



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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January 28, 2009

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor & Public Employment

Date: Friday, January 30, 2009

Time: 8:30 a.m.

Place: Conference Room 309
State Capitol

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

Testimony in Strong Opposition of H.B. 396 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 396 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by adding a section regarding worker retention in the event of a divestiture that the successor employer:

1. Shall hire all incumbent non-supervisory and non-confidential employees of the affected establishment;
2. Shall not require incumbent employees to file employment applications for hiring purposes with the successor employer unless existing employee files are incomplete;
3. May conduct pre-hire screening of incumbent employees not prohibited by law, including criminal history record checks and drug screening; and
4. Lowers the retention rate if the nature of the succeeding business is substantially dissimilar to the former establishment or the human resource needs are reduced; provided that the number of dislocated employees is proportionate to the reduction in total human resource needs.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for workers who were faced with termination due to a sudden closure or partial closing as a result of a sale, transfer, merger, bankruptcy or other business transactions by:

1. Requiring employers with fifty (50) or more employees in the State of Hawaii to provide advance notification to the Department of Labor and Industrial Relations and to all affected employees;
2. Requiring employers to provide Dislocated Worker Allowance (the difference between the employee's average weekly wage and the weekly unemployment compensation benefit) to affected employees who apply for and are found eligible for unemployment compensation; and
3. Requiring employers to provide prompt payment of wages and benefits on the effective date of closing to each employee.

The law was amended in June 2001 to extend the advance notification period from forty-five (45) to sixty (60) days, and in July 2007 to include a definition of "divestiture"; amend the definition of "closing"; include penalties for non-compliance; and allow for an extension of the sixty (60) day period under certain circumstances.

III. HOUSE BILL

The Department of Labor and Industrial Relations strongly opposes this bill for the following reasons:

1. The State should not dictate to a buying company, that is investing money in a local business, to keep those employees that are not needed or not serving in the best interest of their company. This is an over-reaching and improper action that interferes with a business's ability to make decisions relating to their economic well-being.
2. The requirement may also have an adverse affect on the selling employer's current employees. If a company is being sold due to a financial crisis, possible successor companies will choose not to purchase the existing company if the proposed bill takes effect, ensuring a greater likelihood that the company will go bankrupt and all the employees will become unemployed.

3. Requiring a successor employer in a divestiture to retain all of the incumbent employees of an affected establishment, or a number proportionate to total human resource needs, seems overly prescriptive because it would not allow the successor employer to bring its own employees, except for supervisory or confidential workers.
4. Additionally, the bill is vague on how to measure human resource needs. For example, a successor employer retains only 200 of 300 employees because the business can be successfully operated at that lower staffing amount. How would the employer (or Department) verify that the human resource needs of the company merited the release of 100 employees?

If the employer is found in violation, he is responsible for compensation to affected workers. Why should an employer compensate persons who were not their employees?

5. Collective bargaining agreements, which were developed to protect the interests of employees, exist in larger companies and must be taken into consideration by all parties involved in a divestiture.

It would not be in the best interest of the general public for the Legislature to dictate to private companies on who they should hire and terminate under these circumstances.



**Testimony to the House Committee on Labor & Public Employment
Friday, January 30, 2009
8:30 a.m.
Conference Room 309**

RE: HOUSE BILL NO. 396 RELATING TO EMPLOYMENT

Chair Rhoads, Vice Chair Yamashita, 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"). I am here to state The Chamber's strong opposition to House Bill No. 396, relating to Employment.

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 establishes job security requirements upon the divestiture of a covered establishment.

The Chamber well recognizes the hardship that business failures and ownership changes place on employees. However, The Chamber does not believe that House Bill No. 396 is an appropriate measure in addressing this issue. The following is a list of some of the reasons why this bill should be held:

- 1) This bill interferes with the basic principles of doing business. This measure removes the purchasing employer's rights to select employees appropriate for its goals and objectives. As a result, it may have the adverse consequence of discouraging capital investment in Hawaii because purchasers will be more reluctant to acquire companies as a result of the stringent requirements and mandates. This will send a negative message to the nation and further undermine Hawaii's efforts in becoming a "business-friendly" climate. It will be the only state that will have this kind of law.

