



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 9, 2015

To: The Honorable Mark M. Nakashima, Chair,
The Honorable Jarrett Keohokalole, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, February 10, 2015
Time: 9:00 a.m.
Place: Conference Room 309, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 653 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB653 proposes to add a new section in chapter 386, Hawaii Revised Statutes (HRS) and to amend section 386-80, HRS.

The proposed new section to chapter 386, HRS, will impose a penalty on the self-insured employer or insurance carrier who fails to pay compensation under the terms of a settlement agreement within fourteen days after it becomes due, of which a penalty of twenty percent will be added to the unpaid compensation and payable at the same time unless the non-payment is excused by the director.

The amendment to Section 386-80, HRS, will allow injured employees or employers to request the director to appoint a duly qualified impartial physician to examine the injured employee and report. The bill gives the director fourteen days to either approve or deny the request, and if no decision is received, the request is automatically approved.

The department opposes the measure.

II. CURRENT LAW

Section 386-92, HRS, imposes a penalty on the self-insured employer or insurance carrier if compensation payable under the terms of a final decision or judgment is

not paid within thirty-one days after it becomes due.

Section 386-78, HRS, specifies that no compromise in regard to a claim for compensation pending before the director is valid unless approved by decision of the director and conforms to the chapter and made part of the decision.

Section 386-80, HRS, specifies the director may appoint a duly qualified impartial physician to examine the employee and report. The fees for the examination are paid from funds appropriated by the legislature for use by the department.

Section 386-79, HRS, allows the insurance carrier to request the director to issue an order to compel the injured employee to be available for examination by a qualified physician designated and paid by the employer. The physician's fees are limited to the complex medical consultation charges governed by the medical fee schedule.

III. COMMENTS ON THE HOUSE BILL

The department opposes the measure for the following reasons.

1. Section 386-92, HRS, already allows for a twenty percent penalty against the self-insured employer and insurance carrier who does not timely pay compensation under the terms of a final decision. Compromises pursuant to section 386-78, HRS, are decisions of the director and subject to penalties for untimely payments pursuant to Section 386-92, HRS. The department recognizes the importance that self-insured employers and carriers pay all benefits on a timely basis; however, we believe the current statute is adequate to address those who do not.
2. Section 386-79, HRS, allows the insurance carrier, under certain circumstances, to request an order from the director to have the injured employee submit to an examination by a duly qualified physician or surgeon designated and paid for by the employer. The proposed amendment to section 386-80, HRS, does not specify the circumstances or criteria an employee or insurance carrier could make such a request, or how many requests could be made for each case.
3. The amendment will place a financial burden on the department who must bear the cost of all examinations that are either director approved or approved by default. This measure will also place a tremendous administrative burden on the department to develop a procedure to select physicians, schedule appointments, and notify all affected parties of interest of the examinations. The significant amount of work involved will require at a minimum, one professional and one clerical employee at a cost of \$80,000 per year.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

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

February 9, 2015

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR**

For Hearing on Tuesday, February 10, 2015
9:00 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 653
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE ON
LABOR & PUBLIC EMPLOYMENT:

Thank you for the opportunity to provide comments on House Bill 653 (H.B. 653).

The purposes of H.B. 653 are to require workers' compensation settlement agreements to be paid within 14 days; and require that a request for an independent medical examination be approved or denied by the director of labor and industrial relations ("Director") within 14 days.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits these comments on the bill.

First, this bill would shorten by over one-half the current period of time to pay settlements from the thirty-one days allowed in Section 386-92, HRS. All of DHRD's workers' compensation settlements have to be centrally processed through the

Department of Accounting and General Services (“DAGS”), which ultimately issues the settlement checks that are disbursed from our office. Moreover, the current thirty-one days allows time for the injured workers’ attorneys to file for and obtain approval of their attorneys’ fees and costs from the Director. If the approved fees and costs are made a lien on compensation, DHRD has to instruct DAGS to divide the settlement proceeds and issue separate checks for the claimant and his or her attorney to comply with the Director’s approval and order. The realities of these processes would make it very challenging for the State as an employer to meet the 14-day payment deadline. As a result, the State would inevitably be subject to the proposed penalty, thereby increasing our claims costs.

Second, with respect to Section 2 of this bill, if the intent of this measure is to mandate faster approvals by the Director, the proposed fourteen day deadline in Section 386-80, HRS, should also be extended to Section 386-79, HRS (which applies to employers’ requests for ordered examinations), to make the provisions consistent and set a single standard.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

February 10, 2015

The Honorable Mark M. Nakashima, Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

**SUBJECT: House Bill No. 653
Relating to Workers' Compensation**

The purpose of H.B. 653 is to require that workers' compensation settlement agreements are paid within fourteen (14) days after they become due and that requests for independent medical evaluations pursuant to Hawaii Revised Statutes (HRS) Section 386-80 be approved or denied by the Director of Labor and Industrial Relations (Director) within fourteen (14) days. The City and County offers the following comments with respect to the bill.

