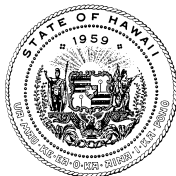


# **TESTIMONY**

**SB 2608**



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

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HONOLULU, HAWAII 96813  
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February 4, 2010

To: The Honorable Dwight Takamine, Chair  
and Members of the Senate Committee on Labor

Date: February 4, 2010

Time: 2:45 p.m.

Place: Conference Room 224, State Capitol

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

**Testimony in STRONG OPPOSITION**

to

**S.B. 2608 – Relating to Vocational Rehabilitation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

Senate Bill 2608 proposes to amend Section 386-25, Hawaii Revised Statutes (“HRS”), by expanding the duties of the vocational rehabilitation (“VR”) unit and providers of VR services. This proposal:

- Provides for adoption of a VR Fee Schedule;
- Establishes time limitations for provision of VR services;
- Suspends VR services if an injured worker suffers an intervening medical condition which renders the injured worker totally disabled and until the injured worker is cleared to return to work;
- Allows employers to terminate temporary total disability benefits when the employee is able to return to his usual and customary work and is enrolled in a plan that has not been approved by the director; and
- Allows any party to request a review of the VR program if it is determined that no progress is being made to establish a viable VR plan and requires the VR unit to respond to this request within thirty days.

**II. CURRENT LAW**

Under Section 386-25, HRS, a permanently disabled employee who is unable to return to his or her regular job, but can be vocationally rehabilitated, is eligible for VR services to be paid for by the employer. The injured employee may select his or her own certified provider of VR services without employer involvement. The self-insured employer or insurance carrier pays for VR services and may challenge the employee's right to VR services. The injured employee is also entitled to collect temporary total disability ("TTD") payments from the employer while enrolled in a VR program.

### III. SENATE BILL

The Department of Labor and Industrial Relations ("Department") **strongly opposes** this bill for the following reasons:

1. Section 386-25(b), HRS, currently allows an injured worker to be referred for VR services if they suffer a permanent disability. This proposal only allows direct placement services to an injured worker who has permanent work restrictions, but no permanent disability. The Department is concerned that this proposal does not consider the extent of the permanent work restrictions. If the restrictions are severe, then direct placement may not be feasible and may not result in a return to work. This proposed change would also deny the injured worker's right to level two of the return to work process (determining if modified work or other work with the same employer represents suitable gainful employment). Furthermore, if the injured worker is already in a training plan when it is determined that he does not have any permanent disability, it would be a waste of time and money to put him directly into a direct placement program.
2. The proposed change in Section 386-25(b)(1), HRS, requires the VR unit to order the injured employee, providers of VR services, or the employer to comply with this section. The current VR Administrative Rules in Sections 12-14-9, 12-14-26, and 12-14-29 already allow the director to modify, suspend, or terminate a VR plan or program due to lack of progress or compliance. The Department believes that these current VR rules are adequate and the proposed changes, therefore, unnecessary.
3. The change in Section 386-25(b)(3), HRS, requires adoption of a fee schedule for VR providers. The VR unit, with only one employee, lacks the time, personnel, and resources to establish and maintain a fee schedule, and to resolve resulting bill disputes.
4. The change in Section 386-25(c), HRS, proposes that the VR unit assign a VR counselor to the injured employee if the injured employee does not select a VR

provider within thirty days of notice of their right to VR. Hawaii Administrative Rule Section 12-14-23(c) already addresses this issue and the change is therefore deemed unnecessary by the Department.

5. The change in Section 386-25(e), HRS, proposes time frames for adjustments to disability, conducting labor market research, submitting a VR plan, and allowing one extension to submit a VR plan. The Department opposes the time frames because each claimant experiences and adapts to their disability differently, and it is not reasonable to establish a mandatory 30-day timeframe, or any timeframe for that matter, for adjustment to disability counseling. Other factors, such as the severity of the disability, age, and a person's disposition, will impact the injured employee's adjustment and ability to return to work. Given the current economy, the increase in unemployment, and the scarcity of finding work in the current labor market, it is also not reasonable to allow only 30 additional days to conduct labor market research. Similarly, 120 days after the initial evaluation may not be sufficient time to provide counseling, review transferable skills, do adequate labor market surveys, research training programs, identify vocational goals, and prepare and submit a VR plan. This short timeframe could result in more VR plans failing and having to start the process over again, resulting in more time and costs to the employer.
6. The change in Section 386-25(i), HRS, eliminates the director's ability to approve a plan that does not meet all the requirements in this section. Stripping the director of the flexibility to approve plans with minor technical problems which this proposal will do will draw out the VR process and increase the cost of VR as plans will need to be revised and resubmitted.
7. The change in Section 386-25(k), HRS, requires an employee with an approved plan who is determined to be able to return to work to be directly placed after he is released to full duty or upon completion of the plan. The Department opposes this change for the same reasons cited in paragraph one above.
8. The change in Section 386-25(l), HRS, proposes that temporary total disability (TTD) payments shall be terminated if the injured employee, who is enrolled in a VR plan that has not been approved by the director, is determined to be able to return to their usual and customary employment. The employer shall give at least two weeks notice of TTD termination in accordance with Section 386-31(b) and VR services shall cease on the date that the employee is cleared for full duty and a closing report is submitted by the VR counselor within fourteen days. The Department does not agree with this proposal. Although the injured employee may be released to full duty, he may be in VR because he may not have a job to go back to. VR services are there to help an injured worker find suitable gainful

employment. By terminating his TTD and VR, the purpose of VR is compromised. In other instances, VR may close but the injured employee is still disabled and not released to full duty. In these cases, TTD should continue and TTD should not be terminated solely because VR is closed.

9. The change in Section 386-25(r), HRS, proposes that any party may request a review of the VR program if it is determined that no progress is being made to establish a viable VR plan. The VR unit shall respond to the request within thirty days and shall issue a directive to the VR provider. The Department opposes this proposal because the sole VR specialist in the VR unit has neither the time, personnel, or resources to complete a file review within 30 days. The review requires the specialist to request progress reports from the VR provider before conducting the review. This delay as well as the procedural requirements and lack of manpower are contributing factors why the 30-day review requirement cannot be met.
10. Due to the mandatory reduction in force of State employees, the current VR Unit in the Department consists of one VR Specialist. This proposed bill would add the following additional duties and responsibilities to the VR unit:
  - A. To order the injured employee, providers of rehabilitation services, or the employer, based upon a written request that demonstrates delay or untimely responses, to comply with Section 386-25, HRS.
  - B. To adopt a fee schedule for providers of VR services.
  - C. To monitor time limits for VR reports (30 days for counseling, 30 additional days for labor market surveys, 90 additional days for a plan).
  - D. To assign a counselor on the injured employee's behalf if the injured employee does not select a VR provider within thirty days of notice of the right of referral to VR.
  - E. To review the injured employee's VR program if it is determined that no progress is being made to establish a viable VR plan and to respond within thirty days and to issue a directive to the VR provider.
11. Additional staff of a minimum of six VR Specialists (one in each Neighbor Island Office and two in Honolulu), one Supervisor, and one clerk will be required to administer the changes required in this bill. If this bill is to be enacted, the

S.B. 2608  
February 4, 2010  
Page 5

Department asks that an additional \$308,000 be appropriated annually to fund the salaries of the additional personnel.

For the reasons cited above, the Department strongly opposes this measure.



STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

February 3, 2010

TESTIMONY TO THE  
SENATE COMMITTEE ON LABOR  
For Hearing on Thursday, February 4, 2010  
2:45 p.m., Conference Room 224

BY

**MARIE C. LADERTA, DIRECTOR**

**Senate Bill No. 2608**  
**Relating to Vocational Rehabilitation**

**(WRITTEN TESTIMONY)**

TO CHAIRPERSON DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 2608 is to expand the duties of the rehabilitation unit and providers of rehabilitation services, and to allow the employer to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

The Department of Human Resources Development is very supportive of this bill's efforts to streamline the vocational rehabilitation process, however, the establishment of the fee schedule cannot be supported. We thank the Senators who introduced the bill for providing very clear guidelines to all parties involved in the process. These proposed amendments should assist injured employees, who are unable to return to their usual and customary jobs, to return to suitable, gainful employment so that they can, once again, be productive members of our community.

We are, however, concerned that establishing a fee schedule will increase the cost of vocational rehabilitation and respectfully request that the bill be amended to delete the establishment of a fee schedule.

Thank you for the opportunity to testify on this bill.

THE SENATE  
TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2010

COMMITTEE ON LABOR  
Sen. Dwight Takamine, Chair  
Sen. Brian Taniguchi, Vice Chair

**TESTIMONY OF ILWU LOCAL 142 RE:  
SB 2608 RE: VOCATIONAL REHABILITATION**

Hearing: Thursday, February 4, 2010  
Time: 2:45 p.m.  
Place: State Capitol, Room 309

Chair Takamine, Vice Chair Taniguchi, Members of the Committee:

Thank you for the opportunity to present testimony regarding SB 2608. We oppose this ill-conceived bill.

At a time when imaginative and independent vocational counseling rehabilitation is most urgently needed by those without work, SB 2608 is an unfortunate attempt by some employers to stifle their exercise of independent vocational judgment and to make these independent professionals subservient to arbitrary guidelines. The bill also undercuts some of the best and most constructive features of the existing vocational rehabilitation process by trying to regiment vocational counseling based on arbitrary, preconceived time tables.

There are numerous substantial reasons for opposing SB 2608 but among the most salient are: 1) it betrays ignorance of existing law, 2) it unnecessarily seeks to adopt features already a part of the existing statute, 3) it creates restrictions that will harm vocational rehabilitation efforts, and 4) it is arbitrarily regimental in its approach, stifling independent professional judgment and rewarding uncreative bureaucratic action.

The proposed amendment to Section 386-25(b) HRS which would limit vocational services for employees with no permanent disability who still have permanent work restrictions to direct placement services is not well-considered. First, the concept of the amendment is inherently contradictory. If an employee has permanent work restrictions, this constitutes a degree of permanent disability, so it is highly unlikely that an employee with no permanent disability would actually have no permanent work restrictions. Moreover, if an employee truly had no permanent disability, i.e. was not impaired by her industrial injury, she would have no need for vocational rehabilitation because she could continue performing her original job. If the job were eliminated purely for bonafide economic reasons, the employee would seek unemployment insurance benefits, not workers' compensation.



The provision in subsection 386-25(l) HRS for terminating temporary total disability if an employee enrolled in an unapproved vocational rehabilitation but is capable of resuming his usual and customary work, or the provision in sub-section 386-25 (k) that requires direct job placement if the injured worker can return to his usual and customary employment are both completely unnecessary. Section 386-31(b) HRS on temporary total disability already provides that temporary total disability can be terminated if the employee is able to resume work. If the employee did in fact return to work, the employee's vocational rehabilitation plan would not continue but would be closed as a successful placement of a rehabilitated employee. HAR 12-14-6 specifically contemplates ending vocational rehabilitation services when a program is completed, as it would be when the employee returns to work. The new language proposed later in subsection 386-25(l) on lines 4-8 of page 12 of the bill is in fact current departmental practice, and it serves no useful purpose to reiterate what is already well-known and established.

Amendments proposed to new subsection (r) that any party may seek review of a vocational rehabilitation plan if they are dissatisfied with current progress or in subsection (b)(1) giving the vocational rehabilitation unit authority to order parties to comply with written requests are already allowed by existing law, regulation, and practice. The VR unit can already modify, suspend or terminate a vocational rehabilitation plan under HAR 12-14-9. The vocational rehabilitation unit does now, in actual practice, conduct reviews of situations where a party is aggrieved about the implementation or non-implementation of vocational rehabilitation plans and orders compliance with justifiable requests for written responses or other necessary action. Authority for such reviews exists in the current Section 386-25(h). Thus, it is disturbing to see SB 2608 suggest that the vocational rehabilitation unit is not being responsive and that this bill is proposed to make these actions happen, when such actions do in fact already occur routinely.

While the above-referenced proposals might be discounted as efforts by isolated employers or insurers who are not well informed about current law, regulation and practice, the attempt to straight jacket rehabilitation efforts into proscribed time tables is wholly unworkable. If an employee has not reached maximum medical stability it is impossible to have physical and psychological limitations defined in 30 days after the selection of the vocational provider as proposed in subsection 386-25(d)(1)(E) HRS (p. 4). Likewise, one cannot arbitrarily require that all adjustment to disability be achieved in 30 days; all labor market surveys and functional capacity evaluations done in 30 additional days; and all vocational rehabilitation plans done in 90 further days, with only one 45 day extension allowable. Section 386-25(e) HRS (pp. 5-6).

An initial evaluation report must already be submitted within 45 days of referral under HAR 12-14-4. This initial evaluation must encompass an assessment of employee's medical status, primary and secondary disabilities, non-work injury disabilities, physical and psychological limitations; a job analysis of current employment; assessment of ability to return to usual and customary employment and participate in vocational rehabilitation; and an overall statement of feasibility to furnishing vocational

rehabilitation services. Progress reports must also be submitted at 30 day intervals pursuant to HAR 12-14-4.1.

The mere allegation that all of these functions can be standardized to this degree reflects profound ignorance of the complex interaction between medical and psychological impairment and how the restoration of physical and mental function in an occupational context actually occurs. It also seems highly unaware about the mind-numbing diversity of problems a vocational counselor must confront and solve in performing rehabilitation.

Subsection 386-25(i) HRS takes the even more unprecedented step of mandating that any “intervening medical condition, related or unrelated to the industrial claim, that renders the claimant again temporarily totally disabled” must suspend a vocational program “pending the employee’s clearance to return to work”. (p. 10) This crude generalization actually has the potential to penalize employers and insurers tremendously. When an individual already is unable to work or to find work and is therefore in vocational rehabilitation, some meaningful rehabilitation activity, like education, training or job search or planning often can still occur while the employee is temporarily totally disabled. It is completely illogical to stop the constructive activities that can occur to prepare an employee to resume work because they are temporarily totally disabled. To stop these activities simply prolongs disability and increases the Employer’s and Insurer’s costs. The Subsection 386-25(i) HRS proposal is thus counterproductive on its face.

The real work of vocational rehabilitation in the a horrendous economic environment requires great skill, discipline, perseverance, and imagination. Successful rehabilitation cannot be achieved by the kind of external mandates and rigid deadlines this bill proposes. Hawaii is actually quite fortunate to have a dedicated core of honest vocational rehabilitation professionals who strive to counsel injured workers efficiently and objectively toward achieving gainful employment in the interest of the multiple stakeholders of our workers’ compensation system. While we are sympathetic to any efforts to achieve a more economical means of restoring industrial injury victims to productivity, S.B. 2608 simply is not an appropriate means of attaining those objectives, and we urge that the bill be defeated.

Senator Dwight Y. Takamine, Chair and Senator Brian T. Taniguchi, Vice Chair:

On behalf of Kessner Umebayashi Bain & Matsunaga, I am writing to express our support for Senate Bill 2608 and to ask that the members of the Committee on Labor vote to pass this bill. Our firm specializes in workers compensation cases and our attorneys collectively have over 120 years of experience in this line of work. We support the beneficent purpose of the Hawaii workers compensation law but are concerned that the vocational rehabilitation provisions can result in unnecessary delay in bringing claims to a reasonable closure and can be the subject of abuse by unmotivated workers. We have experienced workers compensation claims where the vocational rehabilitation process has continued for over one year without the establishment of a vocational rehabilitation plan to return the injured worker to gainful employment.

