
A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM BENEFITS.

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

1 SECTION 1. The legislature finds that this Act is
2 necessary to prevent future unwarranted increases to the
3 unfunded liability of the Employees' Retirement System of the
4 State of Hawaii ("system"). The system's service-connected
5 disability retirement and accidental death provisions are
6 intended to provide benefits different than those of Hawaii's
7 workers' compensation program. The paramount purpose of
8 Hawaii's workers' compensation law is to provide compensation
9 for an employee for all work-connected injuries, regardless of
10 questions of negligence, and work injuries are among the costs
11 of production that industry is required to bear. Accordingly,
12 the workers' compensation statute is to be construed liberally
13 in favor of awarding compensation, and specifically creates a
14 presumption that an employee's claim is for a covered work
15 injury, in exchange for providing an employer with exclusion of
16 all other liability on account of a work injury, except for



1 sexual harassment, sexual assault and infliction of emotional
2 distress, or invasion of privacy.

3 There are no similar policies or purposes behind the
4 system's service-connected disability retirement and accidental
5 death provisions. Consequently, the system's service-connected
6 disability retirement and accidental death provisions do not
7 contain a presumption favoring coverage, and should not be
8 construed liberally in favor of awarding compensation for all
9 injuries and death occurring in the workplace, regardless of
10 questions of system membership position, negligence, proximate
11 cause, the difference between an accident and injury/incapacity,
12 and the burden of proof. Courts in the cases of *Quel v. Bd. of*
13 *Trustees, Employees' Ret. Sys.*, 146 Haw. 197, 457 P.3d 836
14 (2020); *Pasco v. Bd. of Trustees of the Employees' Ret. Sys.*,
15 142 Haw. 373, 420 P.3d 304 (2018), as corrected (May 29, 2018),
16 as corrected (June 4, 2018), as corrected (June 15, 2018);
17 *Stout v. Bd. of Trustees of the Employees' Ret. Sys.*,
18 140 Haw. 177, 398 P.3d 766, reconsideration denied, 141 Haw. 90,
19 404 P.3d 1279 (2017); *Panado v. Bd. of Trustees, Employees'*
20 *Ret. Sys.*, 134 Haw. 1, 332 P.3d 144 (2014); and *Fores v. Bd. of*
21 *Trustees of the Employees' Ret. Sys.*, Civ. 14-1-1270-06, Circuit



1 Court of the First Circuit, recently rendered rulings awarding
2 system service-connected disability retirement and accidental
3 death benefits beyond the legislature's original intent.

4 These rulings have required the system to provide
5 service-connected disability retirement and accidental death
6 benefits that were never contemplated in determining employer
7 contributions; employee contributions; and employee benefits,
8 including monthly retirement allowance benefits to be provided
9 for an extended duration and at a higher rate, plus the refund
10 of employee contributions; and consequently, increased the
11 State's unfunded liability as a whole. Furthermore, system
12 members are not foreclosed from collecting ERS service
13 retirement, system ordinary disability retirement, system
14 ordinary death, workers' compensation, or social security
15 disability; the system's service-connected disability retirement
16 and accidental death programs should not be awarded in a manner
17 similar to an award of system service retirement, system
18 ordinary disability retirement, system ordinary death, workers'
19 compensation, and social security disability benefits.

20 If there is any perceived ambiguity regarding the
21 legislative intent of the system's service-connected disability



1 retirement and accidental death statutes, as reflected in recent
2 court decisions, this bill addresses such perceived ambiguities.

3 SECTION 2. Section 88-21, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding five new definitions to be appropriately
6 inserted and to read as follows:

7 "Accident":

8 (1) Means a single traumatic unlooked-for mishap or
9 untoward event that:

10 (A) Is not expected or designed;

11 (B) Is not a risk inherent in the member's
12 performance of routine or normal job duties;

13 (C) Interrupts the member's performance of routine or
14 normal job duties; and

15 (D) Precedes and precipitates:

16 (i) A medical condition, injury, disability, or
17 symptom of the foregoing that naturally and
18 proximately results in the member's
19 permanent incapacity for duty; or

20 (ii) Death of the member; and

21 (2) Does not include:



1 (A) A medical condition, injury, disability, mental
2 or physical incapacity, symptom of the foregoing,
3 or death itself; and

4 (B) An unexpected result of a routine performance of
5 duty, without external force or unusual stress or
6 strain.

