

JAN 25 2023

---

---

# 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. The employees' retirement system's service-  
5 connected disability retirement and accidental death provisions  
6 are intended to provide benefits different than those of  
7 Hawaii's workers' compensation program. The paramount purpose  
8 of 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 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

S.B. NO. 1312

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

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

S.B. NO. 1312

1 06, Circuit Court of the First Circuit, recently rendered  
2 rulings awarding employees' retirement system service-connected  
3 disability retirement and accidental death benefits beyond the  
4 legislature's original intent.

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

S.B. NO. 1312

1           If there is any perceived ambiguity regarding the  
2 legislative intent of the employees' retirement system's  
3 service-connected disability retirement and accidental death  
4 statutes, as reflected in recent court decisions, this Act  
5 addresses such perceived ambiguities.

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

8           (1) By adding five new definitions to be appropriately  
9 inserted and to read as follows:

10           "Accident":

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

13           (A) Is not expected or designed;

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

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

18           (D) Precedes and precipitates:

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

S.B. NO. 1312

1                   (ii) Death of the member; and

2           (2) Does not include:

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

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

9           "Actual performance of duty" means the performance of duty:

10                   (1) In 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;

15                   (2) During the work hours of the position, appointment, or  
16                               office; and

17                   (3) At either:

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

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

22           "Definite and exact time and place" means:

S.B. NO. 1312

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 of  
10           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  
21           duties of the position, appointment, or office as a  
22           whole.

S.B. NO. 1312

1 "Occupational hazard":

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

7 (2) Does not include:

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

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

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

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

S.B. NO. 1312

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

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

16           "**§88-79 Service-connected disability retirement.** (a)  
17 Under rules the board of trustees may adopt, upon application of  
18 a member, or the person appointed by the family court as  
19 guardian of an incapacitated member, any member while employed  
20 in a position in which all contributions required to be made to  
21 the employees' retirement system by the employee or the  
22 employer, or both, have been made, who has been permanently

S.B. NO. 1312

1 incapacitated for duty as the natural and proximate result of an  
2 accident occurring at a definite and exact time and place while  
3 in the actual performance of duty [~~at some definite time and~~  
4 ~~place~~] or as the cumulative result of [~~some~~] an occupational  
5 hazard[~~7~~] of the position, appointment, or office upon which the  
6 member's membership is based, through no wilful negligence on  
7 the member's part, may be retired by the system for service-  
8 connected disability; provided that:

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

S.B. NO. 1312

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

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

S.B. NO. 1312

1            [~~(b)~~] (c) In the case of firefighters, police officers,  
2 and sewer workers, the effect of the inhalation of smoke, toxic  
3 gases, chemical fumes, and other toxic vapors on the heart,  
4 lungs, and respiratory system shall be construed as an injury  
5 received or disease contracted while in the performance of  
6 [~~their~~] duty in such position and as the result of [~~some~~] an  
7 occupational hazard of such position for the purpose of  
8 determining occupational disability retirement under this  
9 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 firefighter, police officer, or sewer worker,  
14 shall be presumed to have been suffered in the actual  
15 performance of duty in such position, at [~~some~~] a definite and  
16 exact time and place, through no wilful negligence on the  
17 firefighter's, police officer's, or sewer worker's part, and as  
18 a result of the inherent occupational hazard of such position,  
19 of exposure to and inhalation of smoke, toxic gases, chemical  
20 fumes, and other toxic vapors, unless the contrary be shown by  
21 competent evidence; provided that [~~such~~] the firefighter, police  
22 officer, or sewer worker shall have passed a physical

S.B. NO. 1312

1 examination on entry into [~~such~~] service or subsequent to [~~such~~]  
2 entry[~~]~~ into service, which examination failed to reveal any  
3 evidence of [~~such~~] the condition.

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

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

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

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

S.B. NO. 1312

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

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

9           "**§88-82 Petition for contested case hearing regarding**  
10 **disability retirement or accidental death benefits; attorney's**  
11 **fees and costs.** (a) A member or applicant who is not satisfied  
12 with the preliminary decision of the board to grant or deny an  
13 application for disability retirement benefits or accidental  
14 death benefits based on the certifications and findings of the  
15 medical board may file a petition for contested case hearing  
16 with the board within sixty days after receiving written  
17 notification of the preliminary decision of the board.

18           (b) The member or applicant initiating the proceeding  
19 shall have the burden of proof, including the burden of  
20 producing evidence and the burden of persuasion. The degree or  
21 quantum of proof shall be a preponderance of the evidence. The  
22 member or applicant shall have the responsibility of furnishing

S.B. NO. 1312

1 all medical evidence available or that can be made available to  
2 the member or applicant pertaining to the member's death or  
3 disability. Any determination of the disability compensation  
4 division of the department of labor and industrial relations,  
5 the labor and industrial relations appeals board, and the Social  
6 Security Administration relating to the same incapacity for  
7 which the applicant or member is claiming a disability or death  
8 benefit may be taken into consideration; however, that  
9 determination shall not be binding upon the medical board. The  
10 medical board may or may not, at its discretion, subject the  
11 member to a physical examination in arriving at its  
12 certifications and findings on all matters referred to it;  
13 provided that the burden of proof is not shifted to the medical  
14 board, and the member or applicant has the burden of proof.

