



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

March 13, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Wednesday, March 13, 2024
Time: 3:00 p.m.
Place: Conference Room 224, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. 2382 H.D.1 RELATING TO EMPLOYEES' RETIREMENT SYSTEM

I. OVERVIEW OF PROPOSED LEGISLATION

The **DLIR supports** this measure. HB2382 HD1 proposes to amend sections 88-21, 88-79, 88-82, 88-85.5, 88-261, 88-336 and 88-339, Hawaii Revised Statutes (HRS), to clarify the requirements of service-connected disability retirement and accidental death benefits as intended by the legislature.

II. CURRENT LAW

The Workers' Compensation Statute, section 386-3, HRS, defines injury and provides that the employee's employer shall pay compensation to the employee or the employee's dependents as provided in chapter 386 if an employee suffers personal injury either by accident arising out of and in the course of employment, or by disease proximately caused by or resulting from the nature of the employment.

§ 386-21 establishes the employer to provide to the employee so long as reasonably needed, all medical care, services and supplies as the nature of the injury requires.

§ 386-31 defines permanent and temporary total disability benefits to be paid to the injured employee at sixty-six and two-thirds per cent of the employee's average weekly wages.

§ 386-41 (a-c) states that death benefits including funeral and burial allowances, benefits to dependents, and determines the maximum weekly benefits payable to dependents of the deceased employee not to exceed sixty-six and two-thirds per

cent of the employee's average weekly wages.

§ 386-73.5 states that the DLIR Director has original jurisdiction over all controversies and disputes arising out of workers' compensation.

§ 386-85 provides a presumption of employment and compensation for a work-covered work injury, in the absence of substantial evidence to the contrary.

III. COMMENTS ON THE HOUSE BILL

DLIR supports the Employees' Retirement Systems attempt to clarify their own presumption law as it is different from that of Chapter 386.

JOSH GREEN, M.D.
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 LABOR AND TECHNOLOGY

ON

HOUSE BILL NO. 2382 H.D. 1

March 13, 2024

3:00 P.M.

Conference Room 211 & Videoconference

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

Chair Aquino, Vice-Chair Moriwaki and Members of the Committee,

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 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.



Employees' Retirement System
of the State of Hawaii

H.B. 2382 H.D. 1 provides amendments to clarify 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 (HRS). This bill is based upon a plain reading of the legislative intent as stated in governing statutes. The ERS Board of Trustees and Department of Budget and Finance support this bill, as it would assure that the legislative intent is achieved, provide clarity as to the requirements which must be met before award of benefits, and avoid unwarranted increases in the ERS unfunded liabilities.

Unlike other types of disability and health benefits, the ERS service-connected disability retirement and accidental death provisions are focused on those unique hazards to be found in specific occupations and do not contain a presumption favoring broad coverage and should not be construed liberally in favor of awarding compensation for all injuries and deaths occurring in the workplace. For instance, unlike workers' compensation claims, there is no presumption of compensability for disability retirement benefits claims. Clarification is needed regarding the definition of occupational hazard, accident, membership position, causation, the difference between an accident and injury/incapacity, and the burden of proof.

Importantly, service-connected disability is merely one of several disability benefit provisions available for employees who become disabled. ERS members who are ineligible for service-connected disability retirement remain eligible for ERS ordinary disability retirement, ERS service retirement, ERS ordinary death, workers' compensation, or Social Security disability benefits.

By amending HRS sections 88-21, 88-79, 88-82, 88-85.5, 88-261, 88-336, and 88-339, 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 increases 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 Legislature has recently made amendments to clarify the requirements for accidental death and service-related disability benefits. For instance, in 2018, the Legislature made clarifying amendments to HRS section 88-79 after the issuance of a Hawaii Supreme Court opinion. The purpose of the amendments was "to reduce and

control the unfunded liability of the Employee's Retirement System (ERS) and to prevent future retirement contribution increases.” See Conf. Com. Rep. No. 29-18, H.S.C.R. No. 1426-18, and H.S.C.R. No. 1928-18 (2018).

H.B. 2382 H.D. 1 is essentially identical to H.B. 1014 H.D. 1 S.D. 1 (2023), which was approved by the House Committee on Labor & Government Operations (see H.S.C.R. No. 379-23) and the House Finance Committee (see H.S.C.R. No. 1030-23), then passed by the House. It also was approved by the Senate Committee on Labor and Technology (see S.S.C.R. No. 1230-23).

At a hearing on February 9, 2024, the House Committee on Labor & Government Operations recommended that H.B. 2382 be passed with amendments in the form of H.B. 2382 H.D. 1. See S.S.C.R. 222-24.

On February 27, 2024, the House Committee on Finance recommended that H.B. 2382 H.D. 1 be passed unamended. See S.S.C.R. 1067-24. The House passed H.B. 2382 H.D. 1 on third reading on March 5, 2024.

The ERS Board of Trustees supports H.B. 2382 H.D. 1 and respectfully requests its passage. Thank you for this opportunity to testify.