



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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April 8, 2015

To: The Honorable Sylvia Luke, Chair,  
The Honorable Scott Y. Nishimoto, Vice Chair, and  
Members of the House Committee on Finance

Date: Wednesday, April 8, 2015  
Time: 2:00 p.m.  
Place: Conference Room 308, State Capitol

From: Leonard Hoshijo, Deputy Director  
Department of Labor and Industrial Relations (DLIR)

**Re: S.B. No. 1174 S.D. 2 H.D. 2 Relating to Workers' Compensation**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB 1174 SD 2 HD 2 proposes to repeal Section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with new language that proposes:

- Independent Medical Examinations (IMEs) and permanent impairment rating examinations be performed by physicians selected and mutually agreed upon by the employer and employee;
- If no agreement as to the selection of the physician can be reached, the selection may be submitted to the insurance commissioner, arbitration, or circuit court;
- The selected physician shall be currently licensed pursuant to chapter 453 or 442 and shall conduct the examination within 45 calendar days or as soon as possible after the selection;
- The employer shall pay for the IME; and
- The use of an out-of-state physician is allowed under certain circumstances.

The Department supports the intent of this measure that will bring a greater assurance of impartiality in the IME and permanent impairment rating processes and, importantly, has the potential to reduce the number of Workers' Compensation medical disputes.

## **II. CURRENT LAW**

Currently, Section 386-79, HRS, specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the claimant's rights to benefits are suspended for the period during which the refusal or obstruction continues.

## **III. COMMENTS ON THE SENATE BILL**

1. Reduction in number of disputes. Decisions on issues of compensability and permanent disability rely primarily on the doctors' reports that are submitted by the parties. In contested cases, the parties' primary concern is to have doctors' reports that support their position and they would therefore seek IME doctors who will likely support their positions.

Employers or Insurance Companies, however, have an economic advantage over claimants, so creating a mechanism that would limit this dynamic of "shopping for medical experts" could possibly reduce the number of disputes, especially for cases related to the issues of compensability and permanent disability.

2. Out-of-State claimants. The measure also provides for IMEs for claimants living out-of-state. The measure allows for physicians who are licensed in and who reside in the state of the claimants' residence to be selected to perform IMEs and rating examinations for out-of-state claimants if that state's physician licensing requirements are equivalent to a physician's license under chapter 442 or 453. Currently, the employer is responsible for locating these out-of-state physicians and for scheduling the examinations in the state where the claimants currently reside. The employer will continue to be responsible for arranging and paying for travel arrangements for claimants who must return to Hawaii for an IME.
3. Medical records to IME physician. The Department recommends the measure stipulate that the employer shall send the claimant's medical records to the IME physician as is the current practice.
4. The Department points out that this proposal only allows physicians currently licensed pursuant to chapters 453 (medicine) and 442 (chiropractics) to perform IMEs. It does not apply to dentists (chapter 448) and psychologists

- (chapter 465), who are also considered “physicians” under the workers’ compensation law.
5. Medical stability. The Department has concerns about the language in Section 1, Subsection (f) which relies on medical stability to be determined solely by the injured employee’s attending physician. Employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability. This may result in lengthening of certain claims.
  6. The Department questions why this proposal refers the selection of an IME physician to the insurance commissioner or circuit court since the insurance commissioner and circuit court are not directly involved with the workers’ compensation claims processes and this will prolong resolution of the claims. Furthermore, administrative rules will have to be promulgated if the selection of an IME physician goes to arbitration.

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

RANDY BALDEMOR  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
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April 6, 2015

**TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE**

For Hearing on Wednesday, April 8, 2015  
2:00 p.m., Conference Room 308

BY

JAMES K. NISHIMOTO  
DIRECTOR

**Senate Bill No. 1174, H.D. 2**  
**Relating to Workers' Compensation**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE HOUSE COMMITTEE  
ON FINANCE:

Thank you for the opportunity to provide comments on S.B. 1174, H.D. 2.

The purposes of S.B. 1174, H.D. 2, are to provide that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties; and to provide a process for appointment in the event that there is no mutual agreement.

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, an independent medical examination (IME) conducted by a physician of the employer's choice is the primary means that is available to the employer to help overcome the statutory presumption that a claim is for a covered work injury, to show that ongoing medical treatment may be unreasonable or unnecessary, and to determine

whether a requested medical treatment, e.g., surgery, is reasonable and related to the work injury. Amending the statute in this fashion would deprive the employer of a very fundamental right to conduct its discovery, using physicians of its choice, to evaluate whether the employer is liable for the claim or medical treatment. We note that the workers' compensation law allows an employee to select any physician of his or her choice as the attending physician—and make a first change of physician—without having to seek mutual agreement from the employer. An IME physician, as selected by the employer which is paying for the examination, provides an alternative medical opinion and serves as a check and balance to the attending physician when objective evidence indicates that a claim may not be compensable or a contemplated treatment regimen may be unnecessary, unreasonable, or even harmful to the employee.

Second, this bill provides that if the parties are unable to agree on a physician to perform an examination, the selection may be submitted to the insurance commissioner, arbitration, or circuit court. We note that the workers' compensation law is designed as an administrative law process and specifically vests the Director of Labor and Industrial Relations ("Director") with original jurisdiction over all controversies and disputes arising under Chapter 386, HRS. Submitting the selection issue to the insurance commissioner, arbitration, or circuit court divests the Director of such jurisdiction and puts it upon entities that are presently not involved in the determination and adjudication of workers' compensation controversies and disputes. This new process adds another layer of delay to an already complex claims process when compensability of a claim or further medical treatment are at issue. Moreover, this proposed provision also does not address which party would be liable for the costs associated with proceedings submitted to such entities.

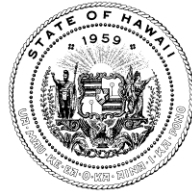
Third, this bill would require that any mutually agreed upon physician examine the employee within forty-five calendar days of selection or appointment, or as soon as practicably possible. In our experience—even where the physician is willing to undertake the examination—the employer often has to wait ninety days or more for an available appointment. The bill is silent as to what would happen if there is no qualified physician available to perform the evaluation within the forty-five days or "as soon as

possible” requirement. These unresolved issues may lengthen the process and make it more burdensome.

Fourth, the appropriate check and balance for any perceived “highly partisan” IME opinion should be left to the Director’s jurisdiction to hear and resolve all controversies and disputes. If the Director believes that an IME opinion is not based on any objective medical evidence, he can simply not credit the report and issue a ruling on a disputed medical issue based on other evidence in the record.

Fifth, we share the stated concerns of the Director that this bill would make the claimant’s attending physician the sole arbiter as to when an injured worker attains medical stability. This would have the unintended consequence of potentially lengthening certain claims, and the costs associated with such claims—because employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability and could possibly return to work.

Finally, in lieu of passing this bill and all of its attendant questions, we respectfully and highly recommend that the issue of mutually agreed IMEs be submitted to the workers’ compensation working group of stakeholders—as proposed in H.C.R. 168, H.D. 1, and H.R. 104, H.D. 1—to formulate possible resolutions and make any necessary recommendations before any changes are made to the existing law and administrative rules. The IME issue is tailor-made for a working group of parties who are well-versed in the intricacies and nuances of the current law and systems and are tasked with looking for ways to streamline the workers’ compensation process.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
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CATHERINE P. AWAKUNI COLÓN  
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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Wednesday, April 8, 2015  
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1174, S.D. 2, H.D. 2 – RELATING TO  
WORKERS' COMPENSATION.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes the H.D.2 version of this measure, and submits the following comments.

S.B. 1174, H.D.1 provides that a qualified physician selected by the mutual agreement of the parties will conduct the independent medical examination and permanent impairment rating examination of the injured worker. If the parties cannot agree on a physician to perform the examination, the parties would alternatively strike names of physicians from a list. The last physician on the list would conduct the examination.

The H.D. 2 specifies a process for appointment if that selection process fails: *“If the parties are unable to reach a mutual agreement on the selection of a physician to conduct the independent medical examination or permanent impairment rating examination, then the selection may be submitted to the insurance commissioner, arbitration, or circuit court.”*

**Senate Bill No. 1174, S.D. 2, H.D. 2**  
**DCCA Testimony of Gordon Ito**  
**Page 2**

The Department respectfully recommends that selection of the physician should ultimately remain within the purview of the Department of Labor and Industrial Relations, which has exclusive jurisdiction over workers' compensation issues.

We thank this Committee for the opportunity to present testimony on this matter.



The Twenty-Eighth Legislature  
Regular Session of 2015

HOUSE OF REPRESENTATIVES  
Committee on Finance  
Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
State Capitol, Conference Room 308  
Wednesday, April 8, 2015; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1174, SD2, HD2  
RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 supports S.B. 1174, SD2, HD2, which provides that an independent medical examination (IME) and permanent impairment rating examination shall be conducted by a qualified physician selected by mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

In the workers' compensation arena, independent medical examinations and examinations for permanent impairment ratings are performed by physicians who are expected to be unbiased and will provide their opinions based on the physical examination of the patient and a review of the medical records. Consideration about who pays their fees should not enter the picture, but the **perception of bias** will exist if the examiner is both selected and paid for by the insurance company or employer.

Mutual agreement regarding the selection of the IME physician will serve to minimize or even eliminate negative perceptions about the examiner and will offer assurance to the injured worker that the examination will be conducted fairly.

Contrary to what employers and insurers have misrepresented, the medical examination is NOT the trade-off to presumption under the law. The trade-off was the right to sue. The workers' compensation law provides for presumption of work-relatedness (and compensability) if the accident occurs in the course of employment or at a workplace. In exchange for this presumption, the injured worker is prohibited from suing the employer for the accident.

Over the years, however, presumption for compensability has been increasingly challenged—yet the prohibition on suing the employer continues.

S.B. 1174, HD2, for the most part, is a good effort at ensuring fairness in the process to select an IME physician. However, we have two concerns.

The **first concern** is that a claimant who is not represented by an attorney may not be able to suggest names of prospective IME physicians for consideration. Therefore, we suggest that the Department consider facilitating the process by:

1. Sending a letter once a year to each physician licensed to practice in the state asking if the physician is interested in and willing to perform Independent Medical Examinations or examinations for permanent impairment ratings. Not all physicians will be so inclined but should be offered the opportunity.

2. Including with the letter a short survey to gather information about the physician—e.g., practice specialty, location, number of years practicing in Hawaii and elsewhere, number of IME and rating exams performed and when, etc.
3. Compiling the information collected into a database.
4. Providing a list of interested physicians and information from the survey to the claimant and the insurer or employer.

The **second concern** is Section 1, (c), paragraph three, which calls for the Insurance Commissioner, arbitration, or Circuit Court to decide an IME examiner if the parties are unable to reach a mutual agreement. We believe that the Disability Compensation Division of the Department of Labor and Industrial Relations is best suited to select an IME examiner using the list it develops and making selections on a rotational basis.

