

SCR 92

REQUESTING THE STATE AUDITOR TO CONDUCT A MANAGEMENT
AUDIT OF THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.



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

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March 31, 2014

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Sam Slom, Vice Chair
Members of the Senate Committee on Economic Development, Government
Operations and Housing

The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

SENATE CONCURRENT RESOLUTION 92 PROPOSED S.D.1
REQUESTING THE STATE AUDITOR TO CONDUCT A MANAGEMENT AUDIT OF
THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

Monday, March 31, 2014
2:30 p.m. Rm 016, State Capitol

Testimony of Dwight Takamine, Director,
Department of Labor and Industrial Relations (DLIR)

Chair Hee, Chair Dela Cruz, and members of the Committees—thank you for providing this opportunity to discuss the management and operational status of the department. I believe that our primary responsibility is to provide the best quality of service to our community, for all those statutory responsibilities the DLIR is assigned. We are willing to work with the State Auditor to identify areas of improvement and look at areas that could benefit from improvements.

I believe we have made significant improvements to the overtime issue that have been discussed during the last several legislative sessions and contained in budget provisos. We have been able to reduce the percentage of overtime in the DLIR by up to 30% between FY12 and FY13 and our projecting an additional 22% reduction in FY14. We have provided this information, which contains updated information, as a separate attachment.

We are very appreciative that the Legislature provided for an additional sixteen positions during FY14. The Legislature provided fourteen of those positions to address backlogs by restoring the capacity of the Disability Compensation Division (DCD). Nine of those positions were for the Honolulu Hearings Section to alleviate the backlog in Workers' Compensation hearings. The Hearings Section also reviews all attorney fees, reconsideration/appeals, billing disputes, and claimant/employer complaints. The billing disputes before the DLIR have grown from less than 150 to 2,400 plus in recent years.

We have provided a status of the all the new FY14 positions as an attachment that provides detailed information and I can report that ten of those fourteen positions for DCD have either been filled or selections have been made. There are also several measures moving through the legislative process that will provide further assistance in reducing billing disputes and facilitating the timely adoption of the Workers' Compensation Medical Fee Schedule if enacted (SB2365, HB1974, SB2923). Moreover, the additional positions in last year's budget for the Hawaii Labor Relations Board has been filled while the list from DHRD is under review by Personnel for the additional Research Statistician III for the Research & Statistics Office. Altogether, eleven of sixteen

new positions (69%) in FY14 are filled or selections have been made.

The Legislature has also provided resources for the department during the last two regular sessions to help restore the capacity of some of the programs, most notably the establishment of a special fund (Act 103, SLH 2012) for the Boiler & Elevator Branch of the Occupational Safety and Health Division (HIOSH). Procuring the establishment of the boiler and elevator special fund provided a mechanism for self-sufficiency and enabled the program to hire and retain sufficient qualified personnel to carry out the public safety purposes of the boiler and elevator safety laws.

The establishment and filling of ten additional positions has allowed the DLIR to begin reducing the historical backlog in boiler and elevator inspections by nearly doubling the number of inspectors. In addition, the Boiler standards (administrative rules) were revised for the first time since 2000, similarly, the elevator rules that have not been updated since 2000 are in the process of being updated and will likely go into effect this summer. The law has enabled the department to meaningfully enhance the public's safety and contribute to the ongoing economic revitalization by not impeding construction as we recover from the Great Recession.

The Elevator Branch also began requiring using an online applications and fee payments system in August 2013 for new installations of elevators and kindred equipment and personnel hoists at construction sites. We are working with the consultants on phase two of the phased project that will eventually provide for an online system for all elevator permits, fee payments

and other services.

Nonetheless, not all programs have obtained assistance since the losses during the Great Recession. To the extent possible and regardless of whether all the programs have received additional resources, we have endeavored to make operations more efficient through various initiatives.

In the short and medium term until the Office of Information Management and Technology's Enterprise Resource Planning project is fully implemented, we have developed a department-wide electronic tracking system for tracking recruitment processes and status, overtime approval and training documentation. In addition to making these processes more efficient and effective, the system was also developed in response to internal complaints about a lack of transparency, efficiency, and the availability of status updates on various requests the department processes.

We are streamlining business processes and using technology to improve the delivery of DLIR's programs and quality of services to Hawaii's people. Act 262 (SLH, 2012) provided for the electronic uploading of insurance information by allowing the acceptance of the notice of an employer's workers' compensation insurance from approved third party agencies. This will reduce the labor-intensive requirements of manually inputting insurance information into the system. This will also improve the accuracy, reliability, and timeliness of information the department provides to the State's procurement and enforcement systems.