7 "Actual performance of duty" means the performance of
8 duty:

9 (1) Of the position, appointment, or office on which the
10 member's membership in the system is based, and for
11 which all contributions required to be made to the
12 system by the employee or the employer, or both, have
13 been made;

14 (2) During the working hours of the position, appointment,
15 or office; and

16 (3) At either:

17 (A) The work premises of the position, appointment,
18 or office; or

19 (B) Wherever the member's duties of the position,
20 appointment, or office require the member to be.

21 "Definite and exact time and place" means:



1 (1) An exact time or time period that is identified, is
2 limited and short in duration, and does not include
3 more than a single work shift; and

4 (2) An exact place or geographic location that is
5 identified and is of a limited and small size."

6 "Incapacitated for duty" and "incapacitated for the further
7 performance of duty":

8 (1) Means incapacitated for duties prescribed in the
9 official position description, or actual job duties,
10 of the position, appointment, or office on which the
11 member's membership in the system is based, and for
12 which all contributions required to be made to the
13 system by the employee or the employer, or both, have
14 been made; and

15 (2) Does not include incapacitated for duties under
16 environmental conditions particular to the member's
17 position, appointment, or office, such as a particular
18 location, in proximity to or under the supervision of
19 particular individuals, or under other particular
20 environmental conditions, but not incapacitated for



1 duties of the position, appointment, or office as a
2 whole.

3 "Occupational hazard":

4 (1) Means danger or risk inherent in, and concomitant to,
5 a particular occupation, the causative factors of
6 which are not ordinarily incident to employment in
7 general, and are different in character from those
8 found in the general run of occupations; and

9 (2) Does not include:

10 (A) A job-related condition that results in
11 incapacitation for further performance of duty or
12 death, without a danger or risk inherent in, and
13 concomitant to, a particular occupation;

14 (B) Work activities that are common to many
15 occupations, such as repetitive motion of hands
16 and arms, lifting, and carrying; and

17 (C) Dangers or risks that are particular to a
18 member's workplace, but not particular to the
19 member's occupation as a whole, such as a lack of
20 proper tools or malfunctioning equipment at the
21 workplace."



1 2. By amending the definition of "accidental death" to
2 read as follows:
3 ""Accidental death" means death of a member while employed
4 in a position in which all contributions required to be made to
5 the employees' retirement system by the employee or the
6 employer, or both, have been made, that is the natural and
7 proximate result of an accident occurring at [~~some~~] a definite
8 and exact time and place while the member [~~was employed in a~~
9 ~~position in which all contributions required to be made to the~~
10 ~~employees' retirement system by the employee or the employer, or~~
11 ~~both, have been made,~~] was in the actual performance of duty[~~7~~]
12 in the position, appointment, or office upon which the
13 employee's membership is based, or due to the result of some
14 occupational hazard[~~7~~] of the position, appointment, or office
15 upon which the employee's membership is based, and not caused by
16 wilful negligence on the part of the member."

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

19 "**§88-79 Service-connected disability retirement.** (a)
20 Under rules the board of trustees may adopt, upon application of
21 a member, or the person appointed by the family court as