For example, if there is a list of 10 examiners (sorted not by alpha but by when their survey is submitted), the first time a set of parties are unable to select an examiner by mutual agreement, the first name on the list will be considered. If the injury in question is not suited to that physician's specialty, the next name will be considered. The next time an examiner is required, the next name (or the name not picked earlier) will be considered. Randomness is the key.

The Insurance Commissioner was suggested because the process seems to work in the no-fault auto insurance system. However, auto and workers' compensation are very different. For one, the auto insurer is on contract to the injured party while the workers' compensation insurer is on contract to the employer. For another, auto insurance has a cap on medical payments and the injured party has the right to sue while an injured worker is barred from suing his employer.

Arbitration and suing in Circuit Court may both be too costly for the injured worker to reasonably consider.

We strongly support Section 1, (d), which prohibits combining the IME and permanent impairment rating examination into a single medical examination. Ratings for permanent impairment should occur only after the injured worker is determined by his attending physician to be "medically stable"—i.e., "no further improvement of the employee's work-related condition can reasonably be anticipated from curative health care or the passage of time." An absurdity occurs when an injured worker is referred to an examiner for both an IME to determine compensability and a permanent impairment rating. How can the examiner determine if there is permanent impairment when the disability has yet to be acknowledged and no treatment has been provided? Nevertheless, this is a common occurrence.

The ILWU respectfully requests consideration of the **two concerns** raised above and urges passage of S.B. 1174, SD2, HD2 . Thank you for the opportunity to provide testimony on this matter.



Randy Perreira  
President

# HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

The Twenty-Eighth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Finance

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Testimony by  
Hawaii State AFL-CIO  
April 8, 2015

S.B. 1174, S.D. 2, H.D. 2 – RELATING TO  
WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports S.B. 1174, S.D. 2, H.D. 2 which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

The purpose of this bill is to reduce workers' compensation costs and speed up an employee's ability to return to work by selecting physicians who are mutually agreed upon.

Presently, injured employees are required to go to non-treating doctors who are selected by the employers or insurance carriers. Employees have absolutely no say as to who the doctors will be, resulting in a lack of trust when the medical reports are generated. In fact, some physicians are paid handsomely each year by insurance carriers to perform medical examinations. This should raise a red flag and lead us to question the validity of the medical reports. As a result, unnecessary hearings are conducted, resulting in various delays causing higher costs for both the employers and insurance carriers.

Most notably, S.B. 1174, S.D. 2, H.D. 2 would reduce workers' compensation costs by eliminating the unnecessary struggles that exist between the employers and employees. It would require mutual cooperation when selecting a doctor to perform a medical examination.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira  
President



THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Seventh Legislature  
Regular Session of 2015

COMMITTEE ON FINANCE

The Honorable Representative Sylvia Luke, Chair  
The Honorable Representative Scott Nishimoto, Vice Chair

DATE OF HEARING: Wednesday, April 8, 2015  
TIME OF HEARING: 2:00 PM  
PLACE OF HEARING: Conference room 308  
State Capitol  
415 South Beretania Street

TESTIMONY ON SB1174 SD2, HD2 RELATING TO WORKERS' COMPENSATION

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers,  
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

This measure provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and it also provides a process for appointment in the event that there is no mutual agreement. The UPW supports this measure and humbly requests the Committee to pass it out.

Thank you for the opportunity to testify in support of this bill.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2 RELATING TO  
WORKERS' COMPENSATION.** Provides that an independent medical  
examination and permanent impairment rating examination shall be conducted by  
a qualified physician selected by the mutual agreement of the parties. Provides a  
process for appointment in the event that there is no mutual agreement. (SB1174  
HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 308

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred eighty 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 GCA's 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.

In order to avoid any confusion, the commonly referred to Independent Medical Examination or IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**The GCA is strongly opposed to S.B. 1174, SD2, HD2, Relating to Workers' Compensation, which would require that the employer and employee mutually agree on the physician to perform any independent medical exam (IME). As an alternative to this measure, GCA supports HCR 168/HR 104 as a means to uncover issues and solutions about how the current Worker's Compensation system can be improved within the state system, which may reveal some solutions that may be considered by the private sector.** The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court. The most recent draft of this bill proposes to follow the motor vehicle insurance statute for the process of choosing the Employers Medical Examination physician if there is no mutual agreement. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers

compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit. Furthermore, under this proposed bill only one employer requested medical exam may be performed combining both the EME and permanent impairment rating into one exam. The bill further makes the injured employee's attending physician the only doctor who will determine when medical stability has been attained.

**The GCA is strongly opposed to this measure because not only are the changes unfair but also because it will increase the cost and delay medical treatment when the issue of compensability is contested by the employer. The added costs and delays benefit neither the employer nor the employee. The current EME procedure is the only action an employer can take to insure that the injury is truly work related and that the medical treatment is appropriate.**

The proposal to require mutual agreement to select the physician to conduct the EME and permanent impairment rating takes away the employer's only tool or check on an injured employee. The EME provides the employer with the primary tool to determine whether an injury claim is compensable and the only way to evaluate medical progress of an injured worker. Making the claimant's physician the sole determiner of when the injured party has attained medical stability is one sided and will prolong treatment and increase the cost of the employer's workers compensation premiums.

**Although the GCA agrees that the current workers compensation may require study, the changes proposed in all previous drafts and the most recent draft, S.B. 1174, SD2, HD2, is unfair and one sided, and will prolong treatment, increase costs and further delay final disposition of the case.**

GCA **strongly opposes** S.B 1174, SD2, HD2 and respectfully requests that this Committee hold the measure. Thank you for the opportunity to express our concerns on this measure.

# BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

THE VOICE OF THE CONSTRUCTION INDUSTRY

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## Testimony to the House Committee on Finance Wednesday, April 08, 2015 2:00 p.m.

State Capitol - Conference Room 308

### **RE: SENATE BILL NO. 1174, S.D. 2, H.D. 2, RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice-Chair Nishimoto, 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 is **strongly opposed** to S.B. 1174, S.D. 2, H.D. 2, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

The current statutes have numerous safeguards in place to allow injured employees full disclosure of an employer/insurance carrier's IME report, the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree. A majority of IME's are conducted today under the current statutes without incident or dispute. Permanent impairment rating examinations are currently performed by mutual agreement between parties, without any need for mandate by legislation.

Changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Furthermore, this bill doesn't address how the insurance commissioner, arbitration, or circuit court are expected to arrive at their selection.

The ability for an employer to select an IME ensures there is a check and balance system for overall medical care for the injured worker because injured workers select their own treating physician. Without it, the system would be one-sided and costs for any employer, whether private or government, could quickly escalate, resulting in an inequitable, unaffordable, and unsustainable program.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it may fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

We appreciate the opportunity to share with you our views



# Chamber of Commerce HAWAII

*The Voice of Business*

**Testimony to the House Committee on Finance  
Wednesday, April 8, 2015 at 2:00 P.M.  
Conference Room 308, State Capitol**

**RE: SENATE BILL 1174 SD2 HD2 RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **strongly opposes** SB 1174 SD2 HD2, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 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.

SB 1174 SD2 HD2 seeks to replace the existing employer requested examinations in workers compensation claims disputes with a new system for obtaining "independent medical examinations".

IME providers provide treatment recommendations to help the attending physician identify the correct diagnosis and form of treatment. The IME provides a thorough review of the injured worker's medical history and treatment for the attending physician to review and provide an accurate diagnosis and working treatment plan. The goal is to identify the form of treatment needed to recover from work injury and achieve medical stability to return the injured worker to the workforce as quickly as possible to benefit all employers and injured workers.

If this bill passes, we believe costs will rise exponentially in the workers' compensation system. If that event, either the insurers will be able to charge the rate they need to cover expenses or they won't. If insurers are allowed to charge what they need to, businesses will quickly realize they cannot afford it. If insurers are not allowed to charge an adequate rate, they will not do business in Hawaii. This will affect jobs everywhere in the state, private as well as public. If there is no insurance available in the private market and the state activates the workers' compensation state fund, the state will take on the liabilities of both public and private markets in order to preserve jobs and provide a continuity in business transactions. If the state fund runs out of money to pay claims, which typically happens in states that have government run systems, it becomes another unfunded liability on Hawaii's citizens and a higher tax burden for all.





# Chamber of Commerce HAWAII

*The Voice of Business*

Additionally, there is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The results of these examinations are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

Although untrue, a vocal minority have made it appear as though the IME process as it exists today is totally one-sided. If the Legislature continues on this route, we encourage you to consider offsetting this onerous statutory change with all of the following provisions in order to keep a stable marketplace over time:

- 1) Change the Presumption Clause to a Preponderance of Evidence;
- 2) Define "physician" as a Medical Doctor, Osteopath, or Dentist;
- 3) Mandate injured workers to enroll in a Coordinated Care Organization;
- 4) Abolish vocational rehabilitation benefits; and
- 5) Reduce indemnity benefits to 66 2/3% of net pay.

Another option is contained in HCR 168, which forms a task force of stakeholders with the goal of streamlining the workers' compensation insurance process including computerizing the Disability Compensation Division of the state. We believe this to be the most prudent path in a system that is both important and delicate.

The Chamber and the members they represent, respectfully request that you hold SB 1174 SD2 HD2. Thank you for the opportunity to submit testimony.



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

**Alison H. Ueoka**  
Executive Director

## TESTIMONY OF JANICE FUKUDA

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COMMITTEE ON FINANCE  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

Wednesday, April 8, 2015  
2:00 p.m.

### **SB 1174, SD2, HD2**

Chair Luke, Vice Chair Nishimoto, 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.

Hawaii Insurers Council opposes this bill. The latest draft of this bill changes the process of choosing an Independent Medical Examination (IME) physician if there is no mutual agreement. In it, it mirrors the motor vehicle insurance statute. Although plaintiff attorneys at the hearing testified that the motor vehicle insurance system works in choosing an IME physician, the two are neither comparable, nor parallel. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit. By the time a motor vehicle insurance claim gets scheduled for an IME, benefits can easily be exhausted or close to it, therefore, the need for IMEs in motor vehicle insurance claims are much less than in workers' compensation claims. In workers' compensation, because medical expenses drive the total cost of the claim, malingering medical claims benefit the injured worker by enhancing total payout in a settlement and prolonged TTD.

This bill also requires the Insurance Commissioner to choose an IME physician if no mutual agreement is reached, then an arbitrator, then circuit court. The Insurance

Commissioner does not have jurisdiction over workers' compensation claims, it is the Department of Labor and Industrial Relations. Nevertheless, the premise is flawed.

Other provisions in the bill remain intact and we continue to oppose them for reasons stated in our prior testimony.

Hawaii Insurers Council empathizes with the Legislature in its frustration in facing this issue time and time again. The workers' compensation system will never be one in which all parties are happy all of the time. It cannot be done because there are too many stakeholders involved and the natural push and pull of the process including adequate checks and balances are necessary for a healthy, workable, and affordable system. This issue has resurfaced repeatedly without passage, but also without ultimate demise. We believe this is so because the Legislature recognizes that passage of a bill such as this could very well unravel the stability of the Hawaii workers' compensation system. Although Hawaii's system is not perfect, it is one that provides a very high level of benefit to injured workers, a broad spectrum of physician choice for the injured worker, a long duration of benefits, and an affordable premium.

