



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

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February 14, 2013

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

Date: Thursday, 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. 923 H.D. 1 Relating to Disability Compensation Division Special Fund

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 923 H.D. 1 amends sections 386-86 and 386-95, Hawaii Revised Statutes (HRS), to authorize the Disability Compensation Division to assess fees for filing applications for hearings, issuing subpoenas and filing injury reports, to establish and fund two full-time positions; and to appropriate up to \$200,000 from a special fund to carry out the purposes of this proposal. The proposal adds a new section to Chapter 386, HRS, to establish a Disability Compensation Division Special Fund into which these fees would be deposited. The measure shall be repealed on June 30, 2016.

The department strongly supports this Administration proposal that provides an opportunity to discuss the implementation of a user fee concept that would not require general funds and which could provide resources that would allow the department to do a better job of cutting down of the delays and backlogs due to recent budget restrictions.

The division's operating budget has suffered greatly over the last four budget cycles, including during the Reduction-in-Force. DCD has endured a 30% reduction in staffing since 2009—35 of 117 positions. The fees would help with the maintenance and upgrading of its automation system, which is the backbone of the division's

operations. We believe this proposal will help the division maintain and improve services to its customers.

II. CURRENT LAW

There is no established Disability Compensation Division Special Fund and no provision in the current law to authorize the division to assess fees for filing applications for hearings, issuing subpoenas or filing injury reports.

III. COMMENTS ON THE HOUSE BILL

Staffing and budget reductions since 2009 have resulted in a severe backlog in the settling 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 and to develop greater efficiency in the complex workers' compensation system.

The automation system, however, also requires additional funding for maintenance and upgrades to prevent catastrophic failure to the workers' compensation system. Furthermore, the operating systems need to be upgraded to continue to operate the server programs that run the worker's compensation system.

The Division is now seeking, through this proposal, to supplement its budget for operating costs by establishing fees for filing applications for hearings, issuing subpoenas and filing injury reports. Other State programs have been allowed to charge filing fees. Agencies such as the Land Use Commission and the Public Utilities Commission, for example, charge fees for the filing of certain documents. Chapter 607, HRS, allows the judiciary and courts to charge a variety of filing fees.

Allowing the Disability Compensation Division to establish fees for filing applications for hearings, issuing subpoenas and filing injury reports would supplement the Disability Compensation Division's operating budget and help defray costs associated with the development of greater efficiency of its workers' compensation automation system and with the expenses relating to the upkeep and upgrade of the division's automation system.

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE
STATE OF HAWAII

COMMITTEE ON FINANCE

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

Hearing: Thursday, February 14, 2013

Time: 2:45 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142, RE: HB 923, H.D. 1
RELATING TO DISABILITY COMPENSATION DIVISION SPECIAL FUND

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

Thank you for the opportunity to present testimony regarding HB 923, H.D. 1. We support this bill but believe one aspects of it requirements amendment.

The Disability Compensation Division (“DCD”) of the Dept. of Labor and Industrial Relations (“DLIR”) adjudicates a high volume of cases but has been hamstrung in recent years by the lack of personnel to conduct such basic functions as processing medical records, setting cases for hearing, and holding hearings. These delays have caused significant delays which have hurt injured workers, depriving them of monetary compensation, medical care, and vocational rehabilitation while their claims await adjudication.

It is our hope that the Governor’s budget for the department will be approved fully restoring the needed personnel without the need to enact additional legislation. However, if the legislature does not restore the positions eliminated, H.B. 923, H.D. 1 judiciously imposes modest fees upon users of the workers’ compensation system, and appropriates funds from the department’s Special Compensation Fund to provide the needed personnel. If legislative funding is not furnished, we support such a bill as a necessary and essential measure to prevent greater hardship with one critical amendment.