This improvement will also facilitate the State's procurement process and allows companies that do business with the State and Counties to receive approval to submit bid proposals more quickly than before and obtain compensation for their work more quickly. The improvement will also provide the investigator and audit staffs with current information necessary to ensure the employers' workers' compensation coverage is kept up to date and will provide the workforce with the economic and health protection the workers' compensation law was intended to provide.

Act 15 (SLH, 2013) allowed the Unemployment Security Appeals Referees' Office (ESARO) to establish an online appeals system, which allows parties to file appeals online, electronically receive hearing notices and appeals documents, and monitor the status of their appeals. In February of this year, ESARO rolled out the online appeals system statewide.

The Unemployment Insurance Division began making unemployment benefits available via direct deposit in 2013. It also completed the fourth, and final phase, of making all kinds of unemployment claims filing available via the web in 2012. Effective February 26, 2014, employers are able to submit the "Weekly Report of Low Earnings" report online.

Employers who take advantage of this system will also have access to the ESARO's online system to file appeals, obtain information about the appeals process, review records regarding an appeal, submit documents for an appeal, verify the date and time of an appeal's hearing, request postponement of a hearing, check the status of an appeal and receive electronic messages from

the appeal's office.

The Unemployment Insurance Division, through prudent stewardship and proper management, has helped maintain and build the reserves in the Unemployment Trust Fund. The resulting drop in unemployment taxes means that employers will save an average of \$300 per employee in 2014 and be able to consider investments in their businesses and employees. The unemployment program is designed to replenish its balance when times are better so the taxes on employers do not rise when the economy falters and when employers can least afford higher taxes. Unemployment benefits play a major role in stabilizing the economy during recessions by maintaining the purchasing power of those without income from employment, and DLIR's duty is to protect employers against the double 'whammy' of diminishing profits and rising unemployment taxes during recessionary times.

Act 261 (SLH, 2012) and Act 98 (SLH, 2013) allows the Labor and Industrial Relations Appeals Board (LIRAB) and Hawaii Labor Relations Board (HLRB) to notify parties of hearings by first class mail instead of costly certified mail. Act 96 (SLH, 2013) also enabled HLRB to provide written notice by first class mail to parties in a HIOSH contested case hearing. Act 14 (SLH, 2013) affirmed the authority of LIRAB 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 funds saved are being used in strategic planning efforts by both of the agencies to move into the digital age with a goal towards paperless litigation and electronic filing and document management.

In addition to the online permit system and the development of a special fund for the Boiler & Elevator Branch, we have focused much attention and resources on HIOSH because it is the one departmental agency that deals with life and death matters and was eviscerated by the previous administration. In 2009, thirty-two of fifty-one HIOSH positions were eliminated during the 2009 Reduction-in-Force (RIF) process. Sixteen of the thirty-two were benchmarked positions that contributed to meeting the necessary OSHA staffing requirements—a federal court ruling [AFL-CIO v. Marshall, C.A. No. 74-406 (D.D.C. 1978)](order implementing AFL-CIO v. Marshall, 570 F.2d 1030 (D.C. Cir. 1978)) requires HIOSH to have twenty-two specific positions in compliance and consultation. In FY 2009, HIOSH completed only 51 percent of its goal for inspections. Due to the RIF 2009, only twelve of the twenty-two benchmarked positions were authorized in the Executive Budget and only ten of the twelve positions were filled.

The 2010 Legislature restored twelve of the positions abolished during the RIF, though the department did not move to fill the positions until the start of the Abercrombie Administration. Beginning in December 2010, the DLIR initiated recruitment for the positions and the conversion of nine of the restored positions to meet the OSHA benchmark staffing requirements. The HIOSH Administrator was also assigned back to the management of the division after being assigned to special projects since 2004.

However, to establish meaningful safety and health regulation, we needed the assistance and leadership of the Occupational Safety and Health

Administration (OSHA) to train and mentor new staff and to provide resources. Therefore, we requested assistance and worked with OSHA to develop an Operational Status Agreement (OSA) that is designed to jointly rebuild and strengthen the safety and health regulatory environment in the state. The OSA delineates the shared regulatory responsibility for Hawaii per an agreement that became effective in September 2012 that clearly divides enforcement responsibilities. This procedural agreement provides a roadmap for how the OSHA and HIOSH will work together to meet safety and health goals and assure safe and healthful working conditions for Hawaii's workers.