One of the unique aspects of Hawaii's law is its Presumption Clause. Although some argue that the Presumption Clause, which allows the injury to be presumed work related, is in exchange for workers' compensation to be the exclusive remedy, other jurisdictions have different standards namely a Preponderance of Evidence. Hawaii's law means that the burden of overcoming the Presumption Clause is very high and because of it, there are more employees in the system than would be otherwise. The IME is a check to prevent those from remaining in the system when it is not appropriate. Without the balance of appropriate benchmarks, a one-sided system favoring the employee will be devastating to jobs in Hawaii and the support of ongoing businesses. If this bill passes, we believe costs will rise exponentially in the workers' compensation system. If that event, either the insurers will be able to charge the rate they need to

cover expenses or they won't. If insurers are allowed to charge what they need to, businesses will quickly realize they cannot afford it. If insurers are not allowed to charge an adequate rate, they will not do business in Hawaii. This will affect jobs everywhere in the state, private as well as public. If there is no insurance available in the private market and the state activates the workers' compensation state fund, the state will take on the liabilities of both public and private markets in order to preserve jobs and provide a continuity in business transactions. If the state fund runs out of money to pay claims, which typically happens in states that have government run systems, it becomes another unfunded liability on Hawaii's citizens and a higher tax burden for all.

Although untrue, a vocal minority have made it appear as though the IME process as it exists today is totally one-sided. If the Legislature continues on this route, we encourage you to consider offsetting this onerous statutory change with all of the following provisions in order to keep a stable marketplace over time:

- 1) Change the Presumption Clause to a Preponderance of Evidence;
- 2) Define "physician" as a Medical Doctor, Osteopath, or Dentist;
- 3) Mandate injured workers enroll in a Coordinated Care Organization;
- 4) Abolish vocational rehabilitation benefits; and
- 5) Reduce indemnity benefits to 66 2/3% of net pay.

Another option is contained in HCR 168 that forms a task force of stakeholders with the goal of streamlining the workers' compensation insurance process including computerizing the Disability Compensation Division of the state. We believe this to be the most prudent path in a system that is both important and delicate.

We ask that you hold this bill and adopt HCR 168. Thank you for the opportunity to testify.

finance1-Kim

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, April 06, 2015 5:13 PM  
To: FINTestimony  
Cc: cflanders@hma-assn.org  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/6/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christopher D. Flanders, D.O.	Hawaii Medical Association	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, April 06, 2015 3:35 PM  
To: FINTestimony  
Cc: jbsestak@prodigy.net  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/6/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betty Sestak	HI Rehabilitation Counseling Assoc.	Support	No

Comments: Strong support for this bill. Time to make it fair for injured workers.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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# Hawaii Independent Insurance Agents

---

## ASSOCIATION

April 7, 2015

To: Representative Sylvia Luke, Chair  
Representative Scott Nishimoto, Vice-Chair  
And Members of the Committee on Finance

From: Sonia M. Leong, Executive Director  
Hawaii Independent Insurance Agents Association

Re: SB1174, SD2, HD2, Relating to Workers' Compensation  
Hearing: Wednesday, April 8, 2015 2:00 pm Conference Room 308

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The Hawaii Independent Insurance Agents Association (HIIA) opposes SB 1174, SD2, HD2 which would require Independent Medical Examinations (IME) and Permanent Rating Examinations to be performed by physicians mutually agreed upon by employers and employees.

The Workers Compensation Law is intended to be impartial and fair to both the Employee and Employer. On one side, the Employee (injured Claimant) has the right to select his or her own physician for treatment. On the other side, the Employer has the right of discovery to measure the progress of the Employee's treatment, medical stability and disability. The Employee has also has the right to challenge the IME findings.

The current Workers Compensation process has been working at least 98% of the time. The existing law is working. We anticipate that if this new proposal is put in effect, it will create more negative consequences including delay in services and increased cost of the claim and put an additional burden on the Courts and Arbitration.

HIIA is a nonprofit trade association of the independent insurance producers dedicated to assisting the insurance buying public with their insurance needs. Many of our clients are business owners who are already struggling to keep their business going. Workers Compensation is a very complex issue with so many interrelated factors that one change could tip a delicate balance.

Thank you for this opportunity to submit testimony.



Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION**  
Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties.  
Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

In order avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**Rons Constrcution Corporation** is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Very truly yours,  
Rons Construction Corporation

A handwritten signature in black ink, appearing to read "Kevin M. Oshiro".

Kevin M. Oshiro, VP  
2045 Kamehameha IV Road,  
Hon., HI 96819 (808) 841-6151





general contractor license #ABC 21576

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)  
Via Fax (808) 586-6201

April 7, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

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LYZ, Inc. is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers' desire to curb costly abuses of the system. No changes are needed.

For these reasons, we request that the proposed bill be held by this Committee.

  
James N. Kurita  
Vice President/ Chief Operating Officer



# HAWAIIAN CRANE & RIGGING, LTD.

MAIN OFFICE  
91-335A KAUHI STREET, KAPOLEI, HAWAII 96707  
TELEPHONE (808) 682-7444



*Crane & Rigging Group Safety Award Winner  
2004, 2006, 2011, 2012, 2013 & 2014*

MAILING ADDRESS  
P.O. BOX 30228  
Honolulu, Hawaii 96820  
FACSIMILE: (808) 682-1009

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

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Hawaiian Crane & Rigging, Ltd. is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and

guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Respectfully,  
Hawaiian Crane & Rigging, Ltd.  
*J. Patrick Rolison*  
President



# HENSEL PHELPS

Plan. Build. Manage.

841 Bishop Street  
Suite 2001  
Honolulu, HI 96813  
808.535.9500

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)  
Via Fax (808) 586-6201

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

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**Hensel Phelps Construction Co.** is in **strong opposition** to **S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.



## **HENSEL PHELPS**

Plan. Build. Manage.

841 Bishop Street  
Suite 2001  
Honolulu, HI 96813  
808.535.9500

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**



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Phone: (808) 877-3902 • Fax: (808) 871-6828  
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Oahu 2265 Hoonee Place • Honolulu, HI. 96819  
Phone: (808) 841-2112 • Fax: (808) 847-1991

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April 7, 2015

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

In order avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**Dorvin D. Leis Co., Inc.** is in **strong opposition** to **S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the



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**Oahu** 2265 Hoonee Place • Honolulu, HI. 96819  
Phone: (808) 841-2112 • Fax: (808) 847-1991

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treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Sincerely,

Stephen T. Leis,  
President

## FIN-Jo

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, April 07, 2015 12:16 PM  
**To:** FINTestimony  
**Cc:** antya@gonorthshore.org  
**Subject:** Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

### **SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Antya Miller	North Shore Chamber of Commerce	Oppose	No

Comments: Aloha: Please do not pass SB1174 which removes an employer's ability to select the physician to conduct the requested IME. . The legislature is completing changing the way Work Comp has worked for years and will be: • Creating more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME. \* Further eroding the ability of the employer to manage costs tilting the system further and further in the employee's favor and creating an unfair situation for employer. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015

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**SPECIALTY SURFACING CO HI, INC.** is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Sincerely,  
J. Matthew Lanin  
President  
Specialty Surfacing Co. HI, Inc.  
440 Seaside Avenue #901  
Honolulu, HI 96815  
Tel: 808-333-4790  
Fax: 866-333-3109  
[ssurfacing@aol.com](mailto:ssurfacing@aol.com)

***“Serving All Islands Since 1976”***



*Hawai`i Injured Workers Association*  
715 South King Street, Suite 410  
Honolulu, HI 96813  
info@hiwahawaii.org  
Phone: (808) 538-9771

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April 7, 2015

Aloha Chair and Members:

The Hawai`i Injured Workers' Assn. (HIWA) strongly supports the passage of this legislation. HIWA strongly supports passage because its intent is to promote fairness with the mutually agreed selection of IMEs and PPD rating evaluations.

PPD rating evaluations have normally been by mutual agreement for many years and should remain so. The mutual agreement for PPD rating evaluations has led to fairness and reduced the costs of litigation for all parties. HIWA believes mutually agreed IMEs will also lead to fairness and reduced costs of litigation.

It is a fair idea to require that the cover letter to the examining physician be copied to the injured worker. In this way, it will fairly allow the injured worker to know that the appropriate medical records and issues have been provided to the examining physician to help insure the fairness of opinions and conclusions.

It is a fair idea to require the examining physician to be currently licensed to practice medicine. This should help reduce the cottage industry of highly paid biased examiners who do not even treat injured people. The opinions of biased examiners foment costly litigation to all parties. Being currently licensed to practice medicine should help reduce such costly litigation.

It is a fair idea that if there is no mutual agreement, then the parties will submit the issue to the insurance commission, arbitration, or the circuit court for resolution. This arrangement I understand has worked well to resolve medical examination differences in no-fault cases, thus reducing the costs of litigation.

It is a fair idea to limit IMEs to one per case unless valid reason exists. Multiple IMEs have been used unfairly to stack the deck against the injured worker. Limiting IMEs should promote fairness and reduce litigation costs.

It is a fair idea for the injured worker's treating physician to determine if the injured worker is medically stable for a PPD rating evaluation. The treating physician is in a much better position to determine an injured worker's medical stability rather than a onetime examiner.

In conclusion, HIWA strongly supports passage of this legislation to promote fairness and reduce litigation costs. Our workers' compensation system is supposed to be "no-fault", but instead, it has become more adversarial and litigious. HIWA believes the passage of this good, appropriate legislation will help our work comp system to be fairer. HIWA commends the legislature for passage of this legislation.

Mahalo,  
Douglas Moore, HIWA President



87-2020 Farrington Highway • Waianae, Hawaii 96792 • Tel: 808 668-4561 • FAX: 808 668-1368 • Website: www.pvtland.com

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)  
Via Fax (808) 586-6201

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

PVT Land Company is the only permitted landfill in Oahu with 45 employees and up to 35 temporary employees.

In order to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

PVT Land Company is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.




87-2020 Farrington Highway • Waianae, Hawaii 96792 • Tel: 808 668-4561 • FAX: 808 668-1368 • Website: www.pvtland.com

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Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Thank you very much,



Ben Yamamoto  
Vice President



SHARING YOUR VISION. BUILDING SUCCESS.

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)  
Via Fax (808) 586-6201

April 7, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.**  
Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

In order avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

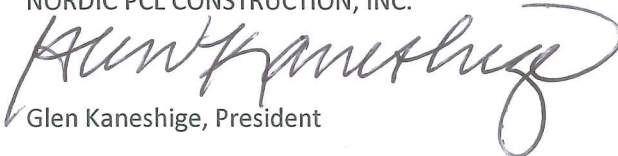
Nordic PCL Construction, Inc. is in **strong opposition** to S.B. 1174, SD2, HD2, Relating to Workers' Compensation, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Yours truly,

NORDIC PCL CONSTRUCTION, INC.