The proposed amendments in SB 2608 address this problem by establishing finite time periods to accomplish the purpose of vocational rehabilitation. The proposed amendments also address the problem where temporary total disability benefits continue after it has been medically determined that the injured worker can return to usual and customary employment and also appropriately limits vocational rehabilitation services to direct placement for employees who do not have permanent impairment as a result of a work injury. Finally, the proposed amendments provide for oversight by the Disability Compensation Division in cases where there is a legitimate concern that progress is not being made toward a vocational rehabilitation plan by establishing a reasonable time frame for the Vocational Rehabilitation Unit to respond to requests regarding the lack of progress in the establishment of a vocational rehabilitation plan.

In closing, we encourage the members of the Committee on Labor to recognize that unreasonable delays and unnecessary costs in the vocational rehabilitation process are borne by all citizens in Hawaii and that the proposed amendments are a reasoned approach to ensuring that vocational rehabilitation is accomplished in a time and cost efficient manner. Thank you for considering our support of SB 2608.  
Very truly yours,

Robert Kessner

Kessner Umebayashi Bain & Matsunaga  
220 South King Street, Suite 1900  
Honolulu, Hawaii 96813  
Ph. (808)536-1900  
Fax (808)529-7177

**International Association of Rehabilitation Professionals  
Hawaii Chapter**

**Testimony Opposing SB 2608  
Hearing 2/4/10 at 2:45 pm in Room 224  
SB 2608**

February 3, 2010

Senator Dwight Y. Takamine  
Chair, Senate Labor Committee

Senator Brian T. Taniguchi  
Vice Chair, Senate Labor Committee

Honorable Committee Members,

My name is Alan S. Ogawa, the current President of International Association of Rehabilitation Professionals-Hawaii Chapter. I have practiced as a rehabilitation counselor in Hawaii for the past 30 plus years.

Our mission in regard to the rehabilitation of injured workers is to provide services that will help them return to suitable gainful employment and be a contributing member of their community.

**We “Do Not” Support SB 2608. SB 2608 will create further hardship for the injured worker’s quest in becoming a productive and contributing member of our community.**

“The purposes of vocational rehabilitation (386-25) are to restore an injured worker’s earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost effective manner.”

(Page 5-6, e1-3) The injured workers of Hawaii come from a very diverse range of occupations where annual income can range from \$16,000 to more than \$60,000 plus. Their injuries and disabilities range in severity where timeframes for medical testing, recovery, adjustment to the disability and functional capacity evaluation will vary. A catastrophic injury or psychiatric impairment suffered by a worker will need time to heal and participation in vocational rehabilitation will take longer to assist them in becoming productive in our community. We must take into account that everyone is different.

A worker who has been left a quadriplegic or paraplegic, a worker with a psychiatric disability who faced a life threatening situation of being held up at gun point and an injured worker who has had multiple levels lumbar back fusion will take longer to adjust to their disability. Each individual’s adjustment to disability will vary in duration. In the process of adjustment to disability the injured workers may need to deal with the stages of shock, denial, acceptance and accommodation. This process may take more than 30 days.

Another example is obtaining a functional capacity evaluation which is prescribed by the treating physician where they will prescribe only when the injured work has maximized treatment. There are times where the VR counselor has limited control of this.

Often times the employer/carrier denies medical treatment or takes a prolonged period of time to approve treatment such as physical therapy and work hardening. This hampers the ability for the injured worker to return to their usual and customary position as soon as possible and will increase cost for the carrier. Injured workers want to return to a job they know the best and earn a good wage rather than look for a new occupation.

(Page 6 3A) There are incidents where the injured worker is attending a community college or university and a class may be filled or not available for the semester, an extension will be requested for an additional 120 days of training to complete the program and accomplish the vocational rehabilitation plan goals. Limiting a plan to one extension of 45 days will stop the injured worker from potentially reach their goal and completing their vocational rehabilitation plan.

An employee with an approved plan who is determined as able to return to usual and customary employment should be able complete the plan unless the employer of record returns the worker to the usual and customary job. Cutting an injured workers plan, not allowing the individual to complete their training and initiating direct placement may not constitute returning to suitable gainful employment. (page 10 item k)

The purpose of vocational rehabilitation is to help injured workers become productive, contributing members of our community. We do not want injured workers to rely on public assistance and increase the burden on the tax payers of Hawaii. This bill if passed will hinder many injured workers from returning to suitable gainful employment.

Therefore we are opposing the passage of SB 2608.

Thank you for allowing me to provide testimony to your committee.

Sincerely

Alan Ogawa, M. Ed. CRC  
President, IARPS  
808-523-7755

SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

**S.B. 2608**

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is *Brenda Tsukayama*, and I represent *(AIMS) Acclamation Insurance Management Services*

**Support for S.B. 2608.**

We believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass SB2608.

Signed

*Brenda J. Tsukayama*

# HAWAII REHABILITATION COUNSELING ASSOCIATION

P O BOX 4385  
HONOLULU, HI 96812



February 3, 2010

TO: Sen. Dwight Takamine, Chair  
Sen. Brian Taniguchi, Vice Chair  
Committee on Labor

FROM: Betty Sestak, Legislative Chair  
Hawaii Rehabilitation Counseling Association

RE: **SB2608: RELATING TO Vocational Rehabilitation**

**I am testifying in strong opposition to SB2608, Relating to Vocational Rehabilitation.**

The Hawaii Rehabilitation Counseling Association represents approximately 50 practicing vocational rehabilitation counselors in the state of Hawaii. Hawaii Rehabilitation Counseling Association has been representing the professional needs of our states counselors for more than 30 years.

This bill erodes injured workers' return to work rights/benefits to job placement.

This bill is confusing in its verbiage. Defining an injured worker without permanent disability but with permanent work restrictions makes no sense, if there is no disability to what are the work restrictions attributable?

Voc rehabilitation acknowledges as its mission/practice to serve persons with disabilities needing placement and pre placement help - adjustment to disability, counseling, vocational evaluation, goal identification, vocational preparation - returning to the work place. These pre placement services are the tools that prepare a worker with the skills, knowledge and ability to achieve vocational success.

This bill restricts services to direct placement. Since all placements are actually direct, save on-the-job training, it appears the bill's goal is to eliminate all pre placement services to injured workers. These are adjustment to disability counseling, vocational evaluation, goal identification, and vocational preparation.

This is mutating the promised VR services benefit to an employment service only benefit.

Time guidelines for service are good provider practice and most providers adopt the state federal guidelines for same. HRCA is concerned time lines as law will not be guidelines, but be enforced universally without respect for each injured worker's unique needs.

Adding additional work for the Dept. of Labor when many of the staff have been released and all are dealing with furloughs of about five weeks a year, seems counterproductive. At present one person is dealing with the vocational rehabilitation needs of both injured workers and insurance companies. No one at DCD seems to understand the reality of the labor market and the unreality of achieving substantial gainful employment via 'direct placement' (no pre placement service) for injured workers.

The present law and administrative rules are very good and (if properly enforced) protect injured workers. Better/fairer enforcement of Chapter 386, H.R.S. and the present administrative rules seems the best protection for both clients and employers.

**Hawaii Rehabilitation Counseling Association is in opposition to Senate Bill 2608 and strongly opposes its passage.**

Thank you for the opportunity to testify and to oppose this bill.



SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

**S.B. 2608**

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is Julie Ninomoto and I represent CAP Insurance and the Pacific Marine & Supply Co., Ltd Family of Companies. I am writing to you to support for S.B. 2608.

We believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass SB2608.

