



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

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February 25, 2008

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 26, 2008
Time: 4:30 p.m.
Place: Conference Room 308, State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

**Testimony in Opposition
to
H.B. 2386 – Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2386 proposes to amend section 386-31(b), Hawaii Revised Statutes (“HRS”), relating to temporary total disability (“TTD”) by requiring the employer to pay initial TTD benefits even if the employer believes the employee’s claim is not work related.

This proposal also allows termination of TTD benefits upon order of the Director or if the employee’s treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee’s medical restrictions. The employer may request a credit for the amount of TTD benefits paid after the date in which the Director determines that benefits should have been terminated.

This proposal also adds a new subsection (c) to section 386-31, HRS, to allow employees to receive a weekly benefit equal to seventy per cent (70%) of the employee’s average weekly wages if the injury causes permanent or temporary disability and payment of compensation was not begun within thirty days of or within the same year as the day of injury, whichever is later.

II. CURRENT LAW

Currently section 386-31(b), HRS, mandates the employer to pay temporary total disability benefits promptly as they accrue without waiting for a decision from the

Director, unless the employer controverts the claim. The employer must make payment no later than the tenth day after they have been notified of the occurrence of total disability. The employer may be penalized for late payment of benefits.

Section 386-31(b), HRS, also specifies that only by order of the director or if the employee can resume work can employee's TTD benefits be terminated. If the employer is of the opinion that TTD benefits should be terminated because the employee is able to return to work, the employer must notify the employee and the director of their intent to terminate benefits, at least two weeks prior to the date when the last payment was made. The employer's notice must also inform the employee the reason for the termination and that the employee may request the director hold a hearing to address the termination of benefits if they do not agree.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") understands the intent and purpose of this bill is to provide injured employees with immediate benefits for their industrial injury, but opposes this bill for the following reasons:

1. This proposal requires the employer to pay TTD benefits regardless of whether the employer denies a claim. These TTD benefits could not be terminated until the director issues an order or the employee's treating physician determines that the employee is able to resume work and the employer has made a bona fide offer of suitable work within the employee's medical restrictions. This may result in payment of TTD benefits to employees for claims determined not to be work related. Employers would have difficulty collecting the overpayment of TTD benefits from the claimant. In addition, if the claim is found to be compensable but there are limited TTD benefits and no permanent partial disability ("PPD") benefits, employer will similarly have difficulty collecting TTD overpayments from the claimant.
2. The Department recommends that this bill be amended to allow the employer to file a request for hearing with the Department to terminate TTD benefits if they believe the employee is able to return to work. Currently, under this same section only employees are allowed to file a request for hearing to determine if TTD benefits should have been terminated. If an employer believes that TTD benefits should be terminated, based upon their independent medical examination, they should be allowed to request a hearing to terminate TTD benefits.

3. The employer is already mandated to make the first payment of benefits no later than on the tenth day after the employer has been notified of the total disability, and further benefits should be paid weekly unless the employer controverts the claim for benefits. Pursuant to section 386-92, HRS, failure to pay benefits in a timely manner or if TTD benefits are terminated in violation of section 386-31, HRS, a twenty percent (20%) penalty may be added to the unpaid benefits due.

The new subsection (c) of this bill would allow injured workers to receive higher weekly benefits (70% vs. 66 and 2/3%) or maximum weekly benefit rates for temporary total disability benefits if the initial payment of benefits are not made within thirty days of or within the same year as the date of injury, whichever is later. This proposal does not specify which rate (70% or maximum) will be applicable but it may allow the injured worker to receive compensation at a weekly benefit rate that may exceed the injured worker's actual weekly salary. This would provide injured workers with a tremendous incentive not to return to work, increasing TTD costs and workers' compensation insurance premiums.

In addition, subsection 386-31(c)(2), HRS, states that the increase in weekly benefit amounts may be applicable if payment of compensation is not begun within thirty days OR within the same year as the date of injury, whichever is later. If an injury is in January, the employer may not be required to make their initial TTD payment until December of the same year.

LINDA LINGLE
GOVERNOR



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813

February 26, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Tuesday, February 26, 2008
4:30 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2386
Relating to Workers' Compensation

TO CHAIR MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2386 is to amend Section 386-31(b), Hawaii Revised Statutes, is to require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to those benefits. It also specifies that the employee's ability to return to work is to be decided by the employee's treating physician. **The Department of Human Resources Development is strongly opposed to this bill.**

Requiring an employer to pay benefits when the right to those benefits is being denied would cause irreparable harm in cases where it was determined that a claim was not compensable. Furthermore, this amendment is unnecessary as there is already a mechanism in place for an injured worker to present rebuttal evidence that his or her claim is, indeed, compensable.