Also, the bill places a mandate on the new business to retain a proportion of the incumbent employees if the human resources needs of the successor employer are reduced. There is no understanding that a change in human resource needs may change the nature of the skills and abilities of those employees needed to operate the new business. Saddling a new business with the predecessors employees may undermine the livelihood and continued employment of other employees.

- 2) This bill will have the reverse effect, and in turn, cost jobs. The measure may have the unintended consequences of hurting local businesses, which otherwise would have had an opportunity to sell their business to a successor company.

In many cases, businesses are sold because the seller is losing money. In order to turn the business around, a buyer needs the flexibility to change or reduce staff to increase efficiency, or to bring in better qualified or more skilled employees, or to bring in employees with different skill sets.

Those businesses which would normally be sold to a buyer which can make necessary changes will simply go out of business and the employees will lose their jobs. Or the assets of the business will be sold off and the employees will lose their jobs.

- 3) The term, "substantially dissimilar" is ambiguous. Although HB 396 recognizes that the new business may be substantially dissimilar to the former business, this term is difficult to define, and will result in litigation in most cases. Once again, employees will lose their jobs due to potential overwhelming litigation costs that could impact the employer.
- 4) Although the bill allows employers to apply substance abuse testing and criminal records check standards it fails to understand that a new employer may have different requirements such as conflict of interest policies or anti-nepotism rules that may not have been applied by the former employer. The bill also fails to recognize that an application form may contain other information important to a new employer that is missing or outdated on the predecessor employer's records.

In sum, House Bill No. 396, while well-intended, will pose negative consequences for Hawaii's future. We cannot afford to pass legislation that will have this kind of result. Hawaii should be encouraging investment in its failed or struggling businesses, especially as Hawaii weathers this tough economic storm. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests HB 396 be held.

Thank you for the opportunity to testify.

yamashita2 - Kristen

From: Party Chair [dphchair@gmail.com]
Sent: Thursday, January 29, 2009 7:29 PM
To: LABtestimony
Subject: HB 396, Hearing on Friday

January 29, 2009

Chair Rhoads and Members of the Committee:

I am writing to offer my support for HB 396. This is a difficult issue for many members of the legislature, but for us as Democrats, it ought to be pretty straightforward.

Entities or individuals who want to buy local companies and immediately lay off their workers, in order to break a union or to dramatically reduce payroll costs, should not be welcome in Hawaii's economy. We desperately need outside investors, but we they must recognize collective bargaining and the critical role that our workers and organized labor plays in Hawaii's economic vitality.

Please pass this bill.

With respect and aloha,

Brian Schatz
Chair
Hawaii Democratic Party



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
January 30, 2009

H.B. 396 - RELATING TO EMPLOYMENT

Unfortunately, Hawaii and the rest of the United States are facing some of the worst economic conditions since the Great Depression. Unemployment levels are continually rising, home prices are sliding at a rapid rate, and consumer confidence is at an all-time low. Unless something is done in the very near future, conditions will get worse and quite frankly, a depression could be imminent. That is why labor supports H.B. 396.

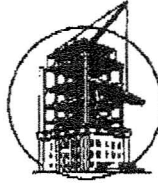
While H.B. 396 will not entirely fix Hawaii's economy, it will help protect workers' jobs which are so vital in today's economy. If people are working, they will hopefully be spending and if they are spending, Hawaii businesses will do better. That is why it is imperative to pass H.B. 396. Hawaii must do all it can to reduce unemployment levels. The lower the unemployment rate, the better the economy will hopefully be.

Furthermore, consumer confidence is at an all-time low and something must be done to change that mind set. H.B. 396 can add some additional comfort to those worried tomorrow may be their last day of work in the event of a divestiture. It is not in Hawaii's best interest to dramatically increase unemployment in today's economic crisis.

The passage of H.B. 396 is critical in today's economy. We must protect workers' jobs and we must do everything we possibly can to change the economy for the better. Thank you for the opportunity to testify in support of H.B. 396.

