HB 1694

RELATING TO WORKERS' COMPENSATION

HB 1694

TESTIMONY

HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

H.B. NO. 1694

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.** [~~(a) 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, surgeon, or chaperone 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. The employee shall also have the right to record such examination by a recording device designated and paid for by the employee; provided that the examining physician or surgeon approves of the recording.~~

~~If an employee refuses to submit to, or the employee or the employee's designated chaperone 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.~~

~~(b) 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(c).~~]

(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 shall be transmitted to the injured employee 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; 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 under chapter 442 or 453, 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.

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 director shall appoint a duly qualified impartial physician to examine the injured employee and to report. The fees for such examination shall be paid from the funds appropriated by the legislature for the use of the department.

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.

In no event shall the director, appellate board, or a court, order more than one requested independent medical examination and one permanent impairment rating examination per case, unless valid reason exists with regard to the medical progress of the employee's medical treatment or when major surgery or elective surgery is contemplated. In the event of multiple examinations, the process of mutually selecting or otherwise appointing a physician set forth in this section shall apply.

(e) The employee shall have the right to have a physician, surgeon, or chaperone designated and paid by the employee present at the examination, which right, however, shall not be construed to deny to the selected physician the right to visit the injured employee at all reasonable times and under all reasonable conditions during total disability. The employee

shall also have the right to record such examination by a recording device designated and paid for by the employee. If an employee refuses to submit to, or the employee or the employee's designated chaperone 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.

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(c).

(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."

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, 2018.

INTRODUCED BY: _____

JAN 12 2018

H.B. NO. 1694

Report Title:
Workers' Compensation; Medical Examination

Description:
Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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ESTABLISHED 1926 An Equal Opportunity Employer

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION. Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

My name is Leslie Isemoto, President of Isemoto Contracting Co., Ltd.

Isemoto Contracting Co., Ltd. is opposed to H.B. 1694, Relating to Workers' Compensation, which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work-related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Very Truly Yours

Leslie Isemoto, President

holt1 - Scott

From: Seal Masters Of Hawaii <smh@sealmastershawaii.com>
Sent: Sunday, January 28, 2018 8:53 AM
To: LABtestimony
Subject: H.B 1694,

To whom it my concern,

My management team and I are opposed to this bill. We have had several cases where an employee chooses a Doctor who benefits financially from the pro longed Workmen's Compensation process and the new bill would allow this unethical behavior to continue. The employer must be able to get a second opinion.
We are opposed to Bill H.B 1694.

Joe Miller
President
Seal Masters if Hawaii

Joe Miller

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

LEONARD HOSHIJO
ACTING DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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January 30, 2018

To: The Honorable Aaron Ling Johanson, Chair;
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 30, 2018
Time: 9:30 a.m.
Place: Conference Room 309, State Capitol

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

Re: H.B. No. 1694 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB1694 proposes to repeal section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with a new title, "Requested mutual examination" and language that proposes:

- Independent Medical Examinations (IMEs) and permanent impairment rating examinations be performed by qualified physicians selected and mutually agreed upon by the employer and employee;
- The selected physician shall be currently licensed pursuant to chapter 453 or chiropractor licensed pursuant to chapter 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;
- The use of an out-of-state physician is allowed under certain circumstances, and if no agreement as to the selection of the physician or a chiropractor can be reached, the Director shall appoint a duly qualified impartial physician or chiropractor to examine the injured employee and submit a report. The fees for such examination shall be paid from the funds appropriated by the

legislature for use by the Department of Labor & Industrial Relations;

The Department appreciates the intent of this measure that seeks greater assurance of impartiality in the IME and permanent impairment rating processes, but has concerns about potential affects and unintended consequences.

DLIR's estimate of the fiscal impact of the measure, without including administrative and staffing costs, ranges between $3,500,000 to $17,500,000 depending on the charges of the physician, the complexity of the case, and location.

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 HOUSE BILL

1. Out-of-State claimants. The measure 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.

2. 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.

3. The Department points out that this proposal only allows physicians currently licensed pursuant to chapters 453 (medicine) and 442 (chiropractors) 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.

4. 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.

5. Mutual agreement. The Department is concerned with the requirement for "mutually" agreed upon physicians by the parties. This requirement may result in unintended delays due to one party objecting and requesting a hearing and having the dispute go through that adjudicatory process.

6. Section 1(e) proposes the right of the employee to have a physician, surgeon or chaperone present during the examination. The Department notes that Act 172 (SLH, 2017) amended section 386-79 and allowed the employee the right to have a chaperone (the statute had currently allowed the employee to only have a physician or surgeon) to be present at the examination. On June 30, 2019 the Act will be repealed and section 386-79 shall be reenacted to the form it was before the effective date and thus only allow the employee a choice of physician or surgeon be present during the examination.

7. This proposal does not include an appropriation and would require the State to pay somewhere between $3,500,000 and $17,500,000 annually for what the employer/carrier pays now.

8. If the director appoints a duly qualified physician or chiropractor, the costs associated with the IME will range from $1,000 to $5,000 or more. The director recommends that the fees for these examinations be paid by the employer/carrier and not from the general funds. With 3,500 potential IME requests a year, the annual cost for the IME's alone could range from $3,500,000 to $17,500,000.

HEALY TIBBITTS BUILDERS, INC.
General Contractors – Hawaii License No. AC-15669
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Telephone (808) 487-3664 • Facsimile (808) 487-3660

January 29, 2018

Sent Via E-mail to: LABTestimony@capitol.hawaii.gov

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt 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 addition to being a general contractor, Healy Tibbitts also performs work as a subcontractor for foundation work.

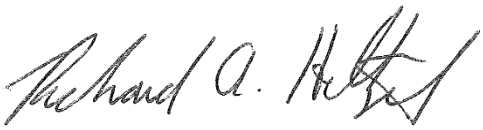
Healy Tibbitts Builders, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured worker's continuing treatment that a medical examination by an employer's physician is brought into the process pursuant to Section 386-79, HRS.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

DAVID Y. IGE
GOVERNOR

RYKER WADA
INTERIM DIRECTOR

DEPUTY DIRECTOR

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

January 26, 2018

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on January 30, 2018
9:30 a.m., Conference Room 309

BY

RYKER WADA
INTERIM DIRECTOR

House Bill No. 1694
Relating to Workers' Compensation; Medical Examination

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON JOHANSON, VICE CHAIR HOLT AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide **comments** on H.B. 1694.

