

MAR 10 2017

SENATE CONCURRENT RESOLUTION

REQUESTING THE AUDITOR TO CONDUCT AN AUDIT OF THE VOCATIONAL
REHABILITATION UNIT IN THE DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS, DISABILITY COMPENSATION UNIT.

1 WHEREAS, vocational rehabilitation is a critical aspect of
2 Hawaii's workers' compensation system and vital to the system's
3 overriding objectives of adequately compensating the injured
4 worker and restoring the worker as fully as possible to that
5 level of economic earnings and as quickly as is possible to
6 gainful employment if the worker becomes disabled; and
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8 WHEREAS, vocational rehabilitation has historically been a
9 successful and valued part of the State's commitment to the
10 restoration process, which assists the individual worker, the
11 employer, and the community as a whole; and
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13 WHEREAS, statistical evidence gathered by vocational
14 rehabilitation professionals attests to the continuing success
15 of vocational rehabilitation as a means of returning injured
16 workers to the workforce; and
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18 WHEREAS, statistical evidence demonstrates that in 2015, an
19 average 59.6% of injured workers returned to work through a
20 vocational rehabilitation plan while in 2016, the average rose
21 to 65.4%; and
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23 WHEREAS, many responsible individuals and stakeholders in
24 the existing workers' compensation system have voiced legitimate
25 concerns that the program is currently administered in a
26 different manner than in the previous three and a half decades,
27 and that is contrary to the original intent of the system as
28 expressed in section 386-25(a), Hawaii Revised Statutes; and
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1 WHEREAS, criticism has been voiced that, in one case, the
2 mutual agreement between the parties to send an injured worker
3 to San Bernadino, California, for heavy equipment training was
4 prudent and economical because no such training was offered in
5 Hawaii and doing so would return the injured worker to gainful
6 employment in an expeditious manner; however, the Vocational
7 Rehabilitation Unit rejected the agreement as well as the
8 supportive decision of the Department of Labor and Industrial
9 Relations' hearing officer and chief hearings officer;
10 accordingly, the worker found it necessary to appeal her case to
11 the Labor and Industrial Relations Appeals Board, which then
12 approved a settlement that reinstated the mutually agreed upon
13 training; and
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15 WHEREAS, the Vocational Rehabilitation Unit's recent
16 denials of initial evaluation reports that are not submitted
17 within the normal forty-five day period have led to the
18 arbitrary closures of otherwise viable vocational rehabilitation
19 cases, with the option of further referral to other counselors,
20 even though failures to comply with the forty-five day limit are
21 due to factors beyond the counselors' control, such as the need
22 to secure medical information from physicians about the injured
23 workers' physical or psychological limitations and requests by
24 physicians to conduct functional capacity testing before
25 providing the medical information on physical limitations; and
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27 WHEREAS, such further referral is duplicative and costly
28 and undertaken without rational basis, is unnecessarily
29 expensive for employers and insurance carriers, and disruptive
30 to sound relationships that claimants have formed with their
31 original vocational counselors; and
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33 WHEREAS, criticism has also been voiced that the Vocational
34 Rehabilitation Unit is currently administered in a manner that
35 is punitive and retaliatory toward counselors who are advised of
36 the department's authority to revoke their certification or
37 registration under section 12-14-19, Hawaii Administrative
38 Rules; and
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40 WHEREAS, the unwarranted references to section 12-14-19,
41 Hawaii Administrative Rules, is intimidating, hostile, and
42 contrary to the cooperative relationships that should be



1 fostered within the Vocational Rehabilitation Unit and the
2 professionals that it regulates, and may even represent, in some
3 cases, retaliation against the vocational counselors' exercise
4 of their First Amendment constitutional rights to participate in
5 the legislative and regulatory process by petitioning their
6 government and the Department of Labor and Industrial Relations
7 for statutory and regulatory changes, as well as their exercise
8 of independent professional judgment as licensed professionals,
9 and their advocacy for appropriate vocational rehabilitation
10 plans on the part of clients they represent; and
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12 WHEREAS, no vocational rehabilitation counselor should have
13 to suffer any detriment or retaliation as the result of the
14 counselor's lawful exercise of the counselor's First Amendment
15 rights to participate in the legislative process or to engage in
16 discussions and debates regarding the adoption of administrative
17 rules, because such detriment or retaliation is antithetical to
18 the essential traditions of American democratic government; now,
19 therefore,
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21 BE IT RESOLVED by the Senate of the Twenty-ninth
22 Legislature of the State of Hawaii, Regular Session of 2017, the
23 House of Representatives concurring, that the Auditor is
24 requested to audit the performance, during calendar years 2015
25 and 2016, of the Vocational Rehabilitation Unit of the
26 Disability Compensation Division of the Department of Labor and
27 Industrial Relations; and
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29 BE IT FURTHER RESOLVED that the Auditor is requested to
30 include in the audit, assessments of whether the Vocational
31 Rehabilitation Unit;
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33 (1) Has data on the success and efficacy of the vocational
34 rehabilitation efforts of the providers that it
35 regulates;
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37 (2) Has any sufficient and statistically valid data to
38 reach meaningful conclusions about the efficacy of the
39 providers that it regulates;



1 (3) Engages in a practice of closing vocational
2 rehabilitation cases, because of noncompliance with
3 the forty-five day deadline for submitting initial
4 evaluations, and then permitting the cases to be
5 assigned to other counselors; provided that the
6 Auditor is requested to determine whether the
7 practice:

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9 (A) Is a recurring one;

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11 (B) Results in an unnecessary delay of vocational
12 rehabilitation services;

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14 (C) Results in the termination of vocational
15 services; and

16
17 (D) Is noticed by employers, insurance carriers,
18 injured workers, injured worker advocates and
19 counsel, and the vocational rehabilitation
20 counselors;

21
22 (4) Treats counselors who have lawfully advocated changes
23 in legislation and administrative rules in an adverse
24 and discriminatory manner. The Legislature requests
25 that this evaluation be conducted by first identifying
26 counselors who opposed the Department of Labor and
27 Industrial Relations' attempt to establish alternative
28 methods of compensating counselors based upon the
29 Department's criteria of vocational success; and

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31 (5) Deliberately misclassifies the success or failure of
32 vocational rehabilitation plans in order to further
33 the Department's previous but now abandoned goal of
34 establishing a new system of compensation; and

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36 BE IT FURTHER RESOLVED that the Auditor is requested to
37 submit a report of any findings and recommendations, including
38 any proposed legislation, to the Legislature not later than
39 twenty days prior to the convening of the Regular Session of
40 2018; and



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1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to the Auditor and the
3 Director of Labor and Industrial Relations.
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OFFERED BY:

BSL b/r