Glen Kaneshige, President

**NORDIC PCL CONSTRUCTION, INC.**

1099 Alakea Street, Suite 1560 Honolulu, HI 96813  
Telephone: 808-541-9101 ♦ Fax: 808-541-9108 ♦ [www.nordicpcl.com](http://www.nordicpcl.com)

April 7, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE  
CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015

TIME: 2:00 p.m.

PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

PSI, a Hawaiian owned company. Performance Systems Inc. was started in 2003 as a general construction firm focusing primarily on the municipal and industrial markets. The company employs a staff of over 130 construction professionals. Our projects in these areas include Design-Build and Design-Bid-Build new construction, renovation, alteration, and repair of buildings, structures, roads, grounds, roofs, utilities, and miscellaneous services including hazardous material removal.

In order avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

**Performance Systems Inc** is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the

new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**



Via Website: [www.capitol.hawaii.gov/submittestimony](http://www.capitol.hawaii.gov/submittestimony)  
Via Fax (800) 535-3859

April 7, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR; HONORABLE SCOTT Y. NISHIMOTO, VICE  
CHAIR AND MEMBERS OF THE COMMITTEE ON FINANCESUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS'  
COMPENSATION.** Provides that an independent medical examination and  
permanent impairment rating examination shall be conducted by a qualified  
physician selected by the mutual agreement of the parties. Provides a process  
for appointment in the event that there is no mutual agreement. (SD2, HD1)HEARINGDATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 308

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee,

Heartwood Pacific, LLC is a locally owned and operated general contractor doing business on  
Hawai'i Island since 2001.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Heartwood Pacific, LLC is in **strong opposition to S.B. 1174, S.D. 2, H.D. 1 Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

**Testimony to the House Committee on Finance  
Wednesday, April 8, 2015 at 2:00 P.M.  
Conference Room 308, State Capitol**

**RE: SENATE BILL 1174 SD2 HD2 RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

My name is Carol Ai May and I am Vice President of City Mill Company, Ltd, a 116-year old Kama'aina Family Company, still run by its family members. We employ about 450 members of our Oahu community with our 8 City Mill stores and 2 Simply Organized stores.

We strongly oppose SB 1174 SD2 HD2, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

Our workers' compensation insurance is already very high and City Mill has a corporate culture of safety. Our workers' compensation insurance companies over the years have given us awards for being safety conscious and we have received awards for safety in the workplace. We have also received the prestigious "Best Places to Work" for 8 years.

We believe the implementation of this bill will cause insurance rates to go up and ultimately create higher expenses which in turn will cause businesses to increase their prices to consumers and/or go out of business.

We respectfully request that you hold SB 1174 SD2 HD2.

Thank you.

Carol Ai May  
Vice President  
City Mill Co., Ltd.  
4/7/15



**RALPH S. INOUE CO LTD**  
**GENERAL CONTRACTOR**

2831 Awaawaloa Street  
Honolulu, Hawaii 96819

T: 808.839.9002  
F: 808.833.5971

License No. ABC-457  
Founded in 1962

Via E-mail: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)  
Via Fax (808) 586-6201

April 7, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR  
AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SB1174 HD2)

HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 p.m.  
PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee,

My name is Lance M. Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), a State of Hawaii General Contractor and member of the General Contractors Association of Hawaii (GCA).

In order to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

RSI is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Please do not pass this bill. Thank you for the chance to express our views in this matter.

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 9:35 AM  
To: FINTestimony  
Cc: lhamano@vmchawaii.com  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
laurie hamano	IARPS	Support	No

Comments: The International Association of Rehab Professionals highly support this measure. As counselors in the field of rehabilitation we see the many injustices occurring in the IME process. This will assist the injured workers to have a fair opportunity to find out what is wrong with them and to have the injury treated. This will help to reduce the animosity between all parties. Thank you for the opportunity to provide testimony.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

April 7, 2015

The House of Representatives  
The Twenty-Eighth Legislature  
Regular Session of 2015

Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

State Capitol, Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Relating to: SB 1174, HD2

Dear Members of the Committee on Finance:

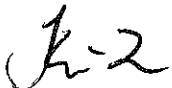
My name is Kirsten Harada and I am a Vocational Rehabilitation Counselor and President of the International Association of Rehabilitation Professionals. I am writing in support of SB 1174, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually agreed upon and qualified physicians.

I feel that the injured worker should not be put on the sidelines and should have a say in who does these examinations to ensure a fair, objective, and truly independent evaluation of their case .

I thank you for the opportunity to address this committee.

I strongly urge you to **SUPPORT SB 1174, HD2 RELATING TO WORKERS' COMPENSATION.**

Sincerely,



Kirsten Harada  
715 S. King Street, Suite #410  
Honolulu, HI 96813  
538-8733

To: COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
Rep. Romy M. Cachola  
Rep. Nicole E. Lowen  
Rep. Ty J.K. Cullen  
Rep. Richard H.K. Onishi  
Rep. Lynn DeCoite  
Rep. James Kunane Tokioka  
Rep. Aaron Ling Johanson  
Rep. Kyle T. Yamashita  
Rep. Jo Jordan  
Rep. Feki Pouha  
Rep. Jarrett Keohokalole  
Rep. Gene Ward  
Rep. Bertrand Kobayashi

From: Lanelle Yamane, MS, CRC, LMHC  
Vocational Rehabilitation Counselor  
120 Pauahi Street, Room 206B  
Hilo, HI 96720

DATE: Wednesday, April 8, 2015  
TIME: 2:00 P.M.  
PLACE: Conference Room 308  
State Capitol  
415 South Beretania Street

Subject: **Testimony in SUPPORT of SB 1174, [SD2, HD2](#), “Relating to Workers’ Compensation”**

My name is Lanelle Yamane and I am a Vocational Rehabilitation Counselor in Hawaii. I have worked as a counselor for the past nine years in both the public and private vocational rehabilitation systems. I currently provide vocational rehabilitation services to injured workers in our worker’s compensation system.

From my observation when servicing clients, I have noticed that the outcomes of independent medical exams have been weighted heavily in favor of the interests of the employer/insurance carrier and not towards the health interests of the injured employee. Without the necessary treatment, the injured worker is not able to achieve maximum medical improvement and their successful return to employment is greatly hindered because of non-treatment.

I have attached signed petitions of Hawaii residents who support **SB 1174**.

The language of **SB 1174** helps to lay out a process of greater equity in the system with a method of mutual agreement in the selection of the independent medical examiner and permanent impairment evaluator.

Please pass **SB 1174** from your committee.

Thank you for the opportunity to have my comments considered.

Sincerely,

Lanelle Yamane, MS, CRC, LMHC  
Vocational Rehabilitation Counselor

# WAYNE H. MUKAIDA

Attorney at Law

888 MILILANI STREET, PH 2  
HONOLULU, HAWAII 96813

TEL & FAX: (808) 531-8899

April 6, 2015

COMMITTEE ON FINANCE

Rep. Sylvia Luke, Chair

Re: S.B. No. 1174, SD2, HD2 Relating to Workers' Compensation  
Hearing: April 8, 2015, 2:00 P.m.

Chair Luke and 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 strongly support S.B. No. 174, SD2, HD2 relating to Workers' Compensation because it will allow decisions of the Department of Labor and Industrial Relations to be based on fair and impartial medical facts and opinions. However, the bill must be amended in several respects.

I. Records and communications to the physician. A current problem in workers' compensation claims is that the insurer often has ex parte communications with the physician. To ensure a fair and unbiased process, the injured employee should receive copies of all records sent to and communications with the physician. Therefore the second sentence in §386-79 (b) of the bill should be amended as follows:

~~The cover letter~~ All records and communications shall be transmitted to the injured employee, unless previously provided, at least five working days prior to the appointment.

II. Selection of a physician not restricted to an M.D. or chiropractor. The second sentence in §386-79 (c) of the bill provides for the selection of the physician, and refers to HRS Chapter 442 or 453. This sentence must be amended as Hawaii's workers' compensation statute provides that an injured worker may receive care by a "physician". §386-71 defines "physician" as being doctor of medicine, a dentist, a chiropractor, an osteopath, a naturopath, a psychologist, an optometrist, and a podiatrist. The licensing provisions for each physician is set out in the definition of "Health care provider" in §386-1.

The reference in the bill to HRS Chapter 442 or 453 incorrectly restricts the term physician to doctors of medicine and chiropractors. Therefore, the second sentence of §386-79 (c) should be amended as follows:

The selected physician shall be ~~currently licensed to practice in Hawaii pursuant to chapter 442 or 453,~~ a health care provider, as defined in §386-1. Upon approval by the director, a physician ~~in a specialty area~~ who resides out side of the State and is licensed in another state as a physician with requirements equivalent to a ~~physician's license under chapter 442 or 453~~ health care provider in the State, may be selected if no physician licensed by the State in that specialty area is available to conduct the examination.

III. Selection of a physician by the director in the event of a dispute. The third paragraph in §386-79 (c) provides that if the parties are unable to reach a mutual agreement on the choice of a physician, then the selection would be determined by “the insurance commissioner, arbitration, or circuit court.” This selection process was taken from the motor vehicle insurance law. Instead, the selection should instead be made by the director of the Department of Labor and Industrial Relations, who will already have many of the medical records, and will already have the procedural documents in the file. Injured workers are often without income and would not be able to afford the fees of arbitration or litigation in circuit court.

The third paragraph in §386-79 (c) should be amended as follows:

If the parties are unable ot reach a mutual agreement on the selection of a physician to conduct the independent medical examination or permanent impairment rating examination, then the selection may be submitted to the ~~insurance commissioner, arbitration, or circuit court~~ director.

IV. No suspension of benefits without due process. §386-79 (e) of the bill provides for suspension of benefits where an employee refuses an examination or unreasonably interferes with the examination. An employee may have a good reason for not being able to attend an examination to which he agreed, for example, an employee might have had to miss an examination if a family emergency arose. There are many disputes that can arise during an examination, for example, if an employee has an arm injury, a physician doing a range of motion examination may physically push the arm beyond the employee's pain tolerance, and the employee might, understandably and reasonably, object. It would be unreasonable and unjust to allow an insurer to unilaterally suspend all compensation.

The term “compensation” is defined in §386-1 as “all benefits accorded by this chapter”, which includes medical, rehabilitation and wage replacement benefits,



among other benefits. If an insurer unilaterally suspended compensation, the results could be devastating to an injured employee.

As a matter of very fundamental due process, no compensation should be suspended until a hearing and a decision by the Director. Therefore, the first sentence in §386-79 (e) of the bill should be amended as follows:

(e) If an employee refuses to submit to, or unreasonably interferes with the examination, the employee's right to ~~claim compensation for the work injury shall be suspended~~ weekly benefit payments, if any, to which the employee is entitled for the work injury, ~~shall be suspended~~ may, after a hearing pursuant to §386-86, be suspended for so long as the refusal or obstruction continues. ~~No compensation shall be payable to the employee for the period of suspension.~~

The added language is similar to the language in §386-21(e) in cases where an employee wilfully refuses or obstructs medical care. That section provides:

§386-21 (e) If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed the physician or surgeon, or medical, surgical, or hospital services or supplies, the director may consider such refusal or obstruction on the part of the injured employee to be a waiver in whole or in part of the right to medical care, services, and supplies, and may suspend the weekly benefit payments, if any, to which the employee is entitled so long as the refusal or obstruction continues.