1 guardian of an incapacitated member, any member while employed
2 in a position in which all contributions required to be made to
3 the employees' retirement system by the employee or the
4 employer, or both, have been made, who has been permanently
5 incapacitated for duty as the natural and proximate result of an
6 accident occurring at a definite and exact time and place while
7 in the actual performance of duty [~~at some definite time and~~
8 ~~place,~~] in the position, appointment, or office upon which the
9 employee's membership is based, or as the cumulative result of
10 some occupational hazard[~~r~~] of the position, appointment, or
11 office upon which the employee's membership is based, through no
12 wilful negligence on the member's part, may be retired by the
13 system 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 or other entity designated by the
8 board of trustees certifies that the member is
9 incapacitated for the further performance of duty at
10 the time of application and that the member's
11 incapacity is likely to be permanent.
- 12 (b) The member or applicant initiating the proceeding
13 shall have the burden of proof, including the burden of
14 producing evidence as well as the burden of persuasion. The
15 degree or quantum of proof shall be a preponderance of the
16 evidence. The member or applicant shall have the responsibility
17 of furnishing all medical evidence available or that can be made
18 available to the member or applicant pertaining to the member's
19 death or disability. Any determination of the disability
20 compensation division of the department of labor and industrial
21 relations, labor and industrial relations appeals board, and



1 Social Security Administration relating to the same incapacity
2 for which the applicant or member is claiming a disability or
3 death benefit may be taken into consideration; provided that the
4 determination shall not be binding upon the medical board. The
5 medical board may or may not, at its discretion, subject the
6 member to a physical examination in arriving at its
7 certifications and findings on all matters referred to it;
8 provided further that the burden of proof shall not be shifted
9 to the medical board, and the member or applicant has the burden
10 of proof.

11 ~~[(b)]~~ (c) In the case of firefighters, police officers,
12 and 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
16 ~~[their]~~ duty in such position and as the result of some
17 occupational hazard of such position for the purpose of
18 determining occupational disability retirement under this
19 section.

20 Notwithstanding any other law to the contrary, any
21 condition of impairment of health caused by any disease of the



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

15 [~~e~~] (d) The system may waive strict compliance with the
16 time limits within which a report of the accident and an
17 application for service-connected disability retirement must be
18 filed with the system if it is satisfied that the failure to
19 file within the time limited by law was due to ignorance of fact
20 or law, inability, or to the fraud, misrepresentation, or deceit
21 of any person, or because the applicant was undergoing treatment



1 for the disability or was receiving vocational rehabilitation
2 services occasioned by the disability.

3 ~~[(d)]~~ (e) The system may determine whether or not the
4 disability is the result of an accident occurring while in the
5 actual performance of duty in the position, appointment, or
6 office upon which the employee's membership is based, at ~~[some]~~
7 a definite and exact time and place and that the disability was
8 not the result of wilful negligence on the part of the member.

9 The system may accept as conclusive:

- 10 (1) The certification made by the head of the agency in
11 which the member is employed; or
12 (2) A finding to this effect by the medical board or other
13 entity designated by the board of trustees.

14 ~~[(e)]~~ (f) Upon approval by the system, the member shall be
15 eligible to receive a service-connected disability retirement
16 benefit after the member has terminated service. Retirement
17 shall become effective on the first day of a month, except for
18 the month of December, when retirement on the first or last day
19 of the month shall be allowed."

20 SECTION 4. Section 88-82, Hawaii Revised Statutes, is
21 amended to read as follows:



1 **"§88-82 Petition for contested case hearing regarding**
2 **disability retirement or accidental death benefits; attorney's**
3 **fees and costs.** (a) A member or applicant who is not satisfied
4 with the preliminary decision of the board to grant or deny an
5 application for disability retirement benefits or accidental
6 death benefits based on the certifications and findings of the
7 medical board may file a petition for contested case hearing
8 with the board within sixty days after receiving written
9 notification of the preliminary decision of the board.

10 (b) Permanent incapacity that is primarily caused by the
11 natural deterioration, degeneration, or progression of a
12 pre-existing condition is not the natural and proximate result
13 of an accident occurring while in the actual performance of duty
14 in the position, appointment, or office upon which the
15 employee's membership is based, at a definite and exact time and
16 place. Permanent incapacity that is primarily caused by the
17 natural deterioration, degeneration, or progression of a
18 pre-existing condition is not the cumulative result of some
19 occupational hazard of the position, appointment, or office upon
20 which the employee's membership is based, unless the
21 pre-existing condition itself was caused by the occupational



1 hazard. In the case of an application for service-connected
2 disability retirement, where there is evidence that the member
3 claiming permanent incapacity had a pre-existing condition, the
4 member shall have the burden of proving by a preponderance of
5 the evidence that the member's permanent incapacity was not
6 primarily caused by the pre-existing condition.

