

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. Section 88-74.5, Hawaii Revised Statutes, is
3 amended by amending subsection (a) to read as follows:

4 "(a) The system shall finalize a retirant's pension
5 benefit within six calendar months following the month of the
6 retirant's retirement [~~7~~] when the effective date of retirement
7 is the first day of the month. When the effective date of
8 retirement date is December 31, the system shall finalize a
9 retirant's pension benefit within seven calendar months
10 following the month of the retirant's retirement. For pension
11 benefits finalized after the sixth calendar month following the
12 month of the retirant's retirement [~~7~~] when the effective date of
13 retirement is on the first day of the month, or the seventh
14 calendar month when the effective date of retirement is December
15 31, an interest payment amounting to [~~four and one-half~~]
16 _____ per cent per annum shall be paid to the
17 retirant. Interest shall be calculated on the difference
18 between the amount the retirant is entitled to receive from the

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1 retirant's retirement date up to the day the payment is made and
2 the amount the retirant was paid, including any refund of member
3 contributions.

4 Beginning January 1, 2004, or the first day of the seventh
5 calendar month following the month of retirement [~~7~~] when the
6 effective date of retirement is on the first day of the month,
7 or the first day of the eighth calendar month following the
8 month of retirement when the effective date of retirement is
9 December 31, whichever is [~~later,~~] the latest, interest payments
10 calculated as simple interest shall be prorated up to the date
11 payment is made; provided that any pension adjustment made after
12 the retirant's pension has once been finalized shall not be
13 subject to any interest payment.

14 The system shall finalize ordinary and service-connected
15 disability retirements within six calendar months following the
16 month that the member's retirement is approved by the board or
17 the actual retirement date specified by the member, whichever is
18 later."

19 SECTION 2. Section 88-100, Hawaii Revised Statutes, is
20 amended by amending subsection (e) to read as follows:

21 "(e) The additional contributions required by this section
22 shall be payable in a lump sum [~~in the~~] within two fiscal [~~year~~]

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1 years following the fiscal year in which the employee or former
2 employee retired; provided that, if the additional contributions
3 required for the employees or former employees who retire in a
4 fiscal year are greater than ten per cent of the employer's
5 contributions (excluding the additional contributions) to the
6 pension accumulation fund for that fiscal year, the employer may
7 pay the additional contributions over a period of three fiscal
8 years in installments equal to no less than one-third of the
9 original amount of the required additional contributions, plus
10 interest on the unpaid balance, commencing on the first day of
11 the second fiscal year following the retirement of the employees
12 or former employees, at an annual rate equal to the investment
13 yield rate assumption for actuarial valuations of the system."

14 PART II

15 SECTION 3. Section 88-75, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§88-75 Ordinary disability retirement.** (a) [~~Upon~~] Under
18 such rules as the board of trustees may adopt, upon application
19 of a member in service or on leave without pay, or the person
20 appointed by the family court as guardian of an incapacitated
21 member, any member who has ten or more years of credited service
22 shall be retired by the [~~board of trustees~~] system on an

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1 ordinary disability retirement allowance if the medical board[~~r~~]
2 or other entity designated by the board of trustees, after a
3 medical examination of the member, certifies that:

4 (1) The member is mentally or physically incapacitated for
5 the further performance of duty at the time of
6 application;

7 (2) The incapacity is likely to be permanent; and

8 (3) The member should be retired.

9 (b) Upon approval by the [~~board~~,] system, the member shall
10 be eligible to receive an ordinary disability retirement benefit
11 no earlier than thirty days from the date the application was
12 filed or the date the member terminated service, whichever is
13 later. Retirement shall be effective on the first day of a
14 month, except for the month of December when retirement on the
15 first or last day of the month shall be allowed. A member whose
16 application for an ordinary disability retirement allowance is
17 approved by the [~~board~~] system while the member is still in
18 service may terminate service and retire at any time following
19 the approval; provided that retirement shall become effective on
20 the first day of the month following the month the applicant
21 terminates employment or goes off the payroll, except for the

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1 month of December when retirement on the first or last day of
2 the month shall be allowed."

