

**SB 2766**

**SD-2**

**RELATING TO  
THE EMPLOYEES'  
RETIREMENT  
SYSTEM**

---

---

# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1           SECTION 1. The legislature finds that this Act is  
2 necessary to reduce and control the unfunded liability of the  
3 employees' retirement system of the State of Hawaii and to  
4 prevent future retirement contribution increases. The purpose  
5 of this Act is to clarify that members of the employees'  
6 retirement system eligible to claim service-connected disability  
7 and accidental death benefits must be beneficiaries of the  
8 trust.

9           SECTION 2. Section 88-21, Hawaii Revised Statutes, is  
10 amended by amending the definition of "accidental death" to read  
11 as follows:

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



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

3 SECTION 3. Section 88-79, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

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

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



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

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

11          (4) The medical board or other entity designated by the  
12          board of trustees certifies that the member is  
13          incapacitated for the further performance of duty at  
14          the time of application and that the member's  
15          incapacity is likely to be permanent."

16          SECTION 4. Section 88-336, Hawaii Revised Statutes, is  
17          amended by amending subsection (a) to read as follows:

18          "(a) Under rules the board of trustees may adopt, upon  
19          application of a class H member, or the person appointed by the  
20          family court as guardian of an incapacitated member, any class H  
21          member, employed in a position in which all contributions



1 required be made to the employees' retirement system by the  
2 employee or the employer, or both, have been made, who has been  
3 permanently incapacitated for duty as the natural and proximate  
4 result of an accident occurring while in the actual performance  
5 of duty at some definite time and place, or as the cumulative  
6 result of some occupational hazard, through no wilful negligence  
7 on 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



1           disability was not the result of wilful negligence on  
2           the part of the member; and

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

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

10          SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

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

**Description:**

Clarifies the applicability of benefits for accidental death and  
service-connected disability benefits for members of the  
Employees' Retirement System. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is  
not legislation or evidence of legislative intent.*



**SB 2766**

**SD-2**

**TESTIMONY**



DAVID Y. IGE  
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 WAYS AND MEANS  
ON

SENATE BILL NO. 2766, S.D. 2

**March 20, 2018**  
**9:00 A.M.**  
**Conference Room 309**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM

Chair Johanson, Vice Chair Holt and Members of the Committee,

S.B. 2766, S.D. 2, would amend and clarify provisions of chapter 88, Hawaii Revised Statutes to contain and limit the claims for ERS benefits to its members and beneficiaries, to protect the interests of the beneficiaries of the Employees' Retirement System ("ERS") Trust and to confirm, that as a trust fund, the assets of the ERS must be used for the exclusive benefit of its members and beneficiaries.

The Board of Trustees of the Employees' Retirement System supports this legislation.

On July 10, 2017, the Supreme Court of the State of Hawaii issued a memorandum of opinion on an appeal of a decision by the Medical Board of the ERS. The opinion applied the ERS requirement for an employee to be disabled while "in the performance of duty" to a claim for service-connected disability benefits, to include any "service" paid by the State or county of a governmental function, including service for which no ERS contributions are made.



Employees' Retirement System  
of the State of Hawaii

As there are numerous persons working in governmental functions paid by the State or county who are not members of the ERS, and for whom no contributions are made, this proposal amends chapter 88, Hawaii Revised Statutes, by amending sections 88-21, 88-70 and 88-336, to clarify that claims for benefits related to service-connected disability and accidental death benefits should be limited to members who are beneficiaries of the Trust. For members of the ERS who are in positions for which all contributions required to the System by the employee, employer, or both, are made, claims for service-connected disability and accidental death benefits will apply. These service-connected disability and accidental death benefits would not apply to persons who are excluded from membership in the ERS.

This bill will serve to clarify and assure that ERS trust assets are used exclusively for the benefit of its members and their beneficiaries.

Thank you for this opportunity to provide testimony on S.B. 2766, S.D. 2.

**SB 2766**

**SD-2**

**LATE**

**TESTIMONY**