

LINDA LINGLE  
GOVERNOR OF HAWAII



MARIE C. LADERTA  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

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

March 31, 2009

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on Thursday, April 2, 2009  
3:00 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 62, S.D. 1. H.D. 1  
Relating to Workers' Compensation**

TO CHAIR MARCUS R. OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 62, S.D. 1, H.D. 1, is to amend Section 386-79 (a), Hawaii Revised Statutes, to require that independent medical examinations and permanent impairment rating examinations be performed by mutually agreed upon physicians. **The Department of Human Resources Development is strongly opposed to this bill and requests that it be held.**

An independent medical examination conducted by a physician of the employer's/insurance carrier's choice is the only tool that is available to the employer to address the statutory presumption, excessive treatment, and reasonableness of a surgical procedure. Amending the statute in this fashion would deprive the employer of a very fundamental right to discovery.

This bill is unnecessary as safeguards already exist in the statute. The injured employee receives a copy of the report and is afforded the opportunity to rebut it or correct any misinformation. This report is also sent to the injured employee's attending physician who is invited to comment on it.

As written, the bill makes no allowances for evaluations to be performed by physicians whose specialties are not available in the State. It isn't clear how the employer would proceed under those circumstances. It also requires that the mutually agreed-upon physician examine the employee within forty-five calendar days of selection or appointment. This appears to be unrealistic given that the employer often has to wait 90 days or more for an available appointment.

Lastly, the definition of medical stability in the bill is inconsistent with the definition in Section 12-10-1, of the Administrative Rules. The rule refers to curative care, passage of time OR when an employee refuses to undergo diagnostic tests or treatment. This would lead to the usage of different standards when determining medical stability for different purposes.

The employer does not believe that these amendments will serve to reduce the adversarial nature of certain disputes and will likely result in higher costs due to more claims being fully litigated. This would not be prudent given the State's current fiscal difficulties.



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

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Phone: (808) 586-8842 / Fax: (808) 586-9099  
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April 2, 2009

To: The Honorable Marcus R. Oshiro, Chair  
and Members of the House Committee on Finance

Date: April 2, 2009

Time: 3:00 p.m.

Place: Conference Room 308, State Capitol

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

**Testimony in OPPOSITION**

to

**S.B. 62 SD 1 HD 1— Relating to Workers' Compensation**

**I. OVERVIEW OF CURRENT PROPOSED LEGISLATION**

Senate Bill 62 SD 1 HD 1 proposes to require that independent medical examinations (“IMEs”) and permanent impairment rating examinations be subject to the following:

1. The IME and permanent impairment rating examination physician be selected by mutual agreement between the employer and employee; and
2. If no agreement can be reached, then to have the Department of Labor and Industrial Relations (“Department”) appoint a qualified physician licensed in the relevant medical specialty and willing to conduct the examination within 30 calendar days of the request

**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, their rights to benefits will be suspended for the period during which the refusal or obstruction continues.

### III. SENATE BILL

The Department understands the intent of this bill is to provide an assurance of impartiality in the IME and rating examination process. However, the Department opposes this bill for the following reasons:

1. On July 8, 2008 Governor Linda Lingle vetoed HB2929 which is substantively very similar to this measure, for some of the reasons set forth below.
2. The IME process is an important part of the employers' discovery process to ensure proper treatment and that the costs they incur are justified. The employer will request an IME only when they have questions or concerns relating to the claimant's injury, or the propriety of attending physician's treatments. Requiring that the IME be chosen from a list provided by the director, if there is no mutual agreement, deprives the employers to choose their own expert witness.

The employer and insurance carrier pays for 100% of the cost of the IME and should be afforded the choice of the IME physician. The role of an IME physician is to evaluate the injury and/or treatment.

3. There are already safeguards in place for IMEs. Hawaii's workers' compensation law **requires full disclosure** of the IME report to the injured employee. This allows the treating physician, or the injured worker, to challenge the evaluation. The Department makes its decisions based upon the evidence provided by the opposing parties.
4. Proponents of this legislation believe that this change may decrease the adversarial nature that arises during disputes and eliminate the impression of bias in the IME. However, the Department is not convinced that this would decrease the adversarial nature of the IME and rating process, as there will always be situations in which claimants and employers will disagree. The IME process is the only vehicle available to the employer to support their position when challenging the injured worker's claim or the propriety of the attending physician's treatment.
5. The Department has concerns that this measure would be a detriment to the employee receiving good medical advice. There may not be an adequate number of physicians willing to have their names placed on the list due to the time constraints imposed on the doctors to respond and perform the

examinations

6. The Department is concerned that this bill proposes that if an employee “unreasonably” refuses to submit to or obstructs an examination; the employee’s right to compensation shall be suspended. The bill gives no definition of what is considered “unreasonably.”

The Department has concerns with having a permanent impairment rating conducted only when the **attending physician** determines the employee to be medically stable, and proposes a new definition of medical stability for the purposes of only this section. First, in some cases, treatment may go on indefinitely before the attending physician believes the employee’s condition has stabilized. This will severely limit the employer’s right to have a permanent impairment rating done to resolve the case expeditiously, if they have evidence from that the injured employee’s condition may be stable. Secondly, this proposal defines “medical stability” to mean that the employee’s medical condition is static and well stabilized. It is not clear what time period would equate to “well stabilized”. Medical stability is defined in Chapter 386 Administrative Rules, section 12-10-1 to mean “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”.

7. The Department also has concerns that additional funding for a position will be required to build and maintain a list of IME and rating physicians who would be willing to conduct these examinations and to coordinate with the employer the appropriate physician to conduct the IME. The Department would require at least one clerical position costing \$28,000 to implement this proposal.
8. The Department would like to note that the current process for selection and payment of an independent medical examiner has worked well for many years and correctly recognizes that employers, who bear the burden of paying workers’ compensation benefits, should be responsible for the medical examination that assesses the employee’s recovery progress.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 10<sup>TH</sup> FLOOR  
HONOLULU, HAWAII 96813

MUFI HANNEMANN  
MAYOR



KENNETH Y. NAKAMATSU  
DIRECTOR

April 2, 2009

The Honorable Marcus R. Oshiro, Chair  
and Members of the Committee on Finance  
State House of Representatives  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

RE: SENATE BILL NO. 62, SD1, HD1 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes Senate Bill No. 62, SD1, HD1 repealing Section 386-79 of the Hawaii Workers' Compensation Law and adding a new section entitled, **Medical examinations; selection of physicians**. This bill requires independent medical examinations and permanent impairment rating examinations to be performed by mutually agreed upon physicians. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are claims where this cannot be avoided. The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an opinion from a physician or specialist when questions arise concerning the progress of a claim. This bill greatly limits an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or if both parties cannot reach a consensus, physicians assigned by the Department of Labor and Industrial Relations.

Hawaii's Workers' Compensation Law weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are often resolved in favor of the claimant. The employer currently has the right to select an independent medical examiner to review a claimant's current medical progress. To change this as proposed is unfair and inequitable to employers. The DCD and LAB already provide the necessary checks and balances to ensure that employees are treated fairly, including limiting ordered medical examinations to one per case, while allowing employers to exercise their rights to review the progress of claims using independent medical examiners.

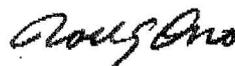
The Honorable Marcus R. Oshiro, Chair  
April 2, 2009  
Page 2

The 1995 Legislature enacted major reforms to the Hawaii Workers' Compensation Law resulting in hundreds of millions of dollars being saved over the last 12 years. The magnitude of the savings can be assessed using data from the State's Department of Labor and Industrial Relations Workers' Compensation Data Book, published annually (see Attachment I). In short, statewide workers' compensation costs 3 years prior to the reform averaged \$331 million annually. Workers' compensation costs for the 12 years immediately following the reform averaged \$253 million annually; a \$78 million annual savings. Put in the proper perspective, over the last 12 years the State of Hawaii saved \$936 million in workers' compensation costs as a result of the 1995 Legislative changes.

The Twenty-fifth Legislature's proposed changes to the Hawaii Workers' Compensation Law will inevitably increase the cost of workers' compensation in the State of Hawaii back to former high levels. In times of economic turmoil requiring fiscal austerity and innovative solutions, we do not believe this change is in the best interest of the people of our State and that it will further add to the already critical financial crises.

We respectfully urge your committee to file Senate Bill No. 62, SD1, HD1. The Hawaii Workers' Compensation Law already weighs heavily in favor of the claimant and the changes proposed by this bill further erode an employer's ability to efficiently and effectively manage claims.

Sincerely,

  
for KEN Y. NAKAMATSU  
Director of Human Resources

Attachment

STATEWIDE WORKERS' COMPENSATION COSTS BY TYPE OF PAYMENT

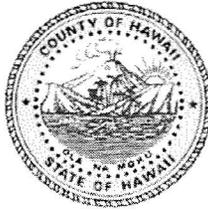
Type of Payment	2000	2001	2002	2003	2004	2005	2006	2007	Type
TTD	55,312,588	62,586,914	65,056,903	67,654,807	63,706,668	59,067,148	54,967,864	56,919,048	TTD
TPD	2,651,756	3,043,394	2,900,452	3,241,339	3,184,548	3,109,906	2,625,563	2,705,692	TPD
PTD	15,507,928	15,118,576	18,395,265	17,626,114	18,093,822	15,955,797	18,599,904	16,765,532	PTD
PPD	57,260,955	57,875,459	65,159,217	68,803,178	69,515,306	66,399,667	64,195,980	63,054,843	PPD
Death	1,962,684	2,735,802	2,360,809	2,325,041	2,148,014	2,010,782	2,182,528	3,052,391	Death
Disfigurement	1,309,482	1,357,202	1,562,803	1,625,475	1,524,271	1,314,094	1,480,269	1,263,750	Disf
Voc Rehab	5,629,397	5,802,764	6,325,020	6,432,282	6,114,837	5,063,253	4,868,366	4,561,823	VR
Medical	91,184,757	103,303,676	105,926,606	106,912,209	106,766,183	97,638,645	93,394,364	98,513,146	Med
Attendant Services	539,633	217,365	140,180	301,787	236,375	219,851	370,655	457,629	AS
Total	231,359,180	252,041,152	267,827,255	274,922,232	271,290,024	250,779,143	242,685,493	247,293,854	Total

Workers' Compensation Reform began July 1, 1995. Major changes were Medical Fee Schedule (Medicare plus 10%), treatment limits, second injury limits on PPD and part-time workers.