Respectfully submitted,

Randy Perreira
President



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO
 GENTRY PACIFIC DESIGN CENTER, STE. 215A • 580 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
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NOLAN MORIWAKI
President
 Bricklayers & Ceramic Tile Setters
 Local 1 & Plasterers/Cement
 Masons Local 630

January 29, 2009

JOSEPH O'DONNELL
Vice President
 Iron Workers Local 625

Honorable Representative Karl Rhoads, Chair
 Honorable Representative Kyle T. Yamashita, Vice Chair
 Members of the House Committee on Labor & Public Employment
 Hawaii State Capital
 415 South Beretania Street
 Honolulu, HI 96813

DAMIEN T. K. KIM
Financial Secretary
 International Brotherhood of
 Electrical Workers Local 1166

ARTHUR TOLENTINO
Treasurer
 Sheet Metal Workers I.A. Local 293

**RE: IN SUPPORT OF HB 396
 RELATING TO EMPLOYMENT
 Hearing: Friday, January 30, 2009, 8:30 p.m.**

MALCOLM K. AHLO
Sergeant-At-Arms
 Carpet, Linoleum, & Soft Tile
 Local 1286

Dear Chair Rhoads, Vice Chair Yamashita and the House Committee on
 Labor & Public Employment:

REGINALD CASTANARES
Trustee
 Plumbers & Fitters Local 575

For the Record my name is Buzz Hong, the Executive Director for
 the Hawaii Building & Construction Trades Council, AFL-CIO. Our
 Council is comprised of 16-construction unions and a membership
 of 26,000 statewide.

THADDEUS TOMEI
 Elevator Constructors Local 125

JOSEPH BAZEMORE
 Drywall, Tapers, & Finishers
 Local 1944

The Council **SUPPORTS** the passage of HB396 that establishes job
 security requirements upon the divestiture of a covered
 establishment.

RICHARD TAGGERE
 Glaziers, Architectural Metal &
 Glassworkers Local Union 1889

Thank you for the opportunity to submit this testimony in support
 of HB396.

AUGHN CHONG
 Roofers, Waterproofers & Allied
 Workers United Union of Roofers
 Local 221

Sincerely,

MARY AYCOCK
 Roller-makers, Ironship Builders
 Local 627

W. Hong/dg

YNN KINNEY
 District Council 50
 Painters & Allied Trades
 Local 1781

William "Buzz" Hong
 Executive Director

ALANI MAHOE
 Operating Engineers Local 3

WBH/dg

EDONARD SEBRESOS
 International Assoc. of
 Flat & Frost Insulators
 Allied Workers Local 132





**International Union of Painters and Allied Trades
District Council 50**

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January 29, 2009

The Honorable Karl Rhoads, Chair
and Members of the House Labor and Public Employment Committee
Hawaii State Capitol
415 S. Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT of HB 396 – “RELATING TO
EMPLOYMENT”
Friday, January 30, 2009, at 8:30 a.m., Conference Room 309

Dear Chair Rhoads
and Members of the House Labor and Public Employment Committee:

As the Business Manager/Secretary-Treasurer of the International Union of Painters and Allied Trades, District Council 50, I would like to offer my support for the intent of House Bill 396, which establishes job security for employees upon the divestiture of a business. As Hawaii enters this challenging period of our history, we would hope that the members of the legislature will keep in mind the needs of everyday working people, and support this bill.

Respectfully,

LYNN KINNEY
Business Manager/Secretary-Treasurer
International Union of Painters and
Allied Trades, District Council 50

Testimony in Support of
HB396 Relating to Employment

To Committee on Labor and Public Employment
Friday, January 30, 2009
8:30 a.m., Room 309
State Capitol

By Al Lardizabal
Director of Government Relations
Laborers' International Union of North America Local 368

January 29, 2009

Honorable Karl Rhoads, Chair; Honorable Kyle T. Yamashita, Vice Chair, and Members of the Committee on Labor and Public Employment:

The Laborers' Union is in full and complete support of HB 396 to establish provisions for employment security that we believe will be fair to both the successor employer and incumbent employees of the covered establishment.

