

NEIL ABERCROMBIE
GOVERNOR



ROLAND Q.F. THOM
CHAIRMAN

MELANIE S. MATSUI
DAVID A. PENDLETON
MEMBERS

LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
KEELIKOLANI BUILDING
830 PUNCHBOWL STREET, ROOM 404
HONOLULU, HAWAII 96813
(808) 586-8600

February 13, 2012

To: The Honorable Angus McKelvey, Chair,
Isaac Choy, Vice Chair, and
Members of the House Committee on Economic Revitalization
& Business

Date: February 14, 2012
Time: 8:30 a.m.
Place: Conference Room 312, State Capitol

From: Roland Q.F. Thom, Chairman
Labor and Industrial Relations Appeals Board, Department of Labor
and Industrial Relations

Re: **IN SUPPORT OF H.B. 2582, H.D. 1 Relating to Appeals to the Appellate
Board with Proposed Amendments**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2582, H.D. 1 authorizes the Appellate Board to charge a filing fee for workers' compensation appeals and establishes a special fund into which moneys collected will be used by the Appellate Board to defray the cost of operations. The Appellate Board strongly supports H.B. 2582 because the funds generated will supplement the Appellate Board's general fund appropriation and give it the opportunity to fund projects to improve services.

II. CURRENT LAW

Under current Section 386-87 of the HRS, the Appellate Board does not have authority to charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals, such as telefaxing and preparation of audio recordings.

III. COMMENTS ON H.B. 2582, H.D. 1

- Despite the cautious optimism expressed in economic projections for growth

and collection of revenues, the budget shortfalls of the past several years highlighted the importance of the need to identify or create sources of revenue to help balance the state budget, especially during tough economic times. H.B. 2582, H.D. 1 would enable the Appellate Board to fund projects to increase efficiency without using additional general funds.

- Funds generated by H.B. 2582, H.D. 1 will supplement the general funds appropriated for the Appellate Board and help defray operational expenses relating to the upgrade of equipment and technology, security, language interpreting services, and other costs associated with the processing of hearings and workers' compensation appeals. Establishing a special fund for the Appellate Board would also enable it to fund high priority projects designed to significantly increase the efficiency and effectiveness of services, such as a document scanning and electronic archiving system for decisions and orders and improvements to the Appellate Board's website.

- Other agencies that conduct chapter 91 administrative hearings, such as the Land Use Commission and Public Utilities Commission, charge filing fees for certain documents to help fund operations. Moreover, the courts (District, Circuit, and Appellate) also charge a variety of filing fees for complaints and appeals and costs for photocopying, telefaxing, and copies of audio or video tapes.

- A reasonable \$30 filing fee for appeals would discourage frivolous or vexatious appeals and allow the Appellate Board to devote more time to appeals with merit.

- Litigants who cannot afford the filing fee may petition the Appellate Board for an exemption or waiver of the filing fee; thus, parties with legitimate appeals who cannot afford the filing fee would not be excluded from the appeals process.

IV. PROPOSED AMENDMENTS TO H.B. 2582, H.D. 1

The Appellate Board proposes the following amendments:

A. Notice of Hearing by First Class Mail

To add language to section 386-87 (b) to allow the Appellate Board to send written notices of agency hearings by first class mail to the parties' last known address and if service cannot be made by first class mail because the appellate board or its agents have been unable to ascertain the address of the party after reasonable and diligent inquiry, then allow the Appellate Board to give notice of hearing by publication once in each of two successive weeks in a daily or weekly publication of statewide circulation or by any other means provided by law.

Current law under section 91-91.5 of the Hawaii Revised Statutes requires notice of agency hearing be given by registered or certified mail with return receipt at least fifteen days before the hearing unless otherwise provided by law and if the address of the party cannot be ascertained after reasonable and diligent inquiry, the notice of hearing may be given by publication at least once in each of two successive weeks in a newspaper of general circulation.

This amendment is consistent with the administration's New Day plan to transform government and improve fiscal management of resources. A notice sent by first class mail costs \$.44. A notice sent by certified mail with return receipt costs over \$5.00. The Appellate Board could save up to \$2,000.00, or more, per year in mailing costs with this amendment. There is already statutory precedent for sending Chapter 91 notices of hearing by first class mail under Hawaii Revised Statutes Section 383-38(a) for unemployment claims appeals.

