

S.B. NO. 2844

JAN 25 2012

A BILL FOR AN ACT

RELATING TO APPEALS TO THE APPELLATE BOARD.

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

1 SECTION 1. Chapter 371, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§371- Labor and industrial relations appeals board
5 special fund. (a) There is established in the state treasury
6 the labor and industrial relations appeals board special fund,
7 into which shall be deposited:

8 (1) All moneys collected by the labor and industrial
9 relations appeals board pursuant to section 386-87;
10 and

11 (2) All interest accrued by the revenues of the fund.

12 (b) The fund shall be administered by the labor and
13 industrial relations appeals board.

14 (c) Moneys in the labor and industrial relations appeals
15 board special fund shall be used by the labor and industrial
16 relations appeals board for operating costs, as defined in
17 section 37-62, incurred in the administration of chapters 91,

1 371, and 386, including but not limited to language interpreting
2 services and electronic document management.

3 (d) The labor and industrial relations appeals board shall
4 submit a report to the legislature detailing all funds received
5 and all moneys disbursed out of the fund prior to the convening
6 of each regular session."

7 SECTION 2. Section 386-87, Hawaii Revised Statutes, is
8 amended to read as follows:

9 **"§386-87 Appeals to appellate board.** (a) A decision of
10 the director shall be final and conclusive between the parties,
11 except as provided in section 386-89, unless within twenty days
12 after a copy has been sent to each party, either party appeals
13 therefrom to the appellate board by filing a written notice of
14 appeal with the appellate board or the department. In all cases
15 of appeal filed with the department the appellate board shall be
16 notified of the pendency thereof by the director. No compromise
17 shall be effected in the appeal except in compliance with
18 section 386-78.

19 (b) The appellate board shall hold a full hearing de novo
20 on the appeal.

21 (c) The appellate board shall have power to review the
22 findings of fact, conclusions of law and exercise of discretion
23 by the director in hearing, determining or otherwise handling of

1 any compensation case and may affirm, reverse or modify any
2 compensation case upon review, or remand the case to the
3 director for further proceedings and action.

4 (d) In the absence of an appeal and within thirty days
5 after mailing of a certified copy of the appellate board's
6 decision or order, the appellate board may, upon the application
7 of the director or any other party, or upon its own motion,
8 reopen the matter and thereupon may take further evidence or may
9 modify its findings, conclusions or decisions. The time to
10 initiate judicial review shall run from the date of mailing of
11 the further decision if the matter has been reopened. If the
12 application for reopening is denied, the time to initiate
13 judicial review shall run from the date of mailing of the denial
14 decision.

15 (e) The appellate board may establish reasonable fees for
16 the filing of a written notice of appeal with the Director or to
17 the appellate board pursuant to this section and other
18 administrative costs associated with the processing of appeals.

19 The fees and costs prescribed under this subsection
20 shall be paid in advance to the chief clerk of the
21 appellate board. Any fees and costs collected shall be
22 deposited with the director of finance to the credit of the

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1 labor and industrial relations appeals board special fund
2 established under section 371- .

3 The appellate board may waive the payment of fees and costs
4 for good cause shown.

5 Neither the State nor any county or any political
6 subdivision shall be required to pay any fees or costs
7 prescribed under this subsection."

8 SECTION 3. There is appropriated out of the labor and
9 industrial relations appeals board special fund a sum not to
10 exceed \$10,000 or so much thereof as may be necessary for fiscal
11 year 2012-2013 for operating costs incurred in the
12 administration of chapters 91, 371, and 386.

13 SECTION 4. The sum appropriated shall be expended by the
14 department of labor and industrial relations for the purposes of
15 this Act.

16 SECTION 5. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

18 INTRODUCED BY: 

19 BY REQUEST

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Report Title:

Labor and Industrial Relations Appeals Board

Description:

Authorizes the Labor and Industrial Relations Appeals Board to establish reasonable fees for the filing of appeals and other administrative costs associated with the processing of appeals and to establish a Labor and Industrial Relations Appeals Board Special Fund.

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: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO APPEALS TO THE APPELLATE BOARD.

PURPOSE: To authorize the Labor and Industrial Relations Appeals Board (Board) to establish reasonable fees for the filing of workers' compensation appeals and fees for other administrative costs associated with the processing of appeals and to establish a Labor and Industrial Relations Appeals Board Special Fund into which funds shall be deposited for use by the Board.

MEANS: Add a new section to chapter 371 and amend section 386-87, Hawaii Revised Statutes.

JUSTIFICATION: The State's economy is still very fragile, notwithstanding the cautious optimism expressed in economic projections for growth and collection of revenues.

Allowing the Board to establish filing fees and fees for other administrative costs would supplement the Board's operating budget and help defray expenses relating to upgrade of equipment, technology, security, language interpreting services, and other costs associated with the processing of appeals.

For example, the Board could use the money collected to fund high-priority, currently unaffordable projects such as a document scanning and electronic archiving system. The Board's decisions and orders are currently kept in hard copies in file cabinets stored on the premises. The office "footprint" required to store and retrieve hard copies is not efficient.

Other projects include the planning, designing, and procurement of an online electronic document filing system that could

be integrated with the judiciary's JEFS e-filing system and enhancing the Board's website to provide litigants with online access to the Board's conference and trial calendar and other important information pertaining to appeals.

The Board also hopes to use funds to improve productivity and efficiency by procuring and maintaining an SMS calendaring and reminder system to send litigants reminders for conferences and hearings via text messages from the Board's Lotus Notes calendar, improve hearings room security by procuring a silent emergency or duress alarm system for the hearings room, improve efficiency in office operations by procuring a stand-alone scanner to meet court-mandated electronic filing requirements, and enhance or improve the Board's library of legal reference and research materials.

A filing fee for appeals would also discourage the filing of vexatious and frivolous appeals. It has been the Board's experience that a number of less than meritorious appeals have been taken by parties as a delay tactic.

Other state programs are allowed to charge filing fees. Agencies such as the Land Use Commission and Public Utilities Commission charge fees for the filing of documents. Chapter 607 of the Hawaii Revised Statutes allows the judiciary and courts to charge a variety of filing fees.

The creation of a special fund into which funds collected by the Board as filing fees and other expenses would allow the Board to manage its funds for the purpose of processing workers' compensation appeals.

Impact to the public: A reasonable fee would discourage frivolous or vexatious appeals. As a result, the board would have more time to devote to appeals with merit.

By setting the fee at a reasonable amount and providing a procedure for parties to seek an exemption or a waiver of the fee with good cause shown, parties with legitimate appeals who cannot afford the filing fees would not be excluded from the appeals process.

Impact on the department and other agencies:
Revenues from fees would supplement the department budget for the Board.

GENERAL FUND: None.

OTHER FUNDS: \$10,000 from Labor and Industrial Relations Appeals Board Special Fund for fiscal year 2012-2013.

PBBS PROGRAM

DESIGNATION: LBR-812.

OTHER AFFECTED

AGENCIES:

Department of Labor and Industrial Relations, Disability Compensation Division ("DCD"), whose assistance would be required to collect the filing fees for appeals filed with the DCD, especially on the neighbor islands.

EFFECTIVE

DATE: Upon approval.