HRS Section 386-92 provides that if any compensation payable under the terms of a final decision or judgment is not paid within thirty-one days after it becomes due, a penalty of twenty per cent will be added on to that amount of compensation due unless the nonpayment is excused by the Director. The City and County offers that in order to maintain a consistent standard between compensation payable for final decisions under HRS Section 386-92 and the compensation payable for settlement agreements set forth in this measure, H.B. 653 should be amended to utilize a thirty-one (31) day deadline to issue payment, rather than a fourteen (14) day deadline. Adding a different standard for what essentially is the same form of benefit compensation as set forth in HRS Section 386-92 will create unnecessary confusion and inconsistent expectations.

The Honorable Mark M. Nakashima, Chair
and Members of the Committee on
Labor & Public Employment
The House of Representatives
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February 10, 2015

The City takes no position with respect to Section 3, which mandates that the Director shall approve or deny any request for an examination by an impartial physician made pursuant to HRS Section 386-80 within fourteen (14) days. The City suggests expanding the scope of Section 3 to also cover medical examinations that are ordered by the Director under HRS Section 386-79. Currently, the language in HRS Section 386-79 does not contain any timeframe standards by which the Director is required to respond to employers' requests for an ordered examination. By amending Section 3 of this measure to mandate a similar fourteen (14) day response period with respect to examinations requested under HRS Section 386-79, there will be a consistent time standard for by which the Director addresses examination requests made under both HRS Section 386-79 and HRS Section 386-80.

Sincerely,



Carolee C. Kubo
Director

BIA-HAWAII

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Testimony to the House Committee on Labor & Public Employment Tuesday, February 10, 2015

9:00 a.m.

Hawaii State Capitol - Conference Room 309

SUBJECT: H.B. 653 RELATING TO WORKERS' COMPENSATION

Chair Nakashima, Vice-Chair Keohokalole, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii respectfully **opposes** H.B. 653, which would impose a penalty on an employer who does not pay an employee temporary partial disability benefits within fourteen calendar days after the end of the employee's workweek. The bill would also allow an injured employee or employer to request that the director of labor and industrial relations appoint a duly qualified impartial physician to examine the injured employee and requires that the director approve or deny the request within fourteen days.

We understand that disabled workers are often unfairly denied disability benefits because their physicians do not complete and sign a specialized form that certifies the injured worker is entitled to compensation, however, **the employer has no control over such payments** since the responsibility of completing the necessary paperwork for temporary disability compensation lies with the disabled employee and his or her doctor. Failing to certify injury prevents payment from the insurance carrier. To penalize the employer for a process he or she has no control over, or participation in, is unfair, extremely troublesome, and increases the costs of conducting business.

Based on the aforementioned reasons, BIA-Hawaii **opposes** H.B. 653.

We appreciate the opportunity to share with you our views.



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Telephone (808) 525-5877

Alison H. Ueoka
Executive Director

TESTIMONY OF JANICE FUKUDA

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Mark M. Nakashima, Chair
Representative Jarrett Keohokalole, Vice Chair

Tuesday, February 10, 2015
9:00 a.m.

HB 653

Chair Nakashima, Vice Chair Keohokalole, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf 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 thirty-six percent of all property and casualty insurance premiums in the state.

The Hawaii Insurers Council opposes Section 1 which creates a new part that dictates the terms of a settlement including when payments will be made.

There is already a requirement in 386-92 requiring payment of settlements and therefore, this section is not necessary.

We ask that this provision be deleted from the bill.

Thank you for the opportunity to testify.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Labor & Public Employment
Tuesday, February 10, 2015 at 9:00 A.M.
Conference Room 309, State Capitol**

RE: HOUSE BILL 653 RELATING TO WORKERS' COMPENSATION

Chair Nakashima, Vice Chair Keohokalole, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 653, which requires workers' compensation settlement agreements to be paid within 14 days and requires that a request for an independent medical examination be approved or denied by the director of labor and industrial relations within 14 days.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber disagrees with the bill and believes that the 14 days is an insufficient amount of time for a settlement agreement to be paid. Whenever a settlement agreement is submitted for processing, it is unknown whether it will be approved or require changes. Once approved, the carrier or employer still requires time to increase reserves on the account to request a check be cut to pay the settlement amount. Oftentimes the check comes from the mainland, and additional mailing time is required.

Additionally, attorney's fees of the injured workers are paid as a lien on the settlement – these attorney's fees also require approval. These attorney's fees are not always submitted in a timely manner and are not received along with the approved settlement agreement. So although the carrier is responsible to deduct the attorney's fees from the settlement amount, the carrier is unable to issue payment of the full settlement amount if the attorney's fees is not approved yet. This is too much to be accomplished within 14 days.

Regarding an IME being approved or denied by the director of labor and industrial relations within 14 days, the bill does not provide any indication of how the physician will be selected. Furthermore, there would be a significant cost to the state as the statute provides that the state will pay for the examination.

We respectfully ask that this bill be held in committee. Thank you for the opportunity to testify on this matter.

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I support H.B. No 653 as it relates to the payment of a settlement agreement. However, I testify strongly against the amendment to HRS § 386-80.