Further evidence of irreparable harm is the fact that only the employee can request a hearing. There would be no way for a self insured employer or an insurance carrier to even present an argument for the termination of temporary total disability benefits. Even if a hearing was held and the director determined the date that benefits should be terminated, it isn't clear how the credit, allowed by the director, would be

applied. It would be a fairly simple process if the employee was awarded permanent partial disability benefits. However, if those benefits were inadequate to cover the credit or if no permanent partial disability benefits were awarded, then the employer would, once again, suffer irreparable harm.

Respectfully submitted,

A handwritten signature in black ink that reads "Marie C. Laderta". The signature is written in a cursive, flowing style.

MARIE C. LADERTA

HOUSE OF REPRESENTATIVES
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

Date: Tuesday, February 26, 2008

Time: 4:30 pm.

Place: Conference Room 308 State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2386, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2386.

This bill seeks to guarantee the payment of temporary total disability to injured workers even if an employer controverts the employee's industrial accident claim. It permits the cessation of such benefits only if the director of the Department of Labor issues an order terminating these benefits, or the employee's treating physician determines he is able to resume work and the employer makes a bonafide offer of suitable work consistent with the employee's medical restriction

When it is determined that benefits should in fact have been discontinued, an employer who has overpaid temporary total disability may request a credit against future benefit payments. Where employers fail to comply with HB 2386, they may be fined not more than \$2500 plus the attorneys' fees and costs of the employee's attorney.

Finally, an injured employee is awarded benefits equal to 70% of the employee's average weekly wage up to the maximum weekly benefit rate in the year of injury if the employee suffers temporary or permanent disability and payment was not commenced "within thirty days of or within the same year as the date of injury, whichever is later."

The idea of making payment of benefits to employees irrespective of whether an employer controverts a claim may seem fanciful and utopian to some, but it has the positive effect of encouraging prompt medical treatment and swift adjudication of the industrial accident claim. It also prevents the financial privation and hardship occasioned by disability and the myriad of social problems that may surround the disabled employee and her family.

If payment of temporary total disability is deemed unacceptable where a claim is denied, the bill might be amended to require the payment of temporary disability insurance, sick leave, or some other form of income replacement by the employer so that the employee would at least receive a steady source of financial aid during the employee's incapacitation. As is now the

case, if workers' compensation is eventually approved and paid, TDI or sick leave can easily be repaid by the workers' compensation insurance carrier.

The idea that employers who delay payment of benefits should be penalized by compensating the injured worker at a higher 70% of average weekly wage rather than 66-2/3% is a valuable innovation. However, as presently proposed, HB 2386 requires that payment of compensation must begin "within thirty days of *or within the same year as the date of injury, whichever is later.*" (italics supplied) In some instances, if compensation is not paid until later within the same year that the injury occurs, this might be result in a extreme delay. If a person were injured on New Year's Day, for example, the 70% of average weekly wage penalty would not take effect, as long as compensation was paid within the next 364 days, or by December 31 of the year in which the injury occurred. Delay of this magnitude would be markedly inconsistent with the goal of prompt payment of assuring injured workers a constant source of income replacement. The words "or within the same year as the date of injury, whichever is later" should therefore be deleted, so the sanction for delaying payment is simply effective 30 days after the industrial accident.

When this bill was heard earlier, the Department of Labor and Industrial Relations suggested that only the employee could request a hearing where there is a dispute concerning the payment of temporary total disability benefits. This impression occurred because under the original language of Section 386-31(b) HRS employers could unilaterally terminate TTD. In those circumstances, only the employee would have needed to request a hearing to challenge the cessation of benefits. Assuming the employer may not unilaterally terminate TTD unless an employee is able to resume work and has a bonafide offer of employment after a full hearing is first held, it would be logical to permit employers as well as employees to request hearings. In actual practice, the department now entertains hearing requests from any party who wishes to resolve a disputed issue, except for those rare issues, like orders for independent medical examinations, which are by regulation excluded from hearings.

We support the concept of prompt payment of benefits without interruption and speedy adjudication of claims embodied in HB 2386 and support its passage with the modifications we have suggested.



Before the House Committee on Finance

DATE: February 26, 2008

TIME: 4:30 p.m.

PLACE: Conference Room 308

Re: HB 2386 Relating to Workers' Compensation Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you defer HB 2386. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We oppose measures that may tend to increase workers' compensation costs and have unintended negative consequences on employers, employees and the economy. Thank you for the opportunity to testify.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

February 26, 2008

Committee on Finance

4:30 P.M.