Respectfully,

  
Julie C. M. Ninomoto

## SENATE

TWENTY-FIFTH LEGISLATURE 2010

## LABOR COMMITTEE

CHAIR: SENATOR D. TAKAMINE

VICE CHAIR: SENATOR BRIAN TANIGUCHI

***Date: Hearing 2/4/10 at 2:45 p.m in room 224******Senate Bill 2608******In Opposition to SB 2608***

Honorable Committee Members,

My name is **Percy Wong**. I have practiced as a rehabilitation counselor in Hawaii since 2000 and am currently employed with Vocational Management Consultants, Inc..

Our mission in regard to the rehabilitation of injured workers is to provide services that will help them return to suitable gainful employment and be a contributing member of our community.

**I Do Not Support SB 2608. SB 2608 will create further hardship for injured workers and subvert their rights, as well as, Hawaii's Return-to-Work process.**

"The purposes of vocational rehabilitation (386-25) are to restore an injured worker's earnings capacity as nearly as possible to that level that the worker was earning at the time of injury and to return the injured worker to suitable gainful employment in the active labor force as quickly as possible in a cost effective manner."

Regarding proposed addition to only allow direct placement service for an injured employee who has been determined not to have a permanent disability, yet suffers from permanent work restrictions, this proposed amendment denies the injured worker the opportunity to access often needed training and/or education to restore his or her earning capacity as nearly as possible to the wage of injury, i.e., gainful employment.

Regarding acceptance of physical or psychological limitations from another physician other than the employee's treating physician if such information is not provided with 30 days of selection of a provider, this should be subject to review and approval of the injured worker's treating physician and not be considered valid until approved.

Regarding 30 days to allow any adjustments to disability, this is purely an arbitrary time frame not supported by any empirical evidence. As any experienced rehabilitation professional, medical practitioner or mental health professional will attest, the profound effects of physical injuries coupled with the psychological impact that these injuries have on an injured worker's livelihood, family life and self-image defy precise measures of

estimation as to adjustment to disability. Allowing 30 days for this process to be completed is unrealistic and deprives the injured worker of the time necessary to confront the reality of his disability and its effects on his life, as well as, those close to him.

Regarding the allowance of only one extension to a rehabilitation plan not to exceed 45 days, occasionally delays are encountered in a plan often brought about by medical or personal emergencies, or educational issues, e.g., unavailability of classes, administrative delays. All of these are outside the control of the injured worker, so to penalize the worker would be unfair to him/her.

Regarding removing the rights of the director to approve a plan that is in the best interest of the employee; contains reasonable assurances that the employee will be placed in suitable gainful employment; and has been approved by the employee;..., this appears to further erode the rights of the injured worker, as well as, remove the director's ability to exercise his or her judgment and appeal to the spirit of the laws related to rehabilitation. For these reasons, this omission should be rejected.


I urge you to consider these points when reviewing this proposed bill. Thank you for your time and consideration.

Sincerely,

Percy Wong, M.Ed., CRC, LMHC



Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair  
Committee on Labor

  
**Brenda Shiroma, HR Coordinator**  
P. O. Box 30100  
Honolulu, Hawaii 96820-0100

Thursday, February 4, 2010

**Support for S.B. No. 2608, Relating to Vocational Rehabilitation**

I am currently employed at a medical facility located in Honolulu. For the past 4 years, part of my responsibilities is to process workers' compensation claims for the company. **I strongly support S. B. No. 2608, Relating to Vocational Rehabilitation**, which would allow the termination of total temporary disability compensation when the employee is able to return to work and enrolled in a non-approved plan.

This bill will limit the abuse of vocational rehabilitation in the State of Hawaii, therefore saving money for everyone. In these tough economic times, the government can help by making bills less subject to interpretation.

The current bill is too broad and encourages claimants to continue to receive compensation when in fact they should have returned to work. Statics show that employees who have been off work for longer than 6 months usually do not return to work. The psychological aspect of not being able to work for that long creates negative thoughts that eventually manifest physically. Some employees will use vocational rehabilitation as a technique to avoid returning to work.

In closing, I strongly support and ask the committee to pass S. B. No. 2608, Relating to Vocational Rehabilitation. Thank you for this opportunity to testify.

Relating to SB 2608, Vocational Rehabilitation  
Committee on Labor  
Date: February 4, 2010 2:45 pm

To The Honorable Dwight Takamine, Chair  
The Honorable Brian Taniguchi, Vice Chair  
And Committee Members

**I am testifying against SB 2608.**

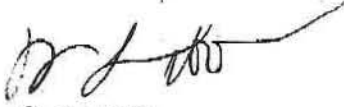
I am a certified **Vocational Rehabilitation Counselor** providing services to injured workers in the workers compensation system. Generally speaking, we see only the most disabled workers, or workers who are unable because of their physical disability and lack of work skills to return to gainful employment.

The changes being proposed will negatively impact these very disabled workers. As an example, the first proposed change of providing "only direct placement services" to an individual who suffers from "permanent work restrictions" makes no sense. How can such a worker find lighter duty employment with no new vocational skills?

The injured worker's treating physician should set the work restrictions. This physician knows the individual the best and will protect the injured worker's interest. Setting a deadline when these restrictions are to be set is unreasonable.

Our injured workers are truly interested in getting better and returning to the competitive labor market. Vocational rehabilitation services are the only program which can assist them in this effort.

I urge you to reject this bill. I thank you for the opportunity to present this testimony.

**Faith Lebb**, DCSW, CRC   
99-142 Aiea Heights Drive, Suite 209  
Aiea, Hawai'i 96701  
(808) 488-3399

## TESTIMONY OF **ALISON POWERS**

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SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

### **S.B. 2608**

Chair Takamine, Vice Chair Taniguchi, 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 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers **Council supports S.B. 2608, with amendments.** This bill expands the duties of the rehabilitation unit and providers of rehabilitation services. Additionally, it allows employers to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

This bill will ensure that injured workers are provided with vocational rehabilitation services consistent with industry standards and with the existing requirements under Chapter 14, Title 12, Hawaii Administrative Rules. The language in this bill also requires providers to adhere to existing timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Hawaii Insurers Council supports this measure with the following amendments:

1. Amend Page 1. line 17 to read:

"restrictions **due to the work injury**, the injured employee shall be allowed only direct"

2. On page 2, line 10, insert after “section”:  
“ . Benefits or payment of fees shall be suspended until compliance with the order or penalties may be assessed under 386-97.5.”
3. On page 3, line 2, insert after “providers”:  
“and a billing dispute process.”
4. On page 10, line 21, replace “shall default” with “may opt.”

Thank you for the opportunity to testify.

Senator Dwight Y. Takamine

Chair Senate Labor Committee

Senator Brian T. Taniguchi

Vice Chair, Senate Labor Committee

Honorable Committee Members,

My name is **Kay Ray**, a Vocational Rehabilitation Counselor who has been in the “trenches” with Injured Workers under Hawai`i Workers’ Compensation, since arriving in 1993. I also have additional experience in Workers’ Compensation Rehabilitation in Arizona, California, Oregon, and Washington State.

**I “DO NOT” SUPPORT SB 2608.**

The purpose of vocational rehabilitation is to provide an “individualized” program that ultimately leads the Injured Worker back to suitable gainful employment so as to become a productive and contributing member of society, as soon as possible and as cost-effectively as possible. This is done with a VR Plan that is considered by both client and counselor to be the best for that person’s vocational independence. **SB 2608** would take away that individuality and make for a “cookie-cutter” approach so that everyone would have to “fit” in exactly the same manner. We must take into account that everyone is different.

