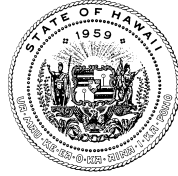


TESTIMONY

SB 688

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
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February 9, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: Tuesday, February 10, 2009

Time: 2:45 p.m.

Place: Conference Room 224
State Capitol

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

**Testimony in Opposition of
S.B. 688, Relating to Employment**

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 688 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 nonsupervisory and nonconfidential 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 during screening.
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 be 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 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;
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 day period under certain circumstances.

III. SENATE BILL

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

1. Enacting this law under Chapter 394B as proposed could be detrimental to Hawaii's current economy. State government 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.
2. The requirement may also have an adverse effect on the selling employer's current employees. If the company in question is being sold due to a financial crisis, possible successor companies will choose not to purchase the existing company, ensuring a greater likelihood that the company will go bankrupt and that 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?
5. 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?
6. 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 whom they should hire and terminate under these circumstances.



Hawai'i State Democratic Women's Caucus 1050 Ala Moana Blvd #D-26, Honolulu, HI 96814 Email: hidemocraticwomenscaucus@yahoo.com

February 10, 2009

To: Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair and
Members of the House Committee on Labor

From: Jeanne Ohta, Chair of Legislative Committee, Hawai'i State Democratic Women's Caucus

Re: SB 688 RELATING TO EMPLOYMENT
(2:45 p.m., Tuesday, February 10, 2009, Conf. Room 224)

Position: SUPPORT

Thank you for allowing me to present written testimony today, in support of SB 688 which establishes job security requirements upon the divestiture of covered establishments.

This measure would assist workers in keeping their jobs in the event of a divestiture. The successor employer shall not require incumbent employees to file employment applications to be considered for hire unless existing employee files are incomplete.

Provisions in this measure allow successor employers to retain less than 100 percent of the incumbent employees if certain requirements are met.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is in keeping with our mission that we support the rights of workers to be treated fairly and without discrimination.

Long-time and older employees are at a disadvantage when a new business entity takes over. Their loyalty to the original employer is ignored and they may not be considered for positions with the new owner. All employees are entitled to fair consideration in keeping their positions; and none should be forced to reapply for positions they currently hold; nor should new ownership be used to subvert an employee union.

This measure provides a level of protection for existing employees. It also provides for fair and respectful treatment by the new owners. We urge the committee to pass SB 688. Thank you for this opportunity to provide testimony.

THE SENATE

Committee on Labor

Sen. Dwight Y. Takamine, Chair

Sen. Brian T. Taniguchi, Vice Chair

State Capitol, Conference Room 224

Tuesday, February 10, 2009; 2:45 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 688
RELATING TO EMPLOYMENT**

The ILWU Local 142 strongly supports S.B. 688, 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 purchase a business.

S.B. 688 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 the ability to purchase goods and services which would help to stimulate the economy. Instead of job creation, which has been government's mantra these past several months, S.B. 688 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 an Outrigger affiliate took over management of Pacific Beach Hotel in January 2007, no one was displaced and business continued uninterrupted. However, when the owner of the hotel, HTH Corporation, cancelled the management 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 Naniloa 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 years of 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.

S.B. 688 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 the 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 S.B. 688. Thank you for the opportunity to share our views and concerns.



est. 1947

Hawaii Restaurant Association

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Better Brands

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Emeritus** Ed Wary
Auntie Paslo's Restaurant

Advisory Directors Faith Freitas
Trade Publishing
Ken Kanter
Douglas Trade Shows
Cuyler Shaw
Ashford & Wriston

February 9, 2009

Senator Dwight Y. Takamine, Chair
Committee on Labor
Hawaii State Senate
State Capitol Rm. 204
Honolulu, Hawaii 96813

Dear Chair Takamine,

The Hawaii Restaurant Association stands in opposition to SB 668 regarding worker retention in the event of a divesture.

Restaurants typically represent the small to medium size businesses of fewer than 100 non supervisory employees. We face this when a restaurant is up for a sale because of retirement plans of the owner or business conditions. Having stipulations like this greatly reduce the value of the business as an ongoing entity. Restaurant sales occur when the prospective buyer see the opportunity in being able to tweak the business concept, marketing, or staffing to meet the new needs. Restrictions on what the prospective buyer might and might not be able to do greatly reduce the value thus affecting the restaurant ability to be sold instead of shutting down.

Thank you very much for giving us the opportunity to share our views.

Sincerely,

Victor Lim
Chairman

EDWIN D. HILL
International President

LINDELL K. LEE
International
Secretary-Treasurer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®



The Senate
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing: Tuesday February 10, 2009
Time: 2:45 p.m.
Place: Conference Room 224

Testimony of the International Brotherhood of Electrical Workers (IBEW)

Re: S.B 688 Relating To Employment

S.B 688 would establish job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity.

The IBEW strongly supports this measure.

Today, all too often when businesses are sold or change ownership it is the poor employees who are used as pawns to broker the deal. Workers are heartlessly dumped and made to reapply for their old jobs at reduced pay and benefits. Employees should be treated as a valued stakeholder in any sale or ownership change in this State and at a minimum be afforded this type of protection, dignity and respect.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
International Representative
IBEW



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii Government Employees Association
February 10, 2009

S.B. 688 – RELATING TO
EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 688 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 will benefit the employees, their families and our community as a whole.

Thank you for the opportunity to testify in support of S.B. 688.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Committee on Labor
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 10, 2009
 2:45 pm
 Conference Room 224

RE: SB688, Relating to Employment

Chair Takamine, Vice Chair Taniguchi, 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 SB688, 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 SB688. Thank you for your consideration and for the opportunity to comment on this measure.