Conference Room 308

Testimony on HB 2386 "Relating to Workers Compensation"

Chair Oshiro and Members of the Committee on Finance:

I am Karen Nakamura, Chief Executive Officer and Executive Vice President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to HB 2386 "Relating to Workers Compensation".

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, BIA-Hawaii strongly opposes this bill.

Thank you for the opportunity to share our views with you.

Karen I. Nakamura



Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON FINANCE
Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Tuesday, February 26, 2008
4:30 p.m.

HB 2386

Chair Oshiro, Vice Chair Lee, and members of the committee, my name is Alison Powers, Executive Director 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 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB 2386. This bill will increase costs and encourage abuse by mandating temporary total disability (TTD) benefits to continue until the Director issues a decision. If the decision is against the employee, the workers' compensation insurer may be unable to recoup these costs and rates will increase accordingly. The only way the employer/insurer would be able to recoup costs if overpaid, would be to take it out of the employee's future settlement. The employer/insurer should not have to request a credit in writing. Credit should be consistent with existing language (see HRS 386-52). There is no time certain in which the Director must make a decision, which exacerbates unnecessary cost if the employee's benefits should have ceased. Even if there is a time certain for the Director to make a decision, provisions need to be included for benefits to automatically cease if the time limit is exceeded. This provision will encourage injured workers to stay off work longer than necessary since the injured worker will not be held accountable for any

financial reimbursement if abuse occurs, and there is no permanent impairment, for the employer to recoup the cost.

The requirement for employers or insurance carriers to pay for the injured worker's attorney fees and costs for enforcement of this section also creates an unfair burden on the employer. Why should the employer pay for the injured worker's attorney fees if the Director renders a decision that TTD should have been discontinued?

Finally, the bill increases the wage reimbursement rate to 70% if a work injury causes permanent or temporary disability and payment of compensation was not begun within 30 days or within the same year as the date of injury, whichever is later.

This provision unfairly increases the benefit for a certain class of injured workers and within that class, only if payments do not meet certain requirements. For example, if an injury occurs on December 31 and payment is made within 30 days but in the next year, the indemnity rate is 70% and not the 66 2/3% of the employee's average weekly wages. This provision will also encourage injured workers to delay the reporting of work related injuries in order to obtain a higher compensation rate.

We respectfully request that HB 2386 be held.

Thank you for the opportunity to testify.

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

GARY M. SLOVIN, ESQ.
CHRISTOPHER G. PABLO, ESQ.
ANNE T. HORIUCHI, ESQ.
MIHOKO E. ITO, ESQ.
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LISA K. KAKAZU**

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February 25, 2008

TO: Representative Marcus Oshiro
Chair, Committee on Finance
Hawaii State Capitol, Room 306
FINtestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2386 Relating to Workers' Compensation
Hearing Date: Tuesday, February 26, 2008 at 4:30 p.m., Agenda #7

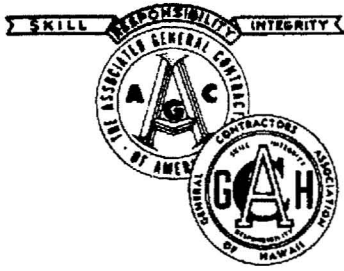
Dear Chair Oshiro and Members of the Committee on Finance:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C., and has representatives in every state.

H.B. 2386 requires an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The measure also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

Where a claim is controverted, employers and their insurers should not be required to pay benefits that they do not believe are owed. AIA opposes H.B. 2386 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.



GENERAL CONTRACTORS ASSOCIATION OF HAWAII

1065 AHUA STREET • HONOLULU, HAWAII 96819-4493 • PHONE 808-833-1681 • FAX 808-839-4167

E-MAIL ADDRESS: gca@gcahawaii.org • WEBSITE: www.gcahawaii.org

February 25, 2008

TO: THE HONORABLE MARCUS R. OSHIRO, CHAIR AND MEMBERS OF THE
COMMITTEE ON FINANCE

SUBJECT: H.B. 2386 RELATING TO WORKERS COMPENSATION

DATE: TUESDAY, February 26, 2008
TIME: 4:30 P.M.
PLACE: Conference Room 308

Dear Chair Oshiro and Members of the Committee on Finance:

The General Contractors Association (GCA), an organization comprised of over five hundred and forty (540) general contractors, subcontractors, and construction related firms, **strongly opposes** the passage of H.B.2386, Relating to Workers Compensation.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, the GCA **strongly opposes** this bill.