The purposes of H.B. 1694 relating to workers' compensation claims are:

(1) to provide that an employer may appoint, at the employer's expense, a qualified physician selected by the mutual agreement of the parties to conduct an independent medical examination or permanent impairment rating examination; and provide a process for appointment in the event that there is no mutual agreement;

(2) to prohibit an independent medical examination and a permanent impairment rating examination from being combined into a single medical examination unless the employee consents in writing to the single examination by the selected physician;

(3) to limit the director, appellate board, or a court, from ordering more than one requested independent medical examination and one permanent impairment rating

examination per case, unless valid reason exists with regard to the medical progress of the employee's medical treatment or when major surgery or elective surgery is contemplated;

(4) to allow an employee to have a chaperone present and use a recording device during the medical examination relating to a work injury under workers' compensation; and

(5) to appoint the employee's attending physician as the sole arbiter in determining "medical stability".

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.

Numerous bills and much testimony has been submitted to this committee in past sessions to change the current law pertaining to independent medical examinations ("IMEs") due to its alleged failings. This matter has also been debated at length in the Workers' Compensation Working Group convened by House Concurrent Resolution 168 (2015) for the purpose of streamlining the workers' compensation process including the employer-requested medical examination, under chapter 386.

From the employer's perspective, the IME remains one of the few ways an employer can defend against a claim that did not arise out of the course and scope of employment or against medical treatment that is not related to the work injury. This is particularly true in light of the statutory presumption in Section 386-78, HRS, that a claim is for a covered work injury, and recent Hawaii Supreme Court decisions such as in Pulawa v. Oahu Construction Co., Ltd., 136 Haw. 217 (Haw. 2015), which liberalized the standard for medical treatment from "reasonable and necessary" to "reasonably needed" and allows claimants to "receive the opportunity for the greatest possible medical rehabilitation." The IME is essentially the only remaining means available to the employer to address the statutory presumption, excessive or inappropriate treatment, reasonableness of medical treatment and care, and ability to return to work as it relates to the work injury. IMEs are necessary for the fair and appropriate adjudication of a claim and to determine the workers' compensation benefits that an

injured worker is entitled to receive. Workers' compensation laws were never intended to prohibit an employer from reasonably investigating the reasonableness and necessity of medical care and treatment that are related to an injury. Since many injured employees receive medical treatment and disability benefits for years, prohibiting the director, appellate board, or a court from ordering more than one requested independent medical examination and one permanent impairment rating examination per case unless valid reason exists does not take into account that an employee's medical condition and treatment are likely to change over the life of the claim which would potentially require more than one IME to evaluate the reasonableness of the medical treatment and the employee's disability.

The requirement that more than one IME cannot be ordered "unless valid reason exists" creates a new standard and places the burden of proving that a "valid reason exists" on the employer, director, appellate board, or a court. The term "valid reason" is not defined and may lead to additional hearings and litigation regarding the need for more than one IME.

The bill is certain to have the unintended consequence of potentially lengthening certain claims because it is silent as to what would happen if there is no physician available to perform the evaluation within the forty-five days or "as soon as possible" requirement.

With respect to a chaperone and recording of the IME, the current form of the bill does not provide for fairness and protection to the examiner if there is any alleged improper conduct or adequacy of the examination nor does it provide for protection of the integrity of an examination. For fairness and integrity of medical examinations and privacy concerns the examiner may have, we suggest that the following should be added to the bill:

(1) The employee be required to give at least three (3) business days prior notice of the intent to record the examination it should be required in order to provide the examiner and/or employer the opportunity to arrange for their own recording of the examination to insure that there is no dispute concerning what occurred during the examination.

(2) The examiner and/or employer be allowed to record the examination with three (3) business days prior notice to the employee.

(3) If the examination is recorded, the party recording the examination be required to provide an unedited copy of the recording to the other party and the examiner immediately at the conclusion of the examination to insure the integrity of the recording and examination.

(4) At least three (3) business days prior notice of the intent to have a chaperone present should be required so the examiner and/or employer will have the opportunity to arrange for their own chaperone at the examination to insure that there is no dispute concerning what occurred during the examination. The examiner and/or employer be allowed to have a third-party chaperone of their own present at the examination If employee has a chaperone present.

With regard to the employee's attending physician being the sole arbiter as to when an injured worker attains medical stability, employers would lose the ability to investigate and/or challenge ongoing disability and medical treatment when the medical evidence indicates the injured worker has reached medical stability and could possibly return to work. The employer would lose the ability and right to investigate whether an employee is stable and able return to work. The bill would in effect allow an interested party, i.e. the treating physician, to determine when treatment and modes of treatment should terminate, if at all.

Employer would essentially be strictly liable for indefinite medical and disability benefits with no mechanism to investigate and terminate such benefits. The injured employee presently has the advantage of the presumption. It would be unfair to now eliminate an employer's right to have an independent third party determine whether medical care and continued disability is appropriate.

The bill also requires two separate IMEs be performed, one for the IME concerning the employee's condition and need for medical care and other issues and a second IME merely for the purposes of an impairment rating. This would increase the cost of workers' compensation claim.

Finally, in lieu of passing this bill with all of its unresolved issues, we respectfully request consideration be given to **deferring** this measure pending completion of the working group report and the workers' compensation closed claims study mandated by Act 188 (SLH 2016), wherein the legislature found that "a closed claims study is warranted to objectively review whether specific statutory changes are necessary" to the workers' compensation law. Upon delivery of the respective reports to the legislature, the empirical findings and specific recommendations of the working group and closed claims study can inform any legislative initiatives on workers' compensation.

Thank you for the opportunity to testify on this bill.

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Rons Construction Corporation is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
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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

January 30, 2018

The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
and Members of the Committee
on Labor & Public Employment
The House of Representatives
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Holt, and Members of the Committee:

SUBJECT: House Bill No. 1694
Relating to Workers' Compensation

H.B. 1694 allows employers and employees to mutually agree to an independent medical examiner or permanent impairment rating examiner; provides an out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state; provides that without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature; and defines "medical stability."

The City and County of Honolulu, Department of Human Resources, offers the following comments on the bill.

First, from the City's perspective as a self-insured employer which pays benefits from public funds, the independent medical examination is one of the few tools the City can use to ensure that a questionable claim arose out of the course and scope of employment or that a requested medical treatment is related to the work injury. Without the benefit of an independent medical opinion, the City could be held liable for every claim that is filed and every medical treatment that is sought—even those injuries and treatments that would otherwise be covered by the employee's private medical insurance or a no-fault policy if the injury or treatment is necessitated by a non-work incident or a motor vehicle accident, respectively. This is particularly true in light of the statutory presumption in Section 386-78, HRS, that a claim is for a covered work injury, and recent Hawaii Supreme Court decisions such as Pulawa v. Oahu Construction Co.,

Ltd., and Seabright Insurance Company, SCWC-11-0001019 (Hawai'i November 4, 2015) which liberalized the standard for medical treatment from "reasonable and necessary" to "reasonably needed" and allows claimants to "receive[ ] the opportunity for the greatest possible medical rehabilitation."

Second, the bill is certain to have the unintended consequence of potentially lengthening certain claims because: 1) it 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; and 2) with the claimant's attending physician being the sole arbiter as to when an injured worker attains medical stability, 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. These situations would undoubtedly lead to additional hearings and litigation at the Department of Labor.

