

HB 2374

**RELATING TO THE
DEPARTMENT OF
LABOR
AND INDUSTRIAL
RELATIONS**

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS.

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

SECTION 1. Chapter 371, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§371- Labor law enforcement special fund; establishment; purposes. (a) There is established in the state treasury the labor law enforcement special fund into which shall be deposited:

(1) All penalties collected pursuant to section 388-9.7;

(2) All penalties collected pursuant to section 388-10;

(3) All civil penalties assessed pursuant to section 396-10;

(4) Moneys appropriated by the legislature to the fund;

and

(5) Any income and capital gains earned by the fund.

(b) The purpose of the special fund is to provide for sufficient operating costs to collect penalties assessed by the department. Moneys in the fund may be used for:

(1) Personnel and operating expenses;

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1 (2) Staff development, training, fees, and expenses; and

2 (3) Litigation expenses, including but not limited to,

3 transcript costs, and interpretation and translation

4 services.

5 (c) The unencumbered balance of the fund exceeding

6 \$500,000 at the end of every fiscal year shall be deposited into

7 the general fund on or about June 30 every year."

8 SECTION 2. Section 388-10, Hawaii Revised Statutes, is
9 amended by amending subsection (a) to read as follows:

10 "(a) Civil. Any employer who fails to pay wages in
11 accordance with this chapter without equitable justification or
12 violates this chapter or the administrative rules adopted under
13 this chapter shall be liable:

14 (1) To the employee, in addition to the wages legally
15 proven to be due, for a sum equal to the amount of
16 unpaid wages and interest at a rate of six per cent
17 per year from the date that the wages were due; and

18 (2) For a penalty of not less than \$500 or \$100 for each
19 violation, whichever is greater. The penalty shall be
20 deposited into the [~~general~~] labor law enforcement
21 special fund."

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SECTION 3. Section 396-10, Hawaii Revised Statutes, is amended to read as follows:

"§396-10 Violations and penalties. (a) Any employer who violates this chapter, or any occupational safety and health standard promulgated hereunder or any rule issued under the authority of this chapter, or who violates or fails to comply with any citation, notice, or order made under or by virtue of this chapter or under or by virtue of any rule of the department, or who defaces, displaces, destroys, damages, or removes without the authority of the department any safety device, safeguards, notice, or warning required by this chapter or any rule of the department may be assessed a civil penalty as specified in this chapter.

(b) Any employer who has received an order or citation for a serious violation of any standard or rule adopted pursuant to this chapter shall be assessed a civil penalty of not more than \$12,675 for each violation.

(c) Any employer who has received an order or citation for a violation of any standard or rule adopted pursuant to this chapter, and the violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$12,675 for each violation.

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1 (d) Each day a violation continues shall constitute a
2 separate violation except that during an abatement period only,
3 no additional penalty shall be levied against the employer.

4 (e) Any employer who violates any of the posting
5 requirements prescribed under this chapter shall be assessed a
6 civil penalty of up to \$12,675 for each violation.

7 (f) Any employer who wilfully or repeatedly violates this
8 chapter, or any standard, rule, citation, or order issued under
9 the authority of this chapter, shall be assessed a civil penalty
10 of not more than \$126,749 for each violation, but not less than
11 \$9,054 for each wilful violation.

12 (g) Any employer convicted of wilful or repeated
13 violations of any standard, rule, citation, or order issued
14 under the authority of this chapter resulting in the death of an
15 employee shall be punished by a fine of not more than \$126,749
16 or by imprisonment for not more than six months, or both, except
17 that if the conviction is for a violation committed after a
18 first conviction, punishment shall be by a fine of not more than
19 \$126,749 or by imprisonment for not more than one year, or both.
20 Failure to correct a violation for which an order or citation of
21 arrest has been issued shall be evidence of wilful conduct.

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1 (h) Any employer who has received an order for violation
2 under section 396-8(e) may be assessed a civil penalty of not
3 more than \$9,054 for each violation.

