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TESTIMONY BY THOMAS WILLIAMS
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TO THE HOUSE COMMITTEE ON LABOR & TOURISM

ON

HOUSE BILL NO. 2105

February 8, 2022
9:30 A.M.
Conference Room 312

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

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

H.B.2105 is virtually identical to H.B. No 931, H.D. 1 (2021), which was approved by the House Committee on Labor & Tourism (see HSCR No. 407) and also by the House Finance Committee) (see HSCR No. 808).

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



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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.

H.B. 2105 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.

The ERS Board of Trustees strongly supports H.B. 2105 and respectfully requests its passage.

Thank you for this opportunity to testify.