



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

February 12, 2013

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Nishimoto, Vice Chair,
The Honorable Aaron Ling Johanson, Vice Chair, and
Members of the House Committee on Finance

Date: February 14, 2013

Time: 2:45 p.m.

Place: Conference Room 308, State Capitol

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

**Re: H.B. No. 920, H.D. 1 Relating to Appeals to the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 920, H.D. 1 is an Administration proposal that authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to charge a filing fee of \$30 for workers' compensation appeals and fees for other administrative costs. The proposal establishes a special fund into which moneys collected will be used by LIRAB to supplement its general fund appropriation and fund projects to improve services. The amendment (HD1) sunsets the law on July 1, 2016.

DLIR strongly supports this Administration measure. This bill 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 Hawaii Revised Statutes (HRS), LIRAB does not have authority to set or charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals.

III. COMMENTS ON THE HOUSE BILL

- The budget shortfalls of the past several years highlighted the importance of identifying or creating sources of revenue to help balance the state budget and defray operational expenses, especially during tough economic times.
- H.B. 920, H.D. 1 would enable LIRAB 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 administrative hearings charge filing fees for certain documents. 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.
- A filing fee would deter the filing of frivolous or vexatious appeals.
- Litigants who cannot afford the filing fee may apply for an exemption or waiver of the filing fee for good cause shown.
- H.B. 920, H.D. 1 provides for a sunset date of July 1, 2016. DLIR does not object to the sunset date as it gives all the affected stakeholders time to analyze the impact of instituting a user fee system for LIRAB and provide feedback to the Legislature on the utility of the filing fee.



LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
KEELIKOLANI BUILDING
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(808) 586-8600

February 13, 2013

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Nishimoto, Vice Chair,
The Honorable Aaron Ling Johanson, Vice Chair, and
Members of the House Committee on Finance

Date: Thursday, February 14, 2013
Time: 02:45 p.m.
Place: Conference Room 308, State Capitol

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

**Re: H.B. No. 920, H.D. 1 Relating to Appeals to the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 920, H.D.1 is an administration measure that authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to charge a filing fee of \$30 for workers' compensation appeals and fees for other administrative costs, and establishes a special fund into which moneys collected will be used by LIRAB to defray the cost of operations.

LIRAB strongly supports H.B. 920, H.D. 1 because the funds generated will supplement LIRAB'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 Hawaii Revised Statutes (HRS), LIRAB does not have statutory authority to set or charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals.

III. COMMENTS ON THE HOUSE BILL

- Despite the cautious optimism expressed in economic projections for growth and collection of revenues, there is still a need to identify or create sources of revenue to help balance the State budget.
- H.B. 920, H.D. 1 would enable LIRAB to fund projects to increase efficiency without using additional general funds.
- Funds generated by H.B. 920, H.D. 1 will be used to defray operational expenses relating to the upgrade of equipment and technology, data security, and other costs associated with the processing of hearings and workers' compensation appeals.
- Establishing a special fund for LIRAB would also enable it to fund high priority projects designed to significantly increase the efficiency and effectiveness of services, such as an electronic archiving system for decisions and orders and an electronic document filing system that could be integrated with the judiciary's JEFs e-filing system.
- Other State boards or commissions that conduct Chapter 91 administrative hearings, such as the Land Use Commission and Public Utilities Commission, charge filing fees for certain documents. Additionally, the courts (District, Circuit, and Appellate) also charge a variety of filing fees for complaints and appeals and costs for photocopying, telefaxing, and preparation or audio or video recordings.
- A reasonable filing fee of \$30 would discourage frivolous or vexatious appeals and allow LIRAB to devote more time to appeals with merit.
- Indigent litigants who cannot afford the filing fee may petition LIRAB for an exemption or waiver of the fee with good cause shown; thus, parties with legitimate appeals who cannot afford the filing fee would not be excluded from the appeals process.
- H.B. 920, H.D. 1 establishes an expiration date of July 1, 2016. LIRAB does not object to the expiration date as it allows stakeholders to assess the impact of the fee system and revisit the issue at a later time.

