a position for which all  
16       contributions required to be made to the employees' retirement  
17       system by the employee, the employer, or both, have been made,  
18       was in the actual performance of duty, or due to the result of

1 some occupational hazard, and not caused by wilful negligence on  
2 the part of the member."

3 SECTION 6. Section 88-79(a) to be amended as follows:

4 **"§88-79 Service-connected disability**

5 **retirement.** (a) Upon application of a member, or the person  
6 appointed by the family court as guardian of an incapacitated  
7 member, any member while employed in a position for which all  
8 contributions required to be made to the employees' retirement  
9 system by the employee, the employer, or both, have been made,  
10 who has been permanently incapacitated for duty as the natural  
11 and proximate result of an accident occurring while in the  
12 actual performance of duty at some definite time and place, or  
13 as the cumulative result of some occupational hazard, through no  
14 wilful negligence on the member's part, may be retired by the  
15 board for service-connected disability; provided that:

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

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

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

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

10       SECTION 7. Section 88-88-336(a) to be amended as follows:

11       **"§88-336 Service-connected disability**

12 **retirement.** (a) Upon application of a class H member, or the  
13 person appointed by the family court as guardian of an  
14 incapacitated member, any class H member, employed in a position  
15 for which all contributions required be made to the employees'  
16 retirement system by the employee, the employer, or both, have  
17 been made, who has been permanently incapacitated for duty as  
18 the natural and proximate result of an accident occurring while  
19 in the actual performance of duty at some definite time and  
20 place, or as the cumulative result of some occupational hazard,  
21 through no wilful negligence on the member's part, may be  
22 retired by the board for service-connected disability; provided  
23 that:

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

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

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

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

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY:

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BY REQUEST

JAN 22 2018

# H.B. NO. 2339

**Report Title:**

Employees' Retirement System; accidental death; service-connected disability.

**Description:**

Amends and clarifies the applicability of benefits for accidental death and service-connected disability benefits for members of 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.*

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To amend and clarify provisions of chapter 88, Hawaii Revised Statutes, to protect the interests of the beneficiaries of the Employees' Retirement System ("ERS") Trust.

MEANS: Amend sections 88-21 and 88-70 and 88-336, of chapter 88, Hawaii Revised Statutes.

JUSTIFICATION: As a trust fund, the assets of the ERS must be used for the exclusive benefit of its members and beneficiaries.

On July 10, 2017, the Supreme Court of the State of Hawaii issued a memorandum of opinion on an appeal of a decision by the Medical Board of the ERS. The opinion applied the ERS requirement for an employee to be disabled while "in the performance of duty" to claim for service-connected disability benefits, to include any "service" paid by the State or county of a governmental function.

As there are numerous persons working in governmental functions paid by the State or county who are not members of the ERS, this proposal amends chapter 88, Hawaii Revised Statutes, to clarify that claims for benefits related to service-connected disability and accidental death benefits should be limited to members who are beneficiaries of the Trust. For members of the ERS who are in positions for which all contributions required to the System by the employee, employer, or both, are made, claims for service-connected disability and accidental death benefits will apply. These service-connected disability and accidental

death benefits would not apply to persons  
who are excluded from membership in the ERS.

Impact on the public: None.

Impact on the department and other agencies:

None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.