3 SECTION 4. Section 88-79, Hawaii Revised Statutes, is
4 amended as follows:

5 (1) By amending subsection (a) to read as follows:

6 "(a) [~~Upon~~] Under such rules as the board of trustees may
7 adopt, upon application of a member, or the person appointed by
8 the family court as guardian of an incapacitated member, any
9 member who has been permanently incapacitated for duty as the
10 natural and proximate result of an accident occurring while in
11 the actual performance of duty at some definite time and place,
12 or as the cumulative result of some occupational hazard, through
13 no wilful negligence on the member's part, may be retired by the
14 [~~board~~] system for service-connected disability; provided that:

15 (1) In the case of an accident occurring after July 1,
16 1963, the employer shall file with the system a copy
17 of the employer's report of the accident submitted to
18 the director of labor and industrial relations;

19 (2) An application for retirement is filed with the system
20 within two years of the date of the accident, or the
21 date upon which workers' compensation benefits cease,
22 whichever is later;

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1 (3) Certification is made by the head of the agency in
2 which the member is employed, stating the time, place,
3 and conditions of the service performed by the member
4 resulting in the member's disability and that the
5 disability was not the result of wilful negligence on
6 the part of the member; and

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

12 (2) By amending subsections (c), (d), and (e) to read as
13 follows:

14 "(c) The [~~board~~] system may waive strict compliance with
15 the time limits within which a report of the accident and an
16 application for service-connected disability retirement must be
17 filed with the [~~board~~] system if it is satisfied that the
18 failure to file within the time limited by law was due to
19 ignorance of fact or law, inability, or to the fraud,
20 misrepresentation, or deceit of any person, or because the
21 applicant was undergoing treatment for the disability or was

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1 receiving vocational rehabilitation services occasioned by the
2 disability.

3 (d) The [~~board~~] system may determine whether or not the
4 disability is the result of an accident occurring while in the
5 actual performance of duty at some definite time and place and
6 that the disability was not the result of wilful negligence on
7 the part of the member. The [~~board~~] system may accept as
8 conclusive:

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

11 (2) A finding to this effect by the [~~medical board~~] or
12 other entity designated by the board of trustees.

13 (e) Upon approval by the [~~board~~], system, the member shall
14 be eligible to receive a service-connected disability retirement
15 benefit after the member has terminated service. Retirement
16 shall become effective on the first day of a month, except for
17 the month of December when retirement on the first or last day
18 of the month shall be allowed."

19 SECTION 5. Section 88-85, Hawaii Revised Statutes, is
20 amended by amending subsection (a) to read as follows:

21 "(a) In the case of an accidental death as determined by
22 the [~~board~~] system pursuant to section 88-85.5, there shall be

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1 paid to the member's designated beneficiary or to the member's
2 estate the amount of the member's accumulated contributions and
3 there shall be paid in lieu of the ordinary death benefit
4 payable under section 88-84, a pension of one-half of the
5 average final compensation of the member:

6 (1) To the surviving spouse or reciprocal beneficiary of
7 the member to continue until the surviving spouse or
8 reciprocal beneficiary remarries, marries, or enters
9 into a new reciprocal beneficiary relationship;

10 (2) If there be no surviving spouse or reciprocal
11 beneficiary, or if the surviving spouse or reciprocal
12 beneficiary dies or remarries, marries, or enters into
13 a new reciprocal beneficiary relationship before any
14 child of the deceased member shall have attained the
15 age of eighteen years, then to the deceased member's
16 child or children under the age of eighteen, divided
17 in the manner as the [board] system in its discretion
18 shall determine, to continue as a joint and survivor
19 pension of one-half of the deceased member's final
20 compensation until every child dies, or attains the
21 age of eighteen; or

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1 (3) If there is no surviving spouse or reciprocal
2 beneficiary or child under the age of eighteen years
3 surviving the deceased member, then to the deceased
4 member's dependent father or dependent mother, as the
5 deceased member shall have nominated by written
6 designation duly acknowledged and filed with the
7 ~~[board,]~~ system, or if there is no nomination, then to
8 the deceased member's dependent father or to the
9 deceased member's dependent mother as the ~~[board,]~~
10 system, in its discretion, shall direct to continue
11 for life.

12 The pension shall be effective on the first day of the
13 month following the member's death, except for the month of
14 December, when benefits shall be effective on the first or last
15 day of the month."

16 SECTION 6. Section 88-85.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§88-85.5 Applications for accidental death benefits;**
19 **approval by the ~~[board,]~~ system.** (a) ~~[An]~~ Under such rules as
20 the board of trustees may adopt, an application for service-
21 connected accidental death benefits may be filed with the system
22 by or on behalf of the claimant pursuant to section 88-85, 88-

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1 286, or 88-339, on a form provided by the system. The
2 application shall be filed no later than three years from the
3 date of the member's death.