4 (i) Any person who gives advance notice of any inspection
5 to be conducted under this chapter, without authority from the
6 director or the director's designees shall, upon conviction, be
7 punished by a fine of not more than \$9,054 or by imprisonment
8 for not more than six months, or by both.

9 (j) The director shall have authority to assess all civil
10 penalties provided in this section, giving due consideration to
11 the appropriateness of the penalty with respect to the size of
12 the business of the employer being charged, the gravity of the
13 violation, the good faith of the employer, and the history of
14 previous violations.

15 (k) Civil penalties imposed under this chapter shall be
16 paid to the department and may be recovered by civil action in
17 the name of the department and the State brought in the district
18 or circuit court for the circuit where the violation is alleged
19 to have occurred or where the employer has its principal office.

20 (l) When an alleged violation of any provision of this
21 chapter or any standard, rule, or order made pursuant to this
22 chapter has occurred, the department shall promptly issue a

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1 written citation, order, or notice thereof to the employer who
2 shall be required to post the citation, order, or notice. The
3 citation, order, or notice thereof shall include the abatement
4 requirements and within a reasonable time the employer shall be
5 advised of the proposed sanctions, including proposed penalties.
6 Whenever reference is made to posting of any citation, order,
7 notice, petition, decision, or any other type of document issued
8 by the director under this chapter and rules adopted pursuant to
9 this chapter, the employer shall post copies of the document at
10 the work site involved or affected and at the place or places
11 where notices to the employees involved are normally posted.
12 Where posting starts the time for notice of action to or for
13 appeal by employees under this chapter and rules adopted under
14 this chapter, the document shall be posted by the employer upon
15 receipt or on the next business day following receipt.
16 (m) Whoever knowingly makes any false statement,
17 representation, or certification in any application, record,
18 report, plan, or other document filed or required to be
19 maintained pursuant to this chapter shall, upon conviction, be
20 punished by a fine of not more than \$11,000, or by imprisonment
21 for not more than six months, or by both.

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(n) Criminal offenses committed against any employee of the State acting within the scope of the employee's office, employment, or authority under this chapter shall be subject to the penalties set forth in the Hawaii Penal Code; provided that:

(1) Ten years shall be added to the maximum term of imprisonment (unless life imprisonment is imposed) and \$55,000 shall be added to the maximum fine imposed for conviction of a class A felony;

(2) Five years shall be added to the maximum term of imprisonment and \$27,500 shall be added to the maximum fine imposed for conviction of a class B felony;

(3) Three years shall be added to the maximum term of imprisonment and \$11,000 shall be added to the maximum fine for conviction of a class C felony;

(4) One year shall be added to the maximum term of imprisonment and \$2,200 shall be added to the maximum fine for conviction of a misdemeanor; and

(5) The maximum term of imprisonment and maximum fines prescribed for misdemeanors under the Hawaii Penal Code shall apply to convictions of a petty misdemeanor.

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(o) The director shall adjust penalties pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, section 701 of P.L. 114-74, by December 15, 2018, and each year thereafter. The director shall adjust penalty levels using the guidance of the Office of Management and Budget and issue the new penalties by December 15 of each year. The new penalties shall take effect the following January 15 of each year. The director shall submit a report to the legislature no later than twenty days prior to the convening of each regular session on the penalty adjustments.

(p) All civil penalties collected pursuant to this section shall be deposited into the labor law enforcement special fund."

SECTION 4. The attorney general shall establish two additional positions, without regard to chapters 76 and 89, Hawaii Revised Statutes, to carry out the purposes of this Act. The positions shall include an attorney and a legal assistant II.

SECTION 5. There is appropriated out of the general fund revenues of the State of Hawaii the sum of \$98,163 or so much as may be necessary thereof for fiscal year 2018-2019 to be deposited in the labor law enforcement special fund.