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo
Director

HAWAII STATE AFL-CIO

345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Randy Perreira
President

Telephone: (808) 597-1441
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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor & Public Employment

Testimony by
Hawaii State AFL-CIO
January 30, 2018

H.B. 1694 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO supports H.B. 1694 which allows employers and employees to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature.

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, H.B. 1694 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.

Respectfully submitted,

Randy Perreira
President

aircentral inc.
HVAC | Sheet Metal | AC Service

1717 Colburn Street, Honolulu, HI 96819 Lic# C-23019
P 808.845.7300 F 808.842.5493 W www.AirCentralHawaii.com

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR, AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt, and Members of the Committee,

Air Central Inc. is a licensed HVAC company providing sheet metal, air conditioning installation and air conditioning preventative maintenance and repair services to Oahu businesses since 1975.

AIR CENTRAL INC. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the 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. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Francis G. Brewer, DC
1150 S. King Street, Suite 604
Honolulu, Hawaii 96814
(808) 593-0313

Chair Aaron Ling Johanson
Vice-Chair Daniel Holt
House Committee on Labor & Public Employment

Re: House Bill No. 1694 Relating to Workers' Compensation
Hearing Date: Tuesday, January 30, 2018
Hearing Time: 9:30 am

Dear Chair Johanson, Vice-Chair Holt, and members of the Committee,

My name is Francis Brewer, DC, and I am the President of Brewer Consulting Services. I have personally performed independent chiropractic evaluations for over twenty years. Thank you for the opportunity to testify on this measure.

House Bill No. 1694 amends Hawaii Revised Statutes, § 386-79 to, among other things, allow an employee to have a chaperone present at, and to have the right to record, the independent medical examination related to the employee's worker's compensation injury.

I respectfully oppose this measure because I believe that the amendments to HRS § 386-79 will taint the independent nature of the independent medical examination (IME) and independent chiropractic examination (ICE). This will result in a smaller pool of qualified IME/ICE physicians, and less effective direction of care of the employees.

At the outset, my role is to impartially evaluate the employee's condition and treatment received, to determine if treatment provided was reasonable and appropriate, to determine whether additional diagnostic testing or treatment may be required and, upon request, to rate the employee's injury. Some people may feel that the IME/ICE process is designed only to cut employees off from care. To the contrary, it is meant to ensure that the employee is getting care that is effective for the workplace injury at issue. In many cases, additional treatment recommendations are made over and above that which have already been prescribed by the treating physician. The independent medical examination process more fully and further evaluates injured employees, which can result in additional appropriate diagnostic testing, specialist referrals, and treatment, benefitting both the employee and the employer. It is in this context that I have the following concerns with H.B. No. 1694.

First, requiring a chaperone impedes honest dialogue between the employee and the examining physician. This has proven to be true in numerous cases where chaperones have attended an evaluation. It is important that the employee's explanation of the incident, treatment received, and symptoms be the employee's alone, and not subject to outside influence. The presence of third-parties who may intentionally -- or unintentionally -- influence

the examination compromises the integrity of the IME/ICE process, which is to determine objectively the employee's status and need for further treatment.

Second, allowing recording of the examination will have the same effect of impeding full and candid communication between the employee and the examining physician that is needed in order for the examination to be effective. Moreover, there is no provision for ensuring the integrity of the recording itself, which may be subject to alteration.

Because of the adverse impact that third-parties and recording devices can have when present during the IME/ICE, it is my policy that third-parties not be allowed to attend the examination, and that recording devices not be used. Please note that this policy ***does not in any way interfere with an employee's right to have an interpreter present***, or to have other assistance necessary for me to conduct a complete and impartial examination. Nor does this policy interfere with the employee's right to a chaperone in ordered IMEs/ICEs under the current version of HRS § 386-79, although I have previously expressed similar concerns with that requirement.

I strongly believe that the integrity of the IME/ICE process must be preserved in order for the results to be reliable and useful, both for the employer and the employee. This requires, as much as possible, an environment of trust between the employee and the examining physician. The proposed amendments do not foster trust but hinder it.

For the foregoing reasons, I respectfully request that this measure be held.

Sincerely,

Francis G. Brewer, D.C.

UNLIMITED
CONSTRUCTION SERVICES, INC

License #ABC-16638

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 29, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Unlimited Construction Services, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Sincerely,

Jay T. Manzano
President

Pacific Guardian Center - Makai Tower, 733 Bishop Street, Suite 1717, Honolulu, Hawaii 96813
Phone: (808) 521-4141 / Fax: (808) 541-4199 • unlimited@unlimitedhawaii.com • www.unlimitedhawaii.com

KOGA
ENGINEERING & CONSTRUCTION, INC.
ESTABLISHED 1973

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Koga Engineering & Construction, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

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Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

ROAD SAFETY SERVICES AND DESIGN LLC, is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

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The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

LYZ Inc.
general contractor license #ABC 21576

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 29, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

LYZ, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

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Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

James N. Kurita
Vice President/ Chief Operating Officer

AIR CONDITIONING • SERVICE • AUTOMATION

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 29, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Island Controls, Inc. is a Commercial Air Conditioning & Building Automation contractor in the state of Hawaii only.

Island Controls, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Mahalo,

Kenneth J Richardson
President

HAWAIIAN DREDGING
CONSTRUCTION COMPANY, INC.

P.O. Box 4088
Honolulu, HI 96812-4088
Phone: (808) 735-3211

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 29, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Hawaiian Dredging Construction Company, Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

With best regards,

J. Majkut
President
Hawaiian Dredging Construction Company, Inc.

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Tuesday, January 30, 2018
9:30 A.M.

H.B. 1694
RELATING TO WORKERS' COMPENSATION

By Marleen Silva
Director, Workers' Compensation
Hawaiian Electric Company, Inc.

Chair Johanson, Vice Chair Holt and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, Ltd., and Hawaii Electric Light Company, Inc**. strongly oppose H.B. 1694.** Our companies represent over 2,500 employees throughout the State.

This bill proposes changes to the existing statute to mandate that independent medical examinations (IME's) and permanent impairment rating examinations for workers' compensation claims be performed by physicians mutually agreed upon by the parties and paid for by the employer. When the parties are unable to come to agreement on the selection of a physician to perform the exam, then the Director will appoint a duly qualified impartial physician. It requires the physician to perform the exam within forty-five days of notice and restricts the physician from conducting both an IME and permanent impairment rating at the same time even though a comprehensive one could be both beneficial and efficient for all parties.

