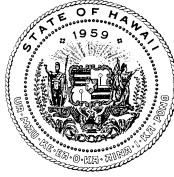


HB 923



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

February 1, 2013

To: The Honorable Mark Nakashima, Chair,
The Honorable Mark Hashem, Vice Chair, and
Members of the House Committee on Labor

Date: Friday, February 1, 2013
Time: 8:00 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. 923 Relating to Disability Compensation Division Special Fund

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 923 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 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.



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Alison Powers
Executive Director

TESTIMONY OF JANICE FUKUDA

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Hashem, Chair
Representative Derek Kawakami, Vice Chair

Friday, February 01, 2013
8:00 a.m.

HB 923

Chair Hashem, Vice Chair Kawakami, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of 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.

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE
STATE OF HAWAII

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Mark M. Nakashima, Chair
Rep. Mark J. Hashem, Vice Chair

Hearing: Friday, February 1, 2013
Time: 8:00 a.m.

Place: Conference Room 309, State Capitol

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

Chairman Nakashima, Vice Chair Hashem, Members of the Committee:

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 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 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 and **provided this is a temporary and not permanent feature of our law**, we support such a bill.

The measure proposes the means to obtain the 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. 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) are imposed only for a three

year period from July 1, 2013 to June 30, 2016 or until a different amount is adopted by the director of the Dept. of Labor and Industrial Relations. We disagree, however with the extension of these fees beyond June 30, 2016 and strong believe such fees should not become a permanent feature of our law. 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 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 if it is amended and limited to three years until June 30, 2016, but we oppose any extension of the fees beyond that date. Language repealing the new assessments on July 1, 2016 is attached to our testimony.

**Testimony to the House Committee on Labor and Public Employment
Friday, February 1, 2013 at 8:00 A.M.
Conference Room 309, State Capitol**

**RE: HOUSE BILL 923 RELATING TO DISABILITY COMPENSATION
DIVISION SPECIAL FUND**

Chair Nakashima, Vice Chair Hashem, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 923 Relating to Disability Compensation Division Special Fund.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber's main concerns are that we are unsure what the fees will be and the need for this additional funding stream. Furthermore, we have a concern of creating a new special fund and fee system without an overall financial plan. We understand the needs of the division and perhaps its loss of \$400,000 in general funds can be reinstated. Also, we suggest that the waiver of the fee be upon approval of application to proceed in forma pauperis rather than "good cause".

Thank you for this opportunity to express our views.