

JAN 26 2022

A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

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 ("ERS"). The ERS's service-connected disability
5 retirement and accidental death provisions are intended to
6 provide benefits different than those of Hawaii's workers'
7 compensation program. The paramount purpose of Hawaii's
8 workers' compensation law is to provide compensation for an
9 employee for all work-connected injuries, regardless of
10 questions of negligence, and the legislature has decided that
11 work injuries are among the costs of production that industry is
12 required to bear. Accordingly, the workers' compensation
13 statute is to be construed liberally in favor of awarding
14 compensation, and specifically creates a presumption that an
15 employee's claim is for a covered work injury, in exchange for
16 providing an employer with exclusion of all other liability on
17 account of a work injury (except for sexual harassment, sexual

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

3 There are no similar policies or purposes behind the ERS's
4 service-connected disability retirement and accidental death
5 provisions. Consequently, the ERS'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 ERS 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), *Stout*
17 *v. Bd. of Trustees of the Employees' Ret. Sys.*, 140 Haw. 177,
18 398 P.3d 766, reconsideration denied, 141 Haw. 90, 404 P.3d 1279
19 (2017), *Panado v. Bd. of Trustees, Employees' Ret. Sys.*, 134
20 Haw. 1, 332 P.3d 144 (2014), and *Fores v. Bd. of Trustees of the*
21 *Employees' Ret. Sys.*, Civ. 14-1-1270-06, Circuit Court of the
22 First Circuit, recently rendered rulings awarding ERS service-

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1 connected disability retirement and accidental death benefits
2 beyond the legislature's original intent.

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

19 If there is any perceived ambiguity regarding the
20 legislative intent of the ERS's service-connected disability
21 retirement and accidental death statutes, as reflected in recent
22 court decisions, this Act addresses such perceived ambiguities.

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

3 (1) By adding new definitions to be appropriately inserted
4 and to read as follows:

5 "Accident":

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

8 (A) Is not expected or designed;

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

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

13 (D) Precedes and precipitates:

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

18 (ii) Death of the member; and

19 (2) Does not include:

20 (A) A medical condition, injury, disability, mental
21 or physical incapacity, symptom of the foregoing,
22 or death itself; and

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1 (B) An unexpected result of a routine performance of
2 duty, without external force or unusual stress or
3 strain.

4 "Actual performance of duty": means the performance of
5 duty:

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

11 (2) During the working hours of the position, appointment,
12 or office; and

13 (3) At either:

14 (A) The work premises of the position, appointment,
15 or office; or

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

18 "Definite and exact time and place" means:

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

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

3 "Incapacitated for duty" and "incapacitated for the further
4 performance of duty":

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

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

20 "Occupational hazard":

21 (1) Means danger or risk inherent in, and concomitant to,
22 a particular occupation, the causative factors of

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1 which are not ordinarily incident to employment in
2 general, and are different in character from those
3 found in the general run of occupations; and

4 (2) Does not include:

5 (A) A job-related condition that results in
6 incapacitation for further performance of duty or
7 death, without a danger or risk inherent in, and
8 concomitant to, a particular occupation;

9 (B) Work activities that are common to many
10 occupations, such as repetitive motion of hands
11 and arms, lifting, and carrying; and

12 (C) Dangers or risks that are particular to a
13 member's workplace, but not particular to the
14 member's occupation as a whole, such as a lack of
15 proper tools or malfunctioning equipment at the
16 workplace."

17 (2) By amending the definition of "accidental death" to
18 read as follows:

19 ""Accidental death": means death of a member while
20 employed in a position in which all contributions required to be
21 made to the employees' retirement system by the employee or the
22 employer, or both, have been made, that is the natural and

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1 proximate result of an accident occurring at [~~some~~] a definite
2 and exact time and place while the member [~~was employed in a~~
3 ~~position in which all contributions required to be made to the~~
4 ~~employees' retirement system by the employee or the employer, or~~
5 ~~both, have been made,~~] was in the actual performance of duty[~~7~~]
6 in the position, appointment, or office upon which the
7 employee's membership is based, or due to the result of some
8 occupational hazard[~~7~~] of the position, appointment, or office
9 upon which the employee's membership is based, and not caused by
10 wilful negligence on the part of the member."