### Conclusion.

After amending the bill as stated above, please move S.B. No. 1174, SD2, HD2 towards passage so that all parties in the workers' compensation system can benefit from fair and impartial medical evaluations. There are no valid arguments against using fair and impartial physicians.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

finance1-Kim

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, April 06, 2015 2:43 PM  
To: FINTestimony  
Cc: mberkowitz@vocationoptions.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/6/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
marcia	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

From: Roberta Chu <roberta.f.chu@gmail.com>  
Sent: Tuesday, April 07, 2015 8:06 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Roberta Chu  
478 Kipuni Street  
Hilo, HI 96720

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Roberta Chu

From: Neil Ishida <nishida@abcstores.com>  
Sent: Tuesday, April 07, 2015 8:32 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Neil Ishida  
766 Pohukaina Street  
Honolulu, HI 96813

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. The bill does not set forth a timeline in which the employee or employer must remove a physician from the list. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Neil Ishida

finance1-Kim

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From: mike dixon <helmsman@lava.net>  
Sent: Tuesday, April 07, 2015 7:54 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

mike dixon  
59029B Holawa St  
Haleiwa, HI 96712

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I do NOT support this bill. Way too one sided,

Sincerely,  
mike dixon

finance1-Kim

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From: Martin Beardeaux <candi.martini@yahoo.com>  
Sent: Tuesday, April 07, 2015 8:18 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Martin Beardeaux  
2332 Wilson Street  
Honolulu, HI 96819

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

As a workers' compensation professional in Hawaii for the last 25 years, I humbly request you to reject, once again, this poorly considered legislation.

The IME is one of the few tools available to the employers and carriers to combat unbridled abuse in the WC system. Without appropriate checks and balances, there is no way to address this.

Some will argue that IMEs should truly be "independent", but there are an abundance of administrative remedies to ensure injured workers receive Medical and Disability benefits in a timely manner. The system is heavily weighted towards employee rights, as it should be. However, IMEs must continue to be available as a 2nd opinion option for the employers.

Thank you for your time and attention.

Sincerely,  
Martin Beardeaux

finance1-Kim

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From: Marshall Joy <marshall@hawnice.com>  
Sent: Tuesday, April 07, 2015 7:52 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Marshall Joy  
1125 N. Nimitz Hwy  
Honolulu, HI 96817

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Creating more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME.

Creating an unfair situation for employers in the case of a workers' compensation claim. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action. This bill removes an employer's ability to select the physician to conduct the requested IME.

Sincerely,  
Marshall Joy

From: David S De Luz Jr <djr@teamdeluz.com>  
Sent: Tuesday, April 07, 2015 8:44 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

David S De Luz Jr  
P O Box 4848  
Hilo, HI 96720

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

There is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The results of these examinations are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

Please DO NOT pass this bill. Thank you in advance for your consideration and for the opportunity to submit testimony.

Sincerely,  
David S De Luz Jr



finance1-Kim

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From: Chong Kenison <kenisonc001@hawaii.rr.com>  
Sent: Tuesday, April 07, 2015 8:44 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Chong Kenison  
95-1001 Moha Street  
Mililani, HI 96789

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

please vote for no. thank you.

Sincerely,  
Chong Kenison

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 8:40 AM  
To: FINTestimony  
Cc: jdeluz@teamdeluz.com  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jackie De Luz Watanabe	Individual	Oppose	No

Comments: I oppose to this bill as an employer because it will create an unfair situation for employers in the case of a workers' compensation claim. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action. This bill removes an employer's ability to select the physician to conduct the requested IME. In addition, this bill will create more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME. Please consider our testimony and OPPOSE this bill. It will again limit the employer's rights.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

From: Wendy Fujio <wfujio@abcstores.com>  
Sent: Tuesday, April 07, 2015 9:19 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Wendy Fujio  
766 Pohukaina Street  
Honolulu, HI 96813

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Wendy Fujio

finance1-Kim

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From: Paul Dziuban <hisc146@cox.net>  
Sent: Tuesday, April 07, 2015 9:07 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Paul Dziuban  
1600 Kapiolani Blvd. #212  
Honolulu, HI 96814

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Please oppose this bill, as a business that employees 100's of employees this bill will increase my workers comp premiums that have already increased this year. To continue to grow my business and hire more employees I need to keep my workers comp premiums as low as possible and this bill will do the opposite, so please oppose this bill to encourage employers to hire more people.

Sincerely,  
Paul Dziuban

From: mitzi okumura <2216mlt@gmail.com>  
Sent: Tuesday, April 07, 2015 9:07 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

mitzi okumura  
45-270A Puaae Rd  
Kaneohe, HI 96744

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Regarding the Worker's Compensation IME Bill SB1174 SD2 HD2, my position is to NOT PASS the bill. Thank you!

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
mitzi okumura

From: Irlene Torres <itorres@atlasinsurance.com>  
Sent: Tuesday, April 07, 2015 9:18 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Irlene Torres  
1132 Bishop Street  
Honolulu, HI 96813

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I respectfully submit: Do not remove the employer-requested IME option in workers compensation claim cases. Every participant in the case, including the employer, should have a fair opportunity to validate and examine by a separate evaluation that the current treatment plan is reasonable and proper in the specific case.

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

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Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Irlene Torres

From: Darrel Tajima <darrel\_tajima@deanfoods.com>  
Sent: Tuesday, April 07, 2015 9:07 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Darrel Tajima  
P.O. Box 1880  
Honolulu, HI 96805

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

There is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The results of these examinations are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

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scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

There is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The results of these examinations are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Darrel Tajima



## FIN-Jo

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**From:** Eric England <eengland@hemic.com>  
**Sent:** Tuesday, April 07, 2015 9:58 AM  
**To:** FINTestimony  
**Subject:** From Your Constituent: My Position on SB 1174 re: IME

Eric England  
91-1456 Halahua Street  
Kapolei, HI 96707

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. The bill does not set forth a timeline in which the employee or employer must remove a physician from the list. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

Our state's workers compensation system is already complex and cumbersome. Adding additional delays and potential loopholes will continue to move the system in the wrong direction.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Eric England

## FIN-Jo

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**From:** Colleen Iseri <colleen@associahawaii.com>  
**Sent:** Tuesday, April 07, 2015 10:11 AM  
**To:** FINTestimony  
**Subject:** From Your Constituent: My Position on SB 1174 re: IME

Colleen Iseri  
95-1011 Hakala St.  
Mililani, HI 96789

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee.

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially

disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Colleen Iseri

finance1-Kim

---

From: Terry Johnson <tjohnson@cfs-hawaii.org>  
Sent: Tuesday, April 07, 2015 10:43 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Terry Johnson  
2026 McKinley St.  
Honolulu, HI 96822

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

This bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. The bill does not set forth a timeline in which the employee or employer must remove a physician from the list. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Terry Johnson

finance1-Kim

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From: Bob Stout <bobs@times-supermarket.com>  
Sent: Tuesday, April 07, 2015 11:11 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Bob Stout  
3375 Koapaka St. D-108  
Honolulu, HI 96819

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Please do not pass this bill as it's yet another that makes worse an already bad situation when it comes to worker's comp and getting folks back to work. There is already so much doctor abuse in this area and this bill further promotes that and keeping folks out longer. As an employer I have a very hard time understanding the ethics of that.

Sincerely,  
Bob Stout

finance1-Kim

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From: Bev Brody <bevbrody@aloha.net>  
Sent: Tuesday, April 07, 2015 11:22 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME - OPPOSED!

Bev Brody  
PO Box 392  
Kilauea, HI 96754

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Aloha,

I am strongly opposed to SB1174 as it is written!!! This bill creates an unfair situation for employers in the case of a workers' compensation claim. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action. This bill removes an employer's ability to select the physician to conduct the requested IME.

This bill would also create more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME.

Please do not pass SB 1174.

Thank you for your time.

Sincerely,  
Bev Brody

**FIN-Jo**

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**From:** Christopher Riemer <criemer61@yahoo.com>  
**Sent:** Tuesday, April 07, 2015 12:15 PM  
**To:** FINTestimony  
**Subject:** From Your Constituent: My Position on SB 1174 re: IME

Christopher Riemer  
6731 Waipouli Rd.  
Kapaa, HI 96746

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Aloha,

I am submitting this to you as an employee of a business and as a private citizen.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.



Please do not pass this bill. Thank you for the opportunity to submit testimony.

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Although untrue, a vocal minority have made it appear as though the IME process as it exists today is totally one-sided. If the Legislature continues on this route, we encourage you to consider offsetting this onerous statutory change with all of the following provisions in order to keep a stable marketplace over time:1) Change the Presumption Clause to a Preponderance of Evidence;2) Define "physician" as a Medical Doctor, Osteopath, or Dentist;3) Mandate injured workers enroll in a Coordinated Care Organization;4) Abolish vocational rehabilitation benefits; and5) Reduce indemnity benefits to 66 2/3% of net pay.

Another option is contained in HCR 168 that forms a task force of stakeholders with the goal of streamlining the workers' compensation insurance process including computerizing the Disability Compensation Division of the state. We believe this to be the most prudent path in a system that is both important and delicate.

This bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Christopher Riemer

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 12:59 PM  
To: FINTestimony  
Cc: timothy.mcnulty@mauilaw.net  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Timothy McNulty	Individual	Support	No

Comments: Please pass this \_now\_. System seriously broken with docs who do nothing but render reports instead of seeing patients. I've been doing this 30+ years, but even Shakespeare remarked on the expert witness back then available to the highest bidder. Mahalo, Timothy P. McNulty, Esq.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 12:44 PM  
To: FINTestimony  
Cc: lmiyahira@vmchawaii.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lily Miyahira	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 12:52 PM  
To: FINTestimony  
Cc: Itadaki-kam@vmchawaii.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Leona Tadaki-Kam	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 12:55 PM  
To: FINTestimony  
Cc: andrew\_chun@ktasuperstores.com  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Andrew Chun	Individual	Oppose	No

Comments: the proposed process will create a bureaucratic mess for the process. It would be better off if the injured obtains their own IME and then compare with the insurance companies IME.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

finance1-Kim

---

From: Joni Kamiya <Jonikamiya@gmail.com>  
Sent: Tuesday, April 07, 2015 1:07 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Joni Kamiya  
45-601 Apapane St  
Kaneohe, HI 96744

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Creating an unfair situation for employers in the case of a workers' compensation claim. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action. This bill removes an employer's ability to select the physician to conduct the requested IME.

Creating more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME.

These are my concerns regarding this bill.