The agreement suspended HIOSH's enforcement authority in specific industries where OSHA assumed responsibility for enforcement until the State is able to be "at least as effective" as OSHA. The partnership allows OSHA to commit the resources and staff necessary to provide the training and support, which will enable HIOSH to reassume sole enforcement authority in the State. HIOSH will progressively resume authority over industries as it rebuilds capacity during the three-year period outlined in the agreement.

After the first full year, we exceeded the number of inspections required by the OSA and the return of the Manufacturing sector to HIOSH jurisdiction occurred as scheduled in the agreement (October 2013). We still face challenges in recruitment and retention, but we recently hired two very difficult to fill supervisory positions in the Safety and Consultation Branches that have been vacant for a number of years.

With the help of the 2013 Legislature, we have reversed the effective

dismantling of civil rights enforcement by obtaining approval of changing the means of financing for seven positions. Since 2008, the Hawaii Civil Rights Commission (HCRC) lost eight of thirty permanent positions. In addition, eight of the remaining twenty-two positions were partially or wholly federally funded, an over-reliance on federal funds that would have resulted in additional loss of staff and enforcement capacity. In 2013 the Legislature changed the means of financing for seven of those eight positions, avoiding further loss of capacity. This, and restoration of three investigator positions lost in the RIF, will allow the HCRC to restore its capacity, address investigation backlog and reduce the time it takes to investigate complaints.

The DLIR is also doing its part to support the ongoing recovery of the state's economy by supporting small businesses by obtaining amendments to the Employment and Training Fund law to assist small businesses in business specific training programs where there are critical skill shortages in high growth or industry areas. 95% of the businesses in Hawaii are small businesses. Act 101 (SLH, 2013) allows using the money collected to pay interest on federal loans for the Unemployment Trust Fund (\$1,000,000) for workforce development. Act 25 (SLH, 2013) will focus DLIR efforts towards small businesses in the Agriculture, Construction, Creative/Innovation, Health Care & Wellness, Hospitality/Visitor and Science & Technology sectors by providing seven macro-grants to employer organizations of up to \$125,000 each. These funds will be used as seed money to develop innovative education and training curricula and program design and activities in the aforementioned sectors identified by DBEDT, the county workforce investment boards, employer organizations, industry and trade associations,

and labor organizations.

Act 101 (SLH, 2013) allowed Employment and Training Fund moneys collected for the purpose of paying interest assessments on loans to the unemployment trust fund to also be used for a period of one year for costs to administer, manage, report, and oversee Title I programs funded under the federal Workforce Investment Act. This is an additional \$800,000 in moneys collected for interest for the unemployment loans is in addition to the \$1,000,000 for the small business program outlined above.

Act 101 addressed the adverse consequences imposed on the department because of a drastic reduction in Workforce Investment Act (WIA) funding for state-level administrative purposes. Prior to 2011, federal law allowed a maximum of 15 % of total funds to be used for administration and management of the funds. Since 2011, Congress imposed a much lower cap of 5 percent, a 67 % decrease, which represents a loss of \$714,882 in funds for the Workforce Development Division in which to administer \$7,145,877 in WIA moneys. The balance of the funds, 95%, is contracted to the four county governments for service delivery as required by federal statute. Despite the federal funding restriction, the State's responsibilities including program and financial management, oversight, administration, contracting, technical assistance, and reporting, remain the same.

From July 1, 2011, the department had been utilizing carryover funds, laying off staff (2.5 FTE), not filling two other positions, and temporary cost-cutting measures to meet its federal obligations. The DLIR is close in achieving

agreements with the Counties that seek to make the administrative and oversight process more efficient. The latest federal budget also restored 3.75% more for allocation for administrative costs (total now 8.75% instead of the previous 15%). Taken together, these two items are likely the long-term solution the DLIR represented it was working towards to the 2013 Legislature.

We are also supporting a measure (SB3039) this session as long as it does not supplant the priorities identified in the Executive Supplemental Budget Request. SB3039 is continuing to move through the legislative process and appears to be going to conference. SB3039, as introduced, would provide a special fund and two positions dedicated to prevailing wage law (chapter 104) enforcement, which would reduce the backlog in chapter 104 cases and allow other specialists in the Wage Standard Division to focus more on the other six laws enforced by the Division.

In summary, as a department we face many challenges and appreciate the opportunity to provide the Committees with information pertinent to those challenges and are willing to work with the State Auditor as we recently did on the Workers' Compensation Medical Fee Schedule.