**If enacted, SB 2608 will place unnecessary burdens on Injured Workers and the VR Counselor, as well as the Department of Labor at a time when there have been significant cutbacks. Neither do we want Injured Workers to rely on public assistance and increase the burden on the taxpayers of Hawai`i.**

I have a number of clients with psychological injuries as well as physical injuries and the time it takes to help them adjust to their disability is considerably more than what would be allowed if **SB 2608** passes. For many of them, their adjustment to disability is greatly hindered by delays and denials of proper medical care by the insurance companies. In fact, one of my clients made a telling statement of his perception of how insurance adjusters approach the cases of injured workers, “delay, deny, and hope they die.”

Another of my clients, who was injured stated that the insurance company “waited more than 1 year to even get an MRI done on my left shoulder (December 2006 to January 2008). They made me feel like I was begging for a privilege while they were, in actuality, violating my rights under the law. The MRI vindicated me, showing that my left shoulder needed surgery, as the bone had healed in a wrong way so that my original movement in the left arm and shoulder needed to be restored. The surgery was finally done in May 2008 but it remains uncertain if I can achieve full restoration of the



left arm and shoulder, as the “window of opportunity” may have passed, medically-speaking.” In this case, the client ended up having another surgery to his right shoulder 2-1/2 years after the injury and it is uncertain if he has additional surgeries yet to come. Thus it will ultimately be a longer period of time for his complete adjustment to disability and SB 2608 would hinder him from returning to suitable gainful employment.

I strongly recommend that the proposed changes contained in SB 2608 NOT be approved.

Thank you for allowing me to provide testimony to your committee.

Sincerely,

*Kay Ray, MS, CRC, LMHC*

**Vocational Rehabilitation Counselor**

(808) 528-1155 ext. 207

Fax: (808) 528-5319

Cell: (808) 542-8600

## HENDERSON GALLAGHER & KANE

HARVEY E. HENDERSON, JR.  
J. PATRICK GALLAGHER  
JOELLE SEGAWA KANE  
LYNN B.K. COSTALES  
JACQUELINE W.S. AMAI  
LEAH M. REYES

ATTORNEYS AT LAW  
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JEFFREY Y. HIGASHI  
MERIDETH Q. McENTIRE  
ERIN MACDONALD  
HIRO S. TAKEI  
JON S. JACOBS

[jamai@insurlawhawaii.com](mailto:jamai@insurlawhawaii.com)

February 3, 2010

Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair  
Committee on Labor

Re: Hearing on February 4, 2010, at 2:45 p.m.  
**Support for S.B. 2608, Relating to Vocational Rehabilitation**

My name is **Jacqueline W.S. Amai**. I am a licensed attorney in Hawaii and have been practicing in the area of workers' compensation insurance defense since 1994. **I strongly support S.B. 2608**, Relating to Vocational Rehabilitation, which holds vocational rehabilitation counselors more accountable and provides greatly needed options in situations where the vocational rehabilitation case is not progressing, an employee returns to work, or an employee is enrolled in a non-approved vocational rehabilitation plan.

In addition to establishing a claimant's right to vocational rehabilitation services, the present § 386-25, HRS, as amended, generally states the responsibilities and requirements of the vocational rehabilitation counselor and defines the authority of the Director of Labor and Industrial Relations, through the Vocational Rehabilitation Branch, to monitor the process and intervene as necessary. While seemingly detailed, the statute is actually vague with its time frames, e.g. "reasonable time," and does not provide guidelines on what may be done when a claimant or vocational rehabilitation counselor are not compliant with the statutory requirements. The present statute also does not address circumstances that are commonly encountered in practice, such as a claimant or counselor being unresponsive or uncooperative, lack of any progress, significant delay in submitting a plan, an unreasonable or unrealistic vocational goal and/or plan, and a claimant being noncompliant with a plan.

S.B. 2608 proposes change that is necessary, but fair to both claimants and employers. By holding counselors more accountable, claimants are assured of receiving services on a timely basis and their case will continue to move forward, meaning they continue to progress towards the ultimate goal of this system which is to return them to suitable gainful employment. Minimizing the opportunities to languish in the system will minimize the exposure to litigation between the parties. With more specific time frames and remedies available to employers, there is a greater degree of control over the associated costs and the monitoring of the vocational rehabilitation case is less adversarial.

I respectfully request your favorable consideration of S.B. 2608. Thank you for this opportunity to present this testimony.

Senator Dwight Y. Takamine  
Chair Senate Labor Committee

Senator Brian T. Taniguchi  
Vice Chair, Senate Labor Committee

Honorable Committee Members:

My name is Don Kegler and I have been a provider of Vocational Rehabilitation services in Hawaii since 1979.

**I AM OPPOSED TO SB NO. 2608.**

I believe the proposed changes, if enacted, will:

Hinder Injured Workers in their return to work and that the changes are detrimental, both in intent and in practice, to the Vocational Rehabilitation Regulation, as the changes are geared to reduce Injured Workers' rights and benefits.

Successful Vocational Rehabilitation is a complex process and cannot be reduced to a simple "cookie cutter" approach. Each "disabled" Injured Worker and their situations are unique and vocational solutions must be individually crafted so that the Injured Worker can return to work as soon as possible, with due consideration to their current physical and psychological capabilities and limitations, and their complete vocational profile.

The proposed changes place additional responsibilities and work load on the Department of Labor Disability Compensation Division at a time when there have been significant cut backs with this agency.

I believe that creating a more adversarial atmosphere in Vocational Rehabilitation will place an unnecessary burden on the Injured Worker, the Vocational Rehabilitation Counselor, and the Department of Labor. I strongly recommend that the proposed changes contained in SB 2608 **NOT** be approved.

*Donald L. Kegler, M.Ed., C.R.C., C.D.M.S., L.M.H.C.*  
Chief Operating Officer  
Vocational Rehabilitation Counselor  
*Case Management Works-Hawaii, Inc.*

SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

**S.B. 2608**

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is **Colette H. Gomoto**, and I am an attorney licensed to practice in the State of Hawaii. My area of practice is workers' compensation.


**Support for S.B. 2608.**

I believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

- As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass SB2608.

Signed

  
Colette H. Gomoto

SENATE

TWENTY-FIFTH LEGISLATURE 2010

LABOR COMMITTEE

CHAIR: SENATOR D. TAKAMINE

VICE CHAIR: SENATOR BRIAN TANIGUCHI

***Date: Hearing 2/4/10 at 2:45 p.m in room 224***

***Senate Bill 2608***

***In Opposition to SB 2608***

Please note the attached petition from 25 professionals and injured workers who are not supporting the Senate Bill 2608.

Please provide this petition to the Labor Committee for the hearing on 2/4/10 at 2:45 p.m. in room 224.

Thank you for this opportunity to make our opinions known regarding Senate Bill 2608.

*Please fax to Sgt. at arms # 586-6659*



February 2, 2010

### Senate The Twenty-Fifth Legislature

Testimony **NOT** in support of SB 2608

We, signed Below, **Do not** support SB 2608 as this would hurt the injured Workers Program rather than assist Them toward productivity. Please do not allow this bill to pass. Thank you very much.

