

JAN 24 2013

SB. NO. 1159

A BILL FOR AN ACT

RELATING TO CERTAIN FUNDS UNDER THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

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

1 SECTION 1. The legislature finds that certain funds in the
2 department of labor and industrial relations are classified and
3 operated incongruently from their statutory designations.

4 According to the legislative auditor's report no. 12-10, issued
5 on December 7, 2012, the confusion in classifying funds may be
6 due to the inconsistency between the name given to the fund by
7 the statute that establishes it; the definitions provided by the
8 department of accounting and general services; and the
9 definitions of special, revolving, and trust funds contained in
10 the Hawaii Revised Statutes. The purpose of this Act is to
11 clarify the classification of five of the department of labor
12 and industrial relation's funds as trust funds as recommended by
13 the legislative auditor.

14 SECTION 2. Section 383-121, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§383-121 Unemployment compensation fund; establishment**
17 **and control.** There is established in the treasury of the State

1 as a [~~special~~] trust fund, separate and apart from all public
2 moneys or funds of the State, an unemployment compensation fund,
3 which shall be administered by the department of labor and
4 industrial relations exclusively for the purposes of this
5 chapter. All contributions pursuant to this chapter shall be
6 paid into the fund and all compensation and benefits payable
7 pursuant to this chapter shall be paid from the fund. All
8 moneys in the fund shall be mingled and undivided. The fund
9 shall consist of:

- 10 (1) All contributions collected pursuant to this chapter;
- 11 (2) Interest earned on any moneys in the fund;
- 12 (3) Any property or securities acquired through the use of
13 moneys belonging to the fund;
- 14 (4) All earnings of such property or securities;
- 15 (5) All moneys credited to this State's account in the
16 unemployment trust fund pursuant to section 903 of the
17 Social Security Act, as amended; and
- 18 (6) All other moneys received for the fund from any other
19 source."

20 SECTION 3. Section 386-151, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) There is hereby created a trust fund to be known as
2 the special compensation fund which shall consist of payments
3 made to it as provided by law. The director of finance of the
4 State shall be custodian of the fund, and all disbursements
5 therefrom shall be paid by the director of finance upon orders
6 by the director of labor and industrial relations."

7 SECTION 4. Section 392-61, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§392-61 Establishment of [~~special~~] trust fund for**
10 **disability benefits.** There is established in the treasury of
11 the State, separate and apart from all public moneys or funds of
12 the State, a [~~special~~] trust fund for disability benefits which
13 shall be administered by the director exclusively for the
14 purposes of this chapter; and for the establishment and
15 maintenance of a family leave data collection system under
16 section 398-9.5. All contributions pursuant to this part shall
17 be paid into the fund and all benefits payable under this part
18 shall be paid from the fund. The fund shall consist of (1) all
19 contributions collected pursuant to this part, together with any
20 interest thereon; (2) all fines and penalties for the fund
21 pursuant to this chapter; (3) all moneys collected by way of
22 subrogation; (4) interest earned on any moneys in the fund; (5)

1 any property or securities acquired through the use of moneys
2 belonging to the fund; (6) all earnings of such property and
3 securities; and (7) all other moneys received for the fund from
4 any source."

5 SECTION 5. Section 393-41, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "~~[‡]~~§393-41~~[‡]~~ **Establishment of ~~[special]~~ premium**
8 **supplementation fund.** There is established in the treasury of
9 the State, separate and apart from all public moneys or funds of
10 the State, a ~~[special]~~ trust fund for premium supplementation
11 which shall be administered exclusively for the purposes of this
12 chapter. All premium supplementations payable under this part
13 shall be paid from the fund. The fund shall consist of (1) all
14 money appropriated by the State for the purposes of premium
15 supplementation under this part and (2) all fines and penalties
16 collected pursuant to this chapter."

17 SECTION 6. To conform to the change in the name "special
18 fund for disability benefits" to "trust fund for disability
19 benefits," the title of part IV of chapter 392, Hawaii Revised
20 Statutes, and sections 392-28(3) and (4), 392-42.5(b), 392-43(f)
21 and (g), 392-45, 392-46, 392-47, 392-52, 392-62, 392-63, 392-64,
22 392-65, 392-67, 392-69, 392-72(a), 392-78(d), and 392-92(b),

1 Hawaii Revised Statutes, are amended by substituting the word
2 "trust fund" or like term, wherever the words "special fund" or
3 like term appears, as the context requires.

4 SECTION 7. To conform to the change in the name "special
5 fund for premium supplementation" to "trust fund for premium
6 supplementation," sections 393-33(a) and 393-34(b), Hawaii
7 Revised Statutes, are amended by substituting the words "trust
8 fund" or like term, wherever the words "special fund" or like
9 term appears, as the context requires.

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 9. This Act shall take effect upon its approval.

13
14 INTRODUCED BY: *Janice Inoué*

15 BY REQUEST

16

Report Title:

Trust Funds, Reclassification

SB. NO. 1159

Description:

Clarifies the classification of certain special funds under the Department of Labor and Industrial Relations as trust funds as recommended by the Legislative Auditor.

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. 1159

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO CERTAIN FUNDS UNDER THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

PURPOSE: The purpose of this bill is to clarify the classification of the Unemployment Compensation Fund section 383-121, Hawaii Revised Statutes (HRS); the Special Compensation Fund section 386-151, HRS; the Temporary Disability Insurance Special Fund for Disability Benefits, section 392-61, HRS; and the Prepaid Health Care Special Premium Supplementation Fund, section 393-41, HRS, as trust funds.

MEANS: Amend sections 383-121, 386-151, 392-61, and 393-41, Hawaii Revised Statutes.

JUSTIFICATION: This bill is needed to comply with the Legislative Auditor's recommendation that the Department of Labor and Industrial Relations should clarify the classification of these four special funds as trust funds. These funds were established as special funds and 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:

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

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The Unemployment Compensation Fund was established in 1937 now codified as section 383-121, HRS, 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 Special Compensation Fund was established in 1935 now codified as section 386-151, HRS, to enhance the employability of persons with pre-existing injuries, reduce discrimination against persons with dependents, and require employers to pay compensation only 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 workers' compensation law, chapter 386, HRS.

The Special Fund for Disability Benefits was established in 1969 by section 392-61, HRS, 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 temporary disability insurance law, chapter 392, HRS.

The Prepaid Health Care (PHC) Premium Supplementation Fund was established in 1974 by section 393-41, HRS, 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.

The Department of 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.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND:	None.
OTHER FUNDS:	Federal.
PPBS PROGRAM DESIGNATION:	LBR-171, LBR-183.
OTHER AFFECTED AGENCIES:	Department of Accounting and General Services
EFFECTIVE DATE:	Upon approval.