H.B. NO. 3167

A BILL FOR AN ACT

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

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

SECTION 1. The purpose of this Act is to clarify the classification of the unemployment compensation fund, the workers' compensation special compensation fund, the temporary disability insurance special fund for disability benefits, and the prepaid health care special premium supplementation fund as trust funds. These funds were established as special funds and thus, were classified accordingly by the department of accounting and general services. This amendment is needed to comply with the State Auditor's recommendation that the department of labor and industrial relations should clarify the classification of these four special funds as trust funds. 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.

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

"**§383-121 Unemployment compensation fund; establishment and control.** There is established in the treasury of the State as a [~~special~~] trust fund, separate and apart from all public moneys or funds of the State, an unemployment compensation fund, which shall be administered by the department of labor and industrial relations exclusively for the purposes of this chapter. All contributions pursuant to this chapter shall be paid into the fund and all compensation and benefits payable pursuant to this chapter shall be paid from the fund. All moneys in the fund shall be mingled and undivided. The fund shall consist of:

(1) All contributions collected pursuant to this chapter;

(2) Interest earned on any moneys in the fund;

(3) Any property or securities acquired through the use of moneys belonging to the fund;

(4) All earnings of such property or securities;

(5) All moneys credited to this State's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and

(6) All other moneys received for the fund from any other source."

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

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

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

"[~~[~~]**§392-61**[~~]~~] **Establishment of** [~~special~~]**trust fund for disability benefits.** There is established in the treasury of the State, separate and apart from all public moneys or funds of the State, a [~~special~~] trust fund for disability benefits which shall be administered by the director exclusively for the purposes of this chapter. All contributions pursuant to this part shall be paid into the fund and all benefits payable under this part shall be paid from the fund. The fund shall consist of (1) all contributions collected pursuant to this part, together with any interest thereon; (2) all fines and penalties for the fund pursuant to this chapter; (3) all moneys collected by way of subrogation; (4) interest earned on any moneys in the fund; (5) any property or securities acquired through the use of moneys belonging to the fund; (6) all earnings of such property

and securities; and (7) all other moneys received for the fund from any source."

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

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

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

H.B. NO. 3167

Report Title:
Trust Funds; Reclassification

Description:
Clarifies the classification of the unemployment compensation fund, the workers' compensation special compensation fund, the temporary disability insurance special fund for disability benefits, and the prepaid health care special premium supplementation fund as trust funds.

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JUSTIFICATION SHEET

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE CLASSIFICATION OF 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, the workers' compensation special compensation fund, the temporary disability insurance special fund for disability benefits, and the prepaid health care special premium supplementation fund as trust funds. These funds were established as special funds and, thus, were classified accordingly by the Department of Accounting and General Services (DAGS). However, each fund meets 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.

The Unemployment Compensation fund was established in 1937 under section 383-121 to provide temporary income to involuntarily 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

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moneys can only be used for benefit payments and employer refunds.

The Workers' Compensation (WC) Special Compensation Fund was established in 1937 under section 386-151 to enhance the employability of persons with pre-existing injuries, reduce discrimination against persons with dependents, and require employers to pay compensation for employees' losses sustained while in their employment. The fund provides compensation benefits to qualifying employees in certain circumstances involving permanent total disability benefit adjustments, subsequent injuries and 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 the WC law.

The Temporary Disability Insurance (TDI) Special Fund for Disability Benefits was established in 1969 under section 392-61 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 TDI law.

The Prepaid Health Care (PHC) Premium Supplementation Fund was established in 1974 under section 393-41 to supplement health care insurance premium payments for certain

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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.

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

JUSTIFICATION: This amendment is needed to comply with the Auditor's recommendation that the department should clarify the classification of these four special funds as trust funds. 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.

The misclassification of these funds creates problems as legislative proposals are introduced to eliminate or reduce the balance of special funds to enhance the State general fund. For example, should moneys from the state unemployment compensation fund be withdrawn for purposes that are not allowed under federal statutes, a conformity issue would be raised by the U.S. Department of Labor. Approximately $12,000,000 to $15,000,000 per year in administrative grants to operate the Hawaii unemployment insurance program would be jeopardized and jobless workers would be precluded from collecting unemployment benefits. In addition, the federal tax offset credit for employers would not apply, resulting in increased payroll taxes for businesses.

Impact on the public: None.

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Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: Federal.

PPBS PROGRAM DESIGNATION: LBR-171, LBR-183.

OTHER AFFECTED AGENCIES: DAGS.

EFFECTIVE DATE: Upon approval.