Type of Payment	1992	1993	1994	1995	1996	1997	1998	1999	Type
TTD	75,124,541	83,443,021	80,281,234	70,875,583	61,054,623	57,366,809	53,356,078	51,550,709	TTD
TPD	2,335,548	2,769,212	3,072,057	2,774,293	2,829,674	2,825,736	2,878,552	2,743,336	TPD
PTD	13,600,845	11,232,499	19,763,997	15,497,510	17,618,587	16,716,542	15,714,253	15,830,200	PTD
PPD	69,506,346	76,270,234	81,865,987	95,125,484	93,619,941	72,453,667	64,909,092	57,124,045	PPD
Death	2,765,124	2,392,562	2,632,183	2,789,579	2,814,023	2,899,119	2,238,102	2,395,396	Death
Disfigurement	1,763,162	1,869,215	1,681,428	1,759,164	1,942,172	1,808,428	1,384,551	1,341,929	Disf
Voc Rehab	6,639,072	7,866,683	7,892,705	7,871,615	6,574,004	6,179,012	5,534,403	5,359,001	VR
Medical	115,960,185	137,740,829	145,500,111	129,125,665	101,664,903	94,424,669	87,019,208	85,513,448	Med
Attendant Services	307,956	178,355	390,071	303,969	376,739	241,389	190,286	198,250	AS
Total	288,002,779	323,762,610	343,079,773	326,122,862	288,494,666	254,915,371	233,224,525	222,056,314	Total

Source: Workers' Compensation Data Book, State of Hawaii, Department of Industrial Relations, Research and Statistics Office (1992 - 2007)

William P. Kenoi  
Mayor



Michael R. Ben, SPHR  
Director of Human Resources

Ronald K. Takahashi  
Deputy Director of Human Resources

## County of Hawai'i Department of Human Resources

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TTY (808) 961-8619 \* e-mail: [cohrcs@co.hawaii.hi.us](mailto:cohrcs@co.hawaii.hi.us) \* Jobs Information: Job Hotline (808) 961-8618 e-mail: [jobs@co.hawaii.hi](mailto:jobs@co.hawaii.hi)

April 2, 2009

The Honorable Marcus R. Oshiro, Chair  
And Members of the House Committee on Finance  
House of Representatives  
State Capitol  
Honolulu, Hawai'i 96813

Dear Chairman Oshiro and Members of the Committee:

### **Re: SB 62 SD 1 HD 1 Relating to Workers' Compensation**

I am Michael R. Ben, the Director of Human Resources of the County of Hawai'i. I am testifying in opposition to SB 62 SD 1 HD 1.

SB 62 SD 1 HD 1 proposes to amend § 386-79(a), HRS by requiring that independent medical examinations and permanent impairment rating examinations be performed by physicians mutually agreed to between the employer and the injured employee. This is a change from the current provisions which allow the employer (or the employer's insurance company) to select the physician who is to perform the independent medical examination.

As the statutes already provide:

1. a statutory presumption of injury;
2. that the injured employee receive a copy of the independent medical examiner's report;
3. that the injured employee be afforded the opportunity to refute or correct any misinformation contained in the report; and,
4. that the report be sent to the injured employee's physician, who is then invited, and given the opportunity to comment on it,

we believe SB 62 SD 1 HD 1 is not needed.

Further, the bill as written may effectively prevent evaluations by physicians whose specialties are unavailable in the State. The bill is seriously lacking in clearly describing how the employer is to proceed in a matter such as this.

*Hawai'i County is an Equal Opportunity Provider and Employer.*

The Honorable Marcus R. Oshiro, Chair  
And the Members of the House Committee on Finance  
April 2, 2009  
Page 2 of 2

The bill also unrealistically requires that the independent medical examination be conducted within forty-five calendar days of the selection or appointment of the physician. We have had experiences where physicians were unable to see our injured employees as long as ninety days or more days from the time the physician was asked to do so.

As a last point, the definition of "stability" in this bill appears to be inconsistent with the definition of medical stabilization in Section 12-10-1 of the Administrative Rules. We believe the rules provides a better definition as it refers to curative care, passage of time or when an employee refuses to undergo diagnostic tests or treatment to aide in employee's recovery.

Considering the comments we've offered, we do not believe that the SB 62 SD 2 HD 1 will achieve its intended purpose, and would result in higher costs attributable to more claim litigation resulting there from.

We ask that the bill be tabled.

Sincerely,

A handwritten signature in cursive script that reads "Michael R. Ben".

Michael R. Ben, SPHR  
Director of Human Resources



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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*Deputy Executive Director*  
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The Twenty-Fifth Legislature, State of Hawaii  
 Hawaii State House of Representatives  
 Committee on Finance

Testimony by  
 Hawaii Government Employees Association  
 April 2, 2009

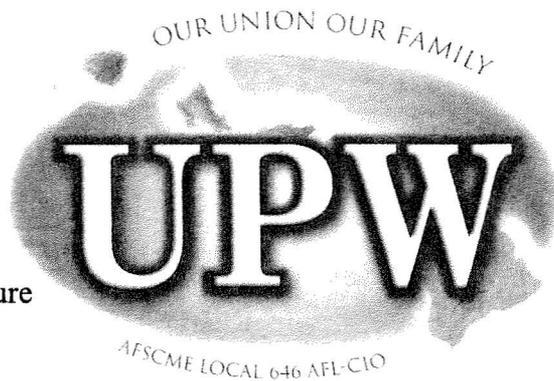
S.B. 62, S.D. 1, H.D. 1 – RELATING  
 TO WORKERS’ COMPENSATION

The Hawaii Government Employees Association supports the purpose and intent of S.B. 62, S.D. 1, H.D. 1. We believe that employees injured on the job deserve to be evaluated by an impartial physician selected with their agreement. As drafted, the bill provides a reasonable alternative to selection of an impartial physician in the event no mutual agreement is reached; and, further, identifies fair timelines for scheduling the examinations.

Thank you for the opportunity to testify in support of S.B. 62, S.D. 1, H.D. 1.

Respectfully submitted,

Nora A. Nomura  
 Deputy Executive Director



House of Representatives  
The Twenty-Fifth Legislature  
Regular Session of 2009

Committee on Finance

Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

DATE: Thursday, April 2, 2009  
TIME: 3:00 p.m.  
PLACE: Conference Room 308

**TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL 646, AFL-CIO, ON SENATE BILL 62, SD1, HD1, RELATING TO WORKERS' COMPENSATION**

My name is Dayton Nakanelu, state director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW currently represents approximately 13,000 members in both the public and private sectors. SB 62, SD1, HD1, requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

**The UPW strongly supports this measure.** The intent of our workers' compensation law is to provide the necessary and proper medical treatment to injured workers so they can return to work as wholly and quickly as possible. The proper medical treatment often depends upon the "independent medical examination (IME). Under current law, an employer's insurance company selects the physician to perform the IME. One should not assume that physicians, some whose entire practice and income derives from IMEs paid by insurers, are totally impartial and free from bias toward insurers. SB 62 levels the playing field and restores faith in the system by requiring examinations by mutual consent between the employer and employee.

We urge this measure's passage.

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**HAWAII** - 362 East Lanikaula Street ♦ Hilo, Hawaii 96720-4336 ♦ Phone: (808) 961-3424  
**KAUAI** - 4211 Rice Street ♦ Lihue, Hawaii 96766-1325 ♦ Phone: (808) 245-2412  
**MAUI** - 841 Kolu Street ♦ Wailuku, Hawaii 96793-1436 ♦ Phone: (808) 244-0815  
1-866-454-4166 (Toll Free, Molokai/Lanai only)



Randy Perreira  
President

# HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441

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

Testimony by  
Hawaii State AFL-CIO  
April 2, 2009

## S.B. 62 SD1, HD1 – RELATING TO WORKERS' COMPENSATION

The Hawaii State AFL-CIO strongly supports S.B. 62 SD1, HD1 which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

The purpose of this bill is to reduce workers' compensation costs and speed up an employee's ability to return to work by selecting outside non-treating doctors 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 decision as to who the doctors will be, resulting in a lack of trust when the medical reports are generated. In fact, there are doctors who are paid large sums of money each year by insurance companies to perform such medical examinations, which can lead one to question the possibility of bias in the medical reports. As a result, unnecessary hearings are conducted, resulting in various delays causing higher costs for both the employers and insurance companies.

Most notably, S.B. 62 SD1, HD1 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. This would ensure that a biased physician who may be on the payroll of the insurer is not selected.

Thank you for the opportunity to testify in support of S.B. 62 SD1, HD1.

Respectfully submitted,

Randy Perreira  
President

THE HOUSE OF REPRESENTATIVES  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE

Rep. Marcus Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Date: Tuesday, April 2, 2009

Time: 3:00 p.m.

Place: Conference Room 308, State Capitol

TESTIMONY OF ILWU LOCAL 142

RE: SB 62, SD 1, HD 1, RELATING TO WORKERS' COMPENSATION

Thank you for the opportunity to present testimony regarding SB 62, SD 1, HD 1.

The bill amends Section 386-79 HRS to require the mutual selection of examining physicians to conduct permanent impairment ratings for injured workers once they have attained medical stability. It also prohibits conducting both an independent medical examination under Section 386-79 HRS and a permanent impairment rating simultaneously without the consent of the injured worker.

HB SB 62, SD 1, HD 1 is necessary to preserve the integrity of the permanent impairment rating process. Historically, the Disability Compensation Division has required mutual consent between the injured worker and the employer or insurer to insure that the physician examiner was impartial. Physicians jointly selected recognized that they were being hired to conduct objective assessment of permanent impairment, although their examinations were paid for by the insurance carrier, and it served to offset the enormous economic advantage insurers had in adjudication compared to individual employees.

In recent years, however, insurers have often bypassed the need for separate assessments of questions about medical treatment or basic coverage by combining independent medical examinations and permanent impairment ratings. Permanent impairment ratings were conducted with independent medical examinations even though an injured worker was still receiving curative medical treatment and had not reached medical stability. The insurer would compel attendance at independent medical examinations upon the threat of suspending compensation, and then ask questions not only about medical care and coverage, but would encourage the examining physician to predict in advance whether there would be permanent impairment, irrespective of whether the injured worker had attained medical stability.

Sometimes insurers would encourage a finding that an injured worker had no permanent impairment to try to subvert the employee's right to vocational rehabilitation, since a finding that an injured worker has, or may have, a permanent impairment is a necessary condition for receiving vocational rehabilitation under Section 386-25(b) HRS. SB 62, SD 1, HD 1 seeks to

end these kinds of abuses and to restore neutrality and objectivity to permanent impairment ratings. The measure will not require any added costs to administer but it will encourage the kind of balance and fairness that should always characterize workers' compensation adjudication.

Some employers and insurance carriers have suggested that the current bill will increase costs, but this concern is misplaced. In the current system, physicians who perform evaluations are almost always paid by the insurers and employers, and thus, they have a natural incentive to prepare reports that will conform to the interest of their clients so that they will be referred future business. Not all evaluators succumb to this inclination and a few have remained overwhelmingly objective in the face of contrary economic pressures. But sufficient numbers of evaluators have become compromised so that the system of evaluation has itself become tainted and skewed.