Sincerely,  
Joni Kamiya

finance1-Kim

---

From: Francine Fong <ffong@hicoffeeco.com>  
Sent: Tuesday, April 07, 2015 1:08 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Francine Fong  
1555 Kalani Street  
Honolulu, HI 96817

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Francine Fong



GILBERT C. DOLES

ATTORNEY AT LAW  
A LAW CORPORATION

CENTURY SQUARE  
1188 BISHOP ST., SUITE 1405  
HONOLULU, HAWAII 96813

TEL: (808) 521-0900  
FAX: (808) 545-5560

April 7, 2015

**VIA EMAIL: LABTestimony@Capitol.hawaii.gov**

TO: House Committee on Finance  
Honorable Sylvia Luke, Chair  
Honorable Scott Y. Nishimoto, Vice Chair

**Re: TESTIMONY IN SUPPORT OF SB1174 SD2, HD2 (HSCR1153)**  
**Hearing Date: April 8, 2015**  
**Hearing Time: 2:00 p.m.**

Dear Honorable Luke and Committee Members:

Please accept my **testimony in support of SB1174 SD2, HD2 (HSCR1153)**, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by mutual agreement of the parties, and which further provides a process for appointment in the event that there is no mutual agreement.

As a Claimant's attorney for over 25 years, I have personally encountered and reviewed an inordinate number of reports done by the same purported "independent" medical examiners, whose opinions are clearly skewed in favor of the Employer/Carrier. Based on such IME reports, which often demonstrate clear and pre-determined bias against the Claimant, workers' compensation benefits have been unfairly denied and/or terminated. The present system is certainly flawed when it continues to allow an Employer to unilaterally select and pay for its own medical examiner to deny medical care and disability benefits to its legitimately injured and hard-working Employees, especially those unrepresented by a workers' compensation attorney. There is a consensus among all parties involved, claimants' counsel, insurance carriers/adjusters, and defense counsel alike, that the current IME system under HRS 386-79 lends itself to more abuse than good and has created an increasingly adversarial workers' compensation system.

Clearly, an amendment to HRS 386-79 and a change in the current IME system under Chapter 386 are long overdue. The passage of **SB1174 SD2, HD2 (HSCR1153)** would allow fairness and impartiality in allowing both parties to mutually select a qualified examiner to evaluate an injured worker's injuries for the purpose of determining compensability, further medical care and treatment, and permanent impairment. Passage of **SB1174 SD2, HD2 (HSCR1153)** would be a positive step in creating a less adversarial system, reduce the frequency and number of medical disputes under the Hawaii Administrative Rules.

**House Committee on Finance**  
**Honorable Sylvia Luke, Chair**  
**Honorable Scott Y. Nishimoto, Vice Chair**  
**April 7, 2015**  
**Page Two**

As a result, litigation costs in workers' compensation claims would greatly diminish since claims would resolve more quickly as the injured worker recovers and returns to work sooner.

For the foregoing reasons, along with those offered by others in support of **SB1174 SD2, HD2 (HSCR1153)**, I strongly urge the passage of **SB1174 SD2, HD2 (HSCR1153)**.

Thank you for allowing me the opportunity to submit testimony and for your kind attention and consideration. Should you have any questions concerning any of the foregoing, please feel free to call me at (808) 521-0900.

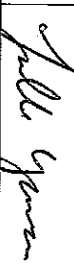
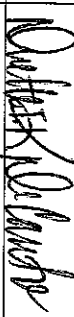
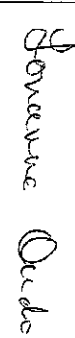

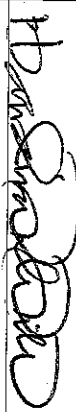
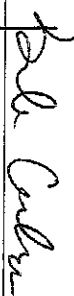



Very truly yours,



GILBERT C. DOLES  
Attorney at Law

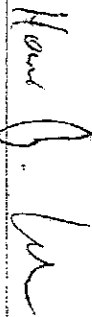

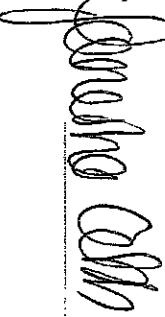
**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON**

**INDEPENDENT MEDICAL EVALUATION**

Name (Print)	Signature	Telephone	Address	E-mail
Lunelle Yamane		808-985-2103	120 Puaehi, Great #2008 Hilo, HI 96720	lyamane@pschulka.com
Doreta DeLanto		808-938-1098	101 Ipuka St. 12d Hilo, HI 96720	dret@hawaii.edu
Lorraine Oude		808 896-0445	HCR 2 Box 6418 Keaau HI 96749	Lorraine057@aol.com
Sean Tszida		808-345-8036	113 Anela St. Hilo, HI 96720	
Blanchina Thida		808-640-2419	113 Anela St. Hilo, HI 96720	
Brooks Adams		808-313-0511	HC1 Box 5159 Keaau HI 96749	kithychar@aol.com
Annette Schlegelmilch				
Camille Boyce		(808)959-1395	434 Pehakulani Street Hilo, Hawaii 96720	hilogir1222@yahoo.com
Kari Lynn Martin		808-990-5747	144 Leimano St. Hilo, HI 96720	ilimat2@aol.com




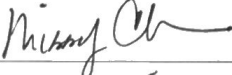
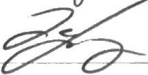
**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON**

**INDEPENDENT MEDICAL EVALUATION**

Name (Print)	Signature	Telephone	Address	E-mail
Hous Rain Henderson		808 965 7299	RR 2 Box 4616, Rehoboth 96728	Hrainer@Dykes.com
Howard Okemur		(908) 333-1878	P.O. Box 755C 96720 Hills, HI	
Tinisha Cobb		808 557 5438	PO Box 1523 Keanu HI 96749	Tinishacobb@gmail.com

**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON**

**INDEPENDENT MEDICAL EVALUATION**

Name (Print)	Signature	Telephone	Address	E-mail
Clayton Ishida		959-5643	113 Anela St.	
Blaine Takaki		217-5880	18-4013 N. Peck Rd.	
Ed Coykendall		(808) 959-4259	124 E Palai St	
Missy Cornwell		(808) 959-4259	124 E. Palai St.	
Todd C. Pataray		(808) 938-7638	1615 Kaulanna Pl H: 16 H: 96720-5571	tc.pataray@gmail.com

WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON

INDEPENDENT MEDICAL EVALUATION

Name (Print)	Signature	Telephone	Address	E-mail
Doreen M. Ordo	Doreen M. Ordo	769-3611	Here 2 Box 6418 Kearau, HI	
Louise Ordo	Louise Ordo	443-8610	Same as above	
Michelle Ordo	Michelle Ordo	982-9882	PO Box 2112 Kearau, HI 96749	
RYAN YOSHIDA	Ryan Yoshida	936-7223	2321 NORTHINA ST HILLO, HI 96720	

**WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION.**

Name (Print)	Signature	Telephone	Address	E-mail
Jason Nais	<i>Jason Nais</i>	365-6148	P.O. Box 5840 HI 10	_____
AROLYN M L KAPPAHU	<i>Arolyn M L Kappahu</i>	315-4548	PO Box 7608 HI 10	_____
MINDI P. Pajinsuan-Poa	<i>Mindi P. Pajinsuan-Poa</i>	709-9595	P.O. Box 7608 HI 10	_____
Michael Kawaha	<i>M. Kawaha</i>	959-7911	566 Keenana St HI 10 96721	<i>Kawaha@Yahoo.com</i>
CHRISTINA MCKEE	<i>Chr. S. Mcke</i>	315-4259	P.O. Box 10827 HI 10 HI 10	<i>malo96795@gmail.com</i>
Chanelle Brooks	<i>Chanelle Brooks</i>	498-6757	1128 Kamehaha St	<i>cbrooksdesigns1@yahoo.com</i>
Geornell, Rebuldela-Rangual	<i>Geornell</i>	930-8754	POB 154 Honomou, HI, 96728	<i>grmaguado@gmail.com</i>

# DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW  
WORKER'S COMPENSATION  
SOCIAL SECURITY DISABILITY  
LABOR UNION REPRESENTATION  
EMPLOYEES RETIREMENT SYSTEM  
BODILY INJURIES

April 7, 2015

HOUSE OF REPRESENTATIVES  
THE TWENTY-EIGHT LEGISLATURE  
REGULAR SESSION OF 2015

**LATE**

## COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Members of the Committee

## NOTICE OF HEARING

DATE: Wednesday, April 8, 2015  
TIME: 2:00 P.M.  
PLACE: Conference Room 308  
State Capitol  
415 south Beretania Street

## STRONG SUPPORT OF SB 1174, SD2, HD2

My name is Dennis WS Chang, and for nearly four (4) decades I have been practicing as a labor lawyer with a heavy emphasis in litigation of complex worker's compensation claims. From my early career to now, I am confident to speak from firsthand knowledge of the changes with the current use of §386-79.

The perceived bias and outright abuse of the current use of section §386-79 has been chronicled session after session before the Legislature for years. The worker's compensation process enacted in 1915 was the result of a beneficent legislation, which was intended to have claims handled informally and expeditiously, and to avoid increasing costs. The intent of SB 1174, SD2, HB2 is a step in the right direction by curbing the perceived bias of the so-called use of the "independent medical examination (IME)," and unnecessary increasing costs to the workers' compensation system. The attached proposed changes to the current bill as now drafted will bring the parties back to the beneficent intent of the workers' compensation statute by ensuring fairness, informal handling of claims, reducing outrageous delay, and continued rising costs in the current process. Similarly, the proposed amendments will decrease unnecessary litigation and hidden costs to both the employer and employees even though studies have repeatedly verified that insurance carriers are profitable. Employers, including myself as a small business owner, are misled highly into believing that any change in §386-79 will inevitably result in higher premiums.

Adoption of the proposed technical changes and amendments will ensure fairness again.

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAII 96813 ● TELEPHONE: (808) 521-4005



Subsection (a). Justification: Minor technical change.

Subsection (b). Justification: Language will prevent both parties from engaging in *ex parte* and other communications. There will be total transparency.

Subsection (c). Justification: Clarification of the definition of a physician, consistent with Chapter 386, Hawaii Revised Statutes (HRS). As currently drafted, many physicians will be barred from participating in the list to be maintained by the director, which is inconsistent with §386-1. Physicians should be broadly defined. "Specialist" has been deleted to increase the pool of physicians, who are willing and capable of participating in the binding physician process by having their names included in the list.

Subsection (c) relating to the deletion of "insurance commissioner, arbitration, or circuit court." Justification: The director is in the best position to make selections because of the familiarity with the workers' compensation statute, and knowledge of physicians who are perceived as bias or abusive based on reports filed with the Department of Labor. As currently written, employees will be forced to retain attorneys because they have no idea what doctor are fair and acceptable as a *pro se* claimant. Maintaining a list of physicians is the key to having an informal system to the unrepresented injured workers. By forcing arbitrations or going into circuit court, the *pro se* claimant will have no choice other than to retain attorneys. Moreover, is the insurance commissioner willing or capable of maintaining a list of physicians, who are competent to conduct examinations in the workers' compensation process? As drafted, we are adding more costs to the workers' compensation process. Can we really expect an injured employee to match the largess of an employer or its representatives?