15        [~~(b)~~] (c) If the member or applicant is the prevailing  
16 party in the contested case, and disability retirement or  
17 accidental death benefits are awarded to the member or applicant  
18 by the board or court of the appropriate jurisdiction under  
19 section 88-75, 88-79, 88-85, 88-284, 88-285, 88-286(c), 88-334,  
20 88-336, or 88-339, the member or applicant shall be paid  
21 reasonable attorney's fees together with any costs payable by  
22 the system. The attorney's fees and costs shall be subject to

S.B. NO. 1312

1 the approval of the board or approval by a court of appropriate  
2 jurisdiction after evidence has been provided by the member or  
3 applicant regarding the reasonableness of the claimed attorney's  
4 fees and costs."

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

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

14 (b) After the claimant files an application for service-  
15 connected accidental death benefits, the system shall obtain the  
16 following:

17 (1) A copy of the employer's report of the accident  
18 submitted by the employer to the department of labor  
19 and industrial relations, workers' compensation  
20 division, and other reports relating to the accident;

21 (2) A certified statement from the head of the department  
22 in which the deceased member was employed, stating the

S.B. NO. 1312

1 date, time, and place of the accident, and the nature  
2 of the service being performed when the accident  
3 occurred. The statement shall also include an opinion  
4 as to whether or not the accident was the result of  
5 wilful negligence on the deceased member's part;

6 (3) A copy of the latest position description of the  
7 deceased member's duties and responsibilities;

8 (4) A certified copy of the death certificate; and

9 (5) A copy of an autopsy report, if performed.

10 (c) Upon the system's receipt of the application and  
11 documents specified in subsection (b), the medical board or  
12 other entity designated by the board of trustees shall determine  
13 and certify to the system whether the member's death was an  
14 accidental death as defined in section 88-21.

15 (d) Death that is primarily caused by the natural  
16 deterioration, degeneration, or progression of a pre-existing  
17 condition is not the natural and proximate result of an accident  
18 occurring at a definite and exact time and place while in the  
19 actual performance of duty. Death that is primarily caused by  
20 the natural deterioration, degeneration, or progression of a  
21 pre-existing condition is not the cumulative result of some  
22 occupational hazard of the position, appointment, or office upon

S.B. NO. 1312

1 which the member's membership is based, unless the pre-existing  
2 condition itself was caused by the occupational hazard. In the  
3 case of an application for accidental death benefits, where  
4 there is evidence that the member had a pre-existing condition,  
5 the applicant shall have the burden of proving by a  
6 preponderance of the evidence that the member's death was not  
7 primarily caused by the pre-existing condition.

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

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

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

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

S.B. NO. 1312

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

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

13           "**§88-336 Service-connected disability retirement.** (a)  
14 Under rules the board of trustees may adopt, upon application of  
15 a class H member, or the person appointed by the family court as  
16 guardian of an incapacitated member, any class H member,  
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~~

S.B. NO. 1312

1 place] or as the cumulative result of some occupational  
2 hazard[~~r~~] of the position, appointment, or office upon which the  
3 member's membership is based, through no wilful negligence on  
4 the member's part, may be retired by the system for service-  
5 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  
22 incapacitated for the further performance of duty at

S.B. NO. 1312

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

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

20           ~~(b)~~ (c) In the case of sewer workers, the effect of the  
21 inhalation of smoke, toxic gases, chemical fumes, and other  
22 toxic vapors on the heart, lungs, and respiratory system shall

S.B. NO. 1312

1 be construed as an injury received or disease contracted while  
2 in the performance of [~~their~~] duty in such position and as the  
3 result of [~~some~~] an occupational hazard of duty in such position  
4 for the purpose of determining occupational disability  
5 retirement under this section.

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

20 [~~(e)~~] (d) The system may waive strict compliance with the  
21 time limits within which a report of the accident and an  
22 application for service-connected disability retirement must be

S.B. NO. 1312

1 filed with the system if it is satisfied that the failure to  
2 file within the time limited by law was due to ignorance of fact  
3 or law, inability, or the fraud, misrepresentation, or deceit of  
4 any person, or because the applicant was undergoing treatment  
5 for the disability, or was receiving vocational rehabilitation  
6 services occasioned by the disability.

7 ~~[(d)]~~ (e) The system may determine whether the disability  
8 is the result of an accident occurring at a definite and exact  
9 time and place while in the actual performance of duty [~~at some~~  
10 ~~definite time and place~~] and that the disability was not the  
11 result of wilful negligence on the part of the member. The  
12 system may accept as conclusive:

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

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

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

S.B. NO. 1312

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

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

17 SECTION 9. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 10. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

S.B. NO. 1312

1 SECTION 11. This Act shall take effect upon its approval  
2 and shall apply to applications and claims filed after its  
3 effective date.

4

INTRODUCED BY: *Ann D. M.*

BY REQUEST

# S.B. NO. 1312

**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

**SB. NO. 1312**

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 or 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

# SB. NO. 1312

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

Furthermore, ERS members are not foreclosed from collecting ERS service retirement, ERS ordinary disability retirement, ERS ordinary death benefits, 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: Indeterminate cost savings

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.