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February 4, 2008

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Tuesday, February 5, 2008
8:30 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 2387
Relating to Workers' Compensation

TO CHAIR ALEX M. SONSON AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 2387 is to amend Section 386-80, Hawaii Revised Statutes, to require the director of the department of labor and industrial relations to appoint a duly qualified impartial physician to examine an injured employee. It further amends this section to provide that fees for such examination be paid from the special compensation fund or from other funds appropriated by the legislature. **The Department of Human Resources Development opposes this bill.**

The language is overly broad, and it isn't clear whether or not the intent is for all injured employees to undergo such examinations. If so, then many dollars would be spent needlessly as the majority of injured employees either do not lose time from work or return to work in a relatively short period of time. If this isn't the intent, then it isn't clear how it would be determined which injured employee would undergo the examination and for what purpose.

Respectfully submitted,

A handwritten signature in black ink that reads "Marie C. Laderta".

MARIE C. LADERTA



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.B. NO. 2387, RELATING TO WORKERS' COMPENSATION.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Tuesday, February 5, 2008 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309

Fax to: 586-6211

TESTIFIER(S): Mark J. Bennett, Attorney General
or Staci I. Teruya, Deputy Attorney General

Chair Sonson and Members of the Committee:

We would like to point out legal concerns with this bill. This bill amends section 386-80, Hawaii Revised Statutes (HRS), regarding examinations by impartial physicians. Currently, section 386-80, HRS, gives the Director of Labor and Industrial Relations (Director) the discretion to appoint impartial physicians to examine injured employees with the physician's fees paid from funds appropriated by the Legislature. This bill proposes to amend the section by mandating the Director to appoint impartial physicians and authorizes payment from the Special Compensation Fund (SCF).

One concern is that this expenditure from the SCF may detrimentally affect the SCF's trust fund status. More specifically, the SCF was created in 1937 to receive funds from employers under specified situations and to pay benefits to certain qualifying injured employees. Over the years, the funding mechanism has changed to include levies against insurers and employers, and the pool of eligible individuals entitled to benefits has expanded. Examples of qualifying individuals include injured employees who have had a previous disability and injured employees who are permanently and totally disabled and are entitled to a benefit adjustment under sections 386-33 and 386-35, HRS, respectively.

Since a "trust fund" is defined in section 37-62, HRS, as "a fund in which designated persons or classes of persons have a vested beneficial interest or equitable ownership, or which was created or established by a gift, grant, contribution, devise or bequest that limits the use of the fund to designated objects or purposes[,]" the SCF qualifies as a trust fund. Thus, because this bill does not specify when the Director is required to appoint an impartial physician or whether the act of doing so would be for the benefit of those persons with a vested beneficial interest in the SCF, the expenditures under this bill could affect the SCF's trust fund status, which may result in legal challenges by insurers and employers who contribute to the SCF on the basis that the funds are being used improperly.

Another concern arises from the ambiguous wording of the proposed amendment. The bill does not specify under what circumstances the Director is required to order an examination and for what purpose. The comment wording is likely to cause confusion and also may result in legal challenges regarding the interpretation and implementation of the bill.

Finally, we also note that as a trust fund, the SCF is exempt from administrative fees pursuant to chapter 36, HRS. If the SCF no longer serves as a trust fund and the administrative fee is assessed, these fees over time would adversely affect the balance of the SCF thereby requiring increased levies against employers and insurance carriers.

To maintain the SCF's trust fund status and avoid future litigation, this bill should be amended to provide an alternate funding source, and to specify under what circumstances the Director is required to order an examination and for what purpose.

TESTIMONY OF ALISON POWERS

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Representative Alex M. Sonson, Chair
Representative Bob Nakasone, Vice Chair

Tuesday, February 5, 2008
8:30 a.m.

HB 2387

Chair Sonson, Vice Chair Nakasone, 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** H.B. 2387. This bill requires payment for IMEs to come out of the special compensation fund. 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 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 goes insolvent. This bill requires insurer expenses to be included in the purpose of the special compensation fund.

We respectfully request that H.B. 2387 be held.

Thank you for the opportunity to testify.

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

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Alex M. Sonson, Chair
Rep. Bob Nakasone, Vice Chair

Date: Tuesday, February 5, 2008

Time: 8:30 a.m.

Place: Conference Room 309, State Capitol

TESTIMONY FRED GALDONES/ILWU LOCAL 142

RE: HB 2387, RELATING TO WORKERS' COMPENSATION

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

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 with sufficient funding to make Section 386-80 HRS viable and to cover any operational costs the Special Compensation Fund would incur.



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
February 5, 2008

H.B. 2387 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports the purpose and intent of H.B. 2387. As drafted, the Department of Labor and Industrial Relations would be required 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.

Respectfully submitted,

Randy Perreira
President

GOODSILL ANDERSON QUINN & STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:

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February 4, 2008

TO: Representative Alex Sonson
Chair, Committee on Labor & Public Employment
Hawaii State Capitol, Room 323
LABtestimony@Capitol.hawaii.gov

FROM: Anne T. Horiuchi, Esq.
H.B. 2387 Relating to Workers' Compensation
Hearing Date: Tuesday, February 5, 2008 at 8:30 a.m.

Dear Chair Sonson and Members of the Committee on Labor & Public Employment:

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 requires the Department of Labor & Industrial Relations to appoint impartial physicians to examine injured employees. The measure also authorizes payment of the examinations from the special compensation fund and appropriates funds.

AIA submits that it is appropriate for the Director to have discretion (rather than a mandate) to appoint an impartial physician to examine the injured employee. AIA opposes H.B. 2387 and respectfully requests that it be held.

Thank you very much for this opportunity to submit testimony.