Name	Address	Telephone No.	Signature
LESLIE ANN LARONAL	817-132 KALUA AVE WAIALAE HI 96792 146-A HAWAIIA AVE.	2-22-0371	Leslie Ann Laronal
CURTIS YONEDA	WAHIAWA HAWAII 96786	754-1293	Curtis H. Yoneda
Martin Olvera Jr	91-044 Parish DR. Ewa Beach HI, 96704	(219) 808-2498	Martin Olvera
PAUL SEVRUK	775 KINALAH PL #1201 HONOLULU HI 96813	(808) 505-3847	Paul Sevruk
Peggy Mc Carty	1129 PLO. OAHU WAY HON, HI 96825	276 8143	P. A.
W. Majors			W. Majors
GERRY TAVARES	1579 Nuuanu Ave UNIT 134, Hon, HI 96817		Gerry Tavares
Kay Ray	2570 Kekuanani St Honolulu, HI 96813		Kay Ray
WAYNE MUKAIDA	888 Mililani St. PH2, HI/H		Wayne Mukaida
Penmi's Chang	735 Bishop St. #320		Penmi's Chang
Leona Teixeira	2023 A Colburn St. 96819		Leona Teixeira
IMELDA V. SAUSAL	94-791 KAAKA ST. WAIPAHU HI 96797		Imelda V. Sausal
Steve Birnbaum	46-159 Meheanu Cp #3227 Kaneohe		Steve Birnbaum
Scott Mc Cartney MD	2029 St. Louis Dr. Hanalei		Scott Mc Cartney MD
Douglas Moore	1188 Bishop #1401, Hon. 96813		Douglas Moore
STANFORD NASHI	520 ALAKAUA 7-400 HAW 96813		Stanford Nashi
Alan S. Galloway	1834 Nuuanu Ave #205 Hon. HI 96814		Alan S. Galloway

CALVIN CHIU 96102 PAKAU PL EWA 96706 Calvin Chiu

Diego CADIENTE 25-012 Kipapa Dr Mililani, HI 96789

Joanne Kealoha 451 Atkinson Drive Honolulu, HI 96814

DERRICK ISHINARA 1210 NUUANU AVE #1505 HON HI 96817

Lena Tadaki-Kam 822 Irokaia Pl HON 96817 Lena Tadaki-Kam

February 2, 2010

SENATE  
The Twenty-fifth Legislature

Testimony NOT IN SUPPORT OF SB 2608

WE, SIGNED BELOW DO NOT SUPPORT SB 2608 AS THIS WOULD HURT THE INJURED WORKERS PROGRAM RATHER THAN ASSIST THEM TOWARD PRODUCTIVITY. PLEASE DO NOT ALLOW THIS BILL TO PASS. THANK YOU VERY MUCH.

NAME	ADDRESS	TELEPHONE NO.
Gilbert Visconde	91-1104 Hanalea St. Ewa Beach HI. 96706	# 741-1338
GREGG VAN CAMP	3731 KANAIWA AVE HONOLULU, HI 96815	808-734-7989
Duke M. Jinnawan	43 Ikaika Pl. Wahiawa, HI 96786	808-241-1790
Lily Miyahira	3191 Bloka Hina Pl. Hon 96817	398-9460

*Handwritten signature/initials on the left margin.*



-February 2, 2010

**Senate  
The Twenty-Fifth Legislature**

Testimony **NOT** in support of SB 2608

We, signed Below, **Do not** support SB 2608 as this would hurt the injured Workers Program rather than assist Them toward productivity. Please do not allow thi bill to pass. Thank you very much.

Name

Address

Telephone No.

Signature

Toby K Fisher

333 Adora St. #40B

(808) 499-8109



T-631 P0005/0005 F-551

02-03-'10 15:29 FROM-

SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

**S.B. 2608**

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is **Elizabeth Moore**. I am a licensed adjuster in the state of Hawaii and admitted to the Hawaii State Bar.

**Support for S.B. 2608.**

I believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you will review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment. The passing of this bill will further provide a structure for the all parties to adhere so as to minimize any confusion and costs.

This will further have a trickling effect that will help the small businesses in Hawaii. By providing a structure and decision making forum, it will allow vocational rehabilitation to be provided in an efficient manner thereby causing a decrease in the cost of the service and the expense of this type of claim. Subsequently, a decrease in the cost of a claim will result in lower workers compensation costs for businesses, allowing businesses to put that money to better use in this frail economy.

Thank you for the opportunity to testify. I request that you pass SB2608.

Signed



SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

S.B. 2608

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is **Joanne Toby Vogel**. I am a licensed Independent Adjuster with the State of Hawaii. I am employed at John Mullen & Company as a Workers' Compensation Insurance Investigator and Adjuster.

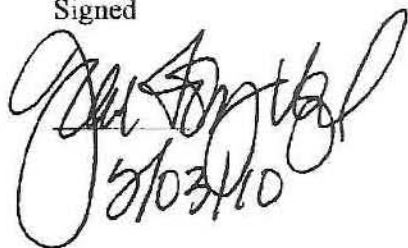
**Support for S.B. 2608.**

We believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass SB2608.

Signed



Handwritten signature of Joanne Toby Vogel, dated 2/3/10.





SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian Taniguchi, Vice Chair

Testimony of Milia Leong on behalf of John Mullen & Co., Inc.

Thursday, February 4, 2010 @ 2:45

Support for S.B. No. 2608, Relating to Vocational Rehabilitation

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is Milia Leong, Workers' Compensation Claim Manager for John Mullen & Co., Inc., a Hawaii based claim administrator for insurance and captive carriers, as well as self-insured employers. We handle on average over 2000 workers' compensation claims yearly and I oversee the majority of the claims which involve vocational rehabilitation (VR). Although I do support the concept, and acknowledge the successes seen in VR over the last 16 years of my career, I believe the system can be improved by S.B. 2608.

HRS 386-25 (a) Vocational Rehabilitation states in part "The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of the injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner."

Our primary concerns are that the VR Counselors fees are not regulated by the Department of Labor (DOL) via a fee schedule or a billing dispute process, nor is there a specified time frame with respect to submission of a "plan." This has created loop holes for prolonged VR programs, which in our experience, benefit no one but the counselor involved. By extending the VR program, prior to submission of a plan, a VR counselor may continue to charge the Employer at any rate, with no maximum allowance, for an unspecified duration of time, thus creating abuse of the system for those providers who choose to take advantage.

It is widely acknowledged in the Workers' Compensation industry, that the longer an injured worker is out of the labor force, the less chance there is that a worker will ever return to gainful employment. Thus, the lack of specified time frames for submission of a plan, only serve as a disadvantage to the injured worker. With the proposed changes outlined in S.B. 2608, the worker will be entitled to a period of up to 240 days (8 months), from the date they are noticed of their eligibility rights, to select a counselor of their choosing and assist in submission of a valid "plan." This generous 240 day time frame does not include the time and cost of the plan itself.

The proposed changes to 386-25 are primarily time specific, and in no way take away benefits from those who are deemed eligible for VR services pursuant to 386-25 (b). When injured workers in VR are released to return to full duty, it is proposed benefits be suspended. This

John Mullen & Company

677 Ala Moana Blvd, Suite 910, Honolulu, HI 96805 • ph 808 531 9773 • f 808 541 4830 • info@johnmullen.com • www.johnmullen.com

goes back to the very issue of fairness amongst the injured workers, wherein all workers shall be treated equally and pursuant to the law, and not based on that of circumstance.

As with all other providers under Chapter 386, it should allow the Director to impose penalties pursuant to 386-97.5 for those that do not comply.

John Mullen & Co., Inc. supports this measure in with the following amendments:

1. Page 3, line 2 "and a billing dispute process."

These changes clearly serve to benefit the injured worker and therefore we urge you to pass S.B. 2608.

Thank you for this opportunity to testify.

SENATE COMMITTEE ON LABOR  
Senator Dwight Y. Takamine, Chair  
Senator Brian T. Taniguchi, Vice Chair

Thursday, February 4, 2010  
2:45 p.m.

S.B. 2608

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is RUBY KIHARA, and I represent JOHN MULLEN AND COMPANY.

Support for S.B. 2608.

We believe the Vocational Rehabilitation system will be much improved by S.B. 2608, especially by establishing the ability of the Disability Compensation Division of the Department of Labor (DCD) to have decision making power over the vocational rehabilitation counselors. This will benefit those in need of vocational rehabilitation services.