Thank you for the opportunity to provide testimony on this important issue.

From: mailinglist@capitol.hawaii.gov
To: EGHTestimony
Cc: william.g.kunstman@hawaii.gov
Subject: Submitted testimony for SCR92 on Mar 31, 2014 14:30PM
Date: Monday, March 31, 2014 10:08:53 AM
Attachments: [DLIR_FY14_Add_Posits20140330_Sunday.pdf](#)

SCR92

Submitted on: 3/31/2014

Testimony for EGH/JDL on Mar 31, 2014 14:30PM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------|--------------|--------------------|--------------------|
| bill kunstman | dlir | Comments Only | Yes |

Comments: Second attachment.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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DLIR FY14 ADDITIONAL POSITIONS STATUS

Program ID: LBR183 DISABILITY COMPENSATION PROGRAM
 Structure #: 020204000000
 Subject Committee: JDL JUDICIARY AND LABOR

| SEQ # | EXPLANATION | FY 2014 | FY 2015 | |
|----------|---|---------------|-----------------------|-----------------------|
| 90-001 | <p>EXECUTIVE REQUEST ADD (14) POSITIONS AND FUNDS FOR DISABILITY COMPENSATION DIVISION (13,000,214,000A, 13,000,428,000A) (1,000,30,000B, 1,000,60,000B)</p> <p>LEGISLATURE CONCURS.....</p> <p>DETAIL OF GOVERNOR'S REQUEST: (1) CERTIFICATE OF COMPLIANCE OFFICE ASSISTANT III SR08 (#94101, FY14: 12,834A, FY15: 25,668A) (3) OFFICE ASSISTANT IV SR10 (#94102, #94105, #94107, #94108, #94109, FY14: 13,878A, FY15: 27,756A EACH) (4) OFFICE ASSISTANT III SR08 (#94110, #94111, #94112, #94113, FY14: 12,834A, FY15: 25,668A EACH) (2) HEARING OFFICER V SR26 (#94104, #94114, FY14: 27,750A, FY15: 55,500A EACH) (1) HEARING OFFICER III SR23 (#94106, FY14: 22,788A, FY15: 45,576A) (1) RESEARCH STATISTICIAN III SR20 (#94161, FY14: 21,066B, FY15: 42,132B) FRINGE BENEFITS (FY14: 8,856B, FY15: 17,712B) TELEPHONE (FY14: 2,152A, 78B, FY15: 4,304A, 156B)</p> | 13.00 1.00 | 214,000 A 30,000 B | 428,000 A 60,000 B |
| 1060-060 | <p>LEGISLATIVE ADJUSTMENT: REDUCE (3,000) POSITIONS AND FUNDS FOR VACANCY SAVINGS.</p> | (3.00) | (138,048) A | (138,048) A |

STATUS OF ADDITIONAL POSITIONS LBR183 (DCD)

| SECTION | POSITION | STATUS |
|-------------------|---------------------------|--------------------------|
| RECORDS & CLAIMS | Office Assistant III | Filled |
| RECORDS & CLAIMS | Office Assistant III | Filled |
| RECORDS & CLAIMS | Office Assistant III | Filled |
| RECORDS & CLAIMS | Office Assistant IV | Hired, Start Date 4/16 |
| LBR901 RESEARCH & | Research Statistician III | Requested List from DHRD |

DLIR FY14 ADDITIONAL POSITIONS STATUS

| | | |
|------------------------|----------------------|--|
| STATISTICS | | |
| ADMINISTRATION | Office Assistant IV | Selection Made, Personnel Reviewing Selection |
| CLERICAL SERVICES UNIT | Office Assistant IV | No Selected Internal Vacancy Applicants, Requested List from DHRD |
| CLERICAL SERVICES UNIT | Office Assistant IV | Selection Made, Personnel Reviewing Selection |
| CLERICAL SERVICES UNIT | Office Assistant III | No Internal Vacancy Applicants, Requested List from DHRD |
| HEARING SECTION | Hearings Officer V | Filled |
| HEARING SECTION | Hearings Officer V | Filled |
| HEARING SECTION | Hearings Officer III | Filled |
| HEARINGS REVIEW | Office Assistant IV | Selection Made, Personnel Reviewing Selection |
| INVESTIGATION | Office Assistant III | Interview List Pending Approval of Selection of Supervisor (Selection Made, Personnel Reviewing Selection) |