Under the current statutes, any workers' compensation claim filed by an employee, or former employee, is presumed to be for a covered work injury, unless there is "substantial evidence to the contrary." Employers have the sole burden of proof to overcome this statutory presumption, and the rights to have the employee "submit to examination, at reasonable times and places, by a duly qualified physician or surgeon designated and paid by the employer." Employees have the right to select their own treating physician, and the right to change physicians once, without mutual agreement with the employer. Employees also have the right to full disclosure of an employer's IME report, and the right to seek their own medical opinion if they disagree with the findings.

We cannot support this measure since it severely restricts an employer's fundamental rights and ability to conduct any meaningful discovery of a workers' compensation claim that may be in dispute. An IME is the only tool an employer has to objectively evaluate an injured employee to determine whether a claim is, in fact, for a covered injury and entitled to such benefits, whether continued treatment is beneficial and necessary for the employee's recovery, whether the requested medical treatment is reasonable and related to a covered work injury, and whether medical stability has been reached if reasonable progress is not being made and the attending physician is allowed to treat indefinitely.

A majority of IME's are conducted under the current statutes without incident or dispute today. Permanent impairment ratings are also performed by mutual agreement between parties, without the need for mandate by legislation.

For these reasons, we strongly oppose H.B. 1694 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.

HB 1694

LATE TESTIMONY

HAWAII MEDICAL ASSOCIATION
1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376
www.hawaiimedicalassociation.org

LATE

TO:
COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair

DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

FROM: Hawaii Medical Association
Dr. Christopher Flanders, DO, Executive Director

Re: HB 1694 RELATING TO WORKERS' COMPENSATION (IME)

Position: SUPPORT

Chairs & Committee Members:

The HMA supports this bill for the following reasons:

- Current law 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.
- The workers' compensation system is supposed to be a "no-fault" system which provides immediate medical care and compensation. In exchange for giving up the right to sue, the employee is given a presumption that an injury is work related, and an injured worker is supposed to receive prompt medical care.
- Unfortunately, some employer/carriers are abusing the system by choosing their "favored" physicians who produce reports which predictably favor the employer/carrier. Too often the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.
- Employer's physicians do not have any duty of care to the injured worker and often escape responsibility for a misdiagnosis. It is the freedom from liability that allows the employer's physician to give employer's the opinions they want without responsibility to the injured worker.
- If an employer delays long enough, the injured employee may give up and attempt to seek care outside of workers' compensation.
- For many workers with severe injuries, however, the workers' compensation system is

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www.hawaiimedicalassociation.org

the only thing that stands between them and a downward spiral of unemployment, debt and even homelessness. The use of "employer medical examinations" results in delays which often have devastating consequences to injured workers.

- There are physicians who conduct employer's examinations who properly consider the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.
- The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier.
- The workers' compensation system was designed to be more informal and outside the normal legal process, but unfortunately it has developed into a formal, adversarial legal process. These bills attempt to reduce the adversarial nature of the increasingly contentious workers' compensation system and reduce the bias of either party's physician through a mutual selection of a physician to perform the IME. This is an attempt to return the workers' compensation system to its original design.

Thank you for allowing testimony on this issue.

RALPH S. INOUYE CO LTD
GENERAL CONTRACTOR

500 Alakawa St., #220E
Honolulu, Hawaii 96817

T: 808.839.9002
F: 808.833.5971

License No. ABC-457
Founded in 1962

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 29, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

LATE

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Ralph S Inouye Co, Ltd (RSI), a Hawaii general contractor and member of the General Contractors Association of Hawaii, **opposes H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

LATE

LATE

To: The Honorable Aaron Ling Johanson, Chair
The Honorable Daniel Holt, Vice Chair
House Committee on Labor & Public Employment

From: Mark Sektnan, Vice President

Re: **HB 1694 – Relating to Workers' Compensation**
PCI Position: OPPOSE

Date: Tuesday, January 30, 2018
9:30 AM, Conference Room 309

Aloha Chair Johanson, Vice Chair Holt and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is **opposed to HB 1694** which requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations. In Hawaii, PCI member companies write approximately 42.3 percent of all property casualty insurance written in Hawaii. PCI member companies write 44.7 percent of all personal automobile insurance, 65.3 percent of all commercial automobile insurance and 76.5 percent of the workers' compensation insurance in Hawaii.

HB 1694 will create an unnecessary administrative cost and burden for insurance companies and require the Director to needlessly intervene in the IME process. The proposed legislation will lead to routine disputes over the employer's or workers' compensation insurer's selection of an IME physician, because trial lawyers will use this as a litigation strategy to get the Director to intervene in the IME process. The bill will also create unnecessary additional work for the Director, delay the selection of an IME physician, and increase claims administrative costs.

The proposed requirement that, "the selection of the examining doctor shall be by mutual agreement" will needlessly delay the IME process to the detriment of the injured workers, increase the IME costs for insurers and employers, and make the IME process unnecessarily contentious.

Policyholders already possess the legal right to have the IME reviewed by a doctor of their selection, if they want to contest the insurer's IME doctor's medical assessment. If a party wants to contest the selection of a particular IME physician by the Director, a resolution of that dispute would need to be resolved *before* any IME may be conducted. Therefore, the insurer could be hindered in its ability to comply with its regulatory duty to promptly investigate and settle claims, and will be prevented from securing timely information about the injured worker's

medical diagnosis. Additionally, this new IME selection process, especially in situations where a party is contesting the Director's IME physician selection, could end up delaying the injured worker's ability to secure timely medical treatment.

HB 1694 is unnecessary, and likely to create unintended adverse consequences for injured workers, impose needless requirements on employers and insurers that will be insurance rate cost-driver for the workers' compensation system, and turn a standard medical evaluation claims process (IME) into a costly, complicated, and contentious procedure.

PCI asks the committee to **hold** the bill in committee.

HAWAII CHAPTER – AMERICAN PHYSICAL THERAPY ASSOCIATION

(800) 554-5569 x13 • www.hapta.org • info@hapta.org

LATE

HB1694, Relating to Workers' Compensation
Hse LAB Committee Hearing
Tues, Jan. 30, 2018 – 9:30 am
Room 309
Position: Support

Chair Johanson and Vice Chair Holt, and Members of the House LAB Committee:

I am Gregg Pacilio, PT and Board President of the Hawaii Chapter of the American Physical Therapy Association (HAPTA), a non-profit professional organization serving more than 340 member Physical Therapists and Physical Therapist Assistants. Our members are employed in hospitals and health care facilities, the Department of Education school system, and private practice. We are movement specialists and part of the spectrum of care for Hawaii. We provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum functioning from neuromusculoskeletal injuries and impairments.

There are reports from injured workers of biased IME's performed by doctors hired by the insurer. The insurers themselves justify the practice as a means of cost control. They feel that since they are paying for the exam, they should have the right to select the physician of their choice. The issue really should be about fairness for the injured employee to get an accurate exam whether it is for a rating or for the issue of compensability or for continued medical care.

HB1694 proposes mutual agreement on the selection of physician to conduct the IME and provides a process if no mutual agreement can be achieved, ultimately allowing the Director to appoint an impartial physician.