When legitimate claims are denied or bonafide impairment is ignored or rationalized away, most injured workers will simply redouble their efforts to find their own experts and to continue to litigate their claims. If the incentive to secure additional evaluations in the future rested with those physicians who sought real objectivity because that created the greatest likelihood of future selections in a joint, mutual agreement process, both parties and general public would benefit by receiving more authentic and unbiased expert opinions. Such opinions would provide a more realistic basis for compromising and settling disputed claims, would result in less litigation over compensability, and lead to a more rapid resolution of claims and more prompt delivery of care, thus minimizing the length of disability. All of these factors would reduce rather than increase costs.

No one disputes that that employers and insurers have obtained the financial relief they have long sought in recent years. In our view, this relief should not be acquired at the expense of injured workers and by reallocating premium dollars and investment income away from the injured to the insured and the insurers. By the adoption of SB 62, SD 1, HD 1, Employer relief can be sustained, while enhancing the equity and efficiency of our current system and more promptly awarding just compensation and necessary medical and rehabilitative care. This is a result that should we welcomed universally, and we therefore urge adoption of this sensible and constructive bill.



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

HOUSE OF REPRESENTATIVE  
THE TWENTY-FIFTH LEGISLATURE  
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE

Representative Marcus R. Oshiro, Chairman  
Representative Marilyn B. Lee, Vice Chairperson

Representative Henry J.C. Aquino  
Representative Karen Leinani Awana  
Representative Tom Brower  
Representative Isaac W. Choy  
Representative Denny Coffman  
Representative Sharon E. Har  
Representative Gilbert S.C. Keith-Agaran  
Representative Chris Lee

Representative Scott Y. Nishimoto  
Representative Roland D. Sagum, III  
Representative James Kunane Tokioka  
Representative Jessica Wooley  
Representative Kyle T. Yamashita  
Representative Kymberly Marcos Pine  
Representative Gene Ward

NOTICE OF HEARING

DATE: Thursday, April 2, 2009  
TIME: 3:00 p.m.  
PLACE: Conference Room #308  
State Capitol  
415 South Beretania Street

SB 62 SD1 HD1  
(HSCR988)

RELATING TO WORKERS' COMPENSATION.  
Requires independent medical examinations and permanent  
impairment rating examinations to be performed by physicians  
mutually agreed upon by employers and employees or appointed  
by the director of labor and industrial relations

LAB,FIN



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

April 2, 2009

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

SB 62 SD1 HD1 requires independent medical examination to be performed by mutually agreed physician.

The Hawaii Injured Workers Alliance strongly supports this measure.

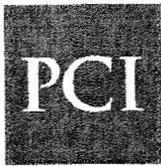
The purpose of this bill is to reduce workers' compensation costs and speed up their ability to return to work by selecting outside non-treating doctors who is mutually agreed upon.

HIWA believes that mutual agreement of an IME physician between the employer and the employee is the fairest way to insure impartial evaluation is conducted. Disability and impairment ratings must be done in the most impartial manner by truly independent examiner.

The passage of the mutually agreed IME bill (SB 62 SD1HD1) will benefit both the injured workers and their employers.

Your passage of this bill would be greatly appreciated.

George M. Waialeale  
Executive Director  
Hawaii Injured Workers Alliance  
383-0436



Property Casualty Insurers  
Association of America

Shaping the Future of American Insurance

1415 L Street, Suite 670, Sacramento, CA 95814-3972

To: The Honorable Marcus R. Oshiro, Chair  
House Finance Committee

From: Samuel Sorich, Vice President

Re: **SB 62 HD1– Relating to Workers’ Compensation**  
**PCI Position: OPPOSE**

Date: Thursday, April 2, 2009 (Agenda #2)  
3:00 p.m., Conference Room 308

Aloha Chair Oshiro and Members of the Committee:

The Property Casualty Insurers Association of American (PCI) is opposed SB 62 HD1 because the bill is unnecessary and unfair and would result in administrative delays.

SB 62 HD1 would establish a new, complex system for obtaining independent medical examinations. Instead of the simple existing system that allows an employer to obtain an independent medical examination, SB 62 HD1 would require the employer and the employee to reach a mutual agreement on the physician who conducts the examination. If mutual agreement is not reached, the director of the department of labor and industry would have to appoint a physician, who may or may not be willing to undertake the examination. The purported reason for the bill is to provide safeguards for injured employees, but existing law already provides strong safeguards. The report of the independent medical examination must be given to the employee. The employee has the right to challenge the report and to offer evidence that disputes the report's findings.

The independent medical review gives the employer valuable information to evaluate the employee's condition. The employer pays for the examination. SB 62 HD1 would unfairly force employers to pay for examinations that may not allow employers to discover information that enables them to make a reasoned evaluation of the employee's condition and treatment.

Existing law allows independent examinations to be undertaken quickly. In contrast, examinations under SB 62 HD1 would be stalled by built-in delays in

the bill. The employer would have to first try to reach a mutual agreement. If that does not work, the employer would have to petition the director for the appointment of a physician. The appointment physician would have seven days to decide whether to take the case. If the physician decides not to take the case, the director restarts the process. Once a physician decides to take the case, the examination is supposed to take place within 45 days. No doubt, that is optimistic. All this means that examinations would be burdened by administrative delays.

PCI requests that the Committee vote No on the SB 62 HD1.



Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair  
Committee on Finance

HEARING      Thursday, April 02, 2009  
                    3:00 pm  
                    Conference Room 309  
                    State Capitol, Honolulu, Hawaii 96813

**RE:    SB62, SD1, HD1, Relating to Workers' Compensation**

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is the one of the largest single employers in the state, employing 20% of the labor force.

**RMH opposes SB62, SD1, HD1**, which requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations.

We do not dispute that an injured worker should receive quality and appropriate medical care as long as required. From the employer's position, the IME process is a vital mechanism to ensure proper treatment for the injured employee and costs of the treatment incurred are justified. As a safeguard, the existing statute requires full disclosure to the injured worker of the IME report, which affords the treating physician and the injured employee the opportunity to challenge the evaluation.

Considering that the employer ultimately bears the entire cost of the IME, the choice of the IME justifiably should be the employer's.

The members of the Retail Merchants of Hawaii respectfully request that you hold SB62, SD1, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President



**Testimony to the House Committee on Finance  
Thursday, April 2, 2009; 3:00 p.m.  
Conference Room 308  
State Capitol  
Agenda #2**

**RE: SENATE BILL 62 SD1, HD1 RELATING TO WORKERS' COMPENSATION**

Chair Oshiro, Vice Chair Lee and Members of the Committee:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber strongly opposes SB 62 SD1, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 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 its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

The Chamber has carefully reviewed the issues involving the IME process and continues to explore how to improve the process for the injured workers and employers. Although we understand the intent of the bill, the Chamber does not support this bill for the following reasons:

- 1) The IME process is an essential part of the employers' discovery process to ensure proper treatment and to justify incurred costs. Taking away the employers' right to choose an IME is analogous to taking away the right of workers compensation claimants to choose their treating physicians. The right for an employer to select the physician of its choice to review claims has not been abused and should not be taken away.
- 2) Proponents of this legislation argue that this change will decrease the adversarial atmosphere that arises in a limited number of claims. However, the vast majority of claims – even those involving IMEs - are conducted without dispute. There is no cause to deny employers their right to select an IME.

- 3) Safeguards already exist to prevent IME abuse. Hawaii's workers' compensation law requires full disclosure of the IME report to the injured employee and opportunity to respond to the report's contents.

In summary, we believe the current system regarding independent medical examinations is working and that most IMEs occur by mutual agreement absent any statute. Furthermore, this measure heavily tips the system in favor of one party, inviting abuse by claimants and their representatives. Therefore, it is inherently unfair and destabilizing to impose this type of legislation on business, especially small companies during this tough economic period.

For these reasons, the Chamber strongly opposes SB 62 SD1 HD1 and respectfully requests that the committee holds this measure.

Thank you very much for the opportunity to testify.

## GOODSILL ANDERSON QUINN &amp; STIFEL

A LIMITED LIABILITY LAW PARTNERSHIP LLP

GOVERNMENT RELATIONS TEAM:  
GARY M. SLOVIN  
CHRISTOPHER G. PABLO  
ANNE T. HORIUCHI  
MIHOKO E. ITO

ALII PLACE, SUITE 1800 • 1099 ALAKEA STREET  
HONOLULU, HAWAII 96813

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ahoriuchi@goodsill.com  
meito@goodsill.com

**MEMORANDUM**

**TO:** Representative Marcus R. Oshiro  
Chair, Committee on Finance  
Via Facsimile – 586-6001

**FROM:** Anne T. Horiuchi

**DATE:** April 1, 2009

**RE:** **S.B. 62, SD1, HD1 - Relating to Workers' Compensation**  
**Hearing: Thursday, April 2, 2009 at 3:00 p.m. in Room 308; Agenda #2**

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Dear Chair Oshiro and Members of the Committee on Finance:

I am Anne Horiuchi, testifying on behalf of the American Insurance Association (AIA). AIA represents approximately 350 major insurance companies that provide all lines of property and casualty insurance and write more than \$123 billion annually in premiums. AIA members supply 23 percent of the property/casualty insurance sold in Hawaii. The association is headquartered in Washington, D.C. and has representatives in every state. All AIA news releases are available at [www.aiadc.org](http://www.aiadc.org).

S.B. 62, SD1, HD1 requires independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the Director of Labor and Industrial Relations.

AIA opposes S.B. 62, SD1, HD1. AIA believes that the current system regarding independent medical examinations is well-established, and we believe that it is working. AIA is also concerned that requiring the selection of an IME physician by mutual agreement may delay the delivery of medical treatment in certain cases, and may also increase costs. AIA opposes S.B. 62, SD1, HD1, and respectfully requests that it be held.

Thank you very much for the opportunity to submit testimony on this measure.



Pauahi Tower, Suite 2010  
1003 Bishop Street  
Honolulu, Hawaii 96813  
Telephone (808) 525-5877  
Facsimile (808) 525-5879

**Alison Powers**  
Executive Director

## TESTIMONY OF ALISON POWERS

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HOUSE COMMITTEE ON FINANCE  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

Thursday, April 2, 2009  
3:00 p.m.

### **SB 62, SD1, HD1**

Chair Oshiro, Vice Chair Lee, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 60% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 62, SD1, HD1, which amends Section 386-79, Medical Examination by Employer's Physician.

Our members 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. 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 rating and if the hearings officer 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 the Department of Labor and Industrial Relations, ordered IMEs number about 1,000 per year. In 2005, there were 52,000 new and pending workers' compensation claims, and therefore, only 2% of all cases require an ordered IME. We believe this legislation is unnecessary because most IMEs occur by mutual agreement, absent any statute. 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 workers' 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.

The provision to require impairment IMEs to be separate from treatment IMEs merely presents an inconvenience to the injured worker. 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. Currently, some IMEs are performed to address appropriate treatment 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. This also benefits the injured worker by having one physician look at the case in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits.