B. Fees for Administrative Costs

The language to allow the Appellate Board to charge fees for administrative costs associated with the processing of workers' compensation appeal was deleted by the LBR committee because of concerns raised about the lack of specificity as to what those costs might entail. The Appellate Board asks that language in section 386-87(e) be amended to address those concerns. The Appellate Board asks that an amendment be made to give it the authority to charge fees for telefaxing, preparation of audio recordings, dishonored checks, and other administrative costs associated with the processing of workers' compensation appeals.

C. In Forma Pauperis Procedure for Waiver of Filing Fee

To amend language in section 386-87(e) to provide a procedure for a party who cannot afford to pay the filing fee to seek a waiver of the fee. This procedure is very similar to the *in forma pauperis* procedure at the circuit court (Rule 24 of the Hawaii Circuit Court Rules) and is preferable to the current language in H.D. 1.

The LBR committee's language to use a good cause standard for waiving the filing fee based on a party's indigent status, pro se status and unemployment status as a result of a work injury is not practical for many reasons. A party could circumvent the filing fee requirement by proceeding pro se and then hiring counsel after the appeal is filed. Additionally, not all pro se litigants are indigent. It could be that a party's claim lacks legal merit and no attorney is willing provide representation. Furthermore, the status of unemployment is not defined. Workers who are collecting benefits for workers' compensation might not be working but could still be employed. Lastly, parties could be unemployed for reasons other than a work injury.

D. Exempt the State, County and any political subdivision from filing fee

The language was deleted by the LBR committee because of concerns over fairness. The Appellate Board asks that the language be reinstated to exempt the State from the filing fee. There is statutory precedent for exempting the State from fees and costs charged by another government entity (Hawaii Revised Statutes Section 92-25, Section 92-26, Section 607-4(b)(10), and Section 607-5(b)(32). The likely reason for the exemption is to avoid having to move State funds from one government entity to another.

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. Notwithstanding any law to the contrary, written
21 notice of hearing shall be sent by first class mail to the
22 parties' last known address at least fifteen days before the

1 hearing. If service by first class mail is not made because the
2 appellate board or its agents have been unable to ascertain the
3 address of the party after reasonable and diligent inquiry, the
4 notice of hearing may be given to the party by publication once
5 in each of two successive weeks in a daily or weekly publication
6 of statewide circulation or by other means as provided by law.
7 The last published notice shall appear at least fifteen days
8 prior to the date of the hearing.

9 (c) The appellate board shall have power to review the
10 findings of fact, conclusions of law and exercise of discretion
11 by the director in hearing, determining or otherwise handling of
12 any compensation case and may affirm, reverse or modify any
13 compensation case upon review, or remand the case to the
14 director for further proceedings and action.

15 (d) In the absence of an appeal and within thirty days
16 after mailing of a certified copy of the appellate board's
17 decision or order, the appellate board may, upon the application
18 of the director or any other party, or upon its own motion,
19 reopen the matter and thereupon may take further evidence or may
20 modify its findings, conclusions or decisions. The time to
21 initiate judicial review shall run from the date of mailing of
22 the further decision if the matter has been reopened. If the

1 application for reopening is denied, the time to initiate
2 judicial review shall run from the date of mailing of the denial
3 decision.

4 (e) The appellate board may establish a fee of \$30 for the
5 filing of a written notice of appeal pursuant to this section
6 and fees for telefaxing of documents, expedited or rush requests
7 for photocopying, dishonored checks or electronic fund
8 transfers, copies of audio or video recordings, and other
9 administrative costs associated with the processing of appeals;
10 provided that the amount of fees may be adjusted accordingly by
11 the appellate board by rules adopted pursuant to chapter 91.

12 The filing fee prescribed under this subsection shall be
13 paid in advance to the chief clerk of the appellate board. Any
14 fees collected shall be deposited with the director of finance
15 to the credit of the labor and industrial relations appeals
16 board special fund established under section 371- .

