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DIRECTOR

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

March 13, 2008

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Monday, March 17, 2008
9:00 a.m., Conference Room 016

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2387, H.D. 1
Relating to Workers' Compensation

TO CHAIR BRIAN T. TANIGUCHI AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2387, H.D. 1 is to amend Section 386-80, Hawaii Revised Statutes, to pay for examinations authorized by this section from the special compensation fund.

The Department of Human Resources Development opposes this bill. The Special Compensation Fund (Section 386-151, Hawaii Revised Statutes) was created in 1963, for specific purposes. It was amended in 1973 and 1985. The fund currently covers pre-existing disabilities under certain circumstances; it covers an injured employee's loss of wages from concurrent employment, it covers benefit adjustments to eligible injured workers' who are permanently and totally disabled, and provides all benefits under Chapter 386, Hawaii Revised Statutes, to those injured employees who work for a company whose insurance carrier has gone out of business. This bill will divert money away from the original intent of the statute and may result in increased assessments to employers and insurance carriers.

Respectfully submitted,

Cindy S. Inoue
for MARIE C. LADERTA

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

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March 14, 2008

TO: Senator Brian T. Taniguchi
Chair, Committee on Judiciary & Labor
Hawaii State Capitol, Room 219
testimony@capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2387, HD1 Relating to Workers' Compensation
Hearing Date: Monday, March 17, 2008 at 9:00 a.m.

Dear Chair Taniguchi and Members of the Committee on Judiciary & Labor:

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. 2387, HD1 authorizes payment of examinations by impartial physicians from the special compensation fund and appropriates funds for departmentally-ordered examinations by impartial physicians under the workers' compensation law.

AIA is concerned that payment for these examinations from the special compensation fund may increase costs to insurers and may affect insurers disproportionately. AIA opposes H.B. 2387, HD1 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.



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Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

Monday, March 17, 2008
9:00 a.m.

HB 2387, HD1

Chair Taniguchi, Vice Chair Hee, 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 2387, HD1. This bill requires payment for IMEs to come out of the special compensation fund or other funds. This means that expenses of insurers for IMEs would come out of a fund whose expenses are assessed back to the insurance industry in market share proportion. The result is that although some insurers may require more IMEs than others, their assessment from the special compensation fund will not be proportional. The same theory applies to more expensive and less expensive IMEs.

This bill allows payment for IMEs to also come from other funds appropriated by the Legislature for use of the Department of Labor and Industrial Relations. This would further change the purposes of other funds to include expenses of insurers and those funds may or may not have any nexus to the workers' compensation system.

This bill also changes the purpose of the special compensation fund, which is to pay benefits to injured workers for a prior disability and in the event an employer does not have workers' compensation insurance or goes insolvent. This bill requires insurer expenses to be included in the purpose of the special compensation fund.

We respectfully request that HB 2387, HD1 be held.

Thank you for the opportunity to testify.

TESTIMONY BEFORE THE SENATE COMMITTEE ON

JUDICIARY AND LABOR

Monday, March 17, 2008

9:00 a.m.

HB 2387 HD1

RELATING TO WORKERS' COMPENSATION

By Marleen Silva

Director, Workers' Compensation

Hawaiian Electric Company, Inc.

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **respectfully oppose H.B. 2387, HD1.**

This bill proposes to amend *Section 386-80*, Hawaii Revised Statutes (HRS), by allowing the Director of Labor to appoint a qualified physician to conduct an impartial examination and pay for the examination from the Special Compensation Fund or other funds.

While we believe that it may be appropriate for the Director to have the discretion to conduct an independent medical examination (IME) as needed, we cannot support the proposal that payment of this examination come from the Special Compensation Fund (SCF) or other funds.

The SCF was created for the specific purpose of paying benefits to injured employees for a prior disability, and in the event an employer does not have workers' compensation insurance, or goes insolvent. Using the fund, as proposed in this bill, changes the purpose and intent of the fund and the equitably mechanism with which assessments are made to employers and insurance carriers.

If implemented, this bill will result in raising each insurer's assessment into the fund and the increase may not be proportional to their use, since the number, complexity, and subsequent cost of each IME conducted will vary.

For these reasons, we respectfully oppose H.B. 2387, HD1.

THE SENATE
THE TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008

COMMITTEE ON JUDICIARY AND LABOR

Sen. Brian T. Taniguchi, Chair

Sen. Clayton Hee, Chair

Date: Monday March 17, 2008

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2387, HD 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding HB 2387, HD 1.

This intelligent bill simply provides funding for examinations by an impartial physician pursuant to Section 386-80 HRS. Funds would be appropriated from the Special Compensation Fund, an entity within the Department of Labor and Industrial Relations, for this purpose.

The Special Compensation Fund exists as the insurer of last resort when employers and insurers default on their workers' compensation insurance obligations. It also promotes the hiring of handicapped employees by paying for the pre-existing portion of permanent injuries when an employee suffers multiple work injuries to the same body part. The fund receives income from annual assessments levied on all insurers.