Thank you for considering our concerns on the above bill.



**Associated Builders and Contractors of Hawaii
80 Sand Island Access Road, M-119
Honolulu, Hawaii 96819**

February 25, 2008

TESTIMONY to be PRESENTED to the
HOUSE COMMITTEE ON FINANCE
For hearing on Tuesday, February 26, 2008, 4:30 P.M., Room 308

by

Karl F. Borgstrom, President
ASSOCIATED BUILDERS & CONTRACTORS OF HAWAII

IN OPPOSITION TO

**HOUSE BILL 2386
RELATING TO WORKERS' COMPENSATION**

CHAIR OSHIRO AND MEMBERS OF THE COMMITTEE:

The Associated Builders and Contractors is a professional trade association representing Merit Shop construction contractors, suppliers and service providers throughout the State of Hawaii. As mostly small to moderate sized businesses, our members are negatively impacted by regulatory rules and constraints which increase the cost of doing business unnecessarily.

HB 2386 would require an employer to pay temporary total disability benefits to an employee regardless of whether the employer controverts the right to such benefits and gives to the employee's treating physician the decision as to whether or not the employee is able to return to work.

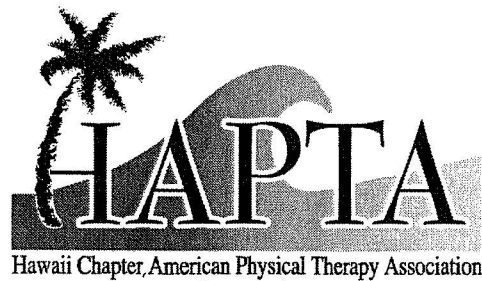
Section 386-31, Hawaii Revised Statutes, currently provides a methodology for handling disability cases that is fair and balanced in its allocation of roles and obligations of the employee, the director, and the employer in resolving disability claims. The proposed amendments shift that balance to the employee, eroding employers' rights and their ability to control costs. Passage of this bill would increase the cost of workers compensation and force employers to continue disability benefits until such time as the employee chooses to return to work.

For these reasons, Associated Builders and Contractor of Hawaii strongly opposes HB 2386.

Thank you for your consideration; should the need arise, ABC Hawaii will respond to any requests of the Committee for additional information regarding this matter.

**Testimony by:
Derrick Ishihara, PT**

**HB 2386, Relating to Workers'
Compensation
House FIN, Tuesday, Feb. 26, 2008
Room 308, 4:30 pm – Agenda #7**



Position: Support

Dear Rep. Oshiro and Members of the House FIN Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee. The Hawaii Chapter – American Physical Therapy Association (HAPTA) is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

HAPTA supports this proposal to prevent insurers from arbitrarily terminating TTD benefits to injured workers.

Anecdotal evidence from attorneys and claimants presented at previous legislative hearings suggest that insurers have terminated benefits to deserving claimants without good cause. Further, it is reported that inquiries from the claimants and the claimants' attorneys to the insurers have been ignored.

This has resulted in extreme financial hardship for injured workers. In some cases, injured workers are forced to return to their jobs prematurely, creating a hazardous situation not only for the injured worker, but also potentially for that employee's co-workers.

Passing this measure would cause insurers to be more selective when evaluating disputed cases for termination of benefits. Currently, as reported, when cases are awaiting administrative hearing, the insurer many times will not pay TTD benefits. In other words, the current system works to the benefit of the insurer and the larger the backlog of cases at the DOL and the longer time to obtain hearing dates, the more favorable it is for the insurer. Requiring payment of benefits while cases await the Directors decision will effectively remove this incentive for insurers.

I may be reached at 593-2610 if there are any questions. Thank you for the opportunity to present testimony.



RALPH S. INOUE CO LTD
GENERAL CONTRACTOR

2831 Awaawaloa Street
Honolulu, Hawaii 96819

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F: 808.833.5971

License No. ABC-457
Founded in 1962

February 25, 2008

The Honorable Marcus Oshiro, Chair and Members of the House Committee on Finance

SUBJECT: H.B. 2386 Relating to Workers Compensation

Dear Chair Oshiro and Members of the Committee:

Ralph S. Inouye Co., Ltd. (RSI), general contractor, strongly opposes H.B. 2386 "Relating to Workers Compensation".

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of H.B. 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable.

For these reasons, RSI strongly opposes this bill.

Thank you for considering our concerns on the above bill.

Sincerely,

RALPH S. INOUE CO., LTD.