17 A party who wishes to proceed on appeal in forma pauperis
18 may seek a waiver of payment of the filing fee by filing a
19 motion for leave to so proceed, together with an affidavit or
20 declaration, showing in detail the party's inability to pay the
21 filing fee, the party's belief that he or she is entitled to
22 redress, and a statement of the issues that the party intends to

1 present on appeal. A party who has filed such a motion may file
2 his or her notice of appeal without being required to prepay the
3 filing fee. If the motion is granted, the party may proceed
4 with the appeal without prepayment of the filing fee. If the
5 motion is denied, the party shall, within 10 days after the
6 denial of the motion, pay the filing fee. Failure to pay the
7 filing fee shall not affect the validity of the appeal, but is
8 ground for such action as the appellate board deems appropriate,
9 and may include dismissal of the appeal.

10 Neither the State nor any county or any political
11 subdivision shall be required to pay any fees prescribed under
12 this subsection."

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

18 SECTION 4. The sum appropriated shall be expended by the
19 department of labor and industrial relations for the purposes of
20 this Act.

21 SECTION 5. New statutory material is underscored.

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

1 INTRODUCED BY: _____

2 BY REQUEST

H.B. NO. 2582

Proposed H.D. 2

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.

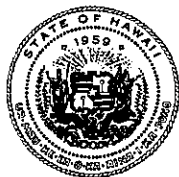
1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping, including the need to maintain original documents and to keep copies of all supporting documents. It also discusses the importance of ensuring that records are stored in a secure and accessible manner.

3. The third part of the document discusses the importance of regular audits and reviews of records. It emphasizes that audits are necessary to ensure that records are accurate and complete, and to identify any areas where improvements can be made.

4. The fourth part of the document discusses the importance of training and education for staff involved in record-keeping. It emphasizes that staff must be properly trained and educated to ensure that records are maintained in accordance with the relevant requirements.

5. The fifth part of the document discusses the importance of maintaining records for the appropriate period of time. It emphasizes that records should be retained for as long as necessary to meet legal and regulatory requirements, and that they should be destroyed in a secure and controlled manner when they are no longer needed.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

www.hawaii.gov/labor

Phone: (808) 586-8842 / Fax: (808) 586-9099

Email: dlir.director@hawaii.gov

February 13, 2012

To: The Honorable Angus L.K. McKelvey, Chair,
The Honorable Isaac W. Choy, Vice Chair, and
Members of the House Committee on Economic
Revitalization & Business

Date: Tuesday, February 14, 2012
Time: 8:30 a.m.
Place: Conference Room 312, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: **IN SUPPORT OF H.B. No. 2582, H.D. 1 Relating to Appeals
To the Appellate Board and Proposed Amendments**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2582, H.D. 1 authorizes the Appellate Board to charge a filing fee of \$30 for workers' compensation appeals and establishes a special fund into which moneys collected will be used by the Appellate Board to supplement its general fund appropriation and fund projects to improve services.

DLIR strongly supports H.B. 2582 H.D. 1. This measure represents a small piece of this administration's efforts to rebuild capacity, in particular, the Workers' Compensation system, which has suffered through budget constraints over the last few budget cycles.

II. CURRENT LAW

Under current Section 386-87 of the HRS, the Appellate Board does not have authority to charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals.

III. COMMENTS ON H.B. 2582, H.D. 1

- The budget shortfalls of the past several years highlighted the importance of the need to identify or create sources of revenue to help balance the state budget, especially during tough economic times.

- H.B. 2582, H.D. 1 would enable the Appellate Board to fund projects to increase efficiency without using additional general funds and to help defray operational expenses associated with the processing of workers' compensation appeals.

- Other administrative agencies that conduct chapter 91 administrative hearings, charge filing fees for certain documents to help fund operations. Additionally, the judiciary (District, Circuit, and Appellate Courts) also charge a variety of filing fees for complaints and appeals and fees for administrative costs such as photocopying, telefaxing, and preparation of audio or video recordings.

- Litigants who cannot afford the filing fee would not be excluded from the appeals process because the measure allows a party to apply for an exemption or waiver of the filing fee.