- The use of an impartial examiner, chosen with input from the injured worker or chosen by the DLIR can mitigate many of problems associated with fair evaluation of the injured worker and timely care.

Further, HB1694 limits the cost of conducting the IME or permanent impairment rating examination to the complex consultation charges in the Medical Fee Schedule (HRS 386-21c).

- If an injured employee feels an IME was not performed fairly, they have the right to hire another physician to perform an exam. This exam however would be at their own expense. Many injured workers do not have the financial means to pay for these exams. Further more if the initial IME is questionable, it can delay the care given and the time an injured worker is without income.

  HB1694 provides a more feasible alternative for the injured worker who is responsible for paying for such costs when the employee disagrees with the IME evaluation or impairment rating examination.

Your support of HB1694 is appreciated. Thank you for the opportunity to testify. Please feel free to contact Derrick Ishihara, HAPTA's Workers' Compensation Committee Chair at (808) 221-8620 for further information.

NAMIC
NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES

317.875.5250 | [F] 317.879.8408
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LATE

Hawaii State Legislature
House Committee on Labor and Public Employment
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

January 29, 2018

Filed via electronic testimony submission system

RE HB 1694, Workers' Compensation, IME Selection – NAMIC's Written Testimony in Opposition

Dear Representative Aaron Ling Johanson, Chair; Representative Daniel Holt, Vice-Chair; and honorable committee members:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the January 30, 2018, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation. NAMIC's written comments need not be read into the record, so long as they are referenced as a formal submission and are provided to the committee for consideration.

The National Association of Mutual Insurance Companies (NAMIC) is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers. NAMIC members represent 40 percent of the total property/casualty insurance market, serve more than 170 million policyholders, and write nearly $225 billion in annual premiums. NAMIC has 84 members who write property/casualty/workers' compensation in the State of Hawaii, which represents 28% of the insurance marketplace.

The proposed legislation states:

"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 director shall appoint a duly qualified impartial physician to examine the injured employee and to report."

NAMIC respectfully submits the following statement of concerns with the proposed amendments to the statute:

1) HB 1694 will create an unnecessary administrative cost and burden for insurance companies and require the Director to needlessly intervene in the IME process.

NAMIC is concerned that the proposed legislation will lead to routine disputes over the employer's or workers' compensation insurer's selection of an IME physician, because trial lawyers will use this as a litigation strategy to get the Director to intervene in the IME process. NAMIC is concerned that this will create unnecessary additional work for the Director, delay the selection of an IME physician, and increase claims administrative costs.

2) NAMIC is concerned that the proposed requirement that, "the selection of a duly qualified physician mutual agreed upon by the parties" will needlessly delay the IME and permanent impairment rating exam (PIRE) process to the detriment of the injured worker, will increase the IME and PIRE costs for insurers and employers, and make the IME and PIRE process unnecessarily contentious.

The injured worker already possess the legal right to have the employer initiated IME reviewed by a doctor selected by the injured worker, if he/she wants to contest the insurer's IME doctor's medical assessment. Therefore, the proposed requirement that the IME doctor be selected by "mutual agreement" (whatever that means procedurally) doesn't really provide the injured worker with any new consumer protection. The only thing it does is make the insurance claims process more complicated and protracted.

Moreover, the proposed "mutual agreement" selection requirement could create unintended professional liability and ethical duty problems for medical professionals. When the insurer retains the IME doctor and the injured worker retains his/her own doctor, the ethical and professional duties of the respective medical professionals are quite clear. The proposed "mutual agreement" selection requirement makes the physician's duties unclear to the detriment of both parties and the physician.

3) NAMIC is concerned that the proposed legislation will adversely impact an insurer's ability to secure a timely and accurate medical evaluation and the injured worker's ability to secure prompt medical treatment.

The proposed legislation states, that "if no agreement is reached, the selection shall be submitted to the Director …" However, the proposed legislation does not address what criteria the Director will use in selecting a particular IME physician, or the process for a party to contest said selection.

If a party wants to contest the selection of a particular IME physician by the Director, a resolution of that selection dispute would need to be resolved *before* any IME may be conducted. Therefore, the insurer could be hindered in its ability to comply with its regulatory duty to promptly investigate and settle claims, and will be prevented from securing timely information about the injured worker's medical diagnosis. Additionally, this new IME selection process, especially in situations where a party is contesting the Director's IME physician selection, could end up delaying the injured worker's ability to secure timely medical treatment.

4) NAMIC is concerned that the "qualified physician" requirements are needlessly overly-restrictive and are likely to increase the cost of the IME process and could adversely impact the quality of the IME review.

Specifically, the proposed revised legislation requires that the IME physician be from Hawaii, unless there is "no physician licensed by the state in that specialty area available to conduct the examination". The practical implication of this provision is that the Director must select a local licensed physician in the area of specialty if he/she is available, even if the local physician is less professionally qualified, has less subject matter expertise and is more expensive than the out of state specialist. NAMIC believes that this requirement is unnecessary and not in the best interest of the injured worker or the employer. Providing employment opportunities for local physicians is a valid public policy objective. However, it shouldn't be a primary public policy objective to the detriment of the workers' compensation system.

5) NAMIC is also concerned that the proposed revised legislation is attempting to raise an issue "the right of an injured worker to electronically record the IME" that was specifically rejected last session in SB 859.

NAMIC is concerned that the proposed electronic recording of IMEs could discourage many medical providers from wanting to participate in medical examinations out of concern that their candid comments to the injured worker could lead to medical malpractice legal liability exposure. Moreover, NAMIC believes that it is in the best interest of injured workers to have medical examinations be "medical in nature" not a "quasi-legal proceeding". If medical examinations are electronically recorded, injured workers may censure their comments about their ailments to the medical provider out of fear that their statements could be used as legal "admissions against interest" in a workers' compensation hearing. If a medical provider only receives limited information from the injured workers about his/her injury, the medical provider's ability to thoroughly and accurately evaluate the injured worker's medical condition is seriously hindered.

6) NAMIC believes that the July 1, 2018, effective date would create unnecessary administrative costs and burdens for insurers and employers.

NAMIC believes that insurers should be granted a year from enactment of the bill for proper implementation of the law and the new administrative requirements. Therefore, NAMIC respectfully requests a July 1, 2019 effective date.

In closing, NAMIC believes that HB 1694 is unnecessary, and likely to create unintended adverse consequences for injured workers, impose needless requirements on employers and insurers that will be insurance rate cost-driver for the workers' compensation system, and turn a standard medical evaluation claims process (IME) into a costly, complicated, and contentious procedure.