The bill also limits IMEs to one per case. 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. Two IMEs may be necessary in some cases since the first is initially done to establish a baseline and another IME is needed to determine whether there has been improvement, explain a change in the condition, or impairment. A subsequent IME may also be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill also does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Another provision in the bill requires IME physicians to meet certain criteria. Mandating that IME physicians meet certain requirements may not increase the standard of care for the injured worker and will reduce the number of physicians willing to participate in workers' compensation cases. Currently, there are a limited number of physicians who perform IMEs and when categorized by specialty, the list of available physicians is even smaller. It is in both the employer's and the injured worker's best interest to have as many IME physicians available as possible to get the most objective opinion in the most efficient way. Many specialty IME physicians like toxicologists, neuropsychologists and infectious disease specialists who practice on the mainland are used because there are too few or no qualified physicians here that can perform the examinations. Hawaii is a small and isolated state in which specialized physicians are not able to acquire practical experience due to exposure to limited and isolated cases. Insurers rely upon regional clinics and medical centers that specialize in particular medical disorders. The provisions which require that the IME physician be licensed to practice in Hawaii and limits their reimbursement rates are unworkable and will shrink the limited pool of available physicians even further. The average lead time to secure an IME appointment is six weeks and this provision will inevitably create a delay in obtaining timely

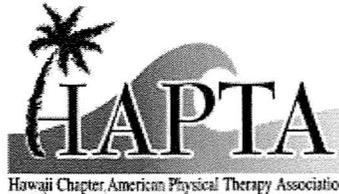
appointments and reports and limit local physicians' ability to draw upon the clinical expertise of their mainland counterparts. There is also a provision requiring injured workers who reside on the mainland to obtain an IME from a physician licensed to practice in that state for the five consecutive years prior. This requirement does nothing to raise the qualification of the IME physician, but rather limits the number who will be eligible to examine injured workers who reside on the mainland. In addition, it is inconsistent with the requirement for IME physicians who examine injured workers who reside in Hawaii.

Finally, the three year sunset provision may be too short of a time to show adverse loss experience in workers' compensation insurance. Workers' compensation claims are considered a long tail line of insurance which means that total losses of a claim take many years to develop. Unlike other property and casualty coverages which may have coverage limits, workers' compensation benefits can be paid for years and the nature of the claim may change over time. It is also extremely difficult to determine if there is a correlation between one law change and the experience of claims. This provision is not likely to show an accurate reflection of the enactment of the law.

For these reasons, we respectfully request that S.B. 62, SD1, HD1 be held.

Thank you for the opportunity to testify.

**Testimony by:**  
**Derrick Ishihara, PT**  
**SB 62hd1, Workers' Compensation**  
**House FIN Committee**  
**Thursday, April 2, 2009 – Agenda #2**  
**Room 308, 3:00 pm**



**Position: Strong Support**

Chair Oshiro and Members of the House FIN Committee:

I am Derrick Ishihara, P.T., a small business owner/physical therapist and member of HAPTA's Legislative Committee and member of the Hawaii Chapter – American Physical Therapy Association (HAPTA). HAPTA is comprised of 300 member physical therapists and physical therapist assistants employed in hospitals and health care facilities, the Department of Education and Department of Health systems, and private practice. Our members represent Hawaii at the national American Physical Therapy Association and are delegates for Pediatrics, Women's Health, Parkinson's Disease and other issue sections. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

We appreciate the Hse LAB amendment to change the 30-day timeframe for conducting an IME to 45 days. As testified previously, the 30 days timeframe might be a problem for physicians with busy practices who are already scheduled more than 30 days in advance.

We support the primary focus of this measure, and believe that we should collaboratively focus on the mutual and fair selection of IMEs. Such a process is needed whereby injured workers and the insurer can re-assess the medical care being given and the future needs of the injured employee in a fairer manner. Currently, the examining physician is selected by the employer/insurer. This process has led to confrontation and extreme distrust between the injured worker and the insurer.

Some opposed to this measure rightly state that a claimant dissatisfied with findings of an IME can appeal the findings in a Hearing at the DLIR. As we know, this process can take months to schedule and after the Hearing, weeks to months to receive a decision. For an injured worker in pain, even a few days without needed medical treatment can seem like an eternity.

Discussions with treating physicians and claimant attorneys reveal that much of the conflict between injured workers and insurers exist early in the process. Some insurers have denied initial medical care and diagnostic tests "pending investigation". We understand the insurers' need for discovery and do not object to this. However we fail to see how mutually selecting a physician to perform the IME denies them this tool. At the very least, we should use mutually selected physicians for the initial IME to get the needed medical care started and as currently practiced, a mutually selected physician to do the Permanent Partial Disability IME.

We anticipate that fair and impartial IMEs will lead to quicker resolution of cases as the injured party can get necessary care in a timely manner, potentially avoiding problems associated with chronic pain and disability. The insurer can also get slowly moving cases examined and recommendations made to resolve medical issues in a faster, more efficient manner, thus minimizing indemnity costs. Employers can get experienced employees back on the job and productive in less time. Hopefully, as the antagonistic nature of treating Workers Compensation cases improves, more qualified medical providers will return to the system and access to providers will improve for injured workers.

Thank you for the opportunity to provide testimony. I can be reached at (808) 593-2610 if there are any questions.



Roofing & Building  
Supply

April 1, 2009

Hawaii State Representatives  
House Finance Committee  
Attn: Rep Marcus Oshiro

Fax 586 6001

RE SB 62, HD 1  
Workers Compensation

Dear Representatives,

I am writing in opposition to SB 62.

Hawaii has excellent provisions to protect and rehab any injured worker. I fear passage of this bill would benefit ONLY those that wish to take "extra" advantage of a very good system that works fine for 99% of workers and the care providers.

The "RIGHT" to ask for an IME by the employer ... polices anyone who might want to take "extra" advantage of our good working system.

Our system works fine .... adding this burden will only raise costs and force reductions in other areas of benefits for the other 99%.

Please vote against this bill.

Sincerely,

Ritchie Mudd  
RSI Roofing & Building Supply  
1081 Makepono St  
Honolulu, HI 96819  
ph 808 847 2077 fax 848 8221 cel 255 9995

TESTIMONY BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCE

April 2, 2009

3:00 p.m.

SB 62, SD1, HD1  
RELATING TO WORKERS' COMPENSATION

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

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Hawaiian Electric Co. Inc., its subsidiaries, Maui Electric Company, LTD., and Hawaii Electric Light Company, Inc. **strongly oppose S.B. 62, SD1, HD1.** Our companies represent over 2,000 employees.

This bill mandates that independent medical examinations (IME's) and permanent impairment rating examinations, be performed by physicians mutually agreed upon by the employer and the injured employee.

We cannot support a bill that takes away an employer's fundamental right in the discovery process to select their own expert medical opinion, which is at the employer's expense. The current statutes have safeguards in place to allow injured employees full disclosure of an employer's IME report, and the right to seek their own medical opinion if they disagree.

This version of the bill requires an unrealistic time frame of forty-five days for physicians selected from the Department of Labor and Industrial Relations list to both perform the exam, and complete their report. In practice, physicians are often booked over thirty days in advance. Given that we are an island community, the qualified physician pool is very limited, and the bill does not make it possible to retain the expertise of specialists outside the State of Hawaii.

Regarding permanent impairment ratings, this proposal provides a new definition for "medical stability" that is inconsistent with the definition contained in *The Guides to the Evaluation of Permanent Impairment, Sixth Edition*, currently used to evaluate permanent impairments.

We believe this bill is unnecessary. A majority of IME's are conducted under the current statutes without incident or dispute today. Also, Permanent Impairment Rating examinations are currently performed by mutual agreement between parties, without any mandate by legislation.

For these reasons, we strongly oppose S.B. 62, SD1, HD1 and respectfully request this measure be held.

Thank you for this opportunity to submit testimony.

**THE LAW OFFICES OF DOUGLAS THOMAS MOORE**

Office Address:  
Century Square  
1188 Bishop Street, Suite 1009  
Honolulu, Hawaii 96813

Telephone: (808) 526-0056  
FAX: (808) 526-0057

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April 1, 2009

VIA FAX # 586-6001

House Finance Committee  
Rep. Marcus Oshiro, Chair

RE: SUPPORT FOR SENATE BILL 62, S.D.1, H.D.1: TO BE HEARD 4/2/09

Dear Mr. Chair and Committee Members:

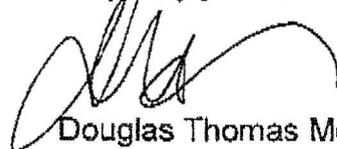
I support Senate Bill 62, S.D.1, H.D.1. I support the efforts of the Hawai'i Injured Workers' Alliance. Please pass Senate Bill 62, S.D.1, H.D.1 as soon as possible.

I support Senate Bill 62, S.D.1, H.D.1. because:

1. So called "Independent" Medical Exams truly need to be independent. Many are not; mutual selection of an IME examiner will help.
2. Truly Independent Medical Exams will help to avoid litigation and to move cases forward with injured workers getting appropriate and necessary medical testing and treatment to rehabilitate and return them to work. This will save employers money.
3. Truly Independent Medical Exams will help to eliminate the expensive cottage industry of biased medical examiners. This will save employers money.
4. Truly Independent Medical Exams will help to protect the decision-making of treating physicians who know their patients best.

Should you have any questions, please do not hesitate to contact me. Thank you for your attention, consideration, and anticipated cooperation.

Very truly yours,



Douglas Thomas Moore

# **BIA-HAWAII**

**BUILDING INDUSTRY ASSOCIATION**

April 2, 2009

Honorable Marcus Oshiro, Chair  
Committee on Finance  
State Capitol, Room 308  
Honolulu, HI 96813

RE: SB62, HD1 "Relating to Workers' Compensation"

Chair Oshiro and Members of the Committee on Finance:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is strongly opposed to SB62, HD1 "Relating to Workers' Compensation" which would deny employers the right to select an Independent Medical Examination physician of their choice in workers' compensation cases. Employers and insurers utilize IMEs to verify the scope and nature of injuries and/or whether medical treatments prescribed by treating physicians are reasonably necessary. IMEs have been selected by employers and their insurers for many years and have served as a stabilizing influence on workers' compensation costs. We believe the current system works and is fair to both employer and employee.

BIA-Hawaii believes that if enacted, this bill will unfairly punish employers and remove necessary cost controls for little or no benefit to a small number of claimants. The potential damage to the system and cost to employers outweigh the anticipated benefits. There is already a process for claimants to seek redress for unfairly denied benefits.

These changes to the workers' compensation law would be detrimental to our businesses and ultimately to our economy. This particular interval in Hawaii's history is posing extreme hardships to our businesses and ultimately to our ability to continue employment.

We urge all lawmakers to consider the dire consequences of skewing the workers compensation system so heavily in favor of one party. It will only place undue burdens on all employers, large and small, but especially on the smaller employers.

Thank you for the opportunity to voice our strong opposition to SB62, HD1.