President

UNITE HERE!

LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Monday, February 09, 2009

Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Members of the Senate Committee on Labor

Supporting the intent of SB 688, *relating to employment.*

Chair Takamine, Vice-Chair Taniguchi and members of the Senate Committee on Labor. I submit this testimony on behalf of UNITE HERE! Local 5 and hereby register our support for the intent outlined in Senate Bill 688.

If enacted, SB 688 would amend Chapter 394B of the Hawaii Revised Statutes by adding a new section outlining the necessary changes to the Statute that would provide job security to employees in the event of a divestiture.

As an organization representing over 11,000 hotel and health care workers throughout our State, we support the intent of SB 688 in addressing the rightful claim of all workers in securing a reasonable sense of job security on the job.

I thank this Committee for providing me with the opportunity to testify.

Sincerely,



Cade M. Watanabe
Community/Political Organizer

Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009
2:45 p.m.
Conference Room 224

RE: SENATE BILL NO. 688 RELATING TO EMPLOYMENT

Chair Takamine, Vice Chair Taniguchi, 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 opposition to Senate Bill No. 688, 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 Senate Bill 688 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 due to the stringent requirements and mandates. This will send a negative message to the nation and further undermine Hawaii's efforts in saving and creating jobs during this tough economic period.

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 predecessor's 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, Senate Bill 688, 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 cultivating the soil to help our local establishments thrive, so that jobs can be saved and created, especially as Hawaii weathers this tough economic storm. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests SB 688 be held.

Thank you for the opportunity to testify.

Testimony In **SUPPORT** of
SB688 Relating to Employment

By
Al Lardizabal, Director of Government Relations
Laborers' Union Local 368

To the Senate Committee on Labor
February 10m, 2009, 2:45 p.m.
Conference Room 224
State Capitol

Honorable Dwight Y. Takamine, Chair; Honorable Brian T. Taniguchi, Vice
Chair and Members of the Committee:

The Laborers' Union **SUPPORTS** this important bill providing for some
measure of employee work stability during a divestiture of a business, with a
pre-hire screening provision. This measure will also provide some business
stability during the transition.

One of the first acts of President Barack Obama on January 30, 2009 was to
over turn three of former President Bush's anti-worker policies. One of
President Obama's policies now requires federal service contractors to offer
jobs to current workers when contracts change. This provides stability for
workers as well as provides continuity of services. He too, is cognizant of
the serious disruption in the lives of workers and in government services
brought about by change in contract/contractors.

SB688 is one step in the right direction if we are truly attempting to save and
or create jobs for our workers through an economic stimulus program.
SB688 does precisely this.

Thank you for the opportunity to present this testimony.



est. 1947

Hawaii Restaurant Association

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Sodexo (Straub)

Bob Morse
Southern Wine & Spirits

Conrad Nonaka
Culinary Institute of the Pacific

Jean Sato
The Gas Company

Robert Small
Orbit Sales

Bill Tobin
Tiki's Grill & Bar

Kevin Wada
Sodexo (Iolani)

Allen Young
Better Brands

**NRA Director
Emeritus** Ed Wary
Auntie Paslo's Restaurant

Advisory Directors Faith Freitas
Trade Publishing
Ken Kanter
Douglas Trade Shows
Cuyler Shaw
Ashford & Wriston

February 9, 2009

Senator Dwight Y. Takamine, Chair
Committee on Labor
Hawaii State Senate
State Capitol Rm. 204
Honolulu, Hawaii 96813

Dear Chair Takamine,

The Hawaii Restaurant Association stands in opposition to SB 668 regarding worker retention in the event of a divesture.

Restaurants typically represent the small to medium size businesses of fewer than 100 non supervisory employees. We face this when a restaurant is up for a sale because of retirement plans of the owner or business conditions. Having stipulations like this greatly reduce the value of the business as an ongoing entity. Restaurant sales occur when the prospective buyer see the opportunity in being able to tweak the business concept, marketing, or staffing to meet the new needs. Restrictions on what the prospective buyer might and might not be able to do greatly reduce the value thus affecting the restaurant ability to be sold instead of shutting down.

Thank you very much for giving us the opportunity to share our views.

Sincerely,

Victor Lim
Chairman



Testimony to the Senate Committee on Labor
Tuesday, February 10, 2009 at 2:45 p.m.
Conference Room 224

RE: SENATE BILL NO. 688 RELATING TO EMPLOYMENT

Chair Takamine, Vice Chair Taniguchi, and Members of the Committee:

On behalf of the Maui Chamber of Commerce, I write this testimony in opposition to Senate Bill No. 688, relating to Employment.

The Maui Chamber of Commerce, a business organization with who mission it is to advance and promote a healthy economic environment for business, advocating for responsive government and quality education, while preserving Maui's unique community characteristics, strongly opposes this bill and asks that you do the same.

We are a membership driven organization comprised of over 900 members, 88% of which are small businesses with fewer than 25 employees, representing nearly 21,000 employees. We oppose this bill which establishes job security requirements upon the divestiture of a covered establishment because it:

- 1) 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. Overall, this bill falls short of taking into consideration that the new business may significantly change the type and scope of goods and services, and may have different plans and objectives for a failed business, which may require a completely different personnel.

- 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.

While Senate Bill No. 688 is well-intended, seeking to address the hardships that business failures and ownership changes place on employees, it will generate 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 and takes away from our economic stability and job creation goals.

Therefore, please oppose this bill. If you are inclined to support it, please contact us immediately so that we can discuss it with you further.

Sincerely,

Pamela Tumpap
President