For the aforementioned reasons, NAMIC respectfully asks the committees to **VOTE NO on HB 1694**.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

Christian John Rataj, Esq.
NAMIC Senior Regional Vice President
State Government Affairs, Western Region

DORVIN D.
Leis co., inc.
MECHANICAL CONTRACTORS

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January 30, 2018

Sent Via E-mail: LABTestimony@capitol.hawaii.gov

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

LATE

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Dorvin D. Leis Co., Inc. is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. Also, the bill will

likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Sincerely,

Stephen T. Leis,
President

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

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

Alison H. Ueoka
President

TESTIMONY OF LINDA O'REILLY

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Aaron Ling Johanson, Chair
Representative Daniel Holt, Vice Chair

Tuesday, January 30, 2018
9:30 a.m.

HB 1694

Chair Johanson, Vice Chair Holt, and members of the Committee on Labor and Public Employment, my name is Linda O'Reilly, Assistant Vice President of Claims - Workers Compensation of First Insurance Company of Hawaii. I am testifying today 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 forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** HB1694.

We believe this bill will substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. The vast majority of IMEs are conducted without incident, dispute, or need for an Order by the Director. In fact, in many cases, the IME provides direction of which an attending physician will often "concur," and proceed with recommendations that result in necessary medical treatment that facilitate recovery of a work accident. It appears that this legislation is prompted by

claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own permanent impairment rating and if the Director relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

According to DLIR, less than 10% of all workersô compensation claims are ordered by the Director. This means that the vast majority of workersô compensation claims are moved through the system without the need for an IME. The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workersô compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer.

This bill requires mutual agreement between the employer and employee of an IME physician. If there is no agreement, the IME physician is chosen by DLIR. Furthermore, only one IME is allowed unless another is approved by the Director.

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 of treatment that is not medically curative, and delay the injured workerôs return to gainful employment.

The amount of cases where parties cannot agree on a mutually agreed upon examiner are the minority. However, if the law is changed to ***require*** *mutual agreement*, we believe many cases, *will not have mutual agreement* because there is no incentive to do so by either party. For this reason, selection of a mutually agreed upon physician will almost undoubtedly always be selected by the Director. HB 1694 is silent on the ñprocessòof a mutually agreed upon examiner. Specifically, what defines ñinability to reach a mutual agreement,òhow the Director will select an examiner, and the timeframe in which selection will take place. This leaves the injured worker in limbo and the employer must keep paying for benefits that may be unrelated to a work injury.

The provision to require permanent impairment ratings to be separate from treatment IMEs presents an inconvenience to the injured worker and does not correspond to better outcomes. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. IMEs are performed to address various aspects of an injured workerôs injury and recovery such as primary and secondary diagnosis, appropriate treatment, ability to return to work, medical stability, utilization and measurement of the degree of physical impairment. *In many cases, it is important to obtain a baseline impairment rating to later determine the effectiveness of treatment.* It is beneficial for the injured worker to have one physician review the medical records and conduct the physical examination in a comprehensive manner when appropriate. It is also more cost effective if treatment and impairment are addressed by a single examination instead of requiring two. The suggestion that two separate evaluations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits. Requiring prior written consent from the injured worker to allow for an impairment rating during the IME exam will delay the process and add cost.

The bill also limits IMEs to one per case, unless approved by the Director. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Several IMEs may be necessary in some

cases to clarify the diagnosis, establish a baseline, determine whether there has been improvement or deterioration, explain a change in the condition, address subsequent diagnoses, ability to return to gainful employment, medical stability and extent of permanent impairment.

If IMEs are restricted to one exam per case, and are subject to limitation not specified by the Director of the DLIR, we believe this practice will only delay benefits and increase costs that are ultimately borne to all and detrimental to the injured workers recovery and return to work.

We ask that this bill be held.

Thank you for the opportunity to testify.

The Twenty-Ninth Legislature
Regular Session of 2018

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Aaron Ling Johanson, Chair
Rep. Daniel Holt, Vice Chair
State Capitol, Conference Room 309
Tuesday, January 30, 2018; 9:30 a.m.

LATE

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1694
RELATING TO WORKERS' COMPENSATION

The ILWU Local 142 supports H.B. 1694, which allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner; requires the exam to be paid for by the employer, unless the parties are unable to mutually agree on an examiner, in which case DLIR will pay; allows out-of-state physicians to conduct exams upon approval of the Director of DLIR or when employee resides out-of-state; and defines "medical stability."

H.B. 1694 will help to ensure the perception of fairness in the independent medical examination process and move toward the goals of the workers' compensation law as originally intended.

When the workers' compensation law was enacted in Hawaii more than 100 years ago, the premise was simple: If a worker became injured in the course of his or her employment, the injury was presumed compensable and the employer was obligated to provide the worker with medical treatment for the injury and compensation (at least in part) paid by the employer for the worker's lost income. In exchange, the injured worker was prohibited from suing his employer for the work-related injuries. Other laws were also enacted to provide for safe and healthful work environments in order to prevent work injuries from occurring in the first place.

When first enacted and for many years, the law worked fine. However, in recent years, this "grand bargain" began to unravel. Although intended to be a "no-fault" system, workers' compensation became more adversarial as employers began denying workers injured on the job their rightful entitlement to compensation by delaying payment of benefits and challenging presumption.

One of the ways in which the adversarial nature of the system manifested itself is in the so-called "independent" medical examination (IME). This examination is requested by the employer and/or its insurer to determine compensability, to assess medical treatment and progress, and to otherwise determine what benefits, if any, the injured worker should receive under the law. However, because the physician is requested by the employer and paid by the employer, physicians chosen by the employer/insurer to conduct the IME are often suspect in the worker's viewpoint.

To counter this perceived bias, H.B. 1694 proposes that the physician who is to perform an IME be selected by mutual agreement of the employer/insurer and the injured worker. If both parties agree to a physician, fewer questions of bias are likely and the adversarial nature of the process should be

lessened. Independent medical examiners themselves need not rely solely on employers/insurers for continuing selection but rather on their own reputation for neutrality and objectivity. Furthermore, the fee for the IME by a physician chosen by mutual agreement should be no different than if the examiner was chosen solely by the employer/insurer.

The ILWU is pleased that the Committee is considering H.B. 1694, but we do have **one concern**. The methodology as proposed in this bill seems to assume that all injured workers will be represented by attorneys who are knowledgeable about the credentials and track record of physicians performing IMEs and PPD ratings. However, the truth is that many injured workers do not have attorney representation. In fact, the Department has a Facilitator Unit staffed by professionals to assist such injured workers without legal representation. The Unit had been sorely understaffed but recently staffing levels have increased (though not to optimum levels) to permit more injured workers to avail themselves of facilitator services. Nevertheless, the role of the facilitator is to assist workers to understand the law and the workers' compensation system but <u>not</u> to represent them. Claimants must make decisions themselves with often very little knowledge or experience to effectively determine which physician would be acceptable to perform an IME or PPD rating.

