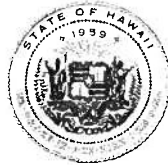


DAVID Y. IGE  
GOVERNOR



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EXECUTIVE DIRECTOR

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**STATE OF HAWAII  
EMPLOYEES' RETIREMENT SYSTEM**

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

TO THE HOUSE COMMITTEE ON LABOR AND TOURISM

ON

HOUSE BILL NO. 931

**February 11, 2021  
9:00 A.M.  
Conference Room**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

Chair Onishi, Vice Chair Sayama, and Members of the Committee,

Based upon a plain reading of the legislative intent as stated in governing statutes, H.B. 931 clarifies the requirements of service-connected disability retirement and accidental death benefits of the Employees' Retirement System ("ERS") by amending sections 88-21, 88-79, 88-82, 88-85.5, 88-261(a), and 88-336, Hawaii Revised Statutes. The ERS Board of Trustees strongly supports this legislation.

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, regarding questions of ERS membership position, negligence, proximate cause, the difference between an accident and injury/incapacity, and the burden of proof.

In several cases, the Hawaii Supreme Court recently 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



Employees' Retirement System  
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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.

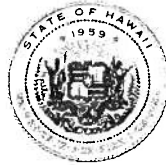
By amending sections 88-21, 88-79, 88-82, 88-85.5, 88-261, 88-336, and 88-339, HRS, this bill clarifies the definitions and requirements of ERS service-connected disability and death benefits in order to preserve them as originally intended.

Subsequent to its initial introduction, we have reviewed H.B. 931 for additional transparency and clarity and would appreciate your consideration of the attached H.D.1 draft to be approved by your committee. Also attached is a summary of the revisions in the draft.

The ERS Board of Trustees strongly supports H.B. 931 and respectfully requests its passage.

Thank you for this opportunity to testify.

Attachments



**STATE OF HAWAII**  
**EMPLOYEES' RETIREMENT SYSTEM**

**Summary of H.D.1 draft revisions to H.B. 931**

**1. Revisions re "accident"**

We revised "accident" by adding the words "a definite and exact" time and place" and deleted "some definite." The ERS supports this revision and agrees that it addresses the issue of "definite time and place." *Pasco v. Bd. of Trustees of the Employees' Ret. Sys.*, 142 Haw. 373, 420 P.3d 304 (2018) ("*Pasco*"); and *Panado v. Board of Trustees, Employees' Retirement System*, 134 Haw. 1, 332 P.3d 144 (2014) ("*Panado*").

- (1) Inserted in § 88-79(a) (page 8)
- (2) Inserted in § 88-336(a) (page 18)
- (3) Inserted in § 88-336(c) [formerly § 88-336(b)] (page 20-21)
- (4) Inserted into definition of "accidental death" (page 7)
- (5) Changed new definition of "some definite time and place" to "definite and exact time and place" page (page 5)

In other parts of the statutes, the words "some definite time and place" appear without the words "accident occurring." For consistency we have substituted the words "a definite and exact time and place":

- (1) Inserted in § 88-79(c) [formerly § 88-79(b)] (page 11)
- (2) Inserted in § 88-79(e) [formerly § 88-79(d)] (page 12)
- (3) Inserted in new § 88-82(b) (page 13)
- (4) Inserted in new § 88-85.5(d) (page 16)
- (5) Inserted in § 88-336(e) [formerly § 88-336(d)] (page 21)
- (6) Inserted in § 88-339(b) (page 24)

**2. Other provisions in H.B. 931, H.D.1**

These provisions address other issues raised by *Pasco*, *Panado*, and other cases (besides "definite time and place"), as well as causation and burden of proof, among other things.

For instance, please note the following provisions. We have cited cases that the provisions were intended to address, as well as some applicable ERS administrative rules (HAR).



Employees Retirement System  
of the State of Hawaii

(1) New definition of "accident" (page 4)

This definition is intended to address *Pasco*, where the Hawaii Supreme Court held that an accident could be the manifestation of pain or injury, and that an accident with did not need to be an event that precipitated in pain, injury or incapacity.

(2) New definition of "occupational hazard" (page 6)

This definition is intended to address *Quel v. Bd. of Trustees, Employees' Ret. Sys.*, 146 Haw. 197, 457 P.3d 836 (2020), where the claimant was a school cafeteria worker. The Hawaii Supreme Court held that incapacity resulting from cumulative and repetitive work was not "a risk common to employment in general," and was therefore an occupational hazard.

(3) Revisions re position at time of the accident

The following provisions are intended to address *Stout v. Bd. of Trustees of the Employees' Ret. Sys.*, 140 Haw. 177, 398 P.3d 766 (2017). In *Stout*, the Hawaii Supreme Court ruled that there was an "accident" "in the performance of duty" even though the precipitating event and injury occurred while member was not working or at work in her ERS membership position.

(a) Inserted in § 88-79(a) (page 8)

(b) Inserted in § 88-79(c) and (e) (pages 11, 12)

(c) Inserted in § 88--82(b), (d) (pages 14, 17)

(d) Inserted in § 88-336(a), (b), (c), (e) (pages. 20-22)

(e) Inserted in § 88-339(b) (page 25).

(4) New definitions relating to "duty"

These new definitions are also intended to address *Stout*. They are consistent with HAR § 6-22-6 and HRS § 88-21 (definition of "membership service").

(a) New definition of "Actual performance of duty" (page 5)

(b) New definition of "Incapacitated for duty" and "incapacitated for the further performance of duty" (page 6 and page 18)

(5) Provisions re pre-existing condition in relation to causation

In *Myers v. Board of Trustees of Employees' Retirement System*, 68 Haw. 94, 95, 704 P.2d 902, 903 (1985), the Hawaii Supreme Court did not consider the claimant's pre-existing back condition when it ruled on the issue of causation. The following new provisions are intended to address *Myers*. They are consistent with HAR § 6-22-7, which was amended after the *Myers* decision.

(a) New § 88-82(b) (pages 13-14)

(b) New § 88-85.5(d) (page 16)

(c) New § 88-336(b) (pages 19-20)

# HB.NO. 931

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## A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM BENEFITS.

**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

.B. NO.          

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-

\_\_\_\_.B. NO.\_\_\_\_

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 **therefore** not be awarded in a manner similar to an award  
16 of ERS service retirement, ERS ordinary disability retirement,  
17 ERS 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 bill 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



.B. NO.    

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

.B. NO.          

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

.B. NO.    

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

\_\_\_\_.B. NO.\_\_\_\_

1 proximate result of an accident occurring at a [some] 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 in  
6 the position, appointment or office upon which the employee's  
7 membership is based, or due to the result of some occupational  
8 hazard of the position, appointment or office upon which the  
9 employee's membership is based, and not caused by wilful  
10 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

\_\_\_\_.B. NO.\_\_\_\_

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 of the position, appointment or office  
4 upon which the employee's membership is based, through no wilful  
5 negligence on the member's part, may be retired by the system  
6 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

\_\_\_\_.B. NO.\_\_\_\_

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 the burden of proof is not shifted to

\_\_\_\_.B. NO.\_\_\_\_

1 the medical board, and the member or applicant has the burden of  
2 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 a [some] 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,  
21 of exposure to and inhalation of smoke, toxic gases, chemical  
22 fumes, and other toxic vapors, unless the contrary be shown by

.B. NO.          

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        [~~(c)~~] (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 a  
19 [some] definite and exact time and place and that the disability  
20 was not the result of wilful negligence on the part of the  
21 member. The system may accept as conclusive:



\_\_\_\_.B. NO.\_\_\_\_

- 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.

\_\_\_\_.B. NO.\_\_\_\_

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 while in the actual performance of duty in  
5 the position, appointment or office upon which the employee's  
6 membership is based, at a definite and exact time and place.  
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

.B. NO.          

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

\_\_\_\_.B. NO.\_\_\_\_

- 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 while in the actual performance of duty in the

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1 position, appointment or office upon which the employee's  
2 membership is based, at a definite and exact time and place.  
3 Death 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

.B. NO.          

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"; "medical board"; "occupational  
13 hazard"; "retirant"; "retirement allowance"; "service";  
14 "definite and exact time and place"; and "system"."

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

17 **"§88-336 Service-connected disability retirement.**

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  
22 required to be made to the employees' retirement system by the

\_\_\_\_.B. NO.\_\_\_\_

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

- 11 (1) In the case of an accident occurring after July 1,  
12 1963, the employer shall file with the system a copy  
13 of the employer's report of the accident submitted to  
14 the 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  
22 resulting in the member's disability and that the

\_\_\_\_.B. NO.\_\_\_\_

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



.B. NO.    

1 shall have the burden of proving by a preponderance of the  
2 evidence that the member's permanent incapacity was not  
3 primarily caused by the pre-existing condition.

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

\_\_\_\_.B. NO.\_\_\_\_

1 physical examination on entry into such service or subsequent to  
2 such entry, which examination failed to reveal any evidence of  
3 such 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 the fraud, misrepresentation, or deceit of  
10 any person, or because the applicant was undergoing treatment  
11 for the disability, or was receiving vocational rehabilitation  
12 services occasioned by the disability.

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

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

\_\_\_\_.B. NO.\_\_\_\_

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

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

9 SECTION 8. Section 88-339, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 **"§88-339 Accidental service-connected death**

12 **benefit.** (a) Under rules the board of trustees may adopt, in  
13 the case of an accidental death as determined by the system  
14 pursuant to section 88-85.5, there shall be paid to the member's  
15 designated beneficiary or to the member's estate the amount of  
16 the member's accumulated contributions and there shall be paid  
17 in lieu of the ordinary death benefit payable under section 88-  
18 338 a pension of one-half of the average final compensation of  
19 the member:

20 (1) To the surviving spouse or reciprocal beneficiary of  
21 the member to continue until the surviving spouse or reciprocal

\_\_\_\_.B. NO.\_\_\_\_

1 beneficiary remarries, marries, or enters into a new reciprocal  
2 beneficiary relationship;

3 (2) If there be no surviving spouse or reciprocal  
4 beneficiary, or if the surviving spouse or reciprocal  
5 beneficiary dies or remarries, marries, or enters into a new  
6 reciprocal beneficiary relationship before any child of the  
7 deceased member shall have attained the age of eighteen years,  
8 then to the deceased member's child or children under that age,  
9 divided in a manner as the system in its discretion shall  
10 determine, to continue as a joint and survivor pension of one-  
11 half of the deceased member's final compensation until every  
12 child dies, or attains that age; or

13 (3) If there is no surviving spouse or reciprocal  
14 beneficiary and no child under the age of eighteen years  
15 surviving the deceased member, then to the deceased member's  
16 dependent father or dependent mother, as the deceased member  
17 shall have nominated by written designation duly acknowledged  
18 and filed with the system, or if there is no nomination, then to  
19 the deceased member's dependent father or to the deceased  
20 member's dependent mother as the system, in its discretion,  
21 shall direct to continue for life. The pension shall be  
22 effective on the first day of the month following the member's

.B. NO.          

1 death, except for the month of December, when benefits shall be  
2 effective on the first or last day of the month.

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 [some]-a  
8 definite and exact time and place through no wilful negligence  
9 on the sewer worker's part, and as a result of the inherent  
10 occupational hazard of such position, of exposure to and  
11 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       (c) Benefits payable under subsection (a) shall continue  
18 through the end of the last month in which the payee is eligible  
19 for the benefit."

20       SECTION 9. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored

\_\_\_\_.B. NO.\_\_\_\_

1 SECTION 10. This Act shall take effect upon its approval  
2 and shall apply to applications and claims filed after its  
3 effective date.

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INTRODUCED BY: \_\_\_\_\_

6

BY REQUEST

\_\_\_\_.B. NO.\_\_\_\_

**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.

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informational purposes only and is not legislation or evidence of legislative  
intent.*