IV. PROPOSED AMENDMENTS TO H.B. 2582, H.D. 1

DLIR strongly supports the proposed amendments to H.D. 1

A. Notice of Hearing by First Class Mail

The proposed amendment to allow the Appellate Board to send notices of hearings by first class mail is consistent with the administration's New Day plan to transform government and improve fiscal management of resources.

The Appellate Board stands to save up to \$2,000.00 a year with this proposed amendment. There is already statutory precedent for sending Chapter 91 notices of hearing by first class mail under Hawaii Revised Statutes Section 383-38(a) for unemployment claims appeals.

B. Fees for Administrative Costs

DLIR supports language to allow the Appellate Board to charge fees for administrative costs associated with the processing of workers' compensation appeal, such as telefaxing, preparation of audio or video recordings, etc. Money collected would help defray operational expenses.

C. In Forma Pauperis Procedure for Waiver of Filing Fee

DLIR supports the proposed amendment to provide an *in forma pauperis* procedure for litigants who wish to apply for an exemption or waiver of filing fees. This procedure is similar to the procedure that is being used at the Circuit Court and Appellate Court for litigants who cannot afford the court's filing fees.

D. Exempt the State, County and any political subdivision from filing fee

DLIR supports the reinstatement of language to exempt the State, County, and other political subdivisions from fees assessed by the Appellate Board. Existing statutory provisions already exempt the State and County from fees for photocopying and other filing fees. The purpose of the exemption is to avoid transferring the same government or general funds from one department to another.

WAYNE H. MUKAIDA

Attorney at Law

888 MILILANI STREET, PH 2

(808) 531-8899

TEL:

HONOLULU, HAWAII 96813

FAX: (808) 521-9844

February 13, 2012

Committee on Economic Revitalization & Business

Re: HB2582 H.D.1, Testimony opposing bill
Relating to Appeals to the Appellate Board
Hearing: Feb. 14, 2012, 8:30 a.m.

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers in their workers' compensation claims.

I oppose H.B. No. 2582 H.D.1, relating to establishing fees for filing appeals.

I. The bill is not fair to injured workers.

The workers' compensation statute is sometimes referred to as the "Great Bargain." The right to sue employers was taken away from injured workers, and workers' remedies were limited to workers' compensation benefits. The Bill is inherently unfair in that in addition to having their remedies severely limited, injured workers will additionally have to pay to have their claims adjudicated.

In many workers' compensation cases, multiple appeals are required. The present system was designed for the Disability Compensation Division ("DCD") of the Department of Labor to render expeditious decisions in place of the former system which involved hearings before the Circuit Court. Cases are heard at the DCD by Hearings Officers, who, with a few exceptions, are not attorneys. If a DCD Decision is incorrect, it most often must be appealed to the Labor and Industrial Relations Appeals Board ("LAB") or the Decision will stand as the law of the case.

The DCD can render multiple Decisions in one case. There can be hearings to determine whether a case is work related, what the average weekly wage should be, whether medical benefits are appropriate, etc. If a Decision is incorrect, it must be appealed to be corrected. So therefore, there can be multiple appeals in one case. To impose the burden of multiple filing fees in one case is unfair to injured workers.

To impose filing fees upon an injured worker, who has been placed at an economic disadvantage because of his injury and the system, and who has to appeal because an erroneous DCD Decision which further impedes his claim, adds insult to injury and is fundamentally unjust and unfair.

II. Many injured workers pursue their cases without an attorney, and too many appeals are already being dismissed. Making the system more complex is not fair to injured workers.

The bill makes the workers' compensation system even more of a maze for injured workers to navigate. Requiring that the filing fee be paid in advance will mean that many appeals will be dismissed or simply not filed.

The bill provides in section (e) that the filing fee "shall be paid in advance." Requiring a filing fee in advance will mean that injured workers will not be permitted to pursue their appeals.

In 2011, about a dozen appeals were dismissed simply because the injured worker did not file his appeal on time. The LAB has repeatedly ruled that if an appeal is not filed timely, the case must be dismissed.