*Karen L. Nakamura*

## **FINTestimony**

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**From:** Kirt Pruyn [kpruyn@hdcc.com]  
**Sent:** Thursday, April 02, 2009 11:25 AM  
**To:** FINTestimony  
**Cc:** Kirt Pruyn  
**Subject:** Hawaiian Dredging Construction Company's testimony in OPPOSITION to SB 62, HD 1 Relating to Workers Compensation.  
**Attachments:** image002.png

Attached and also displayed below is Hawaiian Dredging Construction Company's testimony in OPPOSITION to SB 62, HD 1 Relating to Workers Compensation.

Mahalo.

P.O. Box 4088  
Honolulu, HI 96812-4088  
Phone: (808) 735-3211  
Fax: (808) 735-7416



**HAWAIIAN DREDGING  
CONSTRUCTION COMPANY**

4/2/09

The Honorable

Representative Marcus Oshiro, Chairperson  
Committee on Finance  
Hawaii State Capitol, Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: OPPOSITION TO SB 62, HD 1 RELATING TO WORKERS COMPENSATION, Thursday,  
April 2, 2009, 3:00 PM, Room 308

Dear Chair, Vice Chair, and Committee Members:

My name is Kirt Pruyn, and I am the Manager of Business Development & Community Relations for Hawaiian Dredging Construction Company. Founded in 1902, Hawaiian Dredging is Hawaii's largest and oldest full-service general contractor, currently employing over 700 employees.

Hawaiian Dredging OPPOSES SB 62, HD1 "Relating to Workers' Compensation" for the following reasons:

- The Bill would deny employers the right to select an Independent Medical Examination physician of their choice in workers' compensation cases.
- Employers and insurers utilize IMEs to verify the scope and nature of injuries and/or whether medical treatments prescribed by treating physicians are reasonably necessary.
- IMEs have been selected by employers and their insurers for many years and have served as a

4/2/2009

stabilizing influence on workers' compensation costs.

- We believe the current system works and is fair to both employer and employee.
- If enacted, this Bill will unfairly punish employers and remove necessary cost controls for little or no benefit to a small number of claimants. The potential damage to the system and cost to employers outweigh the anticipated benefits.
- There is already a viable process for claimants to seek redress for unfairly denied benefits.
- These changes to the workers' compensation law would be detrimental to business— especially small businesses—and ultimately to our economy. This particular interval in Hawaii's history is posing extreme hardships to our businesses and ultimately to our ability to continue employment.

Mahalo for your time and concern.

Aloha,

Kirt Pruyn  
Manager, Business Development & Community Relations  
808-735-7411

**TESTIMONY on SB 62, SD1, HD1, (HB 1288)**  
**International Association of Rehabilitation Professionals**

March 30, 2009

Support of SB No. 62, SD1, HD1, H.B. No. 1288  
Relating to Workers Compensation

**Senate Committee on Finance**  
**The Honorable Representative Marcus R. Oshiro, Chair**  
**The Honorable Representative Marilyn B. Lee, Vice Chair**  
**And Members of the Committee:**

As the current President of the International Association of Rehabilitation Professionals-Hawaii Chapter and on behalf of our members,

**We support SB No. 62, SD1, HD1, H.B. No. 1288.**

"The International Association of Rehabilitation Professionals (IARP) brings together rehabilitation professionals in Hawaii and across North America to promote the availability of effective, interdisciplinary services for persons with disabilities."

The International Association of Rehabilitation Professionals (IARP) Hawaii Chapter **supports the concept of a mutually agreed upon Independent Medical Examination to perpetuate fairness and impartiality for injured workers.**

We encourage you to pass the proposed bill **SB No. 62, SD1, HD1, H.B. No. 1288.**

Thank you for the opportunity of addressing this committee.

Alan S. Ogawa, M.ED. CRC, LMHC  
President-International Association of Rehabilitation Professionals  
Hawaii Chapter  
1834 Nu'uauu Ave, Suite 205  
Honolulu, Hawaii 96817  
Phone: 523-7755

**Bill scheduled to be heard by FIN on Thursday, 04-02-09 3:00PM in House conference room 308.**



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

2831 Awaawaloa Street  
 Honolulu, Hawaii 96819

T: 808.839.9002  
 F: 808.833.5971

License No. ABC-457  
 Founded In 1962

April 1, 2009

Honorable Marcus Oshiro, Chair  
 Committee on Finance  
 State Capitol, Room 308  
 Honolulu, HI 96813

Re: SB62, HD1 "Relating to Workers' Compensation"

Chair Oshiro and Members of the Committee on Finance:

Ralph S. Inouye Co., Ltd. (RSI), General Contractor and a member of the General Contractors Association of Hawaii, strongly opposes SB62, HD1 "Relating to Workers' Compensation" which would deny employers the right to select an Independent Medical Examination physician of their choice in workers' compensation cases. Employers and insurers utilize IMEs to verify the scope and nature of injuries and/or whether medical treatments prescribed by treating physicians are reasonably necessary. IMEs have been selected by employers and their insurers for many years and have served as a stabilizing influence on workers' compensation costs. We believe the current system works and is fair to both employer and employee.

RSI believes that if enacted, this bill will unfairly punish employers and remove necessary cost controls for little or no benefit to a small number of claimants. There is already a process for claimants to seek redress for unfairly denied benefits.

These changes to the workers' compensation law would be detrimental to our businesses and ultimately to our economy. This particular interval in Hawaii's history is posing extreme hardships to our businesses and ultimately to our ability to continue employment.

We urge all lawmakers to consider the dire consequences of skewing the workers compensation system so heavily in favor of one party. It will only place undue burdens on all employers, large and small, but especially on the smaller employers.

Thank you for the opportunity to voice our strong opposition to SB62, HD1.

Very truly yours,

RALPH S. INOUE CO., LTD.

Lance M. Inouye  
 President & CEO

LMI:ma



<http://www.h-c4h.org>

302 California Ave. #209  
Wahiawa, HI 96786  
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Fax: 622-5599



<http://www.h-cop.org>

April 1, 2009

Chair Marcus Oshiro  
House Finance Committee  
Hawaii State Legislature

Re: Support for SB 62 (amended)

Dear Chair Oshiro and Committee Members:

I speak on behalf of Dr. Arlene Meyers, the Hawaii Coalition of Health and its 400 + physician membership. As a doctor who has treated literally thousands of industrial injuries I strongly support this measure. It will restore a sense of fairness and balance in a system that has grown callous to the legitimate needs of those injured in the line of their duty.

Arguments that this law will “increase costs” and “drive up premiums” are neither grounded in experience or fact. The truth is that IME opinions are detrimental to patient care and outcomes if unchecked and unregulated. The bill before offers a unique opportunity to protect injured citizens from serial patient abusing evaluators bent on cutting off care to those in need in exchange for additional lucrative carrier referrals.

By mandating cooperation for the first IME, anti-patient doctors will moderate their “less care is best care” approach allowing the patient to continue with his/her recovery vs. getting swept up in litigation—their only other option when derailed and disenfranchised through these nefarious practices that are neither “independent” nor, for that matter, very “medical”.

In addition to the above, orchestrated efforts to cut off care for legitimate injured workers shifts the burden of help to other stressed social welfare safety nets and forces local physicians to no longer accept workers compensation.

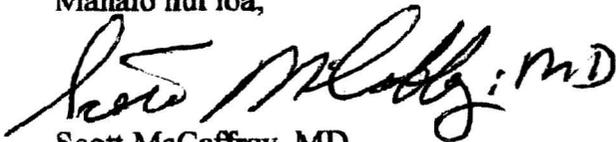
Chair Marcus Oshiro

April 1, 2009

Page 2

I ask that you listen to those on the front lines of care—clinical doctors, physical therapist, vocational councilors and the patients they serve who are testifying here before you today and whom have the direct experience necessary to improve our beleaguered WC System.

Mahalo nui loa,

A handwritten signature in black ink, appearing to read "Scott McCaffrey, MD". The signature is fluid and cursive, with the "MD" part being more distinct and larger than the name.

Scott McCaffrey, MD

Occupational and Emergency Medicine

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcahawaii.org](mailto:info@gcahawaii.org)  
Website: [www.gcahawaii.org](http://www.gcahawaii.org)



**GCA of Hawaii**

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

APRIL 1, 2009

TO: THE HONORABLE REPRESENTATIVE MARCUS R. OSHIRO, CHAIR AND MEMBERS OF COMMITTEE ON FINANCE

SUBJECT: S.B.62, SD1, HD1, RELATING TO WORKERS' COMPENSATION

NOTICE OF HEARING

DATE: Thursday, April 02, 2009

TIME: 3:00 P.M.

PLACE: Conference Room 308

Dear Chair Oshiro and Committee Members:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, **opposed** S.B.62, SD1, HD1, Relating to Workers' Compensation.

S. B. 62, SD1, HD1, Relating to Workers' Compensation would require the selection of an IME physician by mutual agreement, rather than one selected and paid for by the employer as is the current practice.

We believe the current system that is in place works. This legislation is unnecessary because most IMEs occur by mutual agreement absent any law.

The bill changes the concept of an "independent medical exam" (IME) as a process for the employer to determine whether a particular medical procedure is prudent and necessary and to assess whether the medical process of treatment is progressing in a satisfactory manner.

This bill would also limit the number of IMEs to one, thereby, reducing the effectiveness of the procedure as an assessment tool.

We believe that selection of the IME physician by mutual consent is not in the best interest of the parties and is unfair to the employer.

We ask that this legislation not be passed.

Thank you for the opportunity to provide our views on this issue.

Vinh Alkire-Clemen, B.S.N., R.N., BC  
95-492 Kaulia Place  
Mililani, Hawaii 96789  
(808) 623-0899 or (808) 352-7467  
[Alkireclv001@hawaii.rr.com](mailto:Alkireclv001@hawaii.rr.com)

March 31, 2009

Hearing FIN 09.

HOUSE OF REPRESENTATIVES  
THE TWENTY FIFTH LEGISLATURES  
REGULAR SESSION OF 2009

COMMITTEE ON FINANCE  
Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee, Vice Chair

Rep. Leery J.C. Aquino	Rep. Scott V. Nishimoto
Rep. Karen Leilani Awana	Rep. Roland D. Sagum, III
Rep. Tom Brower	Rep. James Kunane Tokioka
Rep. Isaac W. Choy	Rep. Jessica Woolley
Rep. Denny Coffman	Rep. Kyle F. Yamashita
Rep. Sharon E. Har	Rep. Kymberly Marcos Pine
Rep Gilbert S. C. Keith Agaran	

**Attn: COMMITTEE ON FINANCE**

**RE: (“SB 62. SD1, HD1”), I strongly support SB 62. SD1, HD1 (HSC R988), mutually agreed upon IMEs to help the Hawaii Injured Workers:**

(Requires independent medical examinations and permanent impairment Rating examinations to be performed by physicians mutually agreed upon By employers and employees or appointed by the director of labor and industrial relations)

I thank you for this opportunity to speak to the committee.

