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



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



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

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



1 SECTION 2. Section 88-79, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

16 ~~(1)~~ In] in the case of an accident occurring after July 1,  
17 1963 [~~7~~the] :

18 (1) The employer shall file with the system a copy of the  
19 employer's report of the accident submitted to the  
20 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 3. 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 to 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 at a definite and exact time and  
5 place while in the actual performance of duty [~~at some definite~~  
6 ~~time and place~~], or as the cumulative result of some  
7 occupational hazard, through no wilful negligence on the  
8 member's part, may be retired by the system for service-  
9 connected disability; provided that[+]

10 ~~(1)~~ ~~In~~ in the case of an accident occurring after July 1,  
11 1963 [~~7~~ ~~the~~]:

12 (1) The employer shall file with the system a copy of the  
13 employer's report of the accident submitted to the  
14 director of labor and industrial relations;

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

19 (3) Certification is made by the head of the agency in  
20 which the member is employed, stating the time, place,  
21 and conditions of the service performed by the member



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

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

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

11          SECTION 5. This Act shall take effect on July 1, 2051.



S.B. NO. 2870  
S.D. 1

**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. Effective 7/1/2050. (SD1)

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not legislation or evidence of legislative intent.*

