

# S.B. NO. 2801

JAN 24 2018

## 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:

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

4 "§371- Labor law enforcement special fund;  
5 establishment; purposes. (a) There is established in the state  
6 treasury the labor law enforcement special fund into which shall  
7 be deposited:

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

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

10 (3) All civil penalties assessed pursuant to section 396-  
11 10;

12 (4) Moneys appropriated by the legislature to the fund;  
13 and

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

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

18 (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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1 SECTION 3. Section 396-10, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§396-10 Violations and penalties. (a) Any employer who  
4 violates this chapter, or any occupational safety and health  
5 standard promulgated hereunder or any rule issued under the  
6 authority of this chapter, or who violates or fails to comply  
7 with any citation, notice, or order made under or by virtue of  
8 this chapter or under or by virtue of any rule of the  
9 department, or who defaces, displaces, destroys, damages, or  
10 removes without the authority of the department any safety  
11 device, safeguards, notice, or warning required by this chapter  
12 or any rule of the department may be assessed a civil penalty as  
13 specified in this chapter.

14 (b) Any employer who has received an order or citation for  
15 a serious violation of any standard or rule adopted pursuant to  
16 this chapter shall be assessed a civil penalty of not more than  
17 \$12,675 for each violation.

18 (c) Any employer who has received an order or citation for  
19 a violation of any standard or rule adopted pursuant to this  
20 chapter, and the violation is specifically determined not to be  
21 of a serious nature, may be assessed a civil penalty of up to  
22 \$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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1           (n) Criminal offenses committed against any employee of  
2 the State acting within the scope of the employee's office,  
3 employment, or authority under this chapter shall be subject to  
4 the penalties set forth in the Hawaii Penal Code; provided that:

5           (1) Ten years shall be added to the maximum term of  
6 imprisonment (unless life imprisonment is imposed) and  
7 \$55,000 shall be added to the maximum fine imposed for  
8 conviction of a class A felony;

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

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

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

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

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

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

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

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



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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.

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INTRODUCED BY: 

15

BY REQUEST

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**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.*

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## 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

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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.

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OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: LBR902.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General

EFFECTIVE DATE: July 1, 2018.