

# S.B. NO. 1152

JAN 24 2013

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## A BILL FOR AN ACT

RELATING TO PROCEEDINGS BEFORE THE LABOR AND INDUSTRIAL  
RELATIONS APPEALS BOARD.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 371-4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§371-4 Labor and industrial relations appeals board.** (a)

4 There is created a labor and industrial relations appeals board  
5 composed of three members nominated and, by and with the advice  
6 and consent of the senate, appointed by the governor for terms  
7 of ten years each, except that the terms of members first  
8 appointed shall be for six, eight, and ten years respectively as  
9 designated by the governor at the time of appointments. The  
10 governor shall designate the chairperson of the board, who shall  
11 be an attorney at law licensed to practice in all of the courts  
12 of this State. Each member shall hold office until the member's  
13 successor is appointed and qualified. Because cumulative  
14 experience and continuity in office are essential to the proper  
15 handling of appeals under workers' compensation law and other  
16 labor laws, it is hereby declared to be in the public interest  
17 to continue board members in office as long as efficiency is

1 demonstrated. The members shall devote full time to their  
2 duties as members of the board. Effective July 1, 2005, the  
3 chairperson of the board shall be paid a salary set at eighty-  
4 seven per cent of the salary of the director of labor and  
5 industrial relations, and the salary of each of the other  
6 members shall be ninety-five per cent of the chairperson's  
7 salary.

8 (b) The board shall have power to decide appeals from  
9 decisions and orders of the director of labor and industrial  
10 relations issued under the workers' compensation law and any  
11 other law for which an appeal to the board is provided by law.

12 (c) For purposes of appeals to the board conducted  
13 pursuant to chapter 91, notwithstanding section 91-9.5, all  
14 parties shall be given written notice of hearing by first class  
15 mail at least fifteen days before the hearing.

16 (d) Unless otherwise provided by law, if service by first  
17 class mail is not made because the board or its agents have been  
18 unable to ascertain the address of the party after reasonable  
19 and diligent inquiry, the notice of hearing may be given to the  
20 party by publication at least once in each of two successive  
21 weeks in a newspaper of general circulation. The last published

1 notice shall appear at least fifteen days prior to the date of  
2 the hearing.

3 (e) A decision concurred in by any two members shall  
4 constitute a decision of the board.

5 (f) A vacancy in the board, if there remain two members of  
6 it, shall not impair the authority of two members to act.

7 (g) If any member of the board is unable to act because of  
8 absence, temporary disability, or disqualification, the governor  
9 may make a temporary appointment and the appointee shall have  
10 all the powers and duties of a regular member of the board.

11 (h) The chairperson of the appeal board shall be  
12 responsible for the administrative functions of the appeal  
13 board. The appeal board may:

14 (1) Appoint an executive officer and hearings officer, and  
15 employ other employees as it deems necessary in the  
16 performance of its functions;

17 (2) Set the duties and compensation of the executive  
18 officer, hearings officer, and employees; and

19 (3) Provide for the reimbursement of actual and necessary  
20 expenses incurred by the executive officer, hearings  
21 officer, and employees in the performance of their  
22 duties, within the amounts made available by

1           appropriations therefor.

2           Members of the appeal board and employees other than  
3 clerical and stenographic employees shall be exempt from  
4 chapters 76 and 89. Clerical and stenographic employees shall  
5 be employed in accordance with chapter 76.

6           (i) The board shall be within the department of labor and  
7 industrial relations for budgetary and administrative purposes  
8 only.

9           (j) The board may adopt rules [~~and regulations~~] within its  
10 area of responsibilities in accordance with chapter 91.

11           (k) The board may make or issue any order or take other  
12 appropriate steps as may be necessary to enforce its rules and  
13 orders and to carry into full effect the powers and duties given  
14 to it by law. The board may after notice and reasonable  
15 opportunity to be heard by the board:

16           (1) Impose administrative sanctions; and

17           (2) Impose monetary sanctions of not more than \$250 for  
18 each offense against any person who is found to have  
19 violated the board's rules or orders, which amounts  
20 shall be deposited into the special compensation fund  
21 created by section 386-151.

