

JAN 24 2013

S.B. NO. 1154

A BILL FOR AN ACT

RELATING TO DISABILITY COMPENSATION DIVISION SPECIAL FUND.

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

1 SECTION 1. Chapter 386, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§386- Disability compensation division special fund.

5 (a) There is established in the state treasury the disability
6 compensation division special fund, into which shall be
7 deposited:

8 (1) All moneys collected by the disability compensation
9 division pursuant to sections 386-86 and 386-95; and

10 (2) All interest upon any moneys in the fund.

11 (b) The fund shall be administered by the disability
12 compensation division of the department.

13 (c) Moneys in the disability compensation division special
14 fund shall be used by the disability compensation division for
15 personnel and operating costs incurred in the administration of
16 chapter 386, including but not limited to electronic document
17 management.

1 (d) The disability compensation division shall submit a
2 report to the legislature detailing all funds deposited into and
3 all moneys disbursed out of the fund in the prior fiscal year
4 twenty days prior to the convening of each regular session."

5 SECTION 2. Section 386-86, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§386-86 Proceedings upon claim; hearings.** (a) If a
8 claim for compensation is made, the director shall make such
9 further investigation as deemed necessary and render a decision
10 within sixty days after the conclusion of the hearing awarding
11 or denying compensation, stating the findings of fact and
12 conclusions of law. The director may extend the due date for
13 decisions for good cause provided all parties agree. The
14 decision shall be filed with the record of the proceedings and a
15 copy of the decision shall be sent immediately to each party.

16 (b) The hearing shall be informal and shall afford the
17 parties a full and fair opportunity to present the facts and
18 evidence to be considered. Hearings under this section shall
19 not be subject to chapter 91. No stenographic or tape recording
20 shall be allowed.

21 (c) The order of presentation shall not alter the burden
22 of proof, including the burden of producing evidence and the
23 burden of persuasion. The party or parties who bear these

1 burdens shall be determined by law consistent with the purposes
2 of this section.

3 (d) Should the injured employee or injured employee's
4 representative, or the employer or employer's representative
5 fail to appear at the hearing, the director may issue a decision
6 based on the information on file. The decision shall be final
7 unless appealed pursuant to section 386-87. In all other
8 circumstances, a decision shall not be rendered by the director
9 without a hearing, which may not be waived by the parties.

10 (e) For the purpose of obtaining any matter, not
11 privileged, which is relevant to the subject matter involved in
12 the pending action, the director, upon application and for good
13 cause shown, may order the taking of relevant testimony by
14 deposition, upon oral examination, or written interrogatories,
15 or by other means of discovery in the manner and effect
16 prescribed by the Hawaii rules of civil procedure; provided that
17 when the claimant's deposition is taken, the employer shall pay
18 for the cost to the claimant of attending the deposition, any
19 costs associated with having the deposition transcribed and
20 copied, and any and all reasonable attorney's fees and costs
21 incurred by the claimant with respect to the deposition.

22 (f) Subpoenas requiring the attendance of witnesses at a
23 hearing before a hearings officer or for the taking of a

1 deposition or the production of documentary evidence from any
2 place within the State at any designated place of hearing may be
3 issued by the director or a duly authorized representative. The
4 employer shall serve a claimant with a copy of a medical record
5 subpoena unless the employer has previously obtained the
6 claimant's authorization to examine the claimant's medical
7 records. Should the claimant subpoena medical records, the
8 employer shall be served a copy. The party subpoenaing the
9 records shall provide these records within fifteen calendar days
10 of their receipt to the employer, claimant, and the special
11 compensation fund if a joinder has been filed, or their
12 representatives. These records shall be submitted by the party
13 requesting the subpoena to the director within seven calendar
14 days of the date of the notice of hearing or upon request by the
15 director. A party who desires to enforce the director's
16 subpoena shall seek enforcement from a court of competent
17 jurisdiction.

18 (g) The disability compensation division may establish
19 reasonable fees for filing applications for hearings as
20 described in subsections (a) and (b), and for issuing subpoenas
21 as described in subsection (f).

22 Effective from July 1, 2013, to June 30, 2016, or until
23 such time as a different amount is established by rules adopted

1 by the director, the amount to be charged for each filing or
2 subpoena shall be \$10.

3 The fees prescribed under this subsection shall be paid to
4 the disability compensation division in advance by the party
5 applying for a hearing or requesting the subpoena. The fees
6 shall be deposited with the director of finance to the credit of
7 the disability compensation division special fund established
8 under 386- .

9 The disability compensation division administrator may
10 waive the payment of fees for good cause shown. Neither the
11 State, nor any county, or any political subdivision shall be
12 required to pay any fees prescribed under this subsection."

13 SECTION 3. Section 386-95, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§386-95 Reports of injuries, other reports, penalty.**

16 Every employer shall keep a record of all injuries, fatal or
17 otherwise, received by the employer's employees in the course of
18 their employment, when known to the employer or brought to the
19 employer's attention.

20 Within seven working days after the employer has knowledge
21 of such injury causing absence from work for one day or more or
22 requiring medical treatment beyond ordinary first aid, the
23 employer shall make a report thereon to the director. The

1 report shall set forth the name, address, and nature of the
2 employer's business and the name, age, sex, wages, and
3 occupation of the injured employee and shall state the date and
4 hour of the accident, if the injury is produced thereby, the
5 nature and cause of the injury, and such other information as
6 the director may require.