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

February 14, 2013
2:45 p.m.

HB 920, HD1

Chair Luke, Vice Chair Nishimoto, and members of the Committee, my name is Alison Powers, Executive Director of the Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

We **oppose** this bill. This bill imposes fees that will be used for operational costs that are considered general overhead and supplies. These fees are no more than a hidden tax that would be borne by employers which will add to their cost of doing business. Furthermore, it is not a transparent general fund expenditure.

This bill also establishes an adverse precedent by allowing a State Department to impose fees to upgrade technology and equipment – something that many payors cannot even afford for their own businesses. The fees unfairly targets only a portion of all entities to bear a disproportionate financial burden for a State Department's operational budget that does not specifically and solely benefit the payers. Private businesses are supporting other government entities (who are exempt from these fees) as these government entities will benefit from the Labor and Industrial Relations Appeals Board's use of these funds. Even if the fee were to the sole benefit of the payer, these services should be general fund expenditures that go through the Legislative budgeting process.

Employers are currently assessed by the State to support the Special Compensation Fund without accountability. This bill establishes yet another fund for which employers will need to pay into without any controls as to how these funds are expended. The use of the fees for the Department's personnel and operating costs outside a general fund appropriation is a hidden tax. We respectfully ask that this bill be held.

Thank you for the opportunity to testify.

TESTIMONY BEFORE THE HOUSE

COMMITTEE ON FINANCE

Thursday, February 14, 2013
2:45 p.m.

HB 920, HD1
RELATING TO APPEALS TO THE LABOR AND INDUSTRIAL
RELATIONS APPEALS BOARD

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

Chair Luke, Vice Chair Nishimoto, 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. 920, HD1.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to add a new section to Chapter 371, HRS authorizing the Labor and Industrial Relations Appeals Board (LIRAB) 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 LIRAB 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 LIRAB 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. 920, HD1 and request that this measure be held.

Thank you for this opportunity to submit testimony.

HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

Hearing: Thursday, February 14, 2013

Time: 2:45 p.m.

Place: Conference Room 308

TESTIMONY OF ILWU LOCAL 142
RE: HB 920, HD 1, RELATING TO APPEALS TO THE
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, and Members of the Committee on Finance:

Thank you for the opportunity to testify regarding H.B. 920, H.D. 1. We support the general concept of the bill as a necessary but temporary measure to insure the prompt adjudication of claims and to insure the Labor and Industrial Relations Appeals Board (“LIRAB”) has the financial resources necessary to perform their vital work.

H.B. 920, H.D. 1 creates a special fund in the state treasury for fees collected by the LIRAB for operating costs, including upgrading technology and equipment and an electronic document management system. A flat fee of \$30.00 will be assessed for administrative costs, and can be adjusted in accordance with the rule making provisions of the Hawaii Administrative Procedures Act. Fees may also be waived for good cause.

There is little doubt that the LIRAB has had to perform its normal responsibilities under extreme fiscal constraints and without the normal complement of employees, and it is praiseworthy that they have adjudicated as many claims as they have under these demanding circumstances. It would be our first preference that the state simply restore the normal funding for positions and for the costs of upgrading technology and equipment, including an electronic document management system without the need to impose any filing fees on the working class and impoverished claimants who comprise the class of injured workers who are the board’s constituents.

However, we recognize that such funding may well not be forthcoming at this time, and Claimants, employers, insurers, and the Board itself deserve to have better technology and equipment immediately. H.B. 920, H.D. 1 has been amended to limit the period of the \$30.00 filing fee to a distinct three year period commencing July 1, 2013 until July 1, 2016 at which time the collection of filing fees should “sunset” or cease entirely. We therefore support HB 920, H.D. 1 with this limitation. After the temporary

three year measure is enacted, the state should then reassume its normal role of financing the operation of government agencies and boards without the need to impose special filing fees and assessments.

HB920

Submitted on: 2/12/2013

Testimony for FIN on Feb 14, 2013 14:45PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Pamela Williams	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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