

NEIL ABERCROMBIE
GOVERNOR



ROLAND Q.F. THOM
CHAIRMAN

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LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
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February 1, 2012

To: The Honorable Karl Rhoads, Chair,
Kyle Yamashita, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 3, 2012
Time: 9:00 a.m. to 12:00 p.m.
Place: Conference Room 309, State Capitol

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

Re: **IN SUPPORT OF H.B. 2582 Relating to Appeals to the Appellate Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2582 authorizes the Appellate Board to charge a filing fee for workers' compensation appeals and fees for other administrative costs associated with the processing of 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, there is no filing fee for workers compensation appeals filed to the Appellate Board.

III. COMMENTS ON HOUSE BILL

- 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 would enable the Appellate Board to fund projects to increase efficiency without using additional general funds.

- Funds generated by H.B. 2582 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, an electronic document filing system that could be integrated with the judiciary's JEFS e-filing system and improvements to the Appellate Board's website to provide litigants with online access to the Appellate Board's conference and trial calendar.

- The Appellate Board would like to note that other state 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 filing fee would discourage frivolous or vexatious appeals and allow the Appellate Board to devote more time to appeals with merit.

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

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Friday, February 3, 2012
Time: 9:00 a.m. – 12:00 pm.
Place: Conference Room 309

TESTIMONY OF ILWU LOCAL 142
RE: HB 2582 RELATING TO APPEALS TO THE APPELLATE BOARD

Chair Rhoads, Vice Chair Yamashita, Members of the Committee:

Thank you for the opportunity to present testimony regarding HB 2582.

ILWU Local 142 supports the need to fund the Labor and Industrial Relations Appeals Board, as the ability of the Board to process its appeals in a timely fashion is indispensable to the smooth operation of our workers' compensation system. Delay in adjudication adds unnecessary cost for all parties, retarding business growth and development, and especially demoralizing injured workers whose medical care and other forms of compensation are often disrupted pending the outcome of their appeals.

Creating a fund to enhance the Board's technological capability and enhance language access to services is also a laudable objective. In creating this fund, we make the following suggestions:

1. Financial indigency should specifically be stated to be good cause for waiving payment of fees and costs so there is no question on this point and access to justice is not denied based on poverty.
2. The State and several counties should not be exempted from the filing fees and should, on principle, be treated like all other litigants, so there is at least minimal restraint upon frivolous appeals by these public employers.
3. The \$10,000 sum requested for operational costs is a restrained and prudent amount, which the Board can put to good use in administering its significant caseload in a more efficient fashion.
4. In assessing the overall financial circumstances of the Dept. of Labor and Industrial Relations and the Labor and Industrial Relations Appeals Board, we urge that the utmost priority be given to funding additional personnel who are directly involved in the issuance of decisions awarding compensation

to injured workers. Restoring more rapid adjudication of claims has significant cost-saving and rehabilitative ramifications for all stakeholders of this system and should be a fundamental goal and priority of legislative effort.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR & PUBLIC EMPLOYMENT

Friday, February 3, 2012
9:00 a.m.

HB 2582
RELATING TO APPEALS TO THE APPELLATE BOARD

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2582.** Our companies represent over 2,000 employees.

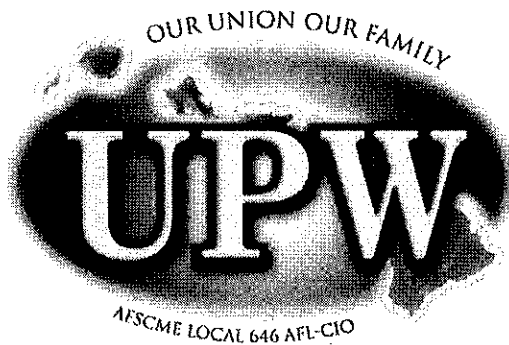
This bill proposes to add a new section to Chapter 371, HRS authorizing the Labor and Industrial Relations Appeals Board (LAB) to establish a special fund, and to establish reasonable fees for the filing of appeals and other administrative costs associated with the processing of appeals. All moneys collected from these fees will then be deposited into the fund. Notably, although the State is the largest employer, the State, county, and any political subdivision are specifically exempt from such fees.