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

13 **"§88-79 Service-connected disability retirement.**

14 (a) Under rules the board of trustees may adopt, upon
15 application of a member, or the person appointed by the family
16 court as guardian of an incapacitated member, any member while
17 employed in a position in which all contributions required to be
18 made to the employees' retirement system by the employee or the
19 employer, or both, have been made, who has been permanently
20 incapacitated for duty as the natural and proximate result of an
21 accident occurring at a definite and exact time and place while
22 in the actual performance of duty [~~at some definite time and~~

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

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

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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) The member or applicant initiating the proceeding
5 shall have the burden of proof, including the burden of
6 producing evidence as well as the burden of persuasion. The
7 degree or quantum of proof shall be a preponderance of the
8 evidence. The member or applicant shall have the responsibility
9 of furnishing all medical evidence available or that can be made
10 available to the member or applicant pertaining to the member's
11 death or disability. Any determination of the disability
12 compensation division of the department of labor and industrial
13 relations, the labor and industrial relations appeals board, and
14 the Social Security Administration relating to the same
15 incapacity for which the applicant or member is claiming a
16 disability or death benefit may be taken into consideration;
17 however, that determination shall not be binding upon the
18 medical board. The medical board may or may not, at its
19 discretion, subject the member to a physical examination in
20 arriving at its certifications and findings on all matters
21 referred to it; provided that the burden of proof is not shifted

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1 to the medical board, and the member or applicant has the burden
2 of proof.

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

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

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1 competent evidence; provided that such firefighter, police
2 officer, or sewer worker shall have passed a physical
3 examination on entry into such service or subsequent to such
4 entry, which examination failed to reveal any evidence of such
5 condition.

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

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

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

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

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

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

13 "**§88-82 Petition for contested case hearing regarding**
14 **disability retirement or accidental death benefits; attorney's**
15 **fees and costs.** (a) A member or applicant who is not satisfied
16 with the preliminary decision of the board to grant or deny an
17 application for disability retirement benefits or accidental
18 death benefits based on the certifications and findings of the
19 medical board may file a petition for contested case hearing
20 with the board within sixty days after receiving written
21 notification of the preliminary decision of the board.

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1 (b) Permanent incapacity that is primarily caused by the
2 natural deterioration, degeneration, or progression of a pre-
3 existing condition is not the natural and proximate result of an
4 accident occurring at a definite and exact time and place while
5 in the actual performance of duty in the position, appointment,
6 or office upon which the employee's membership is based.

7 Permanent incapacity that is primarily caused by the natural
8 deterioration, degeneration, or progression of a pre-existing
9 condition is not the cumulative result of some occupational
10 hazard of the position, appointment, or office upon which the
11 employee's membership is based, unless the pre-existing
12 condition itself was caused by the occupational hazard. In the
13 case of an application for service-connected disability
14 retirement, where there is evidence that the member claiming
15 permanent incapacity had a pre-existing condition, the member
16 shall have the burden of proving by a preponderance of the
17 evidence that the member's permanent incapacity was not
18 primarily caused by the pre-existing condition.

19 [~~(b)~~] (c) If the member or applicant is the prevailing
20 party in the contested case, and disability retirement or
21 accidental death benefits are awarded to the member or applicant
22 by the board or court of the appropriate jurisdiction under

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1 section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334,
2 88-336, or 88-339, the member or applicant shall be paid
3 reasonable attorney's fees together with any costs payable by
4 the system. The attorney's fees and costs shall be subject to
5 the approval of the board or approval by a court of appropriate
6 jurisdiction after evidence has been provided by the member or
7 applicant regarding the reasonableness of the claimed attorney's
8 fees and costs."

