



**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. 921 Relating to Proceedings Before the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 921 is an Administration proposal that affirms the authority of the Labor and Industrial Relations Appeals Board (LIRAB) to take appropriate action to enforce its rules and orders and to provide workers' compensation litigants with the statutory authority to file electronic notices of appeal with the appellate court.

DLIR strongly supports this Administration measure.

II. CURRENT LAW

Current Section 371-4(h) of the Hawaii Revised Statutes (HRS) provides that LIRAB "may adopt rules and regulations in its area of responsibilities in accordance with chapter 91." There is, however, no express statutory authority for the Board to issue orders or take other action (such as the imposition of administrative or monetary sanctions) to enforce its rules or orders.

Current Section 386-88 of the HRS provides for judicial review of LIRAB decisions by filing a written notice of appeal with LIRAB. There is no option for filing electronic notices of appeal with the appellate court, which is now available through the Judiciary Electronic Filing System (JEFS).

III. COMMENTS ON THE HOUSE BILL

This proposal gives LIRAB the express statutory authority to enforce its rules and orders and, in doing so, would give LIRAB's rules and orders "teeth" and result in more efficient processing of appeals. The proposed bill is partly patterned after HRS Section 386-97.5, which gives the Director of Labor and Industrial Relations statutory authority to assess penalties against those found to have violated any provision of Chapter 386 or rule adopted by the Director thereunder for which no penalty is otherwise provided.

Similar to HRS Section 386-97.5 as it applies to the Director of Labor and Industrial Relations, all monetary sanctions or fines collected by LIRAB would be deposited into the Special Compensation Fund established under HRS Section 386-151 to help pay benefits to injured workers in the event of a default by an employer.

In sum, the proposal improves efficiency in the processing of workers' compensation appeals, provides for the use of technology to increase productivity and improve government processes, and is consistent with the governor's New Day initiatives to create a "green" and more efficient government.



LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
KEELIKOLANI BUILDING
830 PUNCHBOWL STREET, ROOM 404
HONOLULU, HAWAII 96813
(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. 921 Relating to Proceedings Before the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 921 is an administration measure that expressly authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to take appropriate action to enforce its rules and orders and to provide workers' compensation litigants with the statutory authority to file electronic notices of appeal with the appellate court.

II. CURRENT LAW

Current Section 371-4(h) of the Hawaii Revised Statutes (HRS) provides that LIRAB "may adopt rules and regulations in its area of responsibilities in accordance with chapter 91." There is, however, no express statutory authority for the Board to issue orders or take other action (such as the imposition of administrative or monetary sanctions) to enforce its rules or orders.

Current Section 386-88 of the HRS provides for judicial review of LIRAB decisions by filing a written notice of appeal with LIRAB. There is no option for filing electronic notices of appeal with the appellate court, which is now available through the Judiciary Electronic Filing System (JEFS).

III. COMMENTS ON THE HOUSE BILL

Empowering LIRAB to enforce its rules and orders would give its rules and orders "teeth" and result in more efficient processing of appeals. The proposed bill is modeled in part after Section 386-97.5, which gives the Director of Labor and Industrial Relations statutory authority to assess penalties against those found to have violated any provision of Chapter 386 or rule adopted by the Director thereunder for which no penalty is otherwise provided.

Other State boards or commissions have statutory authority to fine or sanction parties for noncompliance with a law, regulation, or rule: Hawaii Labor Relations Board (HRS Section 377-9), Hawaii Public Utilities Commission (HRS Section 269-28), and Hawaii Land Use Commission (HRS Section 205-13).

Funds collected through the imposition of sanctions would be deposited into the Workers' Compensation Special Compensation Fund created under HRS § 386-151 to help pay benefits to employees in case of employer default.

Authorizing litigants to electronically file notices of appeal is a small step towards paperless litigation. The proposed bill to allow electronic filing is another step towards becoming a "greener" government.

HOUSE OF REPRESENTATIVES
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2010

COMMITTEE ON FINANCE

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

Date: Thursday, February 14, 2013

Time: 2:45 p.m.

Place: Conference Room 308

TESTIMONY OF ILWU LOCAL 142 RE: H.B. 921, H.D. 1
RELATING TO PROCEEDINGS BEFORE THE LABOR
AND INDUSTRIAL RELATIONS APPEALS BOARD

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

Thank you for the opportunity to present testimony regarding HB 921, H.D. 1. We support this bill.

The Labor and Industrial Relations Appeals Board, like all adjudicatory bodies, requires the ability to enforce its rules and orders through sanctions. This is a commonplace and appropriate function of administrative tribunals and the monetary amounts of \$250.00 per offense is modest and restrained. It may be appropriate to add that the sanctions imposed should be appealable, through additional language to that effect.

H.B. 921, H.D. 1 also creates the alternative for filing appeals electronically in accordance with the manner electronic appeals are filed under the Hawaii Rules of Appellate Procedure. This, too, is a constructive idea, but we suggest that if the Board adopts this procedure that it be properly funded so that the system adopted is user-friendly and easily navigated by pro se litigants as well as attorneys. Even the current Hawaii appellate court procedure has quirks and idiosyncracies that can make utilizing the system a challenge. The Board should therefore weigh carefully if it requires added appropriations to implement its electronic filing program and seek such funding also.