I. Payment of a settlement. There is often a gap in payment of monetary benefits to injured workers. Injured workers receive Temporary Total Disability (“TTD”) benefits while they are “temporarily” unable to work because of an injury. Per statute, TTD benefits may stop if the worker is able to resume some type of work, or if there is an order from the Director. There is usually a gap in time between the termination of TTD benefits and the payment of a benefit for any Permanent Partial Disability (“PPD”). During this gap, the injured worker, not infrequently, is in dire need of the settlement proceeds, and therefore shortening the period of time within which an injured worker receives a settlement would be an improvement.

If the parties agree to settle, their agreement must be reduced to writing and then submitted for approval by the Director. The time it takes to obtain approval varies, but it usually takes 4 weeks to get a settlement document approved. However, a settlement is not effective until it is approved by the Director per §386-78.

The proposed amendment should make it clear that the agreement of the parties will be enforced. For example, if the parties agree that the settlement proceeds shall be paid on February 1, but the settlement agreement is not approved by the Director until March 1, then the carrier must have paid the proceeds on or before February 15. If the carrier did not pay the proceeds by February 15, the carrier is liable for the 20% penalty, even if the settlement is not approved by the Director until March 1.

II. Appointment of an impartial physician. The proposed amendment to HRS § 386-80 is fatally faulty.

A. The amendment refers to a “duly qualified impartial physician”, but the term is not defined, and there is no due process to determine who such a physician may be.

B. The term “physician”, which is defined in §386-1, includes “a doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, and a podiatrist.” There may be an issue over what type of physician is appropriate for a particular injury or disease. Even if an M.D. is appropriate, a particular specialist might not be appropriate for a particular case, for example, would an orthopedic surgeon be the right physician in a brain injury case?

C. In over 30 years of practice, I have never heard of a case in which the Director appointed a physician under §386-80. It has never been done apparently because no funds have ever been appropriated to retain any physician as required by the present statute.

D. A medical examination is a very personal invasion. There are relatively few

physicians in Hawai'i who are willing to accept workers' compensation cases, and only a relative handful of physician who do forensic examinations. In Hawai'i, there is probably no doctor-patient relationship during such examinations, and therefore the physician cannot be held liable for any medical malpractice. There are a few physicians whose practice is almost exclusively conducting such examinations, and who are repeatedly hired by carriers. There is at least one physician who earned over a million dollars from one carrier.

It would be entirely unseemly to allow the Director to appoint a physician and to require an injured worker to be subjected to a very personal invasion by a physician who is known for having a certain bias.

In stark contrast to forcing an examination, under present practice when it is time to select a physician to "rate" the extent of a permanent injury, usually near the "end" of a case, the parties are required to mutually select a physician. This practice has been satisfactory and has worked for many, many years. If the parties can mutually select a physician at the end of a case, they certainly can select one at the beginning of a case. This is proposed in SB 1174.

There is no logical argument against having a mutually selected physician conduct an examination, if the goal is to seek a report which is fair to the parties. Workers' compensation is already too litigious. The proposed amendment encourages more litigation. The law should instead encourage more cooperation.

Thank you for considering my testimony.

Wayne H. Mukaida
Attorney at Law

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GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

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February 10, 2015

TO: HONORABLE MARK NAKASHIMA, CHAIR, HONORABLE JARRETT
KEOHOKALOLE, LABOR AND PUBLIC EMPLOYMENT

SUBJECT: **OPPOSITION TO H.B. 653, RELATING TO WORKERS' COMPENSATION.**
Requires workers' compensation settlement agreements to be paid within 14 days.
Requires that a request for an independent medical examination be approved or
denied by the director of labor and industrial relations within 14 days.

Hearing by Committee on Labor and Public Employment

DATE: Tuesday, February 10, 2015
TIME: 9:00 a.m.
PLACE: Conference Room 309

Dear Chair Nakashima, Vice Chair Keohokalole and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over hundred five hundred eighty (580) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is **opposed** to the passage of H.B.653, Relating to Worker's Compensation. This bill provides that compensation agreed to in a settlement agreement must be paid within fourteen days after it becomes due. The bill further provides that the injured employee or employer may request that the Director of Labor appoint an impartial physician to conduct a physical examination to be approved or denied within fourteen days of submittal. If no action is taken with within the fourteen day time frame the request will be deemed approved.

The GCA believes that all parties to any settlement agreement should comply with the terms agreed to under the agreement. No penalty should be imposed merely on that portion requiring payment without regard to all other terms within the agreement. Any settlement reached by mutual agreement can provide for additional penalties if the parties have mutually agreed to provide for it within the agreement. Any penalty required by statute imposes an unfair financial burden on the employer when the state was not a participant in the settlement negotiations.

The GCA is also opposed to permitting the injured employee or the employer to request the appointment of an impartial physician by the Director of Labor. The Director of Labor is already empowered to appoint an impartial examination when and if he deems it appropriate. We believe that the Director and his staff have the record of treatment and other relevant information necessary to determine when and if any impartial physician should be appointed. This proposed change will merely require an already overburdened staff to devote time to review the request to

meet the statutory deadline to insure a request is not automatically approved when not justified and expenditure state funds.

The GCA **opposes** the passage of H.B. 653, and recommends this bill not be passed.