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

11 **"§88-85.5 Applications for accidental death benefits;**
12 **approval by the system.** (a) Under rules the board of trustees
13 may adopt, an application for service-connected accidental death
14 benefits may be filed with the system by or on behalf of the
15 claimant pursuant to section 88-85, 88-286, or 88-339, on a form
16 provided by the system. The application shall be filed no later
17 than three years from the date of the member's death.

18 (b) After the claimant files an application for service-
19 connected accidental death benefits, the system shall obtain the
20 following:

21 (1) A copy of the employer's report of the accident
22 submitted by the employer to the department of labor

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- 1 and industrial relations, workers' compensation
2 division, and other reports relating to the accident;
- 3 (2) A certified statement from the head of the department
4 in which the deceased member was employed, stating the
5 date, time, and place of the accident, and the nature
6 of the service being performed when the accident
7 occurred. The statement shall also include an opinion
8 as to whether or not the accident was the result of
9 wilful negligence on the deceased member's part;
- 10 (3) A copy of the latest position description of the
11 deceased member's duties and responsibilities;
- 12 (4) A certified copy of the death certificate; and
- 13 (5) A copy of an autopsy report, if performed.
- 14 (c) Upon the system's receipt of the application and
15 documents specified in subsection (b), the medical board or
16 other entity designated by the board of trustees shall determine
17 and certify to the system whether the member's death was an
18 accidental death as defined in section 88-21.
- 19 (d) Death that is primarily caused by the natural
20 deterioration, degeneration, or progression of a pre-existing
21 condition is not the natural and proximate result of an accident
22 occurring at a definite and exact time and place while in the

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1 actual performance of duty in the position, appointment, or
2 office upon which the employee's membership is based. Death
3 that is primarily caused by the natural deterioration,
4 degeneration, or progression of a pre-existing condition is not
5 the cumulative result of some occupational hazard of the
6 position, appointment, or office upon which the employee's
7 membership is based, unless the pre-existing condition itself
8 was caused by the occupational hazard. In the case of an
9 application for accidental death benefits, where there is
10 evidence that the member had a pre-existing condition, the
11 applicant shall have the burden of proving by a preponderance of
12 the evidence that the member's death was not primarily caused by
13 the pre-existing condition.

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

- 17 (1) A certification made by the head of the agency in
18 which the member is employed; or
19 (2) A finding by the medical board or other entity
20 designated by the board of trustees.

21 [~~e~~] (f) After the medical board or other entity
22 designated by the board of trustees submits its certification to

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1 the system, the system shall approve or disapprove the
2 application. Upon approval of an application, benefits shall be
3 paid as provided in section 88-85, 88-286, or 88-339."

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

6 "(a) The following words and phrases as used in this part
7 shall have the same meanings as defined in section 88-21, unless
8 a different meaning is plainly required by the
9 context: "accident"; "accidental death"; "accumulated
10 contributions"; "actual performance of duty"; "actuarial
11 equivalent"; "average final compensation"; "beneficiary";
12 "board"; "county"; "employee"; "incapacitated for duty;"
13 "incapacitated for the further performance of duty;" "medical
14 board"; "occupational hazard"; "retirant"; "retirement
15 allowance"; "service"; "definite and exact time and place"; and
16 "system"."

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

19 **"§88-336 Service-connected disability retirement.**

20 (a) Under rules the board of trustees may adopt, upon
21 application of a class H member, or the person appointed by the
22 family court as guardian of an incapacitated member, any class H

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1 member, employed in a position in which all contributions
2 required to be made to the employees' retirement system by the
3 employee or the employer, or both, have been made, who has been
4 permanently incapacitated for duty as the natural and proximate
5 result of an accident occurring at a definite and exact time and
6 place while in the actual performance of duty [~~at some definite~~
7 ~~time and place~~] in the position, appointment, or office upon
8 which the employee's membership is based, or as the cumulative
9 result of some occupational hazard of the position, appointment,
10 or office upon which the employee's membership is based, through
11 no wilful negligence on the member's part, may be retired by the
12 system for service-connected disability; provided that:

- 13 (1) In the case of an accident occurring after July 1,
14 1963, the employer shall file with the system a copy
15 of the employer's report of the accident submitted to
16 the director of labor and industrial relations;
- 17 (2) An application for retirement is filed with the system
18 within two years of the date of the accident, or the
19 date upon which workers' compensation benefits cease,
20 whichever is later;
- 21 (3) Certification is made by the head of the agency in
22 which the member is employed, stating the time, place,

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1 and conditions of the service performed by the member
2 resulting in the member's disability and that the
3 disability was not the result of wilful negligence on
4 the part of the member; and

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

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

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1 retirement, where there is evidence that the member claiming
2 permanent incapacity had a pre-existing condition, the member
3 shall have the burden of proving by a preponderance of the
4 evidence that the member's permanent incapacity was not
5 primarily caused by the pre-existing condition.

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

14 Notwithstanding any other law to the contrary, any
15 condition of impairment of health caused by any disease of the
16 heart, lungs, or respiratory system resulting in permanent
17 incapacity to a sewer worker shall be presumed to have been
18 suffered in the actual performance of duty in such position, at
19 ~~[some]~~ a definite and exact time and place through no wilful
20 negligence on the sewer worker's part, and as a result of the
21 inherent occupational hazard of such position, of exposure to
22 the inhalation of smoke, toxic gases, chemical fumes, and other

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1 toxic vapors, unless the contrary be shown by competent
2 evidence; provided that the sewer worker shall have passed a
3 physical examination on entry into such service or subsequent to
4 such entry, which examination failed to reveal any evidence of
5 such condition.

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

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

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

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

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

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

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

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1 evidence; provided that the sewer worker shall have passed a
2 physical examination on entry into service or subsequent to
3 entry, which examination failed to reveal any evidence of the
4 condition."

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

7 SECTION 10. This Act shall take effect upon its approval
8 and shall apply to applications and claims filed after its
9 effective date.

10

11

INTRODUCED BY: 

12

BY REQUEST

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Report Title:

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

Description:

Clarifies the Employees' Retirement System's eligibility
requirement definitions for service-connected disability and
accidental death benefits.

*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 EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

PURPOSE: To support the legislative intent and clarify the requirements of service-connected disability retirement and accidental death benefits of the Employees' Retirement System ("ERS").

MEANS: Amend sections 88-21, 88-79, 88-82, 88-85.5, 88-261(a), 88-336, and 88-339(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: The ERS's service-connected disability retirement and accidental death provisions are intended to provide benefits different than those of Hawaii's workers' compensation program. The ERS's service-connected disability retirement and accidental death provisions do not contain a presumption favoring coverage and should not be construed liberally in favor of awarding compensation for all injuries and death occurring in the workplace, regardless of questions of ERS membership position, negligence, proximate cause, the difference between an accident and injury/incapacity, and the burden of proof.

Courts in several cases recently rendered rulings awarding ERS service-connected disability retirement and/or accidental death benefits beyond the Legislature's original intent. These rulings have required the ERS to provide service-connected disability retirement and/or accidental death benefits that were never contemplated in determining employer contributions, employee contributions, and employee benefits (including monthly retirement allowance benefits to be provided for an extended duration and at a higher

rate, plus the refund of employee contributions), and consequently, increased the State's unfunded liability as a whole.

Furthermore, ERS members are not foreclosed from collecting ERS service retirement, ERS ordinary disability retirement, ERS ordinary death, workers' compensation, or social security disability.

By amending sections 88-21, 88-79, 88-82, 88-85.5, 88-261, 88-336, and 88-339, HRS, this bill clarifies the definitions and requirements of ERS service-connected disability and death benefits in order to preserve them as originally intended.

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.