7 [~~(b)~~] (c) If the member or applicant is the prevailing
8 party in the contested case, and disability retirement or
9 accidental death benefits are awarded to the member or applicant
10 by the board or court of the appropriate jurisdiction under
11 section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334,
12 88-336, or 88-339, the member or applicant shall be paid
13 reasonable attorney's fees together with any costs payable by
14 the system. The attorney's fees and costs shall be subject to
15 the approval of the board or approval by a court of appropriate
16 jurisdiction after evidence has been provided by the member or
17 applicant regarding the reasonableness of the claimed attorney's
18 fees and costs."

19 SECTION 5. Section 88-85.5, Hawaii Revised Statutes, is
20 amended to read as follows:



1 **"§88-85.5 Applications for accidental death benefits;**
2 **approval by the system.** (a) Under rules the board of trustees
3 may adopt, an application for service-connected accidental death
4 benefits may be filed with the system by or on behalf of the
5 claimant pursuant to section 88-85, 88-286, or 88-339, on a form
6 provided by the system. The application shall be filed no later
7 than three years from the date of the member's death.

8 (b) After the claimant files an application for
9 service-connected accidental death benefits, the system shall
10 obtain the following:

- 11 (1) A copy of the employer's report of the accident
12 submitted by the employer to the department of labor
13 and industrial relations, workers' compensation
14 division, and other reports relating to the accident;
- 15 (2) A certified statement from the head of the department
16 in which the deceased member was employed, stating the
17 date, time, and place of the accident, and the nature
18 of the service being performed when the accident
19 occurred. The statement shall also include an opinion
20 as to whether or not the accident was the result of
21 wilful negligence on the deceased member's part;



1 (3) A copy of the latest position description of the
2 deceased member's duties and responsibilities;
3 (4) A certified copy of the death certificate; and
4 (5) A copy of an autopsy report, if performed.
5 (c) Upon the system's receipt of the application and
6 documents specified in subsection (b), the medical board or
7 other entity designated by the board of trustees shall determine
8 and certify to the system whether the member's death was an
9 accidental death as defined in section 88-21.
10 (d) Death that is primarily caused by the natural
11 deterioration, degeneration, or progression of a pre-existing
12 condition is not the natural and proximate result of an accident
13 occurring while in the actual performance of duty in the
14 position, appointment, or office upon which the employee's
15 membership is based, at a definite and exact time and place.
16 Death that is primarily caused by the natural deterioration,
17 degeneration, or progression of a pre-existing condition is not
18 the cumulative result of some occupational hazard of the
19 position, appointment, or office upon which the employee's
20 membership is based, unless the pre-existing condition itself
21 was caused by the occupational hazard. In the case of an



1 application for accidental death benefits, where there is
2 evidence that the member had a pre-existing condition, the
3 applicant shall have the burden of proving by a preponderance of
4 the evidence that the member's death was not primarily caused by
5 the pre-existing condition.

6 [~~(d)~~] (e) The system may accept as conclusive as to
7 whether or not the member's death was caused by wilful
8 negligence on the part of the member:

9 (1) A certification made by the head of the agency in
10 which the member is employed; or

11 (2) A finding by the medical board or other entity
12 designated by the board of trustees.

13 [~~(e)~~] (f) After the medical board or other entity
14 designated by the board of trustees submits its certification to
15 the system, the system shall approve or disapprove the
16 application. Upon approval of an application, benefits shall be
17 paid as provided in section 88-85, 88-286, or 88-339."

18 SECTION 6. Section 88-261, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) The following words and phrases as used in this part
21 shall have the same meanings as defined in section 88-21, unless



1 a different meaning is plainly required by the context:
2 "accident"; "accidental death"; "accumulated contributions";
3 "actual performance of duty"; "actuarial equivalent"; "average
4 final compensation"; "beneficiary"; "board"; "county"; "definite
5 and exact time and place"; "employee"; "incapacitated for duty";
6 "incapacitated for the further performance of duty"; "medical
7 board"; "occupational hazard"; "retirant"; "retirement
8 allowance"; "service"; and "system"."

