

HB 920



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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813

<http://labor.hawaii.gov>

January 29, 2013

To: The Honorable Mark Nakashima, Chair,
The Honorable Mark Hashem, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 1, 2013

Time: 8:00 a.m.

Place: Conference Room 309, State Capitol

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

**Re: H.B. No. 920 Relating to Appeals to the Labor
and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 920 is an administration proposal that authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to charge a filing fee of \$30 for workers' compensation appeals and fees for other administrative costs, and establishes a special fund into which moneys collected will be used by LIRAB to supplement its general fund appropriation and fund projects to improve services.

DLIR strongly supports this administration measure. The proposal represents a small piece of this Administration's efforts to rebuild capacity, in particular, the workers' compensation system, which has suffered through budget constraints over the last few budget cycles.

II. CURRENT LAW

Under current Section 386-87 of the Hawaii Revised Statutes (HRS), LIRAB does not have authority to set or charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals.

III. COMMENTS ON THE HOUSE BILL

- The budget shortfalls of the past several years highlighted the importance of identifying or creating sources of revenue to help balance the state budget and

defray operational expenses, especially during tough economic times.

- H.B. 920 would enable LIRAB to fund projects to increase efficiency without using additional general funds and to help defray operational expenses associated with the processing of workers' compensation appeals.
- Other administrative agencies that conduct administrative hearings charge filing fees for certain documents. Additionally, the judiciary (District, Circuit, and Appellate Courts) also charge a variety of filing fees for complaints and appeals and fees for administrative costs such as photocopying, telefaxing, and preparation of audio or video recordings.
- A filing fee would deter the filing of frivolous or vexatious appeals.
- Litigants who cannot afford the filing fee may apply for an exemption or waiver of the filing fee for good cause shown.



LABOR & INDUSTRIAL RELATIONS APPEALS BOARD
KEELIKOLANI BUILDING
830 PUNCHBOWL STREET, ROOM 404
HONOLULU, HAWAII 96813
(808) 586-8600

January 30, 2013

To: The Honorable Mark Nakashima, Chair,
The Honorable Mark Hashem, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Friday, February 1, 2013
Time: 8 a.m.
Place: Conference Room 309, State Capitol

From: Roland Q.F. Thom, Chairman
Labor and Industrial Relations Appeals Board

**Re: H.B. No. 920 Relating to Appeals to the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 920 is an administration measure that authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to charge a filing fee of \$30 for workers' compensation appeals and fees for other administrative costs, and establishes a special fund into which moneys collected will be used by LIRAB to defray the cost of operations.

LIRAB strongly supports H.B. 920 because the funds generated will supplement LIRAB's general fund appropriation and give it the opportunity to fund projects to improve services.

II. CURRENT LAW

Under current Section 386-87 of the Hawaii Revised Statutes (HRS), LIRAB does not have statutory authority to set or charge fees for filing appeals or fees for administrative costs associated with the processing of workers' compensation appeals.

III. COMMENTS ON THE HOUSE BILL

- Despite the cautious optimism expressed in economic projections for growth

and collection of revenues, there is still a need to identify or create sources of revenue to help balance the State budget.

- H.B. 920 would enable LIRAB to fund projects to increase efficiency without using additional general funds.

- Funds generated by H.B. 920 will be used to defray operational expenses relating to the upgrade of equipment and technology, data security, and other costs associated with the processing of hearings and workers' compensation appeals.

- Establishing a special fund for LIRAB would also enable it to fund high priority projects designed to significantly increase the efficiency and effectiveness of services, such as an electronic archiving system for decisions and orders, an electronic document filing system that could be integrated with the judiciary's JEFs e-filing system and improvements to LIRAB's electronic calendaring system to provide litigants with online access to LIRAB's conference and trial calendar.

- Other State boards or commissions that conduct Chapter 91 administrative hearings, such as the Land Use Commission and Public Utilities Commission, charge filing fees for certain documents. Additionally, the courts (District, Circuit, and Appellate) also charge a variety of filing fees for complaints and appeals and costs for photocopying, telefaxing, and preparation or audio or video recordings.

- A reasonable filing fee of \$30 would discourage frivolous or vexatious appeals and allow LIRAB to devote more time to appeals with merit.

- Indigent litigants who cannot afford the filing fee may petition LIRAB for an exemption or waiver of the fee with good cause shown; thus, parties with legitimate appeals who cannot afford the filing fee would not be excluded from the appeals process.