4 (b) After the claimant files an application for service-
5 connected accidental death benefits, the system shall obtain the
6 following:

- 7 (1) A copy of the employer's report of the accident
8 submitted by the employer to the department of labor
9 and industrial relations, workers' compensation
10 division, and other reports relating to the accident;
11 (2) A certified statement from the head of the department
12 in which the deceased member was employed, stating the
13 date, time, and place of the accident, and the nature
14 of the service being performed when the accident
15 occurred. The statement shall also include an opinion
16 as to whether or not the accident was the result of
17 wilful negligence on the deceased member's part;
18 (3) A copy of the latest position description of the
19 deceased member's duties and responsibilities;
20 (4) A certified copy of the death certificate; and
21 (5) A copy of an autopsy report, if performed.

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1 (c) Upon the system's receipt of the application and
2 documents specified in subsection (b), the medical board or
3 other entity designated by the board of trustees shall determine
4 and certify to the board whether the member's death was an
5 accidental death as defined in section 88-21.

6 (d) The [~~board~~] system may accept as conclusive as to
7 whether or not the member's death was caused by wilful
8 negligence on the part of the member:

9 (1) A certification made by the head of the agency in
10 which the member is employed; or

11 (2) A finding by the medical board[-] or other entity
12 designated by the board of trustees.

13 (e) After the medical board or other entity designated by
14 the board of trustees submits its certification to the system,
15 the [~~board~~] system shall approve or disapprove the application."

16 SECTION 7. Section 88-284, Hawaii Revised Statutes, is
17 amended by amending subsections (a) and (b) to read as follows:

18 "(a) [~~Upon~~] Under such rules as the board of trustees may
19 adopt, upon application of a member in service or on leave
20 without pay, or the person appointed by the family court as
21 guardian of an incapacitated member, any member who has ten or
22 more years of credited service shall be retired by the [~~board of~~

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1 ~~trustees]~~ system on an ordinary disability retirement allowance
2 if the medical board~~[7]~~ or other entity designated by the board
3 of trustees, after a medical examination of the member,
4 certifies that:

5 (1) The member is mentally or physically incapacitated for
6 the further performance of duty at the time of
7 application;

8 (2) The incapacity is likely to be permanent; and

9 (3) The member should be retired.

10 (b) Upon approval by the ~~[board,]~~ system, the member shall
11 be eligible to receive an ordinary disability retirement benefit
12 no earlier than thirty days from the date the application was
13 filed or the date the member terminated service, whichever is
14 later. Retirement shall be effective on the first day of a
15 month, except for the month of December when retirement on the
16 first or last day of the month shall be allowed. A member whose
17 application for an ordinary disability retirement allowance is
18 approved by the ~~[board]~~ system while the member is still in
19 service may terminate service and retire at any time following
20 the approval; provided that retirement shall become effective on
21 the first day of the month following the month the applicant
22 terminates employment or goes off the payroll, except for the

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1 month of December when retirement on the first or last day of
2 the month shall be allowed."

3 SECTION 8. Section 88-286, Hawaii Revised Statutes, shall
4 be amended by amending subsection (c) to read as follows:

5 "(c) In the case of accidental death as determined by the
6 ~~board~~ system pursuant to section 88-85.5, the death benefit
7 shall be effective on the first day of the month following the
8 member's death, except for the month of December when retirement
9 on the first or last day of the month shall be allowed, as
10 follows:

11 (1) For the surviving spouse or reciprocal beneficiary, an
12 allowance equal to thirty per cent of the member's
13 average final compensation, payable until remarriage,
14 marriage, or upon entry into a new reciprocal
15 beneficiary relationship;

16 (2) If there is a surviving spouse or reciprocal
17 beneficiary, each child under the age of eighteen
18 shall receive an allowance equal to the greater of:

19 (A) Ten per cent of the member's accrued maximum
20 retirement allowance unreduced for age; provided
21 that the aggregate death benefits for all the
22 children under the age of eighteen shall not

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1 exceed twenty per cent of the member's accrued
2 maximum retirement allowance unreduced for age;
3 or

4 (B) Three per cent of the member's average final
5 compensation; provided that the aggregate death
6 benefits for all the children under the age of
7 eighteen shall not exceed six per cent of the
8 member's average final compensation.