90-001 EXECUTIVE REQUEST: 40,002 A \$0,004 A
 ADD (1) TEMPORARY POSITION AND FUNDS FOR HEARINGS.
 (40,002A, 80,004A)

 LEGISLATURE CONCURS.
 DETAIL OF GOVERNOR'S REQUEST:
 (1) TEMPORARY HEARINGS OFFICER (#94161, FY14: 40,002, FY15: 80,004)

STATUS OF ADDITIONAL POSITIONS LBR161 (HLRB)

| | | |
|------|----------------------------|--------|
| HLRB | TEMPORARY HEARINGS OFFICER | Filled |
|------|----------------------------|--------|

DLIR FY14 ADDITIONAL POSITIONS STATUS

STATUS OF ADDITIONAL POSITIONS LBR901 (R&S)

| | | | | | |
|----------|--|------|------------|------|------------|
| 900-001 | EXECUTIVE REQUEST: ADD (1) POSITION AND FUNDS FOR OCCUPATIONAL SAFETY AND HEALTH SURVEYS (0.50/21,000A; 0.50/22,000A) (0.50/15,000N; 0.50/30,000N) | 0.50 | 11,000 A | 0.50 | 22,000 A |
| | LEGISLATURE CONCURS DETAIL OF GOVERNOR'S REQUEST: (1) RESEARCH STATISTICIAN III SR20 (#04102; 0.5A 0.5N; FY14: 10,533A 10,533N; FY15: 21,066A 21,066N) FRINGE BENEFITS (FY14: 4,428N; FY15: 8,856N) TELEPHONE (FY14: 407A 39N; FY15: 934A 78N) | 0.50 | 15,000 N | 0.50 | 30,000 N |
| 1000-600 | LEGISLATIVE ADJUSTMENT: REDUCE (1) TEMPORARY POSITION AND FUNDS FOR VACANCY SAVINGS. | | (27,750) A | | (27,750) A |

| | | |
|-----------------------|---------------------------|------------------------------------|
| Research & Statistics | Research Statistician III | Personnel Reviewing List from DHRD |
|-----------------------|---------------------------|------------------------------------|

11/16 (69%) FY14 Additional Positions Filled/Selection Under Review.

Department of Labor and Industrial Relations
Overtime By MOF

Total OT Expenditures (Actual and Projected)

| MOF | FY 10 | FY 11 | FY 12 | FY 13 | FY 14 | FY 15 |
|-------|---------|---------|---------|---------|-----------|-----------|
| A | 23,591 | 60,975 | 168,994 | 152,537 | 93,870 | 75,000 |
| B | 880 | 2,410 | 216 | 12,789 | 20,000 | 15,000 |
| C- | - | - | - | - | - | - |
| N | 491,493 | 439,037 | 466,899 | 297,148 | 245,330 | 211,000 |
| TOTAL | 515,964 | 502,422 | 636,109 | 462,474 | 359,200 | 301,000 |
| | | | | | | |
| | Actual | Actual | Actual | Actual | Projected | Projected |

Twenty-Seventh Legislature
Regular Session of 2014

THE SENATE

Committee on Economic Development, Government Operations and Housing

Senator Donovan M. Dela Cruz, Chair

Senator Sam Slom Vice Chair

Committee on Judiciary and Labor

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

State Capitol, Conference Room 016

Monday, March 31, 2014; 2:30 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.C.R. 92, PROPOSED SD1
REQUESTING THE STATE AUDITOR TO CONDUCT A MANAGEMENT AUDIT
OF THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

The ILWU Local 142 **opposes** S.C.R. 92, proposed SD1, which requests the State Auditor to conduct a management audit of the Department of Labor and Industrial Relations.

The management audit that is being proposed by this resolution is likely unnecessary. The resolution itself clearly spells out that the Department of Labor and Industrial Relations has been understaffed and overworked for several years due to reductions in force initiated by the previous administration. If any “delays in processing and backlogs” have occurred, they are justifiable considering the staffing shortages that have yet to be completely remedied.

Now that the Department is finally on track and responsive to the needs of both workers and employers, we question this proposal for a management audit. However, if there are specific allegations regarding overtime and pay issues, these allegations should be raised through the proper channels, investigated thoroughly, and addressed by management in a timely fashion. We sincerely hope that those with grievances will bring them to the attention of the appropriate parties. Department matters should be thoroughly addressed internally before seeking the involvement of the Legislature and the State Auditor.

The ILWU urges that S.C.R. 92, proposed SD1 be shelved. Thank you for considering our views on this matter.