We, therefore, propose that the Department be tasked with preparing a list of physicians willing to perform IMEs and PPD ratings. To do this, the Department may send a letter about the IME and PPD rating along with a survey to each physician in Hawaii, explaining the Department's intent to compile a list of prospective IME physicians. The survey could request: medical specialty, duration of medical practice, number of years performing IMEs or PPD ratings, number of IMEs performed, outcome of those IME's (i.e., number in favor or insurer and number in favor or claimant), number of PPD ratings, and any other pertinent information. With this information, an unrepresented injured worker can make an informed decision about which physician is more likely to develop a fair and unbiased report based on the medical examination.

This list will provide valuable information not only for the injured worker but the employer and the Department itself, which, under H.B. 1694, is charged with selecting an IME physician if the employer and the worker are unable to come to a mutual agreement. In addition, if all physicians are solicited to serve as IME physicians, more physicians may surface to express willingness to serve.

Finally, the requirement in H.B. 1694 to prohibit combining the independent medical examination and the permanent impairment rating examination into a single examination is an important one that should not be minimized. The two exams have different purposes—one to assess compensability, medical treatment and progress, and the other to measure the extent of permanent disability. In the latter case, permanent disability can only be determined when the injured worker has reached maximum medical improvement.

The ILWU urges passage of H.B. 1694. We thank you for the opportunity to share our views on this important matter.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Labor& Public Employment
Tuesday, January 30, 2018 at 9:30 A.M.
Conference Room 309, State Capitol

LATE

RE: HOUSE BILL 1694 RELATING TO WORKERS' COMPENSATION

Chair Johanson, Vice Chair Holt, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 1694, which requires, among other things, independent medical examinations and permanent impairment rating examinations for workers' compensation claims to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations; allows for the use of an out-of-state physician under certain conditions; appropriates funds for positions to assist with workers' compensation claims.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber **opposes** this bill for the following reasons.

First, the 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.

Second, the 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.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

Chamber of Commerce HAWAII
The Voice of Business

Third, 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.

The Chamber and the members they represent respectfully request that you defer SB 253. Thank you for the opportunity to submit testimony.

Thank you for the opportunity to testify.

HB-1694
Submitted on: 1/29/2018 7:11:23 AM
Testimony for LAB on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Ferreira		Support	Yes

Comments:

Michael Ferreira

92-7049 Elele St. 46

Kapolei, HI 96707

RE: SB1694

I have been dealing with this sytem for seven years. Previously in another state the process took 18 months including surgery and rehabilitation. I had to have hearings to get a neurologist to examine me then I was approved for back surgery. Sedgewick and their attorney Ken Goya ran my approval out on the surgery and now wont allow to re-approve it. I dont trust the carrier to approve after- care that I will need so I decided to settle and get my surgery on the Mainland. My last surgery in 1995 on a different part of my back was $57,000. The comp carrier in this instance is offering $25,000. there is no negotiation in good faith of the Comp carrier and my hads are tied. I have fallen due to spympton twode; one resulting in a knee surgery and an ankle injury which took me out of work 4 months. I still have not had my back surgery, my attorney tells me the other attorney will not re-approve it and I am stuck in limbo for eternity. This bill will outline reigning in how Doctors are supposed to operate. One of the steps needed to address the shortage of personnel in the Industrial Relations office and the backup of cases that stretch on needlessly.

Michael Ferreira

808-861-7115

I am writing in opposition to HB 1694.

I am a neurologist who performs IME and impairment rating examinations. I was the founder of the first multidisciplinary occupational health center on Maui.

I am a contributing author to the 6th Edition of the Guides to the Evaluation of Permanent Impairment published by the American Medical Association.

I strive to provide objective, thorough, medically supportable assessments. My opinions are independent of the party requesting the evaluation.

An IME may be requested when there is disagreement or uncertainty about issues such as causation, diagnosis or treatment.

Good and caring healthcare providers can have legitimate disagreements about these and other issues.

A thoughtful assessment of medical issues based on the facts of the case and the findings on careful examination of the patient and review of ancillary studies performed by an experienced and knowledgeable physician benefits all involved in the workers' compensation system.

If an examiner is chosen by agreement, there is increased pressure to "please" an additional party.

When there are issues that may be contentious or about which there is disagreement between the insurer and the claimant or treating physician, one of the parties will likely be unhappy with the opinion. However, if I am not truthful, it serves no one well.

This will likely lead to more ordered IME's and a cumbersome process through the Department of Labor and Industrial Relations leading to further delays and adversely affecting the ability of patients to obtain evaluations from the best qualified and most experienced examiners.

Issues of "observers" in the examination process and the recording of evaluations would also have a major negative impact on the ability to perform quality IME's.

Having the examination recorded contributes to a negative and mistrustful climate in which the goal is to provide an objective medical evaluation. This is the antithesis of the environment required when performing a medical assessment.

Poisoning the atmosphere of these evaluations is a sure way to diminish the value of these assessments to the injured worker.

This bill contributes to an adversarial atmosphere that is inappropriate and detracts from a truly objective medical evaluation, and is detrimental to the injured worker. Therefore, injured workers would not have the benefit of their expertise.

Physicians who perform IMEs may feel harassed and intimidated. This will discourage highly qualified medical specialists from participating in performing IMEs. The effect of this bill will be the opposite of what appears to be intended. This bill will not promote the provision of objective, high quality independent medical examinations.

For these reasons, this bill should not be passed.

Respectfully, Lorne Direnfeld MD.

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Honolulu, HI 96819
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Email: info@gcahawaii.org
Website: www.gcahawaii.org

GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

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January 30, 2018

TO: HONORABLE AARON LING JOHANSON, CHAIR HONORABLE DANIEL HOLT, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR

SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
TIME: 9:30 AM
PLACE: Conference Room 309

LATE

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii and it' 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. GCA is **strongly opposed** to H.B. 1694, Relating to Workers' Compensation.

H.B. 1694 would require that a mutually agreed upon physician be chosen by the employer and employee for the independent medical examination and permanent impairment rating examination for worker's compensation claims. GCA is opposed to this bill because it requires the selection of an Independent Medical Examiner (IME) physician by mutual agreement. This will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker. The IME process is the employer's only safeguard against abusive practices by an employee that may be improperly using his or her worker's compensation benefits. The passage of this bill may likely lead to more contested workers' compensation claims because of the added burden placed on the employer to further defend against potentially fraudulent cases.

In 2015 the Hawaii State Legislature passed House Concurrent Resolution 168, which requested the State Department of Labor and Industrial Relations to convene working group to streamline the state's workers' compensation process. HCR 168 indicated that "injured claimants have experienced considerable delays in the processing of their workers' compensation claims." Upon identifying areas that may cause delays in the process the working group identified areas that needed improvement within the department that could have been contributing to the delays and also talked with insurance providers about how to ensure faster responses. Members of the

working group included physicians, attorneys, insurers, employers, government and others. The working group met for over one year to discuss various issues and come to suggested changes to the workers' compensation system – identifying key areas that required attention including, reporting and claim filing, claim adjusting, dispute resolutions and hearings process, bill dispute and physician dispensed medicines and vocational rehab. The topic of the independent medical examination was a topic of discussion, however it was never a recommendation of the working group as a whole to change how an IME doctor was selected. The working group provided an opportunity to discuss these very important issues outside of the legislative schedule and the recommendations did not reflect what this bill is proposing.