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Mark M. Nakashima, Chair
Rep. Mark J. Hashem, Vice Chair

Hearing: Friday, February 1, 2013
Time: 8:00 a.m.
Conference Room 309

TESTIMONY OF ILWU LOCAL 142 RE: HB 920 RELATING TO
APPEALS TO THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

Chairman Nakashima, Vice Chair Hashem, Members of the Committee:

Thank you for the opportunity to testify regarding H.B. 920. We support the general concept of the bill as a necessary but temporary measure to insure the prompt adjudication of claims and to insure the Labor and Industrial Relations Appeals Board (“LIRAB”) has the financial resources necessary to perform their vital work.

H.B. 920 creates a special fund in the state treasury for fees collected by the LIRAB for operating costs, including upgrading technology and equipment and an electronic document management system. A flat fee of \$30.00 will be assessed for administrative costs, and can be adjusted in accordance with the rule making provisions of the Hawaii Administrative Procedures Act. Fees may also be waived for good cause.

There is little doubt that the LIRAB has had to perform its normal responsibilities under extreme fiscal constraints and without the normal complement of employees, and it is praiseworthy that they have adjudicated as many claims as they have under these demanding circumstances. It would be our first preference that the state simply restore the normal funding for positions and for the costs of upgrading technology and equipment, including an electronic document management system without the need to impose any filing fees on the working class and impoverished claimants who comprise the class of injured workers who are the board’s constituents.

However, we recognize that such funding may well not be forthcoming at this time, and Claimants, employers, insurers, and the Board itself deserve to have better technology and equipment immediately. Therefore, in the current, constrained financial circumstances, we support the temporary imposition of the \$30.00 filing fees for a three year period to commence July 1, 2013 until July 1, 2016 at which time the collection of filing fees should “sunset” or cease entirely. The state should then assume its normal role of financing the operation of government agencies and boards without the need to impose special filing fees and assessments. If funding is not terminated on July 1, 2016, we fear that despite the best intentions, the temptation to increase these fees will prove irresistible

and over time, what begins as a modest exaction will mushroom into a significant burden upon injured workers who are simply unable to bear any additional financial burdens during the period of their recovery and rehabilitation.

TESTIMONY OF JANICE FUKUDA

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Mark J. Hashem, Vice Chair

Friday, February 1, 2013
8:00 a.m.

HB 920

Chair Nakashima, Vice Chair Hashem, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 40% of all property and casualty insurance premiums in the state.

We **oppose** this bill. This bill imposes fees that will be used for operational costs that are considered general overhead and supplies. These fees are no more than a hidden tax that would be borne by employers which will add to their cost of doing business. Furthermore, it is not a transparent general fund expenditure.

This bill also establishes an adverse precedent by allowing a State Department to impose fees to upgrade technology and equipment – something that many payors cannot even afford for their own businesses. The fees unfairly targets only a portion of all entities to bear a disproportionate financial burden for a State Department's operational budget that does not specifically and solely benefit the payers. Private businesses are supporting other government entities (who are exempt from these fees) as these government entities will benefit from the Labor and Industrial Relations

Appeals Board's use of these funds. Even if the fee were to the sole benefit of the payer, these services should be general fund expenditures that go through the Legislative budgeting process.

Employers are currently assessed by the State to support the Special Compensation Fund without accountability. This bill establishes yet another fund for which employers will need to pay into without any controls as to how these funds are expended. The use of the fees for the Department's personnel and operating costs outside a general fund appropriation is a hidden tax.

We respectfully ask that this bill be held.

Thank you for the opportunity to provide comments.

**Testimony to the House Committee on Labor and Public Employment
Friday, February 1, 2013 at 8:00 A.M.
Conference Room 309, State Capitol**

**RE: HOUSE BILL 920 RELATING TO APPEALS TO THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD**

Chair Nakashima, Vice Chair Hashem, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **expresses concern** of HB 920 Relating to Appeals to the Labor and Industrial Relations Appeals Board.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

Our main concern is the language is vague and employers want to ensure that the fee is applied and enforced consistently, and that the waiver should only be if no financial means to pay. We suggest that the waiver of the fee be upon approval of application to proceed in forma pauperis rather than "good cause". We also have a concern on the establishment of a new special fund and fee without a long term financial plan.

Thank you for this opportunity to express our views.

LATE TESTIMONY

**Al Lardizabal, Government Relations
Hawaii Laborers' Union
1617 Palama Street
Honolulu, HI 96817
Phone 808.841.5877**

**Labor and Public Employment Committee
February 1, 2013
8:00 a.m.
Room 309**

**TESTIMONY IN SUPPORT
HB920 – Relating to Appeals to the Labor and Industrial Relations Appeals Board**

Chair Nakashima:

The Hawaii Laborers' Union supports HB920 authorizing the Labor and Industrial Relations Appeals Board to establish a \$30 filing fee and fees for administrative expenses and to establish a Special Fund.

Mahalo,

Al Lardizabal