As is the case with much proposed legislation you must review, the tightening of the laws surrounding service providers for a service such as this are in response to those who abuse the system. The language in S.B. 2608 also requires rehabilitation providers to adhere to reasonable timelines and protocols. This will benefit the injured worker by providing timely service and facilitating the employee's return to meaningful and gainful employment.

Thank you for the opportunity to testify. I request that you pass SB2608.

Signed

  
Ruby Kihara



**O. Gary Whitney, M.Ed., CRC**2618 Waolani Avenue  
Honolulu, Hawaii 96817

Phone: (808) 595-7673 • Fax: (808) 595-4349

email: Gary@vocorehabhawaii.com

**Measure: SB 2608; Relating to Vocational Rehabilitation  
Committee on Labor****Date: February 04, 2010****Time: 2:45 pm**Testimony of **O. Gary Whitney M.Ed., CRC, NBCC, LMHC**The Honorable Dwight Takamine, Chair  
The Honorable Brian Taniguchi, Vice Chair  
And Members of the Committee**I am testifying AGAINST SB 2608** – Relating to Vocational Rehabilitation

I am a certified vocational rehabilitation counselor practicing in Hawaii for the past twenty-eight years. My primary target population are injured workers.

The artificial time lines proposed in SB 2608 would amount to a cookie cutter approach to vocational rehabilitation services which would not take into consideration the complexity of each injured worker's case as well as the individuality and needs that each injured worker presents; therefore, the lack of flexibility would harm the injured worker's ability to resume an independent and productive life within a suitable and gainful employment setting.

Obtaining medical information (permanent physical work restrictions) from the treating physician required in 30 days is unrealistic. What if the injured worker is not medically stable and it is premature to establish permanent physical work restrictions?

The attending physician should have the responsibility of establishing the physical work tolerance of the injured worker/their patient. Allowing IME's to establish physical work tolerance can open the door to abuse which could harm the injured worker.

I am not opposed to the development of a fee schedule for vocational rehabilitation services as long as the vocational rehabilitation counselor has an opportunity to help develop the fee schedule. This could be one way of containing costs without harming the injured worker.

Respectfully submitted,

O. Gary Whitney, M.Ed., CRC, NBCC, LMHC

February 2, 2010

Date

HONORABLE COMMITTEE MEMBERS,

MY NAME IS **TONY HUNSTIBER** AND I HAVE BEEN A PROVIDER OF VOCATIONAL REHABILITATION SERVICES IN HAWAII FOR OVER FIFTEEN YEARS.

**I AM OPPOSED TO SB NO. 2608.**

THE PROPOSED CHANGES MAY;

1. HINDER INJURED WORKERS RETURN TO WORK AND ARE DETRIMENTAL, BOTH IN INTENT AND IN PRACTICE, TO THE VOCATIONAL REHABILITATION REGULATION AS THE CHANGES ARE GEARED TO REDUCE INJURED WORKERS AND THE DISABLED RIGHTS AND BENEFITS.

2. SUCCESSFUL VOCATIONAL REHABILITATION IS A COMPLEX MULTIFACETED PROCESS AND CAN NOT BE REDUCED TO A SIMPLE "COOKIE CUTTER" APPROACH. EACH "DISABLED" INJURED WORKER AND THEIR SITUATIONS ARE UNIQUE AND VOCATIONAL SOLUTIONS MUST BE INDIVIDUALLY CRAFTED SO THAT THE INJURED WORKER CAN RETURN TO WORK AS SOON A POSSIBLE WITH DUE CONSIDERATION TO THEIR CURRENT PHYSICAL AND PSYCHOLOGICAL CAPABILITIES AND LIMITIATIONS AND THEIR COMPLETE VOCATIONAL PROFILE.

3. THE PROPOSED CHANGES PLACE ADDITIONAL RESPONSIBILITIES AND WORK LOAD ON THE DEPARTMENT OF LABOR DISABILITY COMPENSATION DIVISION AT A TIME WHEN THERE HAVE BEEN SIGNIFICANT CUT BACKS WITH THIS AGENCY.

CREATING A MORE ADVISARIAL ATMOSPHERE IN VOCATIONAL REHABILITATION IS NOT THE WAY TO GO.

4. THE PROPOSED CHANGES WILL BE COUNTER PRODUCTIVE, POSSIBLY INCREASE WORKERS COMPENSATION COSTS, DILUTE DISABLED INJURED WORKERS BENEFITS AND CHOICES AND THREATEN TO GUT THE SUBSTANCE OF A HIGHLY SUCCESSFUL VOCATIONAL REHABILITATION REGULATION/INJURED WORKER BENEFIT.

*Tony Hunstiger M.Ed., CRC, LMHC*

**Case Management Works**

Pacific Guardian Center  
Suite 2075 Mauka Tower  
737 Bishop Street  
Honolulu, Hawaii 96813

[tonyh@cmw-hawaii.com](mailto:tonyh@cmw-hawaii.com)

Phone: (808) 528-1155; extension 204

Fax: (808) 528-5319

Toll Free: 1-800-310-1383



SENATE COMMITTEE ON LABOR

Senator Dwight Y. Takamine, Chair

Senator Brian Taniguchi, Vice Chair

Hearing: Thursday, February 4, 2010 @ 2:45

Re: Support for S.B. No. 2608, Relating to Vocational Rehabilitation

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is **Sidney Wong** and I am an attorney in private practice with the law firm of Wong & Oshima. I have represented employers and insurance carriers in the area of Workers' Compensation law for over 28 years. Many of the cases in which I have been retained involved vocational rehabilitation.

I support S.B. No. 2608 with amendments.

HRS 386-25 (a) Vocational Rehabilitation states in part "The purposes of vocational rehabilitation are to restore an injured worker's earning capacity as nearly as possible to that level which the worker was earning at the time of the injury and to return the injured worker to suitable work in the active labor force as quickly as possible in a cost-effective manner."

While the purpose of HRS 386-25 is clear, implementation and completion of vocational rehabilitation efforts are not always clear or timely. The amendments set forth in S.B. No. 2608 provide a workable and reasonable timeline for vocational rehabilitation efforts by adding the elements of: 1) accountability; 2) consistency and predictability in the delivery of services; 3) clearer standards for services; and 4) measurable criteria to evaluate the utility and effectiveness of vocational rehabilitation services. These qualities serve to create a more understandable and effective vocational rehabilitation process for all.

Presently, in the absence of specific timetables and deadlines, delays may occur for various reasons or excuses. Failure to create deadlines or specific time periods for completion of actions required in the initial evaluation stage of the vocational rehabilitation process only serves to delay the vocational rehabilitation process. S.B. No. 2608 provides these deadlines for necessary actions to efficiently complete the initial evaluation of an injured worker's vocational rehabilitation status, and, to minimize the occasions and cases of delay. These delays are of no value to either injured workers or employers.

S.B. No. 2608 does not deprive or take away an injured worker's right to vocational rehabilitation efforts, but rather serves to improve and make more effective the present process.

SENATE COMMITTEE ON LABOR

Page 2

I also **support this measure with the following amendments:**

- 1. Page 3, line 2 "and a billing dispute process."**

In closing, S.B No. 2608 with amendments will better serve to accomplish the purposes of HRS 386-25. Implementation of these changes will benefit the injured workers and all involved in the vocational rehabilitation process.

I urge this Honorable Committee to support and pass S.B. No. 2608 with amendments.

Thank you for this opportunity to testify.

SENATOR DWIGHT Y. TAKAMINE  
CHAIR SENATE LABOR COMMITTEE

SENATOR BRIAN T. TANIGUCHI  
VICE CHAIR, SENATE LABOR COMMITTEE

HONORABLE COMMITTEE MEMBERS,

MY NAME IS **GARY GALLAGHER AND** I HAVE BEEN A PROVIDER OF VOCATIONAL REHABILITATION SERVICES IN HAWAII FOR OVER THIRTY YEARS.