9 The death benefit under this paragraph shall be
10 payable to each child until the child attains age
11 eighteen; and

12 (3) If there is no surviving spouse or reciprocal
13 beneficiary, each child under the age of eighteen
14 shall receive an allowance equal to the greater of:

15 (A) Twenty per cent of the member's accrued maximum
16 retirement allowance unreduced for age; provided
17 that the aggregate death benefits for all the
18 children under the age of eighteen shall not
19 exceed forty per cent of the member's accrued
20 maximum retirement allowance unreduced for age;
21 or

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1 (B) Six per cent of the member's average final
2 compensation; provided that the aggregate death
3 benefits for all the children under the age of
4 eighteen shall not exceed twelve per cent of the
5 member's average final compensation.

6 The death benefit under this paragraph shall be
7 payable to each child until the child attains age
8 eighteen."

9 SECTION 9. Section 88-334, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§88-334 Ordinary disability retirement.** (a) [~~Upon~~
12 Under such rules and regulations as the board of trustees may
13 adopt, upon application of a class H member in service or on
14 leave without pay, or the person appointed by the family court
15 as guardian of an incapacitated member, any member who has ten
16 or more years of credited service shall be retired by the
17 [~~board~~] system on an ordinary disability retirement allowance if
18 the medical board[~~7~~] or other entity designated by the board of
19 trustees, after a medical examination of the member, certifies
20 that:

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1 (1) The member is mentally or physically incapacitated for
2 the further performance of duty at the time of
3 application;

4 (2) The incapacity is likely to be permanent; and

5 (3) The member should be retired.

6 (b) Upon approval by the [~~board,~~] system, the member shall
7 be eligible to receive an ordinary disability retirement benefit
8 no earlier than thirty days from the date the application was
9 filed or the date the member terminated service, whichever is
10 later. Retirement shall be effective on the first day of a
11 month, except for the month of December when retirement on the
12 first or last day of the month shall be allowed. A member whose
13 application for an ordinary disability retirement allowance is
14 approved by the [~~board~~] system while the member is still in
15 service may terminate service and retire at any time following
16 the approval; provided that retirement shall become effective on
17 the first day of the month following the month the applicant
18 terminates employment or goes off the payroll, except for the
19 month of December when retirement on the first or last day of
20 the month shall be allowed."

21 SECTION 10. Section 88-336, Hawaii Revised Statutes, is
22 amended as follows:

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1 (1) By amending subsection (a) to read as follows:

2 "(a) [~~Upon~~] Under such rules and regulations as the board
3 of trustees may adopt, upon application of a class H member, or
4 the person appointed by the family court as guardian of an
5 incapacitated member, any class H member who has been
6 permanently incapacitated for duty as the natural and proximate
7 result of an accident occurring while in the actual performance
8 of duty at some definite time and place, or as the cumulative
9 result of some occupational hazard, through no wilful negligence
10 on the member's part, may be retired by the [~~board~~] system for
11 service-connected disability; provided that:

12 (1) In the case of an accident occurring after July 1,
13 1963, the employer shall file with the system a copy
14 of the employer's report of the accident submitted to
15 the director of labor and industrial relations;

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

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

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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 (2) By amending subsections (c), (d), and (e) to read as
10 follows:

11 "(c) The [~~board~~] system may waive strict compliance with
12 the time limits within which a report of the accident and an
13 application for service-connected disability retirement must be
14 filed with the [~~board~~] system if it is satisfied that the
15 failure to file within the time limited by law was due to
16 ignorance of fact or law, inability, or the fraud,
17 misrepresentation, or deceit of any person, or because the
18 applicant was undergoing treatment for the disability, or was
19 receiving vocational rehabilitation services occasioned by the
20 disability.

21 (d) The [~~board~~] system may determine whether the
22 disability is the result of an accident occurring while in the

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1 actual performance of duty at some definite time and place and
2 that the disability was not the result of wilful negligence on
3 the part of the member. The [~~board~~] system may accept as
4 conclusive:

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

7 (2) A finding to this effect by the medical board[-] or
8 other entity designated by the board of trustees.

9 (e) Upon approval by the [~~board,~~] system, the member shall
10 be eligible to receive a service-connected disability retirement
11 benefit after the member has terminated service. Retirement
12 shall be effective on the first day of a month, except for the
13 month of December when retirement on the first or last day of
14 the month shall be allowed."

