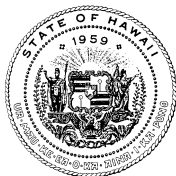


HB 921



**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. 921 Relating to Proceedings Before the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

HB921 expressly affirms the authority of the Labor and Industrial Relations Appeals Board (LIRAB) to take appropriate action to enforce its rules and orders and to provide workers' compensation litigants with the statutory authority to file electronic notices of appeal with the appellate court.

DLIR strongly supports this administration measure. This bill improves efficiency in the processing of workers' compensation appeals, provides for the use of technology to increase productivity and improve government processes, and is consistent with the Governor's New Day initiatives to create a "green" and more efficient government.

II. CURRENT LAW

Current Section 371-4(h) of the Hawaii Revised Statutes (HRS) provides that LIRAB "may adopt rules and regulations in its area of responsibilities in accordance with chapter 91." There is, however, no express statutory authority for the Board to issue orders or take other action (such as the imposition of administrative or monetary sanctions) to enforce its rules or orders.

Current Section 386-88 of the HRS provides for judicial review of LIRAB decisions by filing a written notice of appeal with LIRAB. There is no option for filing electronic notices of appeal with the appellate court, which is now available through the Judiciary Electronic Filing System (JEFS).

III. COMMENTS ON THE HOUSE BILL

This bill gives LIRAB the express statutory authority to enforce its rules and orders and, in doing so, would give LIRAB's rules and orders "teeth" and result in more efficient processing of appeals. The proposal's language is similar to HRS Section 386-97.5, which gives the Director of Labor and Industrial Relations statutory authority to assess penalties against those found to have violated any provision of Chapter 386 or rule adopted by the Director thereunder for which no penalty is otherwise provided.

Similar to HRS Section 386-97.5, as it applies to the Director of Labor and Industrial Relations, all monetary sanctions or fines collected by LIRAB would be deposited into the Special Compensation Fund established under HRS Section 386-151 to help pay benefits to injured workers in the event of a default by an employer.

Authorizing litigants to electronically file notices of appeal is a small step towards paperless litigation. The measure, if enacted, would improve efficiency in the processing of workers' compensation appeals, provide for the use of technology to increase productivity and improve government processes, and is consistent with the Governor's New Day initiatives to create a "green" and more efficient government.



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. 921 Relating to Proceedings Before the
Labor and Industrial Relations Appeals Board**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 921 is an Administration measure that expressly authorizes the Labor and Industrial Relations Appeals Board (LIRAB) to take appropriate action to enforce its rules and orders and to provide workers' compensation litigants with the statutory authority to file electronic notices of appeal with the appellate court.

LIRAB strongly supports this Administration measure, which gives LIRAB's rules and orders "teeth" and reduces the State carbon footprint by allowing litigants to electronically file judicial appeals.

II. CURRENT LAW

Current Section 371-4(h) of the Hawaii Revised Statutes (HRS) provides that LIRAB "may adopt rules and regulations in its area of responsibilities in accordance with chapter 91." There is, however, no express statutory authority for the Board to issue orders or take other action (such as the imposition of administrative or monetary sanctions) to enforce its rules or orders.

Current Section 386-88 of the HRS provides for judicial review of LIRAB decisions by filing a written notice of appeal with LIRAB. There is no option for filing electronic notices of appeal with the appellate court, which is now available through the

Judiciary Electronic Filing System (JEFS).

III. COMMENTS ON THE HOUSE BILL

Empowering LIRAB to enforce its rules and orders would give its rules and orders "teeth" and result in more efficient processing of appeals. The proposed bill is modeled in part after Section 386-97.5, which gives the Director of Labor and Industrial Relations statutory authority to assess penalties against those found to have violated any provision of Chapter 386 or rule adopted by the Director thereunder for which no penalty is otherwise provided.

Other State boards or commissions have statutory authority to fine or sanction parties for noncompliance with a law, regulation, or rule: Hawaii Labor Relations Board (HRS Section 377-9), Hawaii Public Utilities Commission (HRS Section 269-28), and Hawaii Land Use Commission (HRS Section 205-13).

Funds collected through the imposition of sanctions would be deposited into the Workers' Compensation Special Compensation Fund created under HRS § 386-151 to pay benefits to employees in case of employer default.

Authorizing litigants to electronically file notices of appeal is a small step towards paperless litigation. The proposed bill to allow electronic filing is another step towards becoming a "greener" government.

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

AMENDED TESTIMONY OF ILWU LOCAL 142 RE: HB 921 RELATING
TO DISABILITY COMPENSATION DIVISION SPECIAL FUND

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

Thank you for the opportunity to present testimony regarding HB 921. We support this bill.

The Labor and Industrial Relations Appeals Board, like all adjudicatory bodies, requires the ability to enforce its rules and orders through sanctions. This is a commonplace and appropriate function of administrative tribunals and the monetary amounts of \$250.00 per offense is modest and restrained. It may be appropriate to add that the sanctions imposed should be appealable, through additional language to that effect.

H.B. 921 also creates the alternative for filing appeals electronically in accordance with the manner electronic appeals are filed under the Hawaii Rules of Appellate Procedure. This, too, is a constructive idea, but we suggest that if the Board adopts this procedure that it be properly funded so that the system adopted is user-friendly and easily navigated by pro se litigants as well as attorneys. Even the current Hawaii appellate court procedure has quirks and idiosyncracies that can make utilizing the system a challenge. The Board should therefore weigh carefully if it requires added appropriations to implement its electronic filing program and seek such funding also.

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

HB921 – Relating to Proceedings Before the Labor and Industrial Relations Appeals Board

Chair Nakashima:

The Hawaii Laborers' Union supports HB921 affirming the authority of the Labor and Industrial Relations Appeals Board 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.

Mahalo,

Al Lardizabal