The bill will provide for the continued employment of incumbent employees, subject to certain limitations, provide for a smoother transition of ownership, maintenance of customer service and provide some measure of stability in the community. In these "perilous economic times" the importance of this stability is magnified a hundred fold. Our workers need this support; this bill can provide it to some degree.

We ask that this bill be approved and forwarded to the Economic Revitalization, Business and Military Committee, and the Finance Committee for further deliberation.

Thank you for the opportunity to submit this testimony.



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Tel: (808) 833-2711 λ Fax: (808) 839-7106 λ Web: www.hsta.org

Roger K. Takabayashi
President

Wil Okabe
Vice President

Karolyn Mossman
Secretary-Treasurer

Mike McCartney
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

RE: HB 396 – RELATING TO EMPLOYMENT

January 30, 2009

ROGER TAKABAYASHI, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Rhoads and Members of the Committee:

The Hawaii State Teachers Association (HSTA) supports HB 396 which establishes job security requirements upon the divestiture of a covered establishment. This bill will help with the continuity of having jobs for our working people in our State upon divestiture of a covered establishment. We must protect Hawaii's working people whenever an establishment has a change of ownership.

Thank you for the opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA
Executive Director
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NORA A. NOMURA
Deputy Executive Director
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
January 30, 2009

H.B. 396 – RELATING TO EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 396 which provides for job security for employees in the event of a divestiture of a covered establishment and fair compensation in the event of employee dislocation as a result of the divestiture.

The measure establishes a fair and dignified transition for employees in what is surely a disruptive and distressing circumstance. The bill benefits employees, their families and our community as a whole.

Thank you for the opportunity to testify in support of H.B. 396.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996
Affiliated with the International Brotherhood of Teamsters

1817 Hart Street
Honolulu, Hawaii 96819-3205

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Rep. Karl Rhoads, Chair
Rep. Kyle Yamashita, Vice-Chair
Committee on Labor and Public Employment
Glenn Ida
Representative
Friday, January 30, 2009

Support of HB 396, Relating to Employment

The Hawaii Teamsters Local 996 negotiates and enforces over 50 contracts, with a membership of over 6000 through out the state of Hawaii and Guam. One of our companies was ASIG, the WikiWiki Tram Service employees at the Airport.

Local 996 had represented these members for over 20 years with four management contractor changes. Last year the contract was awarded to Roberts Hawaii after the results of the first bid was revealed to all bidders. Our contract with ASIG expired at the same time. The Airport project manager added the service to a satellite parking location to the contract, which then required a second round of bidding. Two of the bids are higher than their original bids to meet the increase in service added. Roberts Hawaii, however, put in a bid that was less than their original bid before the increase in service and won the contract by being the lowest bidder.

Roberts then re-hires about 30% of the previous workforce or just enough of our Teamster members because they have CDL licenses, security clearances and Ramp Badges necessary to drive all the WikiWiki Tram routes throughout the airport. The rest of the new hires will drive the shuttles that pass through the general/public areas in the front of the airport until such time as they can upgrade their licenses and get security clearances and ramp badges.

The Hawaii Teamsters Local 996 strongly supports HB 396, not only to stabilize the employment of these highly qualified and credentialed workers but also a means to support the homeland security requirements of all workers at the Airport.

Thank you for allowing me to testify this morning.

The Twenty-Fifth Legislature
Regular Session of 2009

HOUSE OF REPRESENTATIVES
Committee on Labor and Public Employment
Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

State Capitol, Conference Room 309
Friday, January 30, 2009; 8:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 396
RELATING TO EMPLOYMENT**

The ILWU Local 142 is in strong support of H.B. 396, which establishes job security requirements upon the divestiture of a covered establishment.

As is the rest of the country and the world, Hawaii is going through some very tough economic times with businesses experiencing challenges as never before. In this climate, it is likely that some companies will be up for sale, allowing others seeking to take advantage of an opportunity to surface and purchase the business.

H.B. 396 is intended to minimize disruption in such sales, particularly for the employees. The bill calls for all incumbent workers to be retained by the new employer while permitting pre-hire screening not prohibited by law and allowing employers to retain management rights. If the business is substantially changed, however, the new employer may retain fewer employees, commensurate with the reduction in business. If the employer fails to comply with the law, the employer is obligated to compensate the dislocated worker the difference between his salary under the former employer and his unemployment insurance benefits.