Subsection (c) on procedures. Justification clarifies procedures to be used.

Subsection (d). Justification: To level the playing field, both an employee and an employer are also precluded from engaging in secret communications with a selected binding physician.

Subsection (e). Justification: A hearing requirement is included to conform with the requirement of constitutional due process. There can be a myriad of reasons why there may be excusable neglect when an employee fails to show at an examination.

Subsection (g). Justification: Having the list for both parties, along with the selection process, will reduce costs and ensuring fairness.

For the foregoing reasons, I respectfully ask that you adopt the proposed amendments, and pass SB 1174, SD2, HD2.

Respectfully yours,

  
Dennis W.S. Chang  
Labor and Worker's Compensation Attorney

Enclosure: Proposed Vital Changes to SB 1174, SD 2, HD 2

# PROPOSED VITAL CHANGES

Bracketed deleted; bold added.

THE SENATE  
TWENTY-EIGHTH LEGISLATURE, 2015  
STATE OF HAWAII

S.B. NO. 1174  
S.D. 2  
H.D. 2

---

## A BILL FOR AN ACT

RELATING TO WORKERS' COMPENSATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. Section 386-79, Hawaii Revised Statutes, is amended to read as follows:

"§386-79 ~~[Medical examination by employer's physician.]~~ **Requested mutual examination.** ~~[After an injury and during the period of disability, the employee, whenever ordered by the director of labor and industrial relations, shall submit to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer. The employee shall have the right to have a physician or surgeon designated and paid by the employee present at the examination, which right, however, shall not be construed to deny to the employer's physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability.]~~

~~If an employee refuses to submit to, or in any way obstructs such examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or obstruction ceases and no compensation shall be payable for the period during which the refusal or obstruction continues.~~

~~In cases where the employer is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, the employer may appoint a physician or surgeon of the employer's choice who shall examine the injured~~

~~employee and make a report to the employer. If the employer remains dissatisfied, this report may be forwarded to the director.~~

~~Employer requested examinations under this section shall not exceed more than one per case unless good and valid reasons exist with regard to the medical progress of the employee's treatment. The cost of conducting the ordered medical examination shall be limited to the complex consultation charges governed by the medical fee schedule established pursuant to section 386-21<sup>6</sup>.]~~

(a) Following an injury and after a claim is filed by the injured employee, the employer may appoint a qualified physician mutually agreed upon by the parties and paid [for] by the employer, to conduct an independent medical examination or a permanent impairment rating examination of the injured employee and make a report to the employer.

(b) The cover letter to the physician selected to perform an examination under this section shall notify the physician that the physician has been mutually selected by the parties to conduct an independent examination. The cover letter, all records, and communications shall be transmitted to the injured employee, unless previously provided, at least five working days prior to the appointment. Upon the issuance of the report of the independent medical examination or permanent impairment rating examination, the employee or employee's representative shall be promptly provided with a copy thereof.

(c) A physician selected pursuant to this section to perform an independent medical examination or a permanent impairment rating examination shall be willing to undertake the examination and be paid by the employer. The selected physician shall be currently licensed to practice in Hawaii [pursuant to chapter 442 or 453] as defined a health care provider in section 386-1, Hawaii Revised Statutes (HRS), who is familiar with the area of medicine for the work injury or injuries; except that upon approval by the director, a physician in a specialty area who resides outside of the State and is licensed in another state as a physician with requirements equivalent to a physician's license may be selected if no physician licensed by the State in that [specialty] area is available to conduct the examination.

If the employee does not reside in Hawaii, a physician who is licensed in and who resides in the state of the employee's residence may be selected if that state's physician licensing requirements are equivalent to a physician's license [under chapter 442 or 453] consistent with the requirements contained in section 386-1.

If the parties are unable to reach a mutual agreement on the selection of a physician to conduct the [independent] medical examination or permanent impairment rating examination, then the selection may be submitted to the [insurance commissioner, arbitration, or circuit court] director or appellate board. Each party shall submit a list of three physicians [in the specialty area for] familiar with the area of the injury or injuries. The director or appellate board shall select a binding physician to conduct the examination.

Any physician mutually selected or otherwise appointed to do an [independent] medical examination or permanent impairment rating examination pursuant to this section shall examine the employee within forty-five days of receiving notice of the selection or appointment, or otherwise, as soon as possible.

(d) In no event shall an independent medical examination and a permanent impairment rating examination be combined into a single medical examination unless the employee consents in writing to the single examination by the selected physician, unless the employee consents in writing to the single examination by the selected physician.

In no event shall the director or appellate board [, or a court,] order more than one requested [independent] medical examination and one permanent impairment rating examination per case, unless valid reasons exist with regard to the medical progress of the employee's medical treatment or when major surgery or elective surgery is contemplated. There shall be only one permanent rating examination. An employer shall be precluded from circumventing this subsection in securing more than one examination by securing records' review by an expert. In the event of multiple examinations for valid reasons, the process of mutually selecting or otherwise appointing a physician set forth in this section shall apply.

(e) If an employee refuses to submit to, or unreasonably interferes with the examination, the employee's right to claim compensation for the work injury shall be suspended until the refusal or interference ceases. A hearing shall be conducted before an order is issued that any or [N]no compensation shall be payable to the employee for the period of suspension.

The cost of conducting the ordered independent medical examination or permanent impairment rating examination shall be limited to the complex consultation charges governed by the medical fee schedule established pursuant to section 386-21<sup>©</sup>.

(f) When an employee has attained medical stability as determined by the employee's attending physician, a physician may

be appointed to conduct a permanent impairment rating examination. The physician shall be mutually selected by the parties or otherwise appointed pursuant to this section.

For the purposes of this subsection, "medical stability" means that no further improvement in the injured employee's work-related condition can reasonably be expected from curative health care or the passage of time. Medical stability is also deemed to have occurred when the injured employee refuses to undergo [further diagnostic tests or] treatment that the health care provider believes will greatly aid in the employee's recovery."

(g) The director shall maintain a list of physicians for the use of the parties in the submission of three physicians who are familiar with injury or injuries. The director shall annually update the list.

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2115.

DEPARTMENT OF HUMAN RESOURCES  
CITY AND COUNTY OF HONOLULU  
650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

April 8, 2015

**LATE**

The Honorable Sylvia Luke, Chair  
and Members of the Committee  
on Finance  
The House of Representatives  
State Capitol, Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke and Members of the Committee:

SUBJECT: Senate Bill No. 1174, SD 2, HD 2  
Relating to Workers' Compensation

The City and County of Honolulu **strongly opposes** SB 1174, SD 2, HD 2, which would require independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are certain workers' compensation claims where an independent medical examination (IME) is necessary.

The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally, questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an independent opinion from a physician regarding the compensability or progress of a claim. SB 1174, SD 2, HD 2, would significantly restrict an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or, if both parties cannot reach a consensus, submitting the issue for determination by the Insurance Commissioner, an arbitrator or the court.

The language in the bill regarding the alternative selection process has been adopted from Hawaii Revised Statutes (HRS) Chapter 431:0010C (motor vehicle insurance code). However, unlike our motor vehicle no-fault law, Hawaii's workers'

The Honorable Sylvia Luke, Chair  
and members of the Committee  
on Finance  
The House of Representatives  
April 8, 2015  
Page 2

compensation law does not authorize an insurance dispute to be submitted to either arbitration or the court. To the contrary, HRS Section 386-73 specifically provides that the Director of Labor and Industrial Relations has original jurisdiction over all controversies and disputes regarding workers' compensation.

Assuming for the sake of argument that SB 1174, SD 2, HD 2, affords concurrent jurisdiction regarding the selection of an independent medical examiner, the measure fails to provide a process on how the arbitrator is to be selected. At the same time, it is nonsensical to require the parties to select an arbitrator so that he or she can then select a physician to perform an independent medical examination. As it stands, the proposal is accordingly incongruous with the stated goal of having the examinations performed in a more timely manner as it will increase the time it takes for an IME to be performed and delay disposition of the claim with respect to compensability and/or additional medical treatment.

The City and County of Honolulu also strongly objects to the portion of the bill that appears to allow only the attending physician to determine medical stability. In most instances, this is self-serving and will undoubtedly prolong treatment, delay an employee's return to work and dramatically increase the cost of a claim.

Based on the foregoing, we respectfully urge your committee to file SB 1174, SD 2, HD 2. Thank you for the opportunity to testify.

Sincerely,



Carolee C. Kubo  
Director

cc: Mayor's Office

**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 3:44 PM  
To: FINTestimony  
Cc: regoa@hawaii.rr.com  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
ANSON REGO	Individual	Support	No

Comments: I submit my strong support for SB1174,SD2, HD2. I am a claimant's attorney who have handled hundreds of injured workers claims over the past forty years and have seen firsthand how the current IME system has too often caused unfairness to an injured worker's rights within the workers compensation system. I hereby incorporate my previously submitted testimony in support of SB 1174. Thank you. Anson Rego

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 3:59 PM  
To: FINTestimony  
Cc: lho@hawaiipublicpolicy.com  
Subject: Submitted testimony for SB1174 on Apr 8, 2015 14:00PM

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
SHRM Hawaii	SHRM Hawaii	Oppose	No

Comments: We are Melissa Pannell and John Knorek, the Legislative Committee cochairs for the Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii. We are writing to respectfully oppose SB 1174, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. It also provides a process for appointment in the event that there is no mutual agreement. Human resource professionals are keenly attuned to the needs of employers and employees. We are the front line professionals responsible for businesses’ most valuable asset: human capital. We truly have our employers’ and employees’ interests at heart. We respectfully oppose this measure for the potential delay and logistical challenges.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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finance1-Kim

**LATE**

From: Taschia Wright <taschia@controlfreakshawaii.com>  
Sent: Tuesday, April 07, 2015 4:44 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Taschia Wright  
340 Ohukai Rd. #210  
Kihei, HI 96753

April 7, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

This bill is unfair to employers. It's creating an unfair situation for employers in the case of a workers' compensation claim.

This bill removes an employer's ability to select the physician to conduct the requested Independent Medical Examination (IME). This bill will create more delays and costs in the workers' compensation system. There is no deadline for a physician to be removed from the list, which would prolong the process to merely select a physician, in addition to the process of actually conducting the IME.

Please don't pass this bill.

Sincerely,  
Taschia Wright



HAWAI'I LODGING & TOURISM  
ASSOCIATION

**LATE**

Testimony of George Szigeti  
President & CEO  
HAWAI'I LODGING & TOURISM ASSOCIATION  
House Committee on FINANCE  
Hearing on April 08, 2015, 2:00 p.m.  
SB 1174 SD 2 HD 2 Relating to Worker's Compensation

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating \$14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding SB 1174 SD2 HD2 relating to the Worker's Compensation; Medical Examination which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement

The Hawai'i Lodging and Tourism Association **opposes** SB 1174 SD2 HD2. In the case of a worker's compensation claim an employer-requested independent medical examination or IME is the only tool to objectively evaluate the treating physician's plan of action. Through Hawai'i law an employee cannot be denied treatment or compensation if they claim they were injured on the job, so the burden is on the employer to prove otherwise. In this case the IME is essential in providing balance in the law. As it currently stands the employer is only allowed one IME under most circumstances per case, the results of the examination are then subject to review and appeal by the employee and the Director of the DLIR, there should be no question that employer's want to obtain a credible report through their examination.