Dear Committee On Finance:

I, Vinh Alkire-Clemen, an injured worker, had worked for over 15 years as a Registered Nurse when I was severely injured twice at work. 1998, back injured and neck strain from catching a patient who was falling out of bed and a 1999, severe neck injury and aggravated my back injury resulted from an attack by male Nurse's Aide.

Under the old and destructions policy, the Injured Workers have no say regarding IME, the Employers/Insurance Carriers selectively choose IMEs that generated copious amount of medical reports about work-related injured workers. These IMEs will say that either nothing wrong with the workers the injury was

from a preexisted condition that is unrelated to their employment. Further, this old policy only benefits the Employer/Adjuster. They force Injured Workers to see a stranger who is a non-treating and bias doctor.

Some IMEs believe they have exaggerated power over the injury worker. In my case, one IME expected me to be totally nude and in order to assess curvature of my back. The implication was cooperating or your injury could be minimized. I kept on my gown but it had an open back. Because he did not respect my right of privacy, I resisted following his command. He went so far as to inappropriately pushing my head forward to expose my whole back side! I felt psychologically harm by this IME inappropriate behavior. I also felt very vulnerable because I was alone and has no one to substantiate what was done to me.

The goal of these high paid IMEs is to ignore the diagnosis from doctors and specialists M.Ds. who have treated these injured workers for months and years. They substituted their single 15minutes examination to generate a 50-70 pages document that support their position that little or no injury exist. Positive results on MRIs, BS, and EMGs are often ignored or minimized. This document is use by Employer/Adjuster to denied benefits.

In my case, in-spite of these malfeasances' IMEs reports, since 2002, until August 28, 2007 and October 19, 2007, I finally, received wise and favorable Decisions on my hearing. However, the long wait for these decisions proved that these IMEs have no ground in their examinations. Further, to wait for this decision to be made, result in injured workers suffering from lack of medical Care and benefits being put on hold. Their medical condition often deteriorates from subsequently injuries, such as in my case. Now I am still waiting for Employer/Adjuster to honor DILR's and LIRAB's Decisions to resume my medical care, TTD, & Vocational Rehabilitation, they are still using these IMEs reports in the Intermediate Court of Appeals (ICA).

**My goals today are:**

**First**, to share with you that under current IME's policy Hawaii Injured Workers (I) are not getting the care and treatment that they (I) deserve. In addition, financial damage, destroy professional reputation and inflict severe emotional injury.

**Second**, to plead with the house of Senate to support the **SB62**:

SB62 will require Employers/Insurance Carriers and Injured Workers to cooperate in selecting outside (non-treating) doctors when Employers/Insurance Carriers want medical opinions from these non-treating doctors. Under SB 62 injured workers will be sent to non-treating doctors that are selected mutually (jointly) by the Employers/Insurance Carriers and Injured Workers.

**I strongly support SB62 and I am asking all of your representatives ensure us to help us by passing this bill.**

Thank you for this opportunity to speak to the committee via testimony.

**DATED: Honolulu, Hawaii: March 31, 2009.**

Request submitted by: *Vinh Alkire-Clemen*  
Vinh Alkire-Clemen, B.S.N., R.N., BC  
95-492 Kaulia Place  
Mililani Town, Hawaii 96789  
(808) 623-0899, (808) 352-7467  
[Alkireclv001@hawaii.rr.com](mailto:Alkireclv001@hawaii.rr.com)

TESTIMONY IN SUPPORT OF S.B. NO. 62, SD 1,HD 1  
RELATING TO WORKERS' COMPENSATION  
COMMITTEE ON FINANCE

Thursday, April 2, 2009, 3:00 p.m.

Mr. Chairman, members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I support SB 62 relating to Workers' Compensation and mutually agreed upon "Independent Medical Examinations."

Under the current system, insurance carriers can force injured workers to be examined by physicians favored by the carriers. The problems of such a system were recently highlighted in two features in the New York Times:

[http://www.nytimes.com/2009/03/31/nyregion/31comp.html?\\_r=1&emc=eta1](http://www.nytimes.com/2009/03/31/nyregion/31comp.html?_r=1&emc=eta1)  
[http://www.nytimes.com/2009/04/01/nyregion/01comp.html?\\_r=1&hp](http://www.nytimes.com/2009/04/01/nyregion/01comp.html?_r=1&hp)

Just as in New York, there are several problems in this arrangement in Hawaii.

1. THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN  
EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN THE  
CARRIER'S FAVOR.

There are physicians who regularly prepare reports favorable to carriers. The financial rewards to carriers' physicians who provide opinions in favor of carriers can be very substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination. Therefore, there is no limit to the fees which can be charged by carriers' physicians for examinations which have not been ordered.

Carriers' physicians are paid an approximate average of over \$2,000.00 per examination; 3 examinations per week yields \$6,000.00; 50 weeks a year yields an income of \$300,000.00. Carriers' physicians can, of course, do more than 3 examinations per week. At least one physician reported receiving over a million dollars from one carrier.

Carriers' physicians whose income is from examinations paid for by carriers are very susceptible to making sure that their livelihoods are kept intact. The financial incentives for carriers' physicians to provide reports favoring carriers are therefore very powerful and are reflected in their reports.

A carrier can readily obtain a physician's opinion to fit its needs because the carrier's physician can presently state any opinion with impunity. The carrier's physician is free to opine, regardless of the facts, that the injury:

- (1) did not occur,
- (2) should have already healed,
- (3) was a temporary aggravation of a pre-existing condition, and has healed,
- (4) was entirely pre-existing, or
- (5) was due to non-work related conditions.

The carrier then uses that opinion to deny coverage or to deny treatment. The carrier's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement for the carrier's physician to explain why a worker could do his job for years, but is not able to do his job after the injury.

Although the carrier's physician knows that his opinion will directly affect the injured worker, the carrier's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The carrier's physician is free from liability and can give the carrier the opinions the carrier wants without responsibility for the devastating consequences to the injured worker. The carrier's physician is so empowered because a Hawaii U.S. District Court decision held that the carrier's physician had no duty to the injured worker. Although the employer's physician knows that the impact of his opinion can be devastating to the worker, the physician claims that he is under no duty to the worker, and therefore is not liable for any adverse consequences.

## 2. "INSURER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER INDEMNITY PAYMENTS.

One of the criticisms of Hawaii's workers' compensation system is that the rate of indemnity payments higher than that of other states. One of the reasons for the higher rate of payments is the delay in allowing injured workers to get the appropriate care. The longer it takes to receive medical care, the longer it takes for an injured worker to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments. If injured workers are allowed to receive appropriate medical care on a timely basis they would, no doubt, be able to return to the work force sooner and the total indemnity payments would drop.

One factor which prevents timely receipt of medical care is the current use of "insurer medical examinations." If insurer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

Unfortunately, too often the goal of an insurer medical examination is not altruistic. The goal is often to enable an insurer to escape liability, although the employee was injured on the job and is entitled to treatment. An insurer can attempt to escape liability if the insurer can obtain a physician's opinion in its favor.

a. “INSURER MEDICAL EXAMINATIONS” AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING TO INJURED WORKERS.

The use of “insurer medical examinations” results in delays which have devastating consequences to injured workers.

After an injury is reported by a worker, the workers’ compensation statute allows an insurer to contest the claim. The insurer can contest the claim even though the injury was witnessed and is obvious. §12-10-73 of the Administrative Rules requires the insurer to support a denial with a “report” within 30 days of the denial, however, the Rule also provides that the insurer can request extensions of time. The insurers often request extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86).

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered. All this time, the worker might be without medical care and without income. He might be without a personal health plan because he is a new employee or is a part-time employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker’s health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage. He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence.

b. “INSURER MEDICAL EXAMINATIONS” IN THE MIDDLE OF CASES ARE ALSO DEVASTATING.

“Insurer medical examinations” can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

One major cause of delay in treatment is the use of “insurer medical examinations.” The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees.

## CONCLUSION.

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 insurers 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 insurers' examinations lies with certain physicians and insurers who are willing to use improper opinions to unfairly cut off benefits to injured workers. The inherent disparity of the financial resources of an insurer versus an injured worker, who is frequently without income, makes the playing field inherently uneven in the insurer's favor. The workers' compensation system certainly does not need the unrestrained opinions of insurers' physicians to allow insurers to deny benefits to injured workers.

The most efficient and immediate means to handle these concerns is the use of agreed upon physicians. This has already proven to work with respect to "rating" examinations. In order to assess the extent of any permanent injury, a "rating" examination is conducted. The current system requires the insurer and the injured worker to agree upon the selection of physician to conduct the rating examination. Over the years, in just about every case, an agreement is reached between the carrier and the injured worker.

This mutual agreement system of choosing rating physicians can also work for IMEs. Carriers and representatives of injured workers are familiar with the work of the various physicians, and the fact that the ratings physicians selection process has worked over the years is proof that use of mutually agreed upon physicians can also work for IMEs.

The major focus of SB 62 is to require that insurers and injured workers agree upon the examiners. While the bill will not remedy all IME problems, the bill will go a long ways towards forging a more just system.

Thank you for considering my testimony.

WAYNE H. MUKAIDA  
Attorney at Law  
1001 Bishop St., Ste. 1028  
Honolulu, HI 96813  
Tel: 531-8899

March 31, 2009

HOUSE OF REPRESENTATIVES  
The Twenty-fifth Legislature  
Committee on Finance

HOUSE CHAIR: Rep. Marcus Oshiro

Vice Chair: Rep. Marilyn B. Lee

DATE: Thursday April 02, 2009  
TIME: 3:00 p.m.  
PLACE: Conference Room 308  
State Capitol  
415 South Beretania Street

**Testimony in support of SB 62 HD 1**

*My name is Laurie Hamano, President of Vocational Management Consultants. I have worked in the community for the past 25 + years working with injured workers as a vocational rehabilitation counselor, as well as a member of Hawaii Injured Workers Alliance, as well as a member of International Association of Rehabilitation Specialists and I am a business owner and member of the Chamber of Commerce. I support SB 62 as this bill supports the mutually agreed upon Independent Medical Evaluations. This will help the system by asking all the parties involved to agree upon a doctor to lessen the animosity that is set forth during these employer requested medical evaluations. We know that mutually agreed upon IME doctors for PPD ratings are done as the "standard practice" now and it works amongst the carriers and the attorneys/injured workers who are settling their cases. Why can't that same agreement of mutually agreeing who will complete the IME work in the first IME on a new case?*

*We have experienced the trauma with our injured workers who have been subjected to numerous IMES on their cases as they are told over and over by these Employer selected doctors that "there is nothing wrong with you; go back to work" only to find that they cannot return and either re-injure or are terminated from their jobs. These cases never receive the proper treatment that is needed to assist them to recover and return to productive lives. In turn, the case drags on for many more months than necessary if the Injured Worker received the immediate care he/she needed to recover.*

*This can only help the system decrease the costs and delays from the onset of the cases.*

*I urge you to pass this bill.*

*Thank you for allowing me to provide testimony.*

*Laurie H. Hamano M. Ed. CRC, MHC  
President, Vocational Management Consultants, Inc.*

*My address and phone number is:  
Vocational Management Consultants, Inc.  
715 S. King Street Suite 410*

Honolulu, Hi 96813 #538-8733

April 1, 2009

State House Of Representatives  
The Twenty-Fifth Legislature

Committee on Finance  
Representative Marcus Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
And Members of the Committee on Finance  
State Capitol, Room 306  
415 South Beretania Street  
Honolulu, Hawaii 96813

Relating to: SB 62, SD1, HD1 Relating to Worker's Compensation

Dear Representative Oshiro and Members of the Committee:

My name is Leona Tadaki-Kam and I am writing in support of SB 62, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually physicians.

