



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

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March 28, 2018

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J.K. Cullen, Vice-Chair, and
Members of the House Committee on Finance

Date: Wednesday, March 28, 2018

Time: 4:00 p.m.

Place: Conference Room 308, State Capitol

From: Leonard Hoshijo, Director
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. 2801 SD2 HD1 RELATING TO THE DEPARTMENT OF
LABOR AND INDUSTRIAL RELATIONS**

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal establishes the Labor Law Enforcement Special Fund and two positions to strengthen enforcement of labor laws by more aggressively collecting outstanding assessed penalties and fees. The measure also includes the following provisions:

- Allows the Department of the Attorney General to hire an attorney and a legal assistant to collect penalties on behalf of the Department of Labor and Industrial Relations.
- Amends the Occupational Safety and Health and Payment of Wages and Other Compensation Laws to direct the deposit of penalties to the Labor Law Enforcement Special Fund.
- Makes an appropriation of \$98,163 in seed money for the Labor Law Enforcement Special Fund and an equal appropriation out of the Fund for the purposes of the Act.

DLIR strongly supports this Departmental proposal designed to enhance the ability to enforce labor laws by helping ensure that penalties for violations of law are collected by the Department.

II. CURRENT LAW

Programs within the Department currently work with the Department of the Attorney General to attempt to collect penalties when entities fail to respond to citations or determinations resulting from administrative processes. The Department of the Attorney General currently has one FTE assigned part-time to pursue collections on behalf of the Department.

III. COMMENTS ON S.B. 2801SD2HD1

DLIR strongly supports this Departmental initiative aimed to improve compliance with labor laws by helping ensure penalties for violations are collected by DLIR. In mid-2017, DLIR estimated that it had more than \$2,705,024 in accounts receivable over the past several years. The Department believes that hiring an attorney and a legal assistant to pursue these collections would greatly improve its capacity to collect these penalties and efficiently effectuate the intent of labor law.

This proposal requests \$98,163 in seed moneys to establish the Labor Law Enforcement Special Fund. Collection of penalties under Occupational Safety and Health and Payment of Wages and Other Compensation Laws will serve as the source of funding for the special fund moving forward. The Department deposited \$5,164,393 in Occupational Safety and Health penalties into the General Fund between fiscal years 2014-2015 to 2016-2017.

Act 135, Session Laws of Hawaii 2017, established a minimum administrative penalty of \$500 for violations of chapter 388, Hawaii Revised Statutes (HRS), Payment of Wages and Other Compensation Law. This new administrative penalty also would be deposited into the special fund if this bill is enacted. The unencumbered balance of the fund exceeding \$500,000 would be deposited into the General Fund.

If enacted, this proposal will result in a self-sustaining special fund while also increasing the current amount of moneys going into the general fund due to the increased collections by the Department. Furthermore, Act 126, Session Laws of Hawaii 2017, significantly increased penalties imposed under section 396-10, HRS, of the Occupational Safety and Health Law, and directs the Director to adjust the penalties on an annual basis to reflect increases in the Consumer Price Index.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: MISCELLANEOUS, Diversion of Penalties to Create a DLIR Special Fund

BILL NUMBER: SB 2801, SD-2, HD-1

INTRODUCED BY: House Committee on Labor & Public Employment

EXECUTIVE SUMMARY: The bill as introduced mandates that the collections of civil fines and penalties be deposited into a new enforcement special fund. This would reduce transparency and accountability by bypassing the normal appropriations process.

SYNOPSIS: Adds a new section to HRS chapter 371 to establish the labor law enforcement special fund. States that the purpose of the fund is to provide for sufficient operating costs to collect penalties assessed by the department, and that moneys in the fund may be used for: (1) Personnel and operating expenses; (2) Staff development, training, fees, and expenses; and (3) Litigation expenses, including but not limited to transcript costs, and interpretation and translation services. Provides that the unencumbered balance of the fund exceeding \$500,000 at the end of every fiscal year shall go to the general fund.

Amends sections 388-10 and 396-10, HRS, to redirect the civil fines and penalties imposed under those sections to the new special fund.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: This bill is part of the Administration package and is sponsored by the Department of Labor and Industrial Relations. It is designated LBR-01 (18).

In 2002, the Legislature set requirements for establishing and continuing special and revolving funds. Sections 37-52.3 and 37-52.4, HRS, now state that the criteria used to review special and revolving funds are the extent to which each fund:

- Serves a need, as demonstrated by the purpose of the program to be supported by the fund; the scope of the program, including financial information on fees to be charged, sources of projected revenue, and costs; and an explanation of why the program cannot be implemented successfully under the general fund appropriation process;
- Reflects a clear nexus between the benefits sought and charges made upon the program users or beneficiaries, or a clear link between the program and the sources of revenue—as opposed to serving primarily as a means to provide the program or users with an automatic means of support, removed from the normal budget and appropriation process;
- Provides an appropriate means of financing for the program or activity, that is used only when essential to the successful operation of the program or activity; and

- Demonstrates the capacity to be financially self-sustaining.

We are concerned that the diversion of civil fines and penalties from the general fund to the new special fund to support additional positions subverts the appropriation process. DLIR explained that it now has a backlog of cases and more than \$2.7 million in accounts receivable; however, it did collect \$5.1 million in Occupational Safety and Health penalties over a two-year period. Thus, DLIR reasons that if it can just scoop the penalties, its enforcement function will be self-sustaining.

The backlog is a good argument for the Legislature to appropriate more money to support DLIR's enforcement responsibilities. It is not a good argument for using a special funding mechanism as opposed to the normal general fund appropriations process.

The bill relies upon earmarking civil fine moneys for its success. As with any earmarking of revenues, the legislature will be preapproving each of the programs fed by the fund into which the monies are diverted, expenses from the funds largely avoid legislative scrutiny, and the effectiveness of the programs funded becomes harder to ascertain. It is also difficult to determine whether the fund (or the departments involved) has too little or too much revenue.

Next, we expect our departments and agencies to enforce the laws fairly and impartially. How impartial can a DLIR enforcement employee be if: (1) his (or her) job is funded by the special fund, (2) the fund is fed by fines and penalties, and therefore (3) if the fines and penalties don't come in, the employee's job may be in jeopardy?

The fact that this type of bill is being introduced, furthermore, raises questions about how DLIR has been managed. Its enforcement cases have been allowed to back up, so has it really been giving sufficient priority and resources to enforcing the laws over which it now has responsibility? Legislators, this is where your oversight role kicks in!

Digested 3/27/2018

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

THE HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

NOTICE OF HEARING
Wednesday, March 28, 2018
4:00 p.m.
State Capitol
Conference Room 308

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee:

In an effort to ensure a level playing field among those who do follow the labor laws in the State of Hawaii, we strongly support SB 2801, HD1 which establishes the Labor Law Enforcement Special Fund to finance the collection of penalties for violations of labor law. This proposed bill establishes two positions, including an attorney and legal assistant, in the Department of the Attorney General to represent the Department of Labor and Industrial Relations in collecting penalties for violations of law.

We believe that increased enforcement of laws, as well as stiffer penalties, will help to ensure that our citizens, consumers, and stakeholders in the construction industry are protected from those who choose to cheat or circumvent existing laws.

Thank you for allowing us to express our strong support on SB 2801, HD1, and we respectfully request changing the effective date back to “upon its approval.”



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About PRP

Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.