We respectfully ask that you hold SB1174 SD2 HD2.

Thank you for this opportunity to testify.



From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 9:14 PM  
To: FINTestimony  
Cc: derrick@islandpt.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Derrick Ishihara	Individual	Support	No

Comments:

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**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, April 07, 2015 8:58 PM  
To: FINTestimony  
Cc: frankvannatta@hotmail.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/7/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
James Van Natta	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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finance1-Kim

**LATE**

From: katherine smith <honumai@gmail.com>  
Sent: Tuesday, April 07, 2015 8:19 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 (SD2 HD20 re: IME)

katherine smith  
500 Kapalua Drive  
Lahaina, HI 96761

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Please vote against SB 1174 regarding Workers Compensation Independent Medical Examiners. We had an employee of our HOA who injured his foot on our property, for whom we paid workers compensation. We later found that he was receiving similar claims from his two previous employers -- for the same injury. All three claims were based on the testimony of one physician! We were scammed because we did not exercise our right to select an alternative examiner.

Please don't remove this right for employers to protect themselves from fraud.

Please do not pass SB 1174 (SD2 HD2) as proposed. Support small business employers in Hawaii.

Sincerely,  
katherine smith

finance1-Kim

---

**LATE**

From: Howard Amarin <jobline.xpress@hawaiiantel.net>  
Sent: Wednesday, April 08, 2015 7:50 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Howard Amarin  
77 Waiale, #102  
Wailuku, HI 96793

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I believe in our Government to support the welfare of small business enterprise in Hawaii and throughout our United States of America and Blatantly to understand the demise of our existence by NOT PASSING THIS BILL! Small businesses are and have been the backbone of our communities, PLEASE PROTECT US!! MAHALO NUI LOA!!!

Sincerely,  
Howard Amarin

**LATE**

I oppose SB 1174 HD2 for the following reasons:

- Employees are given the right to select their own examining physician. Employers should have an equal right to select an IME physician, especially in light of the presumption that a workplace injury is covered by workers' compensation law;
- Restricting the IME process takes away an employer's ability to conduct any meaningful discovery of disputed workers' compensation claims;
- The requirement of "mutual agreement" on the selection of an IME physician may delay the medical treatment of a claimant because it will take longer for the employer and employee to agree on the selection of a physician, as opposed to allowing the employer to select a physician on its own;
- The proposed legislation allows for abuse by employees because there is no requirement that employees object in good faith to any IME physicians selected by an employer;
- The proposed legislation does not provide any assurances that the insurance commissioner, arbitrator, or circuit court will have the resources or ability to appoint IME physicians who have the knowledge, experience, skills or training necessary to conduct a meaningful IME.
- The proposed legislation does not allow employers to object - or even have any input - on the IME physician selected by the insurance commissioner, arbitrator, or circuit court. This is extremely problematic because it could potentially result in the selection of a physician who would be required to render an opinion on a medical matter for which they are not qualified to do so;
- If the IME must be conducted within 45 days, it will limit what physicians will be able to conduct the IME based upon availability and scheduling issues; and
- Restricting an employer's ability to conduct meaningful IMEs of disputed workers' compensation claims will eventually lead to a rise in workers' compensation insurance premium rates.



From: Robert Cartwright <bob@whalersrealty.com>  
Sent: Wednesday, April 08, 2015 9:47 AM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME



Robert Cartwright  
2435 Kaanapali Parkway  
Lahaina, HI 96761

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

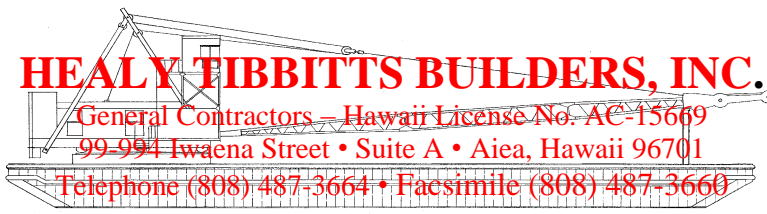
RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Robert J. Cartwright



SENT VIA E-MAIL: [FINTestimony@capitol.hawaii.gov](mailto:FINTestimony@capitol.hawaii.gov)

**LATE**

April 8, 2015

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO,  
VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON  
FINANCE

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, HD2, RELATING TO  
WORKERS' COMPENSATION.** Provides that an independent medical  
examination and permanent impairment rating examination shall be conducted by  
a qualified physician selected by the mutual agreement of the parties. Provides a  
process for appointment in the event that there is no mutual agreement. (SB 1174  
HD2)

HEARING

DATE: Wednesday, April 8, 2015

TIME: 2:00 p.m.

PLACE: Conference Room 309

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

In order avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Healy Tibbitts Builders, Inc. is in **strong opposition to S.B. 1174, SD2, HD2, Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works. The latest draft of the bill proposes that if the parties are unable to agree, the selection may be submitted to the insurance commissioner, arbitration or the state circuit court, which would follow the motor vehicle insurance statute. This proposal is highly problematic because the motor vehicle insurance statute cannot be compared to the workers compensation statute. The motor vehicle insurance system does not have a presumption clause, nor does it have lifetime benefits and guaranteed wage loss. Most importantly, Personal Injury Protection (PIP) benefits are usually low, at the \$10,000 statutory limit.

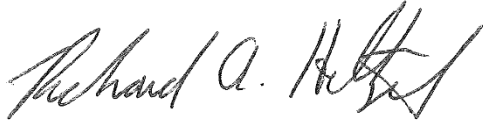
**Healy Tibbitts Builders, Inc.**

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Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

**For these reasons, we request that that the proposed bill be held by this Committee.**

Very truly yours,  
Healy Tibbitts Builders, Inc.

A handwritten signature in black ink, appearing to read "Richard A. Heltzel". The signature is written in a cursive style with a large, stylized initial "R".

Richard A. Heltzel  
President

From: Riley Coon <riley.coon@sailtrilogy.com>  
Sent: Wednesday, April 08, 2015 1:21 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Riley Coon  
51 Kauaula St  
Lahaina, HI 96761

April 8, 2015



Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I am against this bill.

As a manager in a small business, I feel this bill creates a real opportunity to negatively affect my business. There is already very little a company can do to have any control over worker's comps claims, and this only opens up the door to make it easier for dishonest employees or doctors to take advantage of small businesses.

Please do not pass this bill

This bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Please do not pass this bill. Thank you for the opportunity to submit testimony.

Sincerely,  
Riley Coon

From: CARRIE KINKADE <carrie.kinkade@sailtrilogy.com>  
Sent: Wednesday, April 08, 2015 1:31 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME



CARRIE KINKADE  
PO BOX 1119  
LAHAINA, HI 96767

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I am writing to state that I am against this bill.

I work in the Human Resources Department of a local Maui business and one of my responsibilities is administrating our Worker's Comp policy and claims.

This bill would create more delay, limit our options and could also create the possibility for dishonest employees and doctors to harm our business. Currently, businesses don't have many rights in regards to WC claims and this would further limit our involvement and rights.

It would also increase the amount of dispute on selecting and IME and could also increase our premiums.

Sincerely,  
CARRIE KINKADE

From: LiAnne Coon <lianne.coon@sailtrilogy.com>  
Sent: Wednesday, April 08, 2015 1:51 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

**LATE**

LiAnne Coon  
1073 Ulu Kanu St  
Wailuku, HI 96793

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

This bill creates an unfair situation for employers in the case of a workers' compensation claim. An employer-requested IME is the only tool to objectively evaluate the treating physician's plan of action. This bill removes an employer's ability to select the physician to conduct the requested IME.

Sincerely,  
LiAnne Coon

finance8-Melanie

---

From: Jenny Coon <mrsjennycoon@gmail.com>  
Sent: Wednesday, April 08, 2015 2:01 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Jenny Coon  
51 Kauaula Rd  
Lahaina, HI 96761

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

I am against this bill.

There is no need for this bill to be in place. There is already a fine system in place for worker's comp.

Sincerely,  
Jenny Coon

# WORK STAR INJURY CENTER

91-2135 FORT WEAVER ROAD  
EWA BEACH, HAWAII 96706

COMMITTEE ON FINANCE  
NOTICE OF HEARING  
WEDNESDAY, APRIL 8, 2015  
CONFERENCE ROOM 208

**LATE TESTIMONY**

To: The House Finance Committee

Re: Mutually Agreed IME Bill—SB 1174

Dear Distinguished Chair Luke and Committee Members

I am writing in strong support of this and any other measure which helps protect the injured worker from the anti-patient, biased “independent” medical evaluation (IME) process that has come to plague our WC System. A recent study reported by National Public Radio shows that IME’s performed this way are harmful to patients in some way 90% of the time. By paying evaluators 10-20 times more for this type of work, insurers have created a rather Draconian “skinners box” wherein a onetime assessment by a single provider can be used to override and deny treatment recommendations of seasoned clinicians—against the patient’s desires, wishes and best interest.

Insurance-sponsored IME doctors are also immune from the malpractice law patient safeguards from doctors and 1) failure to diagnose 2) failure to treat and 3) withholding of needed care violations--because there is no “established doctor-patient relationship”. Yet the insurer is quick to embrace recommendations to reduce care by this one individual with impunity.

These cost saving maneuvers are good for insurance profits but bad for patients and other publicly funded safety nets which must step in to halt the injured worker’s slide toward chronic pain, impairment, financial destitution and often homelessness. This law will restore some of the balance needed to restore fairness to the IME process.

Thank you for your continued efforts to improve Hawaii’s WC System .

Scott McCaffrey, MD

The Workstar Injury Recovery Center

The Queen’s West Oahu Campus



**LATE**

From: Gregory Raab <greg@hokunui.com>  
Sent: Wednesday, April 08, 2015 2:51 PM  
To: FINTestimony  
Subject: From Your Constituent: My Position on SB 1174 re: IME

Gregory Raab  
1125 Malu Place  
Makawao, HI 96768

April 8, 2015

Dear Chair Luke Vice Chair Nishimoto & Members of the Committee,

RE: SB 1174 SD2 HD2 (April 8 at 2:00pm FIN Hearing)

Workers' comp claims by nature are difficult cases. Employers should have the right to evaluate the physician's plan of action and to select the physician for IMEs. Increasing the cost, timing and complexity of insurance claims and premiums would be an unproductive outcome.

Sincerely,  
Gregory Raab

**LATE**

From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, April 08, 2015 5:31 PM  
To: FINTestimony  
Cc: mercers@hawaii.rr.com  
Subject: \*Submitted testimony for SB1174 on Apr 8, 2015 14:00PM\*

**SB1174**

Submitted on: 4/8/2015

Testimony for FIN on Apr 8, 2015 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Fielding Mercer	HAPA	Support	No

Comments:

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