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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to moderate the  
2           unprecedented unemployment tax increase that is triggered by the  
3           unusual drain on the unemployment compensation fund and to  
4           provide for the payment of any interest charged for sums  
5           borrowed to pay expected unemployment benefit claims during a  
6           period when the balance in the unemployment compensation fund is  
7           insufficient to pay those claims and to preserve jobs and  
8           employment for Hawaii citizens that might otherwise be lost or  
9           not created due to the negative consequences of a sudden and  
10          sharp increase in unemployment taxes.

11          The legislature finds that whenever it is anticipated that  
12          the balance in any state's unemployment compensation fund is  
13          insufficient to pay expected benefit claims during a specified  
14          period of time, the governor may request a loan from the United  
15          States Secretary of Labor in accordance with Title XII of the  
16          Social Security Act.



1           Furthermore, this Act also provides other economic relief  
2 to employers and job stabilization subject to the employment  
3 security law by:

4           (1) Permanently retaining the adequate reserve fund at one  
5 times the product of the benefit cost rate multiplied  
6 by the total remuneration paid;

7           (2) Applying contribution rate schedule D for calendar  
8 year 2010, and contribution rate schedule F for  
9 calendar year 2011; and

10          (3) Keeping the taxable wage base at ninety per cent of  
11 the average annual wage.

12          SECTION 2. Chapter 383, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15          "§383-     Repayment of interest on loans from Secretary of  
16 Labor through employer assessments to avoid increase of the  
17 federal tax on employers. Whenever it is anticipated that the  
18 State will have an outstanding loan balance on January 1 for two  
19 consecutive years with respect to any loan that the State  
20 receives from the Secretary of Labor to assist in the payment of  
21 expected benefit claims, the director shall assess all employers  
22 the amounts that, together with the other assets of the



1 department paid by employers are sufficient to repay the full  
2 amount of the interest on the loan prior to November 10 of the  
3 second year following the two consecutive years of an  
4 outstanding loan balance. The director shall establish an  
5 assessment schedule based upon the contribution rate schedule of  
6 section 383-68. Prior to any assessment, the director shall  
7 apply any funds collected from employers for penalties or  
8 interest pursuant to Title 21 not otherwise required by law to  
9 be used for other purposes toward the payment of any interest.  
10 In addition, all funds collected under section 383-128 and 383-  
11 129 during any year in which there is an outstanding loan to the  
12 federal government for unemployment insurance funding shall  
13 first be applied to pay any interest on the loans."

14 SECTION 3. Section 383-61, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§383-61 Payment of contributions; wages not included.**

17 (a) Contributions with respect to wages for employment shall  
18 accrue and become payable by each employer for each calendar  
19 year in which the employer is subject to this chapter. The  
20 contributions shall become due and be paid by each employer to  
21 the director of labor and industrial relations for the fund in  
22 accordance with such rules as the department of labor and



1 industrial relations may prescribe, and shall not be deducted,  
2 in whole or in part, from the wages of individuals in the  
3 employer's employ.

4 (b) Except as provided in subsections (c) and (d), the  
5 term "wages" does not include remuneration paid with respect to  
6 employment to an individual by an employer during any calendar  
7 year which exceeds the average annual wage, rounded to the  
8 nearest hundred dollars, for the four calendar quarter period  
9 ending on June 30 of the preceding year.

10 The average annual wage shall be computed as follows: on  
11 or before November 30 of each year the total remuneration paid  
12 by employers, as reported on contribution reports on or before  
13 [~~such~~] that date, with respect to all employment during the four  
14 consecutive calendar quarters ending on June 30 of [~~such~~] that  
15 year shall be divided by the average monthly number of  
16 individuals performing services in [~~such~~] that employment during  
17 the same four calendar quarters as reported on [~~such~~] those  
18 contribution reports and rounded to the nearest hundred dollars.

19 (c) For the calendar year 1991 only, the term "wages" does  
20 not include remuneration in excess of \$7,000 paid with respect  
21 to employment to an individual by an employer. For calendar  
22 years 2008, 2009, and 2010 only, the term "wages" as used in



1 this part does not include remuneration in excess of \$13,000  
2 paid with respect to employment to an individual by an employer  
3 so long as the balance of the unemployment trust fund does not  
4 fall below the adequate reserve fund as specified by section  
5 383-63.