The bill would prevent fewer layoffs due to the sale of a business. This objective is in keeping with the State's desire to keep people employed, thus allowing them to purchase goods and services to stimulate the economy. Instead of job creation, which has been government's mantra these past several months, H.B. 396 is designed for job preservation. Management will retain the right to evaluate employees and assess their ability to meet the company's objectives. But the initial changeover of business will be as seamless as possible under this law.

Most companies concede that this type of seamless transition is important to continuity of business. For example, when Outrigger took over management of Pacific Beach Hotel in January 2007, no one was displaced and business continued uninterrupted. However, when the owner of Pacific Beach Hotel cancelled the contract with Outrigger and decided to operate the hotel again, everyone had to reapply for their old jobs and 32 were terminated. In the Pacific Beach Hotel situation, other issues were in play, but if worker retention was law, the workers may be faring far better than they are today.

Another example is Hawaii Nanihoa Resort. In 2006, the owner lost its State land lease to another bidder, which required all employees to reapply for their jobs. The result was that some 100 workers were laid off and only 20 retained. Many of the workers, especially those with long seniority were out of work for a long time. Some of them tried occupational training for a new career, others had to drive from Hilo to the Kohala Coast for work. For most of them, their lives were irrevocably disrupted by the new employer's actions.

H.B. 396 makes good business sense. When a business is taken over by a successor employer, the requirement to retain incumbent employees will provide for an orderly transition from one employer to another. The employees, their families and the community can be spared needless disruption and distress resulting from a mass layoff. The employer will retain management rights and can be assured of productivity and loyalty from an experienced and skilled incumbent workforce. We think it's a win-win situation by any standard.

The ILWU urges strongly passage of H.B. 396. Thank you for the opportunity to share our views and concerns.



Before the House Committee on Labor & Public Employment

DATE: January 30, 2009
TIME: 8:30 a.m.
PLACE: Conference Room 309
DELIVER TO: Please deliver 30 copies to room 309

Re: HB 396 Relating to Employment Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the thousands of business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we ask that you reject HB 396. NFIB opposes this measure in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

HB 396 is impracticable and anti-business and has the potential to hasten the demise of struggling businesses, ultimately hurting Hawaii's economy. We respectfully ask that you reject HB 396.



est. 1947

Hawaii Restaurant Association

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Douglas Trade Shows

Cuyler Shaw
Ashford & Whiston

January 28, 2009

Representative Karl Rhoads, Chair
Committee on Labor and Public Employment
House of Representatives
State Capitol Rm. 326
Honolulu, Hawaii 96813

Dear Chair Rhoads,

The Hawaii Restaurant Association stands in opposition to HB 396 regarding worker retention in the event of a divestiture.

We face this situation during the event of a business (restaurant) sale and having stipulations such as stated in this bill greatly reduces the value of the business as an ongoing entity and having the ability to continue as an ongoing business. Restaurant sales occur when one owner is planning to retire or the business is somewhat marginal but the prospective buyer see a different opportunity such as tweaking the concept, marketing, and or staffing to meet the new needs. Restrictions on what the prospective buyer might be able to do thus greatly reduces the value of the business or the ability of the business transaction to be able to go thru thus resulting in just shutting down instead of an ongoing business entity.

Thanks you very much for giving us the opportunity to share our opinion and please feel free to call on us if we can offer further comments.

Sincerely,

Victor Lim
Chairman



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment
State Capitol, Honolulu, Hawaii 96813

HEARING Friday, January 29, 2009
 8:30 am
 Conference Room 309

RE: HB396, Relating to Employment

Chair Rhoads, Vice Chair Yamashita, 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.

RMH strongly opposes HB396, relating to employment, which essentially requires successor employers to retain certain incumbent employees upon the divestiture of a covered establishment.

This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest, sell or transfer that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities. At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB396. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in black ink, appearing to read 'Carol Prejzler', is written in a cursive style.

President

RETAIL MERCHANTS OF HAWAII
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Honolulu, HI 96814
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