I feel the injured worker should be the one who decides who does these examinations to ensure a fair, objective, and truly independent evaluation of their case and disability.

I thank you for the opportunity to address this committee.

I strongly urge you to **SUPPORT SB 62, SD1, HD1 RELATING TO WORKERS' COMPENSATION.**

Sincerely,



Leona Tadaki-Kam

April 1, 2009

State House Of Representatives  
The Twenty-Fifth Legislature

Committee on Finance  
Representative Marcus Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
And Members of the Committee on Finance  
State Capitol, Room 306  
415 South Beretania Street  
Honolulu, Hawaii 96813

Relating to: SB 62, SD1, HD1 Relating to Worker's Compensation

Dear Representative Oshiro and Members of the Committee:

My name is Kirsten Harada and I am a Vocational Rehabilitation Counselor and member of the International Association of Rehabilitation Professionals. I am writing in support of SB 62, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutually physicians.

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

I thank you for the opportunity to address this committee.

I strongly urge you to **SUPPORT SB 62, SD1, HD1 RELATING TO WORKERS' COMPENSATION.**

Sincerely,



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

March 31, 2009

The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn Lee, Vice-Chair  
Members of the House Finance Committee  
415 South Beretania Street, Room 306  
Honolulu, Hawaii 96813

Relating to: SB 62, SD1, HD1 - Relating to Workers' Compensation

Dear Representative Oshiro and members of the Committee:

I strongly urge you to **SUPPORT SB 62, SD1, HD1 - Relating to Workers' Compensation.**

I am a vocational rehabilitation counselor who works with injured workers. I feel that the changes being proposed in SB 62, SD1, HD1 appear to be in the best interest of the injured worker. The bill allows for a **mutually agreed** upon Independent Medical Exam be performed for an injured worker.

This bill will allow for fairness and equity for the injured worker in having input on the medical doctors who are often determining the types of services that a person can receive to the current ability of the injured worker. I have seen too many times in the past where IME doctors do not fairly address the concerns of an injured worker which ends up having the injured worker endure further pain and suffering because of a report that appears to be more favorable towards the insurance companies. I have also seen cases where an injured worker has been informed that they are required to attend an "IME" and because of a possibly biased report from the IME doctor, the person is prevented from receiving treatment that is recommended by their treating physician which can result in the cases remaining open for longer periods of time.

By mutually agreeing upon a qualified, independent examiner, there will be less need for continuous exams to be ordered as both parties are in agreement of the examiner and will expect fair and judicious findings.

Thank you for the opportunity to address this committee in regard to SB 62, SD1, HD1.

Sincerely,

---

Patti Inoue, M.Ed., CRC  
715 S. King Street, #410  
Honolulu, Hawaii 96813  
808-538-8733

3/31/09

March 31, 2009

COMMITTEE ON FINANCE  
Chairman Rep. Marcus Oshiro  
Vice Chairman Rep. Marilyn B. Lee

RE: Testimony in Support of HB1390, HD1  
Relating to Workers' Compensation  
Hearing, Tuesday, March 03, 2009 12:00PM  
Conference Room 308

FROM: James A. Pleiss, DC  
2045 Main Street, Wailuku, Maui, Hawaii 96793  
808-244-0312

Dear Chairman Oshiro, Vice Chair Lee, and Members of the Committee:

Thank you for the opportunity to testify in support of the intent SB62, HD1 which requires permanent impairment rating examinations be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor.

I have been performing independent medical evaluations (IME) and permanent partial disability (PPD) ratings in Hawaii since 1985. However, the majority of my practice is in the treatment of patients. I have performed in excess of 300 of these types of examinations. In my record reviews involved in those examinations, and of those IME/PPD ratings performed on my patients by others, those physicians who only perform IME/PPD examinations that do not have an active practice tend to be biased towards the entity that refers to them, namely the insurance companies and defense attorneys. In other words, if one only performs these examinations as their source of income, they tend to be inherently biased towards the referring party.

SB62, HD1 goes a long way to correct this situation. However, one problem is that injured workers have no way of knowing the qualifications of the doctors who perform these examinations.

In order to correct this, SB62, HD1 should be amended to allow only the director of labor to pick the PPD physician from a list of qualified examiners on a rotating basis. The choice of provider should be the same specialty as the treating provider. This will insure a fair and balanced assessment because there will be no incentive to provide a report that satisfies the referring entity. This law should also apply to independent medical examinations (IME) as well.

I also support the testimony of the Hawaii State Chiropractic Association.

Thank you for the opportunity to testify before your committee in support of the intent of SB62, HD1.

Sincerely

James A. Pleiss, DC

## **FINTestimony**

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 31, 2009 9:23 AM  
**To:** FINTestimony  
**Cc:** batfish@hawaii.rr.com  
**Subject:** Testimony for SB62 on 4/2/2009 3:00:00 PM

Testimony for FIN 4/2/2009 3:00:00 PM SB62

Conference room: 308  
Testifier position: support  
Testifier will be present: Yes  
Submitted by: Dr. Gary Saito, DC  
Organization: HSCA  
Address: 1314 S. King St, #1562 Honolulu, HI 96814  
Phone: 593-9992  
E-mail: batfish@hawaii.rr.com  
Submitted on: 3/31/2009

Comments:

## **FINTestimony**

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**From:** Stevenlee@hawaii.rr.com  
**Sent:** Tuesday, March 31, 2009 8:46 AM  
**To:** FINTestimony  
**Subject:** SB 62 SD1 HD1

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

I am the owner of a small business in Hawaii and I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

## **FINTestimony**

---

**From:** kkane@argosy.edu  
**Sent:** Monday, March 30, 2009 9:36 AM  
**To:** FINTestimony  
**Subject:** Do not pass SB 62 SD1 HD1

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Kawika Kane of Kapolei, Oahu and I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Kawika Kane  
91-1022 Owakalena Street  
Kapolei, HI, 96707

Cell: 808-366-6559  
Email: kkane@argosy.edu

## Testimony in support of Senate Bill 62 ( SB62-SD1)

Everyone says that it takes injured workers too long to get back to work following an injury. Extended **stop loss time increases work comp. costs** in Hawaii resulting in excessive weekly benefit payments. **SB62 is the solution to this problem.** Small businesses pay for these extended weekly benefits.

1. SB62 will **reduce workers' compensation costs** and speed up injured workers' return to the job site. **Quicker return to work means less weekly benefits paid out.**
2. SB62 will **require "mutual cooperation"** in selecting outside (non-treating) doctors when Employers/Insurance Carriers want medical opinions from these non-treating doctors.
3. SB62 will **speed up the delivery of needed medical services** and that will **allow injured workers to return to work faster.**

### Why should SB62 be passed into law?

1. It will **reduce workers compensation costs** by speeding up the work injury claim process.
2. It will reduce workers compensation costs by **eliminating present day fights over the validity of medical reports** generated by doctors closely connected to the very insurance carrier that selected them alone.
3. The **'mandated cooperation'** requirement in SB62 has previously been successfully used with auto-insurance claims and is successfully being used with final impairment reports. **Mandated cooperation has a proven track record of being successful in Hawaii.**
4. In addition to cutting work comp. costs for Hawaii's business community the passage of SB62 **will establish Hawaii as a national leader in promoting "mandated cooperation" in workers' compensation claim. Mandated cooperation is a pro-business statement.**

Joseph F. Zuiker

Work Comp. Attorney

1188 Bishop St., Ste. 1102

Honolulu, Hawaii 96813

808 523 1142 Zuikerlw@pixi.com

Date: March 31, 2009

To: Rep. Marcus Oshiro and Finance Committee Members

From: Debra A. Kawamoto

Re: **TESTIMONY IN SUPPORT OF SB 62**

My name is Debra Kawamoto and I am writing in SUPPORT OF SB 62.

In 2006, I was an injured worker struggling through our complicated worker's compensation system. The primary reason I am in support of this bill, is because my own personal frustrating experience with an IME physician. Upon submitting my work comp claim, it took another 3 months for me to actually see this appointed IME physician and even though he said it was a pretty "simple" case and "straightforward", it still took him another 4 months to complete my report, despite my monthly phone calls to his office to follow up on the status of the report. The phone calls got me nowhere and his lack of response was extremely frustrating to me. Ironically, I ended up getting my copy of the report for the first time to review, on the day of my scheduled hearing with the Dept. of Labor. A total of 7 months after my claim was submitted. After having gone through this experience, I believe that if a legislative bill such as SB 62 were in place, I would be given an option to choose from a list of mutually recommended physicians rather than just being assigned one by the employer's insurance company, and that the evaluation report would be completed in a timely manner.

Despite the fact that I was unemployed and not compensated at all, for almost a year in-a-half, I have successfully completed vocational rehab and am currently working Vocational Management Consultants. Working as a Vocational Tech, I assist other VR counselors and their clients. On a daily basis, I witness the stress and frustration of our injured clients, many who are not properly diagnosed or fairly evaluated by their assigned IME physician. These clients are often times, also without proper medical care and treatment, which only delays their recovery and their ability to return to work and live productive lives. In this last year, while working at VMC and also serving as the Secretary for the Hawaii Injured Workers Alliance, I have learned so many things about IME physicians and the current system and I firmly believe that changes need to be made soon.

I cannot go back and change MY experience, but I still believe that I have a responsibility to help prevent other injured workers from going through any further hardship and frustrations. I do not believe we can change the entire worker's compensation system, but passing SB 62, will be a major step forward in improving the system and helping future injured workers, many who could be your family member, relative, friend or supporter. I strongly urge all of you to pay close attention to the testimonies of all of the injured workers and those that are directly involved with them, and know first hand why this bill needs to be passed.

Thank you for your time and consideration, but most of all for your vote in support of SB 62!

## FINTestimony

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**From:** mbeams@cochawaii.com  
**At:** Monday, March 30, 2009 11:42 AM  
**Subject:** FINTestimony  
A bad bill!