7 By January 31 of each year, the employer shall file with
8 the director a report with respect to each injury on which the
9 employer is continuing to pay compensation, showing all amounts
10 paid by the employer on account of the injury.

11 The reports required by this section shall be made on forms
12 to be obtained from the director pursuant to section 386-71 and
13 deposit of reports in the United States mail, addressed to the
14 director, within the time specified shall be deemed compliance
15 with the requirements of this section.

16 When an injury results in immediate death, the employer
17 shall within forty-eight hours notify personally or by telephone
18 a representative of the department in the county where the
19 injury occurred.

20 Within thirty days after final payment of compensation for
21 an injury, the employer shall file a final report with the
22 director showing the total payments made, the date of

1 termination of temporary total disability, and such other
2 information as the director may require.

3 Any employer who wilfully refuses or neglects to file any
4 of the reports or give any notice required by this section shall
5 be fined by the director not more than \$5,000.

6 Copies of all reports, other than those of fatal injuries,
7 filed with the director as required by this section shall be
8 sent to the injured employee by the employer.

9 The disability compensation division may establish
10 reasonable fees for the filing of the "WC-1 Employer's Report of
11 Industrial Injury" and the "Employee's Claim for Workers'
12 Compensation Benefits". Effective from July 1, 2013, to June
13 30, 2016, or until such time a different amount is established
14 by rule adopted by the director, the amount to be charged for
15 each filing shall be \$10.

16 The fees prescribed under this section shall be paid in
17 advance to the disability compensation division and deposited
18 with the director of finance to the credit of the disability
19 compensation division special fund established under section
20 386- . The disability compensation division administrator may
21 waive the payment of fees for good cause shown. Neither the
22 State, nor any county, or any political subdivision shall be

S.B. NO. 1154

1 required to pay any fees or costs prescribed under this
2 subsection."


3 SECTION 4. The director of labor and industrial relations
4 may establish two full-time equivalent permanent additional
5 positions, subject to chapters 76 and 89, Hawaii Revised
6 Statutes, to carry out the purposes of this Act. The positions
7 shall include a workers' compensation hearings officer and an
8 office assistant.

9 SECTION 5. There is appropriated out of the disability
10 compensation division special fund the sum of \$200,000, or so
11 much thereof as may be necessary, for fiscal year 2013-2014 to
12 carry out the purposes of this Act, including the hiring of two
13 full-time equivalent permanent positions pursuant to section 4
14 of this Act and for operating costs incurred in the
15 administration of chapter 386, Hawaii Revised Statutes.

16 The sum appropriated shall be expended by the department of
17 labor and industrial relations for the purposes of this Act.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored

20 SECTION 7. This Act, upon its approval, shall take effect
21 on July 1, 2013.

22 INTRODUCED BY: 

23 BY REQUEST

Report Title:

Disability Compensation Division Special Fund; Fees

Description:

Establishes a Disability Compensation Division Special Fund and authorizes the Disability Compensation Division to establish reasonable fees for issuing subpoenas, and filing injury reports and hearings applications; and also authorizes the establishment of and funds two full-time positions.

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

SB. NO. 1154

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO DISABILITY COMPENSATION DIVISION SPECIAL FUND.

PURPOSE: To authorize the Disability Compensation Division of the Department of Labor and Industrial Relations to establish reasonable fees for: issuing subpoenas, filing "WC-1 Employer's Report of Industrial Injury," filing "Employee's Claim for Workers' Compensation Benefits," and filing applications for hearings; and to establish a Disability Compensation Division Special Fund into which funds collected shall be deposited for operating costs incurred in the administration of chapter 386, Hawaii Revised Statutes (HRS), and for the establishment and funding of two full-time positions (Workers' Compensation Hearings Officer and Office Assistant).

MEANS: Add a new section to chapter 386, and amend sections 386-86 and 386-95, HRS.

JUSTIFICATION: Staffing and budget reductions since 2009, including a \$400,000 reduction in the last biennium budget, have resulted in a severe backlog in the setting of hearings and reductions of service to the public. The division has had to rely heavily on its automation system to mitigate the backlogs and service reductions, and is seeking funding to: improve its electronic management system of the hearings functions; develop greater efficiency in the complex workers' compensation system; and increase staffing to mitigate the backlogs caused by the staffing reductions in 2009.

SB. NO. 1154

The Division is now seeking, through this proposal, to supplement its budget for personnel and operating costs by establishing fees for filing initial reports of injury, filing applications for hearings, and for processing subpoena requests.

Allowing the Disability Compensation Division to establish these fees would supplement the Disability Compensation Division's operating budget, fund two positions to reduce backlogs, and help defray costs associated with the development of greater efficiency and upkeep of the Division's automation system.

Impact on the public: Hearings backlogs will be reduced and workers' compensation-related services to the public will improve.

Impact on the department and other agencies: None. State and county departments are not required to pay the filing fees.

GENERAL FUND: None.

OTHER FUNDS: A Disability Compensation Division Special Fund will be established.

PPBS PROGRAM DESIGNATION: LRB 183/DA.

OTHER AGENCIES AFFECTED: None.

EFFECTIVE DATE: July 1, 2013.