Lance M. Inouye
President

LMI:ma



**Property Casualty Insurers
Association of America**

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

From: Samuel Sorich, Vice President

RE: **HB 2386 – Relating to Workers’ Compensation**
PCI Position: Oppose

Date: Tuesday, February 26, 2008
4:30 p.m.; Conference Room 308

The Property Casualty Insurers Association of America (PCI) is an association of property/casualty insurers. There are more than 100 PCI member companies doing business in Hawaii. PCI members are responsible for approximately 45 percent of the property/casualty insurance premiums written in Hawaii.

PCI is opposed to HB 2386 because the bill would unfairly impose additional workers compensation costs on Hawaii employers.

HB 2386 would require an employer to pay temporary total disability benefits even though the employer contests the employee’s right to these benefits. The practical effect of the bill would be that temporary disability payments would have to be paid until there is a termination order after an administrative hearing.

The injustice of this proposed scheme is exacerbated by the fact that under HB 2386, the employer has no express right to request a hearing; the bill leaves in place existing statutory language that a hearing is to be conducted “upon receipt of the request from the employee.” Even when a decision to hold a hearing is made, HB 2386 sets no specific time frame for conducting the hearing.

While this administrative process grinds on, the employer would be required to continue to make benefit payments. HB 2386 offers no real relief when the director decides that the employee was not entitled to temporary disability benefits. The bill offers a "credit" against future benefit payments. But this is an empty offer if the employee has no temporary or permanent disability.

HB 2386 is costly and unfair. PCI requests that the Committee vote No on the bill.

FINtestimony

From: Fred Moore [discover@hsimechanical.com]
Sent: Saturday, February 23, 2008 6:54 PM
To: FINtestimony
Subject: HB 2386 . . .

February 26, 2008
Committee on Finance
4:30 P.M.
Conference Room 308

Testimony on HB 2386 “Relating to Workers Compensation”

Chair Oshiro and Members of the Committee on Finance:

Aloha . . . my name is Fred Moore, President, HSI Mechanical, Inc., a Hawai'i Small Business since 1979 employing 41 associates.

HSI Mechanical, Inc. strongly opposed to HB 2386 “Relating to Workers Compensation”.

The bill would require an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. The bill also specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

The provisions of HB 2386 would erode employers' rights and their ability to control their costs. If passed, this bill would increase the cost of workers compensation by providing another incentive for workers not to return to work because they could determine (with their treating physician) when they choose to return to work. To force employers, (*especially small business enterprise - the back bone of business in Hawai'i*) to continue TTD benefits for a period of time to be determined essentially by the employee is unreasonable. Hawaii's economy is very fragile and a turn down has already started . . . contractor's margins are less than 2-3% per year, and additional cost, even small, adversely affect our ability to stay in business.

For these reasons, HSI Mechanical, Inc. strongly opposes this bill.

Thank you for the opportunity to share our views with you!

Fred Moore
President
HSI Mechanical, Inc.
227 Puuhales Road
Honolulu, HI 96819

Chair, Representative Marcus R. Oshiro
Vice- chair, Representative Marilyn B. Lee
Committee: FIN
From: Society for Human Resource Management (SHRM) Hawaii
(808) 447-1840 or e-mail: shrmhawaii@hawaii.biz.rr.com
Testimony date: Tuesday, 26 February 2008

Opposition to
HB 2386 (HSCR524-08)

SHRM Hawaii is local chapter of a National professional organization of Human Resource professionals. Our 1,000+ local membership includes those from small and large companies, in every industry Hawaii has – all tasked with meeting the needs of employees and employers in a balanced manner, while ensuring compliance with laws affecting the workplace. We (HR Professionals) are the people that implement the legislation you pass, on a day-to-day front line level.

SHRM Hawaii Opposes HB 2386 (HSCR524-08)

Requiring an employer to pay temporary total disability benefits regardless of whether the employer controverts the right to benefits. Specifies that the employee's ability to return to work is to be decided by the employee's treating physician.

As presently written this bill provides no disincentive for employees that wish to stay out of work longer than medically needed, as they will not be responsible for repaying any of the unnecessary TTD costs if the DLIR Director determines the employee needed no further treatment and should have returned to work.

This Bill would create an incentive to stay out of work longer as there are no cost or other negative consequences for the employee.

The financial burden of unnecessary TTD would be born by the insurance carriers and employers through higher premiums – which means less money available for wage increases and training programs for those employees that wish to work.

SHRM Hawaii respectfully urges the committee to HOLD HB 2386 until language is written that holds employees financially responsible for unnecessary TTD

Thank you for the opportunity to testify. SHRM Hawaii offers the assistance of its Legislative Committee members in discussing this matter further.