H.B. NO. 2314

1 The sum appropriated shall be expended by the department of
2 labor and industrial relations.

3 SECTION 6. There is appropriated out of the labor law
4 enforcement special fund the sum of \$98,163 or so much thereof
5 as may be necessary for fiscal year 2018-2019 for the purposes
6 of this Act.

7 The sum appropriated shall be expended by the department of
8 labor and industrial relations.

9 SECTION 7. Statutory materials to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 8. This Act, upon its approval, shall take effect
12 on July 1, 2018.

13

14

INTRODUCED BY:



15

BY REQUEST

JAN 22 2018

H.B. NO. 2374

Report Title:

Labor Law Enforcement Special Fund; Collections

Description:

Establishes the Labor Law Enforcement Special Fund to finance the collection of penalties for violations of labor law; 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. Effective July 1, 2018.

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

DEPARTMENT: Labor and Industrial Relations

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

PURPOSE: To establish the Labor Law Enforcement Special Fund and two positions to strengthen enforcement of labor laws by more aggressively collecting outstanding assessed penalties.

To allow 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.

To amend 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.

MEANS: Add a new section to chapter 371, Hawaii Revised Statutes (HRS), and amend sections 388-10 and 396-10, HRS.

JUSTIFICATION: This proposal is intended to enhance the Department of Labor and Industrial Relations' (Department) ability to enforce labor laws. Specifically, the Department of the Attorney General intends to hire an attorney to help ensure that penalties for violations of law are collected by the Department of Labor and Industrial Relations.

Currently, the Department's attempts to collect fines have resulted in a backlog of cases and more than \$2,705,024 in accounts receivable. 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, 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.

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. Act 126, Session Laws of Hawaii 2017, significantly increased penalties imposed under section 396-10, HRS, and directs the Director to adjust the penalties on an annual basis to reflect increases in the Consumer Price Index.

Impact on the public: This measure will increase the enforcement of labor laws and thereby enhance the protections afforded by the laws administered by the Department.

Impact on the department and other agencies: This proposal will increase the capacity of the Department's divisions involved in enforcement.

GENERAL FUND:

\$98,163 in appropriations to the Labor Law Enforcement Special Fund for start-up costs until the program revenue sustains the program.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: LBR902.

OTHER AFFECTED
AGENCIES: Department of the Attorney General

EFFECTIVE DATE: July 1, 2018.

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TESTIMONY



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 7, 2018

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice-Chair, and
Members of the House Committee on Labor and Public Employment

Date: Thursday, February 8, 2018
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

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

**Re: H.B. 2374 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. The Department requests an amendment regarding the purpose of the fund.

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 THE HOUSE BILL

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, 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, Hawaii Revised Statutes, 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.

DLIR requests an amendment to clarify the purpose of the fund by inserting “and fees” on page one line sixteen after “penalties”.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: SB 2801; HB 2374 (Identical)

INTRODUCED BY: SB by Kouchi by request; HB by Saiki by request

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.

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

Section 13 of the bill as introduced amended section 329-49, HRS, to redirect any fines collected for violations of the controlled substances provisions from the general fund to the controlled substance registration revolving fund established under HRS section 329-59.

EFFECTIVE DATE: July 1, 2018.

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, in the justification sheet submitted with SB 2801, 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.

News flash to DLIR, as well as the Department of the Attorney General: Enforcing the labor laws is your job. It always has been your job. 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.

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 1/29/2018

Testimony of
Christopher Delaunay, Government Relations Manager
Pacific Resource Partnership

THE HOUSE
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2018

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

NOTICE OF HEARING
Thursday, February 8, 2018
9:00 a.m.
State Capitol
Conference Room 309

Aloha Chair Johanson, Vice Chair Holt 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 House Bills 2421 & 2374 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 House Bills 2421 & 2374, and we respectfully request your favorable consideration.



(Continued From Page 1)

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.

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**LATE
TESTIMONY**