At certain times during the adjudication of work injury claims, an added impartial medical examination may be extremely useful in illuminating complex medical questions of causation and disability. At times, the adjudicators of claims themselves would benefit from having access to medical expert opinion, and examinations by impartial physicians could assist them, as well as the parties to such cases. Injured workers rarely can afford such examinations, however, which generally require at least two thousand dollars for a single examination, review of medical records, and drafting of a written report. Section 386-80 HRS has historically never been utilized by the Department of Labor and Industrial Relations, presumably because funding has never been available. However, this provision could be a valuable tool to secure objective neutral expert opinion in the resolution of complex claims, that could assist in reducing unnecessary litigation and conflict.

We therefore support the passage of HB 2387, HD 1 with sufficient funding to make Section 386-80 HRS viable and to cover any operational costs the Special Compensation Fund would incur.

LORNE K. DIRENFELD, M.D., FRCP (C)
NEUROLOGIST
DIPLOMATE, AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY

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March 13, 2008

TESTIMONY RE: HB 2387, HD1

COMMITTEE ON JUDICIARY AND LABOR

Senator Brian T. Taniguchi, Chair

Senator Clayton Ilee, Vice-Chair

Date: Monday, March, 17, 2008

Time: 9:00 a.m.

Conference Room 016 State Capitol

415 S. Beretania Street

I am testifying in opposition to HB 2387, HD1.

This Bill adds an unnecessary layer of government bureaucracy and increased tax payer expense and tax burdens.

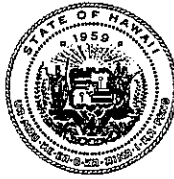
This Bill will not lead to improvement in the workers' compensation system or enhance the ability to obtain impartial medical examinations within this system.

My opinion is based on my knowledge and experience.

I am a board-certified neurologist who performs independent medical examinations. I have been in practice in Hawaii for 25 years. I am a contributing editor to the Guides to the Evaluation of Permanent Impairment, Sixth Edition, published by the American Medical Association. I am the founder and was the medical director of Maui Occupational Health Center between 1995-2001. This was a multidisciplinary clinic for the treatment of injured workers.

I have been committed to performing high-quality, objective, thorough independent medical examinations for years.

In view of the unnecessary administrative and monetary burdens and the ability to obtain impartial physician evaluations currently, there is no justification for this Bill.



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

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March 12, 2008

To: The Honorable Brian Taniguchi, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: March 17, 2008

Time: 9:00 a.m.

Place: Conference Room 016 State Capitol

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

**Testimony in Opposition
to
H.B. 2387, HD1– Relating to Workers’ Compensation**

I. OVERVIEW OF CURRENT PROPOSED LEGISLATION

House Bill 2387, H.D. 1, proposes to amend Section 386-80, Hawaii Revised Statutes (“HRS”) by allowing the director to appoint a qualified physician to conduct an impartial examination and pay for the examination from the Special Compensation Fund (“SCF”) or other funds.

II. CURRENT LAW

Currently, Section 386-80 indicates that the Director may appoint a physician, and the fees to pay for the examination would be from funds appropriated by the legislature for the use of the department.

The SCF was established in 1937 to enhance the employability of persons with pre-existing injuries, to pay benefits in excess of employer liability limits under the law, and to pay benefits due to employees of delinquent employers.

The fund also provides compensation benefits to qualifying employees in certain circumstances involving permanent total disability benefit adjustments, subsequent injuries and preexisting conditions, defaulting employers, total disability under previous laws, concurrent employment, and benefit adjustments for services of attendants.

The SCF is funded primarily from levies imposed on workers' compensation carriers and self-insured employers. The SCF also receives revenue from interest income, reimbursements from defaulting employers, unpaid benefits in certain cases, and fines for noncompliance with the Workers' Compensation Law.

III. HOUSE BILL

The Department of Labor and Industrial Relations ("Department") opposes H.B. 2387, HD1 for the following reasons:

1. The SCF is considered a trust fund and monies from the fund cannot be utilized for purposes that the fund was not expressly established for. The Department defers to the Department of the Attorney General ("AG") in regards to the specific legal concerns.
2. If the bill were able to overcome the legal concerns raised by the Department and the AG, the Department would increase the cost of doing business in Hawaii as the assessment on self-insured employers and insurance companies would need to be raised to cover these additional expenses.



Working Together for Hawaii

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Hawaii Government Employees Association
AFSCME Local 152, AFL-CIO

LATE

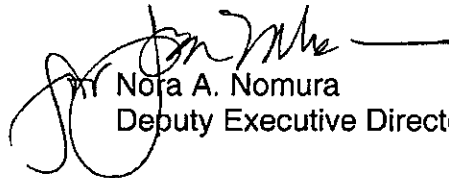
The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor

Testimony by
HGEA/AFSCME Local 152, AFL-CIO
March 17, 2008

**H.B. 2387, H.D. 1 – RELATING
TO WORKERS’ COMPENSATION**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2387, H.D.1. As drafted, the bill enables the Department of Labor and Industrial Relations to appoint impartial physicians to examine injured employees. We believe that employees deserve to be evaluated by an impartial physician instead of someone who may have a bias in favor of employers. Thank you for the opportunity to testify in support of H.B. 2387, H.D. 1.

Respectfully submitted,


Nora A. Nomura
Deputy Executive Director