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March 25, 2013

To: The Honorable David Ige, Chair,
The Honorable Michelle Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Monday, March 25, 2013

Time: 9:10 a.m.

Place: Conference Room 211, State Capitol

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

**Re: HB 928 H.D.1 S.D.1 Relating to Certain Funds under the
Department of Labor and Industrial Relations**

I. OVERVIEW OF PROPOSED LEGISLATION

House Bill 928 HD1SD1 is an Administration proposal that proposes to clarify the classification of the following four funds as trust funds in sections of the Hawaii Revised Statutes (HRS):

- ◆ Unemployment Compensation Fund (383-121, HRS);
- ◆ Workers' Compensation Special Compensation Fund (386-151, HRS);
- ◆ Temporary Disability Insurance Special Fund for Disability Benefits (392-61, HRS); and
- ◆ Prepaid Health Care Special Premium Supplementation Fund (393-41, H.R.S).

The department strongly supports this Administration measure needed to comply with the Legislative Auditor's recommendation that the Department of Labor and Industrial Relations should clarify the classification of these special funds as trust funds.

II. **CURRENT LAW**

The Unemployment Compensation Fund was established in 1937 to provide temporary income to eligible unemployed individuals as required by state and federal laws. The program pays benefits to eligible unemployed individuals and is financed primarily through payroll taxes assessed on employers and interest earned on the fund balance. Federal law specifies that the Unemployment Compensation Fund moneys can only be used for benefit payments and employer refunds.

The Workers' Compensation (WC) Special Compensation Fund was established in 1937 to enhance the employability of persons with pre-existing injuries, reduce discrimination against persons with dependents, and require employers to pay compensation for employees' losses sustained while in their employment. The fund provides compensation benefits to qualifying employees in certain circumstances including permanent total disability benefit adjustments, permanent disability benefits involving pre-existing conditions, defaulting employers, total disability under previous laws, concurrent employment, and benefit adjustments for services of attendants. Revenues are from levies on workers' compensation carriers and self-insured employers, interest income, reimbursements from defaulting employers, unpaid benefits in certain cases, and fines for noncompliance with the WC law.

The Special Fund for Disability Benefits was established in 1969 to pay benefits to individuals who become temporarily disabled while unemployed and are ineligible for unemployment insurance benefits. The fund also pays temporary disability benefits to employees who are entitled to benefits, but cannot receive them because of employer bankruptcy or employer noncompliance with the TDI law. In 1969, a one-time assessment on employers was used to establish the fund. Since then, revenues are primarily from interest income and receipts from fines and penalties enforced through the TDI law. Currently, the TDI Law limits the administration of the Special Fund exclusively for the purposes of Chapter 392, HRS.

The Prepaid Health Care (PHC) Premium Supplementation Fund was established in 1974 to supplement health care insurance premium payments for certain employers with fewer than eight employees. In 1978, prepaid health care benefits coverage was added for employees who are entitled to receive benefits but whose employers are bankrupt or noncompliant with the state's PHC Act. The fund was established by an initial appropriation from the State's general fund. Since then, revenues have been primarily from interest income and receipts from fines and penalties collected under the PHC Act.

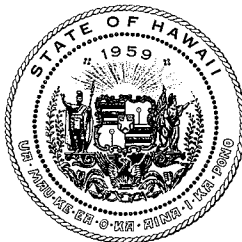
III. COMMENTS ON THE HOUSE BILL

This amendment is needed to comply with the Legislative Auditor's recommendation that the Department of Labor and Industrial Relations should clarify the classification of these special funds as trust funds. These funds were established as special funds and thus were classified accordingly by the Department of Accounting and General Services (DAGS). However, the funds meet

the review criteria for a trust fund as established by the State Auditor's Office based on the following criteria:

- The fund continues to serve the purpose for which it was originally created;
- The fund provides the benefits or services originally intended to the beneficiaries;
- The fund does not require general fund appropriations; and
- The fund meets the definition of a trust fund.

The Attorney General has also concluded that these special funds fall within the definition of a trust fund or functions as a trust fund and has recommended that the discrepancy be addressed through legislative action.



**TESTIMONY OF JAN K. YAMANE, ACTING STATE AUDITOR,
ON HOUSE BILL NO. 928, HOUSE DRAFT 1, SENATE DRAFT 1, RELATING TO
CERTAIN FUNDS UNDER THE DEPARTMENT OF LABOR AND INDUSTRIAL
RELATIONS**

**Senate Committee on Ways and Means
March 25, 2013**

Chair Ige and Members of the Committee:

I am Jan Yamane, Acting State Auditor. Thank you for this opportunity to testify in support of this bill that would amend Sections 383-121, Hawai'i Revised Statutes (HRS); 386-151, HRS; 392-61, HRS; and 393-41, HRS, within *Title 21 Labor and Industrial Relations*, by substituting the words "trust fund" wherever the words "special fund" appear.

Impetus for this bill came from a recommendation in our Report No. 12-10, *Review of Revolving Funds, Trust Funds, and Trust Accounts of the Departments of Human Resources Development, Labor and Industrial Relations, Public Safety, and Taxation*, in which we found, among other things, that the five funds administered by the Department of Labor and Industrial Relations are classified and operating incongruently from their statutory designations. We recommended, among other things, that the department clarify the funds' classification and propose legislation, if necessary.

We support passage of HB 928, HD 1, SD 1. I am available to answer any questions you may have.