6 (d) For calendar year 1988 only, the term "wages" as used  
7 in this part does not include remuneration paid with respect to  
8 employment to an individual by an employer during the calendar  
9 year which exceeds:

10 (1) One hundred per cent of the average annual wage if the  
11 most recently computed ratio of the current reserve  
12 fund to the adequate reserve fund prior to that  
13 calendar year is equal to or less than .80; or

14 (2) Seventy-five per cent of the average annual wage if  
15 the most recently computed ratio of the current  
16 reserve fund to the adequate reserve fund prior to  
17 that calendar year is greater than .80 but less than  
18 1.2; or

19 (3) Fifty per cent of the average annual wage if the most  
20 recently computed ratio of the current reserve fund to  
21 the adequate reserve fund prior to that calendar year  
22 is equal to or more than 1.2;



1 provided that "wages" with respect to which contributions are  
2 paid are not less than that part of remuneration which is  
3 subject to tax in accordance with section 3306(b) of the  
4 Internal Revenue Code of 1986, as amended.

5 (e) For calendar year 2010 and thereafter, the term  
6 "wages" as used in this part does not include remuneration paid  
7 with respect to employment to an individual by an employer  
8 during the calendar year which exceeds ninety per cent of the  
9 average annual wage.

10 [~~e~~] (f) If an employer during any calendar year acquires  
11 substantially all the property used in a trade or business, or  
12 in a separate unit of a trade or business, of another employer,  
13 and after the acquisition employs an individual who prior to the  
14 acquisition was employed by the predecessor, then for the  
15 purpose of determining whether remuneration in excess of the  
16 average annual wages has been paid to the individual for  
17 employment, remuneration paid to the individual by the  
18 predecessor during the calendar year shall be considered as  
19 having been paid by the successor employer. For the purposes of  
20 this subsection, the term "employment" includes services  
21 constituting employment under any employment security law of  
22 another state or of the federal government.



1        [~~f~~] (g) Subsections (b) through [~~e~~] (f)  
2 notwithstanding, for the purposes of this part the term "wages"  
3 shall include at least that amount of remuneration paid in a  
4 calendar year to an individual by an employer or the employer's  
5 predecessor with respect to employment during any calendar year  
6 which is subject to a tax under a federal law imposing a tax  
7 against which credit may be taken for contributions required to  
8 be paid into a state unemployment fund.

9        [~~g~~] (h) In accordance with section 303(a)(5) of the  
10 Social Security Act, as amended, and section 3304(a)(4) of the  
11 Internal Revenue Code of 1986, as amended, any contributions  
12 overpaid due to a retroactive reduction in the taxable wage base  
13 may be credited against the employer's future contributions upon  
14 request by the employer; provided that no employer shall be  
15 given a cash refund."

16        SECTION 4. Section 383-63, Hawaii Revised Statutes, is  
17 amended by amending the definition of "adequate reserve fund" to  
18 read as follows:

19        "'Adequate reserve fund" means an amount that is equal to  
20 the amount derived by multiplying the benefit cost rate that is  
21 the highest during the ten-year period ending on November 30 of  
22 each year by the total remuneration paid by all employers, with

1 respect to all employment for which contributions are payable  
2 during the last four calendar quarters ending on June 30 of the  
3 same year, as reported on contribution reports filed on or  
4 before October 31 of the same year. "Remuneration", as used in  
5 this definition, means wages as defined in section 383-10. For  
6 the purpose of determining the highest benefit cost rate, the  
7 benefit cost rate for the first twelve-consecutive-calendar-  
8 month period beginning with the first day of the first month of  
9 the ten-year period and for each succeeding twelve-consecutive-  
10 calendar-month period beginning with the first day of each  
11 subsequent month shall be computed.

12 Effective for the calendar years 1992 through 2007, [~~and~~  
13 ~~from calendar year 2011 and thereafter,~~] "adequate reserve fund"  
14 means an amount that is equal to one and one-half times the  
15 amount derived by multiplying the benefit cost rate that is the  
16 highest during the ten-year period ending on November 30 of each  
17 year by the total remuneration paid by all employers, with  
18 respect to all employment for which contributions are payable  
19 during the last four calendar quarters ending on June 30 of the  
20 same year, as reported on contribution reports filed on or  
21 before October 31 of the same year. "Remuneration", as used in  
22 this definition, means wages as defined in section 383-10. For





1 the purpose of determining the highest benefit cost rate, the  
2 benefit cost rate for the first twelve-consecutive-calendar-  
3 month period beginning with the first day of the first month of  
4 the ten-year period and for each succeeding twelve-consecutive-  
5 calendar-month period beginning with the first day of each  
6 subsