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**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS
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TO THE HOUSE COMMITTEE ON FINANCE

ON

HOUSE BILL NO. 931, H.D. 1

**February 26, 2021
11:00 A.M.
Conference Room 308**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM DISABILITY RETIREMENT.

Chair Luke, Vice Chair Cullen, and Members of the Committee,

Based upon a plain reading of the legislative intent as stated in governing statutes, H.B. 931, H.D. 1 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 and views its passage as vital to avoid unintended growth in the ERS unfunded liability.

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

In several recent cases, the Hawaii Supreme Court rendered rulings awarding lucrative ERS service-connected disability retirement and/or accidental death benefits beyond a plain reading of the legislature's original intent.



Employees' Retirement System
of the State of Hawaii

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. 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.

Importantly, service-connected disability is not the only available benefit provision 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.

Subsequent to its initial introduction, we reviewed H.B. 931 for additional transparency and clarity and requested amendments to the bill. The House Committee on Labor and Tourism incorporated the ERS's requested amendments and approved H.B. No 931, H.D. 1. See HSCR No. 407. Attached is a summary of the ERS requested amendments that were incorporated into H.D. 1.

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

Thank you for this opportunity to testify.

Attachments

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).

(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)