The measure now proposes the means to obtain revenue to improve the department’s execution of vital tasks by creating a DCD special fund within the state treasury that would receive: 1) the appropriation of \$200,000 from the Special Compensation Fund and 2) charges of \$10 for each application for hearing or request for subpoena before the Division and for each Form WC-1 Employer’s Report of Injury or Form WC-5 requested. Employees’s Claim for Workers’ Compensation Benefits. In this fashion, DCD itself, through its Special Compensation Fund contribution, employers

through Form WC-1 assessments and hearing and subpoena requests, and injured workers through the filing of Form WC-5, as well as hearing and subpoena requests will all contribute the needed revenue to enhance the department's operations.

The fees associated with the filing of a WC-1 Form (Employer's Report of Injury) and a WC-5 Form (Employees Claim for Compensation) states imposed only for a three year period from July 1, 2013 to June 30, 2016 **“or until such time as a different amount is established by rules adopted by the director” of the Dept. of Labor and Industrial Relations.** (Section 2(g) second paragraph) This was not our understanding of the decision actually made in House Committee on Labor and Public Employment, which we understood to be a complete sunsetting of all fees effective June 30, 2016.

To the extent H. B, 923, H.D. 1 the extends these fees beyond June 30, 2016 and allows the promulgation of administrative rules that will continue the fees beyond that date, we oppose the fee extension. If there is not a firm deadline to “sunset” or terminate this arrangement, the temptation to rely upon these added fees will be irresistible and they will gradually expand and grow until they become a burden on the class of injured workers who is least able to bear this burden. Likewise, employers should not be burdened with these fees, as it is a function of government itself to perform these basic adjudicatory functions. Access to justice in industrial injury claims is akin to a fundamental right, and funding for this basic service should not be “privatized” as a matter of principle.

In brief, H.B. 923, H.D. 1 may now contain only small, appropriate, and tolerable assessments on private parties, for limited and necessary administrative purposes. If these assessments are limited to a temporary three year period, this sacrifice is appropriate. However, to make these assessments permanent contradicts a fundamental purpose of government and the basic rights of injured workers. We therefore support HB 923 H.D. 1, if it is amended and limited to three years until June 30, 2016, but we oppose any extension of the fees beyond that date.

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 923, 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. WC-1, WC-3, and Subpoenas are an inherent part of the Department's usual and customary duties. This bill imposes user fees of \$10 each for subpoenas, WC-1 and WC-3 forms. WC-1 and WC-3 forms are required by statute. These fees are no more than a hidden tax that would be borne primarily 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 on forms required by statute and unfairly targets employers and self insured 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 Disability Compensation Division'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.

The Department of Labor Disability Compensation Division does not exist solely for Workers' Compensation. The Division is also responsible for Prepaid Health Care and Temporary Disability Insurance. The use of the fees for the Department's personnel and operating costs outside a general fund appropriation is a hidden tax that specifically targets employers and self insureds who are required to purchase Workers' Compensation insurance.

We respectfully ask that this bill be held.

Thank you for this opportunity to testify.

TESTIMONY BEFORE THE HOUSE

COMMITTEE ON FINANCE

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

HB 923, HD1
RELATING TO DISABILITY COMPENSATION DIVISION SPECIAL FUND

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. 923, HD1.** Our companies represent over 2,000 employees throughout the State.

This bill proposes to add a new section to Chapter 386, HRS, authorizing the Disability Compensation Division (DCD) to establish a Special Fund. The revenue for this new fund would come from establishing new "reasonable" fees for the filing of the "WC-1 Employer's Report of Industrial Injury" and from new fees for the issuing of subpoenas, and hearing applications. Since the vast majority of subpoenas issued are requested by employers and not claimants, and the WC-1 form is one required of employers only, this bill unfairly shifts the costs of administering the workers' compensation program to employers.

We recognize the challenges and need for the DCD to explore different financing approaches to supplement their operating expenses in these tough economic times. However, the challenges of these economic times are not unique to the DCD yet this bill would require employers to unfairly share in this burden. We also oppose the bill for its ambiguity as to what constitutes "reasonable fees," and in the case of allowed waivers "for good cause shown" what constitutes "good cause."

For these reasons, we respectfully oppose H.B. 923, HD1 and request that this measure be held.

Thank you for this opportunity to submit testimony.