9 SECTION 7. Section 88-336, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§88-336 Service-connected disability retirement. (a)**
12 Under rules the board of trustees may adopt, upon application of
13 a class H member, or the person appointed by the family court as
14 guardian of an incapacitated member, any class H member,
15 employed in a position in which all contributions required to be
16 made to the employees' retirement system by the employee or the
17 employer, or both, have been made, who has been permanently
18 incapacitated for duty as the natural and proximate result of an
19 accident occurring at a definite and exact time and place while
20 in the actual performance of duty [~~at some definite time and~~
21 ~~place,~~] in the position, appointment, or office upon which the



1 employee's membership is based, or as the cumulative result of
2 some occupational hazard[7] of the position, appointment, or
3 office upon which the employee's membership is based, through no
4 wilful negligence on the member's part, may be retired by the
5 system for service-connected disability; provided that:

- 6 (1) In the case of an accident occurring after July 1,
7 1963, the employer shall file with the system a copy
8 of the employer's report of the accident submitted to
9 the director of labor and industrial relations;
- 10 (2) An application for retirement is filed with the system
11 within two years of the date of the accident, or the
12 date upon which workers' compensation benefits cease,
13 whichever is later;
- 14 (3) Certification is made by the head of the agency in
15 which the member is employed, stating the time, place,
16 and conditions of the service performed by the member
17 resulting in the member's disability and that the
18 disability was not the result of wilful negligence on
19 the part of the member; and
- 20 (4) The medical board or other entity designated by the
21 board of trustees certifies that the member is



1 incapacitated for the further performance of duty at
2 the time of application and that the member's
3 incapacity is likely to be permanent.

4 (b) Permanent incapacity that is primarily caused by the
5 natural deterioration, degeneration, or progression of a
6 pre-existing condition is not the natural and proximate result
7 of an accident occurring while in the actual performance of duty
8 in the position, appointment, or office upon which the
9 employee's membership is based, at a definite and exact time and
10 place. Permanent incapacity that is primarily caused by the
11 natural deterioration, degeneration, or progression of a
12 pre-existing condition is not the cumulative result of some
13 occupational hazard of the position, appointment, or office upon
14 which the employee's membership is based, unless the
15 pre-existing condition itself was caused by the occupational
16 hazard. In the case of an application for service-connected
17 disability retirement, where there is evidence that the member
18 claiming permanent incapacity had a pre-existing condition, the
19 member shall have the burden of proving by a preponderance of
20 the evidence that the member's permanent incapacity was not
21 primarily caused by the pre-existing condition.



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

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



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

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

12 ~~[(d)]~~ (e) The system may determine whether the disability
13 is the result of an accident occurring while in the actual
14 performance of duty in the position, appointment, or office upon
15 which the employee's membership is based, at ~~[some]~~ a definite
16 and exact time and place and that the disability was not the
17 result of wilful negligence on the part of the member. The
18 system may accept as conclusive:

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



1 (2) A finding to this effect by the medical board or other
2 entity designated by the board of trustees.

3 [~~e~~] (f) Upon approval by the system, the member shall be
4 eligible to receive a service-connected disability retirement
5 benefit after the member has terminated service. Retirement
6 shall be effective on the first day of a month, except for the
7 month of December, when retirement on the first or last day of
8 the month shall be allowed."

9 SECTION 8. Section 88-339, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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



1 physical examination on entry into service or subsequent to
2 entry, which examination failed to reveal any evidence of the
3 condition."

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on December 25,
7 2040, and shall apply to applications and claims filed after its
8 effective date.



H.B. NO. 931 H.D. 1

Report Title:

Employees' Retirement System; Service-Connected Disability Retirement; Accidental Death

Description:

Clarifies the Employees' Retirement System's eligibility requirement definitions for service-connected disability retirement and accidental death benefits. Effective 12/25/2040. (HD1)

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