1       The board shall determine and direct the appropriate notice  
2 and form for such opportunity to be heard."

3       SECTION 2. Section 386-88, Hawaii Revised Statutes, is  
4 amended to read as follows:

5       "**§386-88 Judicial review.** The decision or order of the  
6 appellate board shall be final and conclusive, except as  
7 provided in section 386-89, unless within thirty days after  
8 mailing of a certified copy of the decision or order, the  
9 director or any other party appeals to the intermediate  
10 appellate court, subject to chapter 602, by filing a written  
11 notice of appeal with the appellate board~~[-]~~, or by  
12 electronically filing a notice of appeal in accordance with the  
13 Hawaii rules of appellate procedure. A fee in the amount  
14 prescribed by section 607-5 for filing a notice of appeal from a  
15 circuit court shall be paid to the appellate board for filing  
16 the notice of appeal from the board, which together with the  
17 appellate court costs shall be deemed costs of the appellate  
18 court proceeding. The appeal shall be on the record, and the  
19 court shall review the appellate board's decision on matters of  
20 law only. No new evidence shall be introduced in the appellate  
21 court, except that if evidence is offered that is clearly newly


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1 discovered evidence and material to the just decision of the  
2 appeal, the court may admit the evidence."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

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**Report Title:**

Labor and Industrial Relations Appeals Board Proceedings

**Description:**

Affirms the authority of the Labor and Industrial Relations Appeals Board to issue orders or take other appropriate action to enforce its rules and orders and allows parties to electronically file appeals to the appellate court.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

**SB. NO. 1152**

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO PROCEEDINGS BEFORE THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD.

PURPOSE: To affirm the authority of the Labor and Industrial Relations Appeals Board (Board) to issue or make orders to enforce its rules or orders and to provide litigants with the statutory authority to file electronic notices of appeal with the appellate court.

MEANS: Amend sections 371-4 and 386-88, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The Board is empowered to decide appeals from decisions and orders of the Director of Labor and Industrial Relations issued under the workers' compensation law and any other law for which an appeal to the Board is provided by law. Section 371-4 gives the Board the power and authority to adopt rules and regulations within its area of responsibilities in accordance with chapter 91, HRS. The rules adopted by the Board authorize the Board to impose sanctions for failure to comply with an order of the Board.

The proposed amendment to section 371-4 explicitly authorizes the Board to take appropriate action to enforce its rules or orders, including the imposition of sanctions. This is similar to the statutory authority given to the Director of Labor and Industrial Relations under section 386-97.5, HRS, to assess penalties against those found to have violated any provision of chapter 386 or rule adopted thereunder for which no penalty is otherwise provided.



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The proposed amendment to section 386-88 is intended to conform the workers' compensation statute to amended appellate court rules that took effect in 2010, which allow litigants to file documents, including notices of appeals from a court or agency, electronically through JEFS (Judiciary Electronic Filing System). Under Rule 4 of the Hawaii Rules of Appellate Procedure, a notice of appeal filed through JEFS is deemed filed with the clerk of the court appealed from.

The current version of section 386-88 provides only for the filing of a written notice of appeal with the Board. The proposed statutory amendment to section 386-88 would authorize the option of filing electronic notices of appeal in accordance with the rules of court.

Impact on the public: The proposed amendment to section 371-4 has minimal effect upon the public since it merely affirms the Board's authority to take action to enforce its own rules and orders.

Non-represented litigants seeking judicial appeal under section 386-88 would have the option of filing a written notice of appeal to the Board or filing the notice of appeal electronically with the appellate court through JEFS. Attorneys, who are required by appellate court rules to file documents electronically, would be authorized under section 386-88 to file written notices of appeal electronically.

Impact on the department and other agencies: Enforcement of the Board's rules and orders would result in more efficient processing of appeals, which would improve the workers' compensation related services to the public.

Amendment of section 386-88 is part of Governor Abercrombie's New Day effort to

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transform state government into an efficient and effective enterprise and a small step towards the State's goal of reducing its carbon footprint.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LBR 812.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE  
DATE: Upon approval.