**I AM OPPOSED TO SB NO. 2608.**

THE PROPOSED CHANGES MAY;

1. HINDER INJURED WORKERS RETURN TO WORK AND ARE DETRIMENTAL, BOTH IN INTENT AND IN PRACTICE, TO THE VOCATIONAL REHABILITATION REGULATION AS THE CHANGES ARE GEARED TO REDUCE INJURED WORKERS AND THE DISABLED RIGHTS AND BENEFITS.

2. SUCCESSFUL VOCATIONAL REHABILITATION IS A COMPLEX MULTIFACETED PROCESS AND CAN NOT BE REDUCED TO A SIMPLE "COOKIE CUTTER" APPROACH. EACH "DISABLED" INJURED WORKER AND THEIR SITUATIONS ARE UNIQUE AND VOCATIONAL SOLUTIONS MUST BE INDIVIDUALLY CRAFTED SO THAT THE INJURED WORKER CAN RETURN TO WORK AS SOON A POSSIBLE WITH DUE CONSIDERATION TO THEIR CURRENT PHYSICAL AND PSYCHOLOGICAL CAPABILITIES AND LIMITATIONS AND THEIR COMPLETE VOCATIONAL PROFILE.

3. THE PROPOSED CHANGES PLACE ADDITIONAL RESPONSIBILITIES AND WORK LOAD ON THE DEPARTMENT OF LABOR DISABILITY COMPENSATION DIVISION AT A TIME WHEN THERE HAVE BEEN SIGNIFICANT CUT BACKS WITH THIS AGENCY.

CREATING A MORE ADVERSARIAL ATMOSPHERE IN VOCATIONAL REHABILITATION IS NOT THE WAY TO GO.

4. THE PROPOSED CHANGES WILL BE COUNTER PRODUCTIVE, POSSIBLY INCREASE WORKERS COMPENSATION COSTS, DILUTE DISABLED INJURED WORKERS BENEFITS AND CHOICES AND THREATEN TO GUT THE SUBSTANCE OF A HIGHLY SUCCESSFUL VOCATIONAL REHABILITATION REGULATION/INJURED WORKER BENEFIT.

**TESTIMONY**

**SB 2608**

**LATE**

## **Testimony in OPPOSITION of SB 2608**

February 4, 2010

To: Senator Dwight Y. Takamine, Chair, Senate Labor Committee  
Senator Brian T. Taniguchi, Vice Chair, Senate Labor Committee

Dear Honorable Committee Chairs & Members:

My name is **Debbie Kawamoto** and I am a former injured worker, who has personally gone through and has survived the arduous and complicated worker's compensation system in Hawaii. I happen to also now be working for Vocational Management Consultants, Inc. as a Vocational Tech, assisting 5 Vocational Rehabilitation Counselors and the many injured workers they are currently working with. I also serve as Secretary, for the Hawaii Injured Workers Alliance (HIWA), an organization that is working toward making productive and much needed changes to the worker's compensation system, to provide various assistance to the injured worker to help them return to gainful employment in a timely manner.

I am writing this testimony to request that you **"DO NOT SUPPORT SB 2608"**, as it will only create even further hardship for the injured worker, who is trying to return to and once again become a productive and contributing member of our society, which is the ultimate goal of the Vocational Rehabilitation process.

### **Why I believe SB 2608 should NOT be passed:**

1) The injured workers that are receiving VR assistance come from various occupations and their respective injuries and disabilities can vary in severity. Therefore, they require different timeframes for medical testing, completion of a functional capacity evaluation, general healing & recovery, and adjustment to disability. All injuries whether physical or psychological in nature, require time. Regardless of what kind of injury or impairment, the injured worker needs this proper time to heal, in order to actively and productively participate in the requirements of the vocational rehabilitation program. During the healing process, due to no fault of their own, individuals may sometimes experience setbacks that may further delay the vocational rehab process. The healing and recovery process is unique to the individual and therefore, to **require unreasonable timeliness** such as outlined in SB 2608 (see reference below), for the injured worker, **simply does not make sense.**

- Pg 5 – Line 19 – 30 Days to allow for any adjustment to disability
- Pg 5 – Line 20 – 30 Additional days to conduct a functional capacity evaluation

2) The primary and ultimate goal of vocational rehabilitation is to help the injured worker once again become a productive contributing member of society. **At a time when the State of Hawaii is already in a budget crisis, the last thing any of your constituents, would want is for more injured workers to be out of work and to rely on public assistance and further increase the burdens onto the tax payers of Hawaii. If SB 2608 is passed, it will surely prevent and/or delay many injured workers from returning to the workforce and allowing the burden to continue.**

Thank you for allowing me to provide testimony to your committee. Please pay close attention to the testimonies of the injured workers, and the vocational rehabilitation counselors, attorneys and doctors who work daily with the injured workers and the struggles of the Work Comp system, as they will be the ones most heavily impacted by your decision/vote.

**Debbie Kawamoto**  
**Vocational Tech - Vocational Management Consultants, Inc.**  
**Secretary - HIWA**





HAWAII INJURED WORKERS ALLIANCE  
715 SOUTH KING STREET SUITE #410  
HONOLULU, HAWAII 96813

February 4, 2010

The Twenty-Fifth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Labor

**S.B. 2608** expands duties of the rehabilitation unit and providers of rehabilitation services. Allows employer to terminate temporary total disability benefits when the employee is able to return to work and is enrolled in a non-approved plan.

The **Hawaii Injured Workers Alliance strongly REJECTS** this measure.

S.B. 2608 will have a detrimental impact on the injured workers journey to recovery.

Vocational rehabilitation is to insure that injured workers become a part of the working community in a productive manner.

We believe this bill will be a negative step for injured workers in the State of Hawaii.

Your **REJECTION** of this bill would be greatly appreciated.

**George M. Waialeale**

**Executive Director**

Hawaii Injured Workers Alliance  
383-0436

Testimony for LBR 2/4/2010 2:45:00 PM SB2608

Conference room: 224

Testifier position: oppose

Testifier will be present: No

Submitted by: Mark Hambright

Organization: Individual

Address: P.O. Box 603 Waimanalo, Hi

Phone:

Submitted on: 2/4/2010

Comments:

I have worked in health care since 1983. I injured my back in 2008. It took over a year for me to get my back taken care of, I finally had surgery 3 months ago. This is unheard of and would have NEVER happened on the mainland. I am so tired of the political BS and corruption that goes on in this state. I can no longer go back to my previous position at work. I am in Physical therapy at the moment and cannot sit for more than an hour at a time. If this happened to you or one of your family members, you would be as pissed-off as I am right now. Remember, this IS an election year. I am a member of the, "Independent Tea Party"; I WILL, vote out anyone who does not vow to take care of the People and State of HAWAII....

We are tired of all of your false promises and big money pockets.

I went to college for 5 years so I could do a job that I loved and was good at. Because of the incompetent people I work with, my back was injured. I have been off of work for 17 months now. I blame the STATE of Hawaii for this, because once again it is pure buracratic BS. I should NOT have had to wait for over a year to have surgery on my back. Totally unheard of!!!!

Mark Hambright

Testimony for LBR 2/4/2010 2:45:00 PM SB2608

Conference room: 224

Testifier position: oppose

Testifier will be present: No

Submitted by: Emily Skedeleski

Organization: Individual

Address: 94-1037 Hanauna St. Waipahu, HI

Phone: 808 286 1846

Submitted on: 2/4/2010

Comments:

For me, vocational rehab was a blessing in disguise. I was able to learn computer skills which are now a necessity in finding a job. They helped in assisting me in finding a job with a resume, mock interview, and calling/emailing for jobs. Vocational rehab is a must if you have been with one employer for most of your working life after being hurt on the job. They help train you to find a job in the current job market.