15 SECTION 11. Section 88-339, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) [~~In~~] Under such rules and regulations as the board of
18 trustees may adopt, in the case of an accidental death as
19 determined by the [~~board~~] system pursuant to section 88-85.5,
20 there shall be paid to the member's designated beneficiary or to
21 the member's estate the amount of the member's accumulated
22 contributions and there shall be paid in lieu of the ordinary

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1 death benefit payable under section 88-338 a pension of one-half
2 of the average final compensation of the member:

3 (1) To the surviving spouse or reciprocal beneficiary of
4 the member to continue until the surviving spouse or
5 reciprocal beneficiary remarries, marries, or enters
6 into a new reciprocal beneficiary relationship;

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

19 (3) If there is no surviving spouse or reciprocal
20 beneficiary and no child under the age of eighteen
21 years surviving the deceased member, then to the
22 deceased member's dependent father or dependent

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1 mother, as the deceased member shall have nominated by
2 written designation duly acknowledged and filed with
3 the [~~board,~~] system, or if there is no nomination,
4 then to the deceased member's dependent father or to
5 the deceased member's dependent mother as the [~~board,~~]
6 system, in its discretion, shall direct to continue
7 for life.

8 The pension shall be effective on the first day of the
9 month following the member's death, except for the month of
10 December, when benefits shall be effective on the first or last
11 day of the month."

12 SECTION 12. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act, upon its approval, shall take effect
15 on July 1, 2017.

16
17 INTRODUCED BY: *M. D. W.*

18 BY REQUEST

19

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Report Title:

Employees' Retirement System

Description:

Extends benefit finalization period for December 31 retirements; changes interest rate for late benefit finalizations; extends deadline for employer payments under section 88-100, Hawaii Revised Statutes; allows delegation of certain disability retirement and service connected death benefit approval functions.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE:

- (1) To correct the anomaly of the finalized retirement adjustment period for December 31 retirees to be consistent with the full six-month finalized adjustment period of members retiring on the first of the month and to adjust the interest rate on underpayments if benefits are not finalized within the time in which benefits are required to be finalized.
- (2) To address employer concerns regarding the amount of time between when the employers are billed for additional retirement contributions due to their employees retired with significant non-base pay increases and the due date of the payment.
- (3) To improve service provided to members and beneficiaries applying for disability retirement and accidental death benefits by reducing the direct involvement of the Board of Trustees of the Employees' Retirement System (ERS) and allowing ERS staff to play a greater role in the process. Also allows the ERS Board of Trustees to have medical reviews of disability retirement and accidental death claims performed by a designated entity instead of the ERS medical board.

MEANS: Amend sections 88-74.5(a), 88-75, 88-79(a), (c), (d), and (e), 88-85(a), 88-85.5, 88-100(e), 88-284(a) and (b), 88-286(c), 88-334, 88-336(a), (c), and (d), and 88-339(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: (1) Under section 88-74.5, the ERS is required to finalize a retirant's pension

benefit within six calendar months following the month of the retirant's retirement. After six calendar months, interest at 4.5 percent per annum is payable on the amount by which the retirant was underpaid prior to finalization of the retirant's retirement benefit. ERS members may retire on the first day of a month or on December 31. When a retirant retires on the first day of a month, the ERS has a full six month following the retirant's retirement in which to finalize the retirant's retirement benefit; however, when a retirant retires on December 31, the ERS only has five months in which to finalize the retirant's retirement benefits because December, the month in which the retirant retired, is lost. Approximately 30 percent of the retirements in any given year are on December 31. In 2015, this was 651 of the 2240 retirements. This bill would also reduce the interest rate payable on underpayments closer to current market rates on deposit accounts.

(2) Under section 88-100 employers are required to pay additional contributions to the ERS at the beginning of the fiscal year following the fiscal year in which an employee or former employee retires with significant non-base pay increases. This bill would allow the employers an additional fiscal year in which to budget for these additional contributions prior to making payment.

(3) Under sections 88-75, 88-79, 88-85, 88-85.5, 88-284, 88-286, 88-334, 88-336 and 88-339, disability retirement and accidental death claims are reviewed by the ERS medical board and recommendations are transmitted to the ERS board of trustees for approval. On average, claims for ordinary disability take six months or longer and claims for service-connected disability and accidental death may take three years or longer. This bill will allow the ERS staff and an additional medical review entity to streamline the

review, recommendation and approval process for disability and accidental death cases.

Impact on the public: Could reduce the interest payments due to December 31 retirants whose retirement benefits are finalized more than six calendar months after their retirement. Would reduce the interest payments to retirants whose retirement benefits are not finalized within the time in which the benefits are required to be finalized.

Impact on the department and other agencies: Would allow state and county departments to budget for additional contributions required for employees and former employees who retire with significant non-base pay increases.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2017.