The proposed mutually agreed upon IME doctor proposed in H.B. 1694 was not identified by the working group as a viable solution to improve the workers compensation process or the well-being of the injured worker, which should be the main focus in any workers compensation claim. **GCA opposes H.B. 1694 and respectfully requests that this Committee hold the measure.**

Alan Shintani INC.
GENERAL CONTRACTOR ABC 13068

LATE

Via E-mail: LABTestimony@capitol.hawaii.gov
Via Fax (808) 586-9476

January 30, 2018

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SUBJECT: **STRONG OPPOSITION TO H.B. 1694, RELATING TO WORKERS' COMPENSATION.** Allows employer and employee to mutually agree to an independent medical examiner or permanent impairment rating examiner. An out-of-state physician may conduct the examination upon approval by the Director of Labor and Industrial Relations (Director) or when an employee resides out-of-state. Without the parties' mutual agreement, the Director shall appoint the physician who shall be paid from funds appropriated by the Legislature. Defines "medical stability."

HEARING
DATE: Tuesday, January 30, 2018
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PLACE: Conference Room 309

Dear Chair Johanson, Vice Chair Holt and Members of the Committee,

Established in 1984, ASI is a licensed general construction company offering a range of general contractor services and construction management for homes, commercial buildings and government projects (Federal and local Hawaii government). Those services include: general contracting and pre-construction services; Historical, residential, government; Design Build; Commercial Industrial

We are comprised of approximately 70 staff: Of these, half are non-bargaining Office staff: Project Management/Engineers/Administrative Assistants, Accounting and HR staff. Trades people are Union (Carpenters, Laborers, Masons).

Alan Shintani, Inc., is **opposed to H.B. 1694, Relating to Workers' Compensation,** which would require the employer to "appoint a qualified physician mutually agreed upon by the parties and paid for by the employer." We believe that the current procedure in place provides for sound safeguards to allow an injured worker to choose their treatment doctor upon being injured in a work related injury and it is only when there is a question of an injured workers continuing treatment does a medical examination by an employer's physician pursuant to Section 386-79, HRS s brought into the process.

Further, under the current system employees have the right to seek their own medical opinion if they disagree and take action in an appeal process if they are unsatisfied with the outcome. This bill would result in increased workers compensation cost to businesses both small and large without any expedition of the injured workers recovery and return to work. The existing law provides employers

the ability to get a second medical opinion independent of the treating physician with regards to questionable workers compensation claims.

Overall, the bill is fundamentally unfair. If the employer has reason to question the treating physicians proposed course of action, the employer's only tool to objectively evaluate the

treating physician's plan of action is the employer requested examination. Also, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates.

The current law is effective in building trust and reducing confrontation in the program for both employers and employees. For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Jennifer Shintani

LATE

HB-1694
Submitted on: 1/29/2018 10:58:03 AM
Testimony for LAB on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melinda Buck		Support	Yes

Comments:

I have witnessed multiple of denial request of seeing an independent medical provider. Finally on year three after many hearings access was allowed to see a private independent medical providers who would do a complete medical examination. This medical provider provided a clear and accurate detailed non-biased examination. Clearly showing cause of injury which workers comp tried to deny and disregard. The workers comp lawyer going as far as Googling medical injuries and medications stepping out of his scope of practice by diagnosing for his personal agenda.

I have also witness this creating a physical, emotional and financial hardship for unpaid medical bills and lack of proper Medical Care. Creating a financial burden in which the patient files for bankruptcy due to lack of timely manner a medical care treatment and financial burden.

Thank you,

Melinda Buck

LATE

HB-1694
Submitted on: 1/29/2018 11:37:04 PM
Testimony for LAB on 1/30/2018 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	AHCS	Support	No

Comments:

LATE

LATE

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Chair Rep. Aaron Johanson
Vice Chair, Daniel Holt

Aloha Chairman Johanson and fellow Committee members,

I am speaking in support of HB 1694. My name is Justin Hughey, I am speaking as an individual, a teacher at King Kamehameha III School. I have been a teacher for 11 years.

Problem: Department of Education is not paying for workman's comp services in accordance with the law.

The Board of Education has policies E-500 and E-900 that state the DOE needs to follow all state laws. The workman's comp law states that they need to pay for therapy within 60 days or give a disagreement. From my experiences, there is a pattern in practice of not paying or giving a disagreement, and the problem is systemic.

I was injured on the job in August 2016, bulging disc. When this happened the pain was extremely severe and the process was agonizing. Unbeknown to to me I was denied services at Wailea Medical and Wailuku Maui Medical. I was in so much pain that I found myself in the emergency room. Finally I was offered services by a chiropractor.

Every therapist I have talked to has nothing positive to say about working with the Department of Education. It is so bad multiple therapists feel the DOE makes it as difficult as possible so therapists don't want to take on any workman's comp cases.

I was offered physical therapy from Therapeutic Associates in December 2016, January, February and March of 2017. I informed them they were not being paid and once they found out they were not receiving payment after 120 days, they canceled my therapy. I didn't take it personal, I would too.

Chiropractor Rick Anderson has informed me several times that the pay is not coming in within the 60 day timeline. The one I was shocked by was for his acupuncture therapist who saw me between 11/12/16 to 5/11/17 and, last time in inquired over a year later, not one dime of the 2,213.40 had been received.

Currently Physical Therapy Wellness Center has billed the Department of Education for treatment and they have gone over the 60 day timeline for receiving payment.

Treatment plans are rendered every 30 days. They are suppose to show progress, less therapy over time and a guess as to when you will be able to be good enough to go back to work. If the DOE refuses to pay businesses can file a financial dispute claim with the Department of Labor, I talked to them and they informed me it takes about 3 months to resolve a lack of payment issue. Actions speak louder than words. I feel the DOE knows they can not pay services and thus end treatment earlier than expected. Since this happened to

all my therapists and since the DOE saved money doing so, it feels like there is obvious intent by the department.

Last spring I had a lot of conversations with therapists that I may never be able to teach again. I was informed I could be on permanent disability. I have serious concerns about the ethics of not paying for therapy to save money. My life, my future was at risk from the Department of Education was not paying their bills on time. I don't know about you, but I can't get away with not paying my bills in a timely manner. This is gross negligence and it has life changing consequences.

Respectfully,,
Justin Hughey
Third Grade Special Education Teacher
King Kamehameha III Elementary School