We recognize the challenges and need for the LAB to explore different financing approaches to supplement their operating expenses in these tough economic times. However, the challenges and fragility of these economic times are not unique to the LAB yet this bill would require private employers to unfairly share in this burden since it exempts the State, the largest employer, and county from such fees.

Although one of the purposes of this bill is to discourage frivolous or vexatious appeals, there are already existing remedies available to discourage such appeals. Section 386-93, HRS already allows the LAB to recoup the whole costs of the proceedings in the event that the claim is determined to be brought, prosecuted, or defended without reasonable ground by a party. As such, this bill is unnecessary and would disproportionately impact private employers.

For these reasons, we respectfully oppose H.B. 2582 and request that this measure be held.

Thank you for this opportunity to submit testimony.



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Sixth Legislature
Regular Session of 2012

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
The Honorable Rep. Karl Rhoads, Chair
The Honorable Rep. Kyle T. Yamashita, Vice Chair

DATE OF HEARING: Friday, February 3, 2012
TIME OF HEARING: 9:00 a.m. - 12:00 p.m.
PLACE OF HEARING: Conference Room 309

**TESTIMONY ON HB 2582 RELATING TO APPEALS TO THE APPELLATE
BOARD**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW supports 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.

Accordingly, the UPW is in support of HB 2582.

Thank you for opportunity to testify on this measure.

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 2, 2012

VIA ELECTRONIC MAIL

TO: COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Karl Rhoads, Chair
Hawaii State Capitol, Room 309

HEARING: Friday, February 03, 2012
Time: 9:00 a.m. - 12:00 p.m.

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

RE: HB 2582 Relating to Appeals to the Appellate Board

Dear Honorable Chair Rhoads and Committee Members:

As a labor attorney with an extensive practice in workers' compensation, I fully support the intent underlying HB 2582 relating to the Labor and Industrial Relations Appeals Board's (Board) resourceful attempt to secure some nominal contributions by creating a special fund for operating expenses. This is a small step in the right direction during our economic crisis. As a stakeholder, I am confident that many attorneys are not at all adverse to making a small contribution in filing fees for an appeal in a special fund designated for operating expenses, which will assist in the function of the Board.

However, I am concerned that "reasonable fees," if left undefined, could be cost prohibitive to discourage the filing of appeals. There is also a sense of ambiguity by including "costs" and "other administrative costs" in the bill, both of which are also left undefined. Clarification is necessary to avoid duplication of charges for "reasonable fees" and "costs." Perhaps we need to delete the words "administrative costs" and

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DENNIS W. S. CHANG
ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW
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"and costs" contained in subsection (e) for clarification.

The waiver provision for "good cause shown" is much too vague. "Good cause" should also be defined. Consider *pro se*

injured workers, who unfortunately fail to prevail in his claim for compensation before the Director of Labor and Industrial Relations. Surely, it would be insulting to demand that he or she pay a filing fee. Criteria must be built in now for such injured workers.

Action must be taken in today's dire economic times. Any help for the Board, however small, is a step in the right direction. With my concerns stated, I ask that the Honorable Chair and Members of the Committee join in passing this unique bill.

Respectfully submitted,

Dennis W. S. Chang

George M. Waialeale
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February 3, 2012

Committee on Labor and Public Employment

HB 2582 Relating to Appeals to the Appellate Board

I am here to testify in support of HB 2582. This bill authorizes the Labor and Industrial Relations Appeals Board to establish reasonable fees for the filing for appeals and other administrative costs associated with the processing of appeals and to establish a Labor and Industrial Relations Appeals Board Special Fund.

These moneys shall be used by the labor and industrial relations appeals board for operating costs. The labor and industrial relations appeals board shall submit a report to the legislature detailing all funds received and all moneys disbursed out of the fund prior to the convening of each regular legislative session.

I ask for your passage of this legislation.

George Waialeale