Even if there is a provision for the fee to be waived, if an injured worker is filing an appeal on the last day, he will not have time to request and obtain a waiver of the filing fee. If a *pro se* injured worker cannot even simply file an appeal on a timely basis, it is not likely that imposing further burdens of a filing fee or applications for a waiver are justifiable.

II. Giving the LAB the discretion to impose fees would increase the public's perception that the worker's compensation system is unfair to injured workers.

In years past, the practice had been to have the LAB composed of an attorney chairman, a member with past connections with labor, and a member with past connections with employers. However, the present Board consists of a Chairman and a Board member who were formerly workers compensation defense attorneys. While I personally have respect for the entire Board, my perception probably does not coincide with the public's perception.

Injured workers often have a difficult time finding attorneys who are willing to represent them. This is because the statute requires that the LAB approve attorney's fees, and the LAB has been setting fee rates at about 40% lower than civil rates in other fields of law. This has resulted in few attorneys practicing in the area.

A \$30.00 filing fee which might seem to be nominal to a healthy working individual would probably seem onerous to an injured person who is not able to work and who has no income. After their initial difficulties in obtaining representation, perceptions of injured workers of a bill that grants the LAB the discretion to require a filing fee rate which impose a further impediment to their claim, cannot be viewed favorably.

Although the LAB may promulgate regulations to give the LAB discretion to waive filing fees in certain circumstances, it is not likely that the amount of time necessary to fill out an application would make economic sense to the injured worker who is represented by counsel.

A bill which gives the LAB the discretion to required a filing fee, and the discretion to spend the amounts collected, is not just and would further erode the public's confidence in the system and in government.

III. The burden of the operating costs of the LAB should not be placed economically disadvantaged injured workers.

The general idea behind the bill is to generate operating funds for the LAB. It is recognized that the State has budgetary difficulties. The LAB is already a lean operation, and its funding needs to be increased. However, it does not make sense to impose any part of the burden of operating the LAB on economically disadvantaged injured workers.

Injured workers suffer physically, mentally and socially from a work injury. It is difficult enough for an injured worker to have to struggle to find a physician who will accept a workers' compensation patient, and to do battle with the carriers. To impose the additional burden of any filing fee on an injured worker is unjust.

IV. CONCLUSION.

The entire workers' compensation system can only benefit from amendments which will assist in assuring that the system is fair. The proposed amendment is a step in the wrong direction.

Thank you for considering my testimony.

[s] WAYNE H. MUKAIDA
Attorney at Law

DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

February 13, 2012

VIA ELECTRONIC MAIL

TO: COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
Representative Angus McKelvey, Chair
Hawaii State Capitol, Room 312

FROM: Dennis W.S. Chang
Labor and Workers' Compensation Attorney

RE: **Testimony In Support to HB 2582, HD 1**
(Hearing: 02/14/12 at 8:30 a.m.)

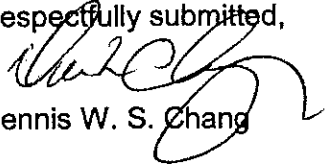
Dear Honorable Chair McKelvey and Members of Committee:

I unquestionably and enthusiastically support the creation of a Labor and Industrial Relations Appeals Board Special Fund for obvious reasons. However, I do have a major reservation where the fee of \$30.00 for the filing of an appeal may be adjusted by rules adopted pursuant to chapter 91. While I personally would like to contribute to the special fund, I have substantial concerns that the fee of \$30.00 may be adjusted without direct oversight by the Legislature, and *pro se* injured workers may be discouraged from filing appeals. This is so despite the fact that the fee may be waived since some injured workers will undoubtedly be unaware of the fact that there is a waiver provision or may not know how to proceed in securing a waiver. We must keep in mind that there are only twenty (20) days in which to perfect an appeal, and the additional paperwork may pose a burden and many appeals may be dismissed as untimely.

For this reason, I submit that subsection (e) be amended with a deletion of all words beginning with the phrase "provided that the amount may be adjusted accordingly". I suggest the following should be added "provided that the amount of the fee may be adjusted accordingly by the Legislature upon justification by the Director."

With the foregoing in mind, I fully support the bill of yet with the amended language.

Respectfully submitted,


Dennis W. S. Chang

DWSC:ty

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005

