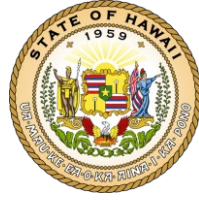


JOSH GREEN, M.D.
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE SENATE COMMITTEE ON LABOR & TECHNOLOGY

ON

SENATE BILL NO. 1312

February 15, 2023

3:10 P.M.

Conference Room 224 & Videoconference

**RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM DISABILITY
RETIREMENT.**

Chair Moriwaki, Vice Chair Lee and Members of the Committee,

The purpose of Employees' Retirement System ("ERS") service-connected disability benefits is to compensate members who have been permanently incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty at some definite time and place, or as the cumulative result of some occupational hazard, as provided in Chapter 88 of the Hawaii Revised Statutes (HRS).

In several recent cases, the Hawaii Supreme Court rendered rulings awarding ERS service-connected disability retirement and/or accidental death benefits beyond a plain reading of the legislature's original intent. These rulings have required the ERS to provide service-connected disability retirement and/or accidental death benefits which were never contemplated in determining employer and employee contribution rates and employee benefits. Service-connected disability retirement benefits are provided for an increased number of applicants, for an extended duration and are being awarded at a higher rate. Additionally, the benefit includes a refund of employee contributions and, consequently, increases the plan's unfunded liability as a whole.



Employees' Retirement System
of the State of Hawaii

S.B. 1312 clarifies the requirements of ERS service-connected disability retirement and accidental death benefits by amending HRS sections 88-21, 88-79, 88-82, 88-85.5, 88-261(a), and 88-336, Hawaii Revised Statutes. This bill is based upon a plain reading of the legislative intent as stated in governing statutes. The ERS Board of Trustees strongly supports this bill and views its passage as vital to avoid unintended growth in the ERS unfunded liability.

Unlike other types of benefits, the ERS 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. Clarification is needed regarding the issues of accident, membership position, causation, the difference between an accident and injury/incapacity, and the burden of proof.

Importantly, service-connected disability is not the only benefit provision available for applicants. ERS members remain eligible for ERS ordinary disability retirement, ERS service retirement, ERS ordinary death, workers' compensation, or social security disability benefits.

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 and to avoid unintended growth in the ERS unfunded liability. For example:

- The proposed definition of "accident" is intended to address *Pasco v. Bd. of Trustees of the Employees' Ref. Sys.*, 142 Hawai'i 373,420 P.3d 304 (2018) ("*Pasco*"); and *Panado v. Board of Trustees, Employees' Retirement System*, 134 Hawai'i 1, 332 P.3d 144 (2014) ("*Panado*").
- The proposed definition of "occupational hazard" is intended to address *Quel v. Bd. of Trustees, Employees' Ret. Sys.*, 146 Hawai'i 197,457 P.3d 836 (2020).
- Proposed revisions regarding position at the time of the accident are intended to address *Stout v. Bd. of Trustees of the Employees' Ret. Sys.*, 140 Haw. 177,398 P.3d 766 (2017).
- Other proposed provisions address other issues raised by *Pasco*, *Panado*, and other cases, as well as causation and burden of proof.

S.B. 1312 is essentially identical to H.B. 1014 H.D. 1.

H.B. 2014 is essentially identical to H.B. No 2105, H.D. 1 (2022), which was approved by the House Committee on Labor & Tourism (see H.S.C.R. No. 224-22) and also by the House Finance Committee (see H.S.C.R. No. 759-22), then passed by the House.

On February 9, 2023, the House Committee on Labor and Government Operations passed H.B. 1014 with amendments. See H.S.C.R. 379 and H.B. 1014 H.D. 1.

The ERS Board of Trustees strongly supports S.B. 1312 and respectfully requests its passage.

Thank you for this opportunity to testify.

SB-1312

Submitted on: 2/13/2023 3:47:38 PM

Testimony for LBT on 2/15/2023 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
David Fukuzawa	Individual	Support	Written Testimony Only

Comments:

Dear Honorable Senators,

I am in support of this bill. As a disabled retired public safety employee of the state of Hawaii. I had to leave the Dept of Public Safety because of health reasons in 2013 after being denied being able to be placed on disability at work. I was also denied from the ERS because my disability originally was from the military in 1991 after serving in the US Navy in the Persian Gulf War. My disability was exacerbated by my job in the Dept of Public Safety - Corrections Division. This law would now allow me to collect my retirement instead of having to wait until I am 65 which won't be until September 2025. Back when I tried to apply in early 2013, they (the board) did not care about my disability exacerbated due to the stress of the job. I had to just leave the job without any compensation after being in the department for almost 14 years.

So in short, I think this would be advantageous for those of us like me who have had to rely on the VA and Social Security disability. For the year while I waited for the VA, it was extremely difficult financially, physically, mentally, and emotionally.

Thank you for your assistance in this matter.

Sincerely,

David Fukuzawa, SAS-V (Retired - OCCC/LWFC)