

**HB 982**



**TESTIMONY OF THE STATE ATTORNEY GENERAL**  
**TWENTY-FIFTH LEGISLATURE, 2009**

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**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 982, H.D. 3, RELATING TO FAMILY LEAVE.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, April 3, 2009 **TIME:** 9:45 AM

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY

(For more information, call Deputy Attorney General  
Nelson T. Higa at 586-1450.)

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Chair Kim and Members of the Committee:

The Department of the Attorney General has legal concerns regarding this bill.

Section 4 of this bill (page 5, beginning at line 15) proposes to appropriate funding out of the Disability Benefits Special Fund established by section 392-61, HRS, for the establishment of a family leave database contemplated by this bill. Section 392-61, HRS, provides:

There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a special fund for disability benefits which shall be administered by the director exclusively for the purposes of this chapter. [Emphasis added.]

This special fund was initially financed by an assessment on employers pursuant to section 392-67, HRS, and additional levies are triggered whenever the fund balance falls below \$500,000.00.

Section 392-62, HRS, provides:

The director of finance shall be the treasurer and custodian of the special fund for disability benefits and shall administer the fund in accordance with the directions of the director of labor and industrial relations. All moneys in the fund shall be held in trust for the purposes of this part only and shall not be expended, released, or

appropriated or otherwise disposed of for any other purpose. [Emphasis added.]

Further, section 392-65, HRS, provides that the purpose of the Disability Benefits Special Fund is to provide benefits to unemployed employees who subsequently become ineligible for unemployment benefits due to disability and to provide benefits to employees who are entitled to receive temporary disability benefits but are unable to do so because of the bankruptcy of their employer or because their employer did not otherwise comply with the provisions of chapter 392.

Section 392-62, HRS, clearly provides that the moneys in the Disability Benefits Special Fund are held "in trust" for the payment of temporary disability benefits should the need defined by section 392-65, HRS, arise. The funding and maintenance of a family leave database by the Disability Benefits Special Fund appears to be outside of the scope of this part of chapter 392, unless that chapter is substantively changed.

Finally, the recent decision in Hawaii Insurers Council v. Lingle, 120 Haw. 51, 201 P.3d 564 (2008), could be used as a basis to challenge this expenditure of funds from the Disability Benefits Special Fund. In Hawaii Insurers Council, the Hawaii Supreme Court determined that the transfer of moneys derived from assessments made by the Insurance Commissioner and deposited into a special fund, which was established to benefit the parties who paid the fees, violated the separation of powers doctrine.

Applying the three-prong test set out in Hawaii Insurers Council, certain of the moneys in the Disability Benefits Special Fund appear on balance to be moneys that may not be transferred for purposes set out in the bill. If a determination is made as to the source of the moneys, certain moneys - such as fines, penalties, etc. - can be transferred.

If this bill is passed, we recommend that section 4 of the bill be amended to use another source of funding that would not be subject to challenge. Alternatively, we recommend that another special revenue

funding mechanism be established to fulfill this legislative objective. Alternatively, we recommend a detailed analysis of the source of the moneys in the fund.

THE SENATE  
Committee on Ways and Means  
Senator Donna Mercado Kim, Chair  
Senator Shan S. Tsutsui, Vice Chair

State Capitol, Conference Room 211  
Friday, April 3, 2009; 9:45 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 982, HD3  
RELATING TO FAMILY LEAVE**

The ILWU Local 142 supports H.B. 982, HD3, which establishes a new data collection system for family leave and appropriates funds from the Disability Benefits Special Fund.

Hawaii's population is growing older and not always in good health. That means more and more adults will need some kind of help for caregiving--and more and more workers will be called upon to serve in a caregiver capacity and will need to take family leave.

Hawaii law currently requires employers with 100 or more employees to provide family leave, which is four weeks of unpaid leave to care for a seriously ill family member. The leave provision is limited (four weeks), unpaid, and only for workers in large companies (100+). However, all workers may be faced with the need for family leave yet may not be able to take it because of loss of income.

A bill had been proposed last year to provide for paid family leave. Unable to agree on this concept, the Legislature established a working group (of which the ILWU was a part) to discuss the issue, explore options, and report to the Legislature on a proposal. Unfortunately, the working group also could not agree.

H.B. 982 was developed as a compromise, knowing that in the current economic climate, a tax to support paid family leave would not pass. Yet even proponents of paid family leave do not have sufficient information about the magnitude of the problem or the amount of funds needed to support the benefit. H.B. 982 was proposed as a means of collecting data to determine how many workers take family leave even if it is unpaid. This data can later be extrapolated to determine how many may seek paid family leave when a law is enacted.

While H.B. 982, HD3 is not a perfect bill and does not include some of the provisions from the original bill that the ILWU supported, we believe this bill will bring us a little closer toward understanding the scope of the problem for working men and women who must become family caregivers. Paid family leave may not be the answer, but it is a beginning recognition of the problem that must be addressed by the State.

The ILWU urges passage of H.B. 982, HD3. Thank you for considering our testimony.