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Mimi Beams and I live in your neighborhood. Currently I am working at the Chamber of Commerce of Hawaii, previously I was with Pacific Business News. I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

## **FINTestimony**

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**From:** kaeo@koolinalm.com  
**it:** Monday, March 30, 2009 12:40 PM  
**Subject:** FINTestimony  
Another increased cost small business can't afford...

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Ka'eo Gouveia and I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation. I have the fortune of operating a small business by the name of Mokulua Contracting LLC providing grounds, building, and janitorial maintenance services to the island. This measure would severely inhibit our chances of survival.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony. If needed, I can be contacted at 678-6511 or kaeo@koolinalm.com.

## **FINTestimony**

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**From:** TropicalHawaiiUSA@gmail.com  
**Sent:** Monday, March 30, 2009 3:30 PM  
**To:** FINTestimony  
**Subject:** SB 62 SD1 HD1 - Workers' Comp - Vote "NO"

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Christine Olah. I am a resident and business person in Honolulu and a member of the Chamber of Commerce of Hawaii.

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Sincerely,  
Christine Olah  
P.O.Box 3294  
Honolulu, HI 96801  
TropicalHawaiiUSA@gmail.com  
282 4010

## **FINTestimony**

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**From:** TropicalHawaiiUSA@gmail.com  
**Sent:** Monday, March 30, 2009 3:30 PM  
**To:** FINTestimony  
**Subject:** SB 62 SD1 HD1 - Workers' Comp - Vote "NO"

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Christine Olah. I am a resident and business person in Honolulu and a member of the Chamber of Commerce of Hawaii.

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Sincerely,  
Christine Olah  
P.O.Box 3294  
Honolulu, HI 96801  
TropicalHawaiiUSA@gmail.com  
282 4010

## **FINTestimony**

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**From:** cai@citymill.com  
**Sent:** Monday, March 30, 2009 1:32 PM  
**To:** FINTestimony  
**Subject:** Please vote NO to SB 62 SD1 HD1

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Carol Ai May and I am Vice President of 110-year old City Mill Company, which employs 500 members of the Oahu community, and constituents of all of you,

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure requires independent medical examinations and Permanent Impairment Rating Examinations to be performed by mutually agreed upon physicians.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Carol Ai May  
Vice President  
City Mill Company, Ltd.  
808-529-5806  
cai@citymill.com

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, April 01, 2009 1:46 PM  
**To:** FINTestimony  
**Cc:** ayonamine@vmchawaii.com  
**Subject:** Testimony for SB62 on 4/2/2009 3:00:00 PM

Testimony for FIN 4/2/2009 3:00:00 PM SB62

Conference room: 308  
Testifier position: support  
Testifier will be present: No  
Submitted by: Adam Yonamine  
Organization: Individual  
Address: 45-514 Apiki St. Kaneohe, HI  
Phone: (808) 203-9564  
E-mail: ayonamine@vmchawaii.com  
Submitted on: 4/1/2009

**Comments:**

I am writing because I highly support SB 62 which is asking to require "independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees or appointed by the director of labor and industrial relations."

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, April 01, 2009 3:17 PM  
**To:** FINTestimony  
**Cc:** marion@rsinouye.com  
**Subject:** Testimony for SB62 on 4/2/2009 3:00:00 PM

Testimony for FIN 4/2/2009 3:00:00 PM SB62

Conference room: 308  
Testifier position:  
Testifier will be present: No  
Submitted by: Ralph S. Inouye Co., Ltd.  
Organization: Individual  
Address:  
Phone:  
E-mail: marion@rsinouye.com  
Submitted on: 4/1/2009

Comments:

## FINTestimony

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From: venturab001@hawaii.rr.com  
Sent: Thursday, April 02, 2009 6:16 AM  
To: FINTestimony

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, April 02, 2009 10:10 AM  
**To:** FINTestimony  
**Cc:** regoa@hawaii.rr.com  
**Subject:** Testimony for SB62 on 4/2/2009 3:00:00 PM

Testimony for FIN 4/2/2009 3:00:00 PM SB62

Conference room: 308  
Testifier position: support  
Testifier will be present: No  
Submitted by: Anson Rego  
Organization: Individual  
Address:  
Phone:  
E-mail: regoa@hawaii.rr.com  
Submitted on: 4/2/2009

**Comments:**

I am an attorney practicing in the workers compensation field for injured workers for over 20 years, and I support SB 62. SB 62 is fair and reasonable to BOTH employer and now, finally, the employee.

Hawaii IME statute problems are not much different from New York and other State's IME system for workers compensation cases. It needs immediate reform. Many doctors in Hawaii have semi retired to do IMEs exclusively for Employers, who can afford 1, 2 or even more IMES. Injured workers have no such funds.

Hawaii pays in the thousands of dollars for IME reports and examinations and even more is charged the Employers for updated reviews and testimony. These IMEs are routine and often unnecessary and causes delay, since hearings must be held thereafter to request the IME's opinion be overruled by the Labor Department--a process which easily take 1/2 year and leave injured workers without medical care, even surgery for all that time. Presently, Hawaii's IMEs system is a willy-nilly process which needs the utmost scrutiny. It makes for a great living for a few well-used physicians, who rather than treating actual patients, prefer to make a living doing reports without any obligations towards the injured worker.

See the recent New York Times article this past week on the IME scandal there. It is a scandal here as well.

<http://www.nytimes.com/2009/04/01/nyregion/01comp.html?hp>

The focus of the above article is on IMEs in NY's work comp system but most of the article applies to HI's situation as well.

Mahalo

Anson Rego  
Attorney at Law  
A Law Corporation

## **FINTestimony**

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**From:** shelley@wilsonhomecare.net  
**Sent:** Thursday, April 02, 2009 8:10 AM  
**To:** FINTestimony  
**Subject:** RE: SB 62 SD1 HD1 re Workers' Compensation

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

I, Shelley Wilson, owner of Wilson Homecare, a homehealthcare agency that employs more than 200 employees, respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination. I have found that the current system is quite fair and effective. If it's not broken, why try and fix it?

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Best Regards,  
Shelley Wilson  
President  
Wilson Homecare  
PO Box 2058  
Honolulu, HI 96805  
808-596-4486  
Shelley@wilsonhomecare.net

## **FINTestimony**

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**From:** cindy.fujioka@hilton.com  
**Sent:** Thursday, April 02, 2009 7:58 AM  
**To:** FINTestimony  
**Subject:** SB62 SD1 HD1 Workers' Compensation

Cindy Fujioka  
Doubletree Alana Hotel-Waikiki  
1956 Ala Moana Blvd.  
Honolulu, HI 96815

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

2009 APR -1 P 4: 33

April 1, 2009

State House of Representatives  
The Twenty-Fifth Legislature

Committee on Finance  
Representative Marcus Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
And Member of the Committee on Finance  
State Capitol, Room 306  
415 South Beretania Street  
Honolulu, Hawaii 96813

Relating to: SB 62, SD1, HD1 Relating to Worker's Compensation

Dear Representative Oshiro and Members of the Committee:

My name is Lily Miyahira and I have been employed by a vocational rehabilitation company since 1996. I am writing in support of SB 62, which will require Independent Medical Evaluations and Permanent Impairment rating examinations to be performed by mutual physicians.

I feel that the injured worker should have a say in who performs these examinations to ensure a fair, objective, and true independent evaluation of their case and disability. Due to my line of work, I have seen too many injured workers' services and benefits jeopardized because they were unable to participate in this decision making process in regards to their case and disability.

I strongly urge you to **SUPPORT SB 62, SD1, HD1 RELATING TO WORKERS' COMPENSATION.**

Sincerely,

Lily Miyahira  
715 S. King St., Suite #410  
Honolulu, HI 96813  
538-8733

## FINTestimony

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**From:** mbeams@cochawaii.com  
**Sent:** Wednesday, April 01, 2009 2:10 PM  
**To:** FINTestimony  
**Subject:** harmful workers' comp

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Mimi Beams, I work at the Chamber of Commerce of Hawaii as the VP Business Development and have lived in your district for a very long time. You may contact me at mbeams@cochawaii.org. I know that this bill does not serve the business community nor provide for a healthy business environment. It does harm to what has been a very good Workers' Compensation program in Hawaii.

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

## FINTestimony

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**From:** ksanders@oceannetwork.tv  
**Sent:** Wednesday, April 01, 2009 2:14 PM  
**To:** FINTestimony  
**Subject:** Oppose Worker's comp

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

From Ken Sanders, Chairman, Co-Founder, President of Ocean Network, digital TV Channel 349

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

We are barely holding on in this economy and trying to cut expenses. If we have one more item of increased expenses, it may be the tipping point that puts us under.

Thank you for the opportunity to submit testimony.

## **FINTestimony**

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**From:** ldarnell@comtelhi.com  
**Sent:** Wednesday, April 01, 2009 2:10 PM  
**To:** FINTestimony  
**Subject:** Oppose SB 62

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Louis Darnell  
ComTel, Inc.  
ldarnell@comtelhi.com

Chair Oshiro, Vice Chair Lee and members of the committee:

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

## **FINTestimony**

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**From:** dhalcro@vpgmail.com  
**Sent:** Wednesday, April 01, 2009 2:31 PM  
**To:** FINTestimony  
**Subject:** SB62 Sd1 HD1

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is absolutely unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. We have been in a position with an employee who had their own doctor, their own agenda, and we paid dearly for it. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Since it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified the employer should choose the doctor.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Deborah Halcro, President  
Valenti Print Group  
999 Waimanu Street  
Honolulu, HI 96814

## **FINTestimony**

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**From:** kkane@argosy.edu  
**Sent:** Wednesday, April 01, 2009 2:06 PM  
**To:** FINTestimony  
**Subject:** do not pass SB 62 SD1 HD1

Testimony to the House Finance Committee Thursday, April 2 3:00 p.m. in Room 308

RE: SB 62 SD1 HD1 re Workers' Compensation

Chair Oshiro, Vice Chair Lee and members of the committee:

My name is Kawika Kane of Kapolei, Oahu, and I respectfully request that you do not pass SB 62 SD1 HD1 relating to Workers' Compensation.

SB 62 SD1 HD1 measure removes the employer's right to select an Independent Medical Examination.

I believe that it is inherently unfair to allow one party to choose both the treating physician and the IME physician who will review the treating physician's plan. Therefore, to balance the equation, the employer should have the right to select a physician to conduct the IME. Furthermore, it is the employer who pays for 100% of the cost of the IME physician and it is part of our discovery process to ensure proper treatment and that the costs are justified.

It is unfair to pass legislation that heavily tips in favor for one party and not the other. Furthermore, this is not the time to pass legislation that will further increase costs. If businesses hurt, jobs will be lost, and the economy will continue to spiral down.

This measure, if passed, will increase the cost of workers' compensation premiums and the overall cost of doing business. Thus, I respectfully ask that you hold this measure.

Thank you for the opportunity to submit testimony.

Kawika Kane  
91-1022 Owakalena Street  
Kapolei, HI, 96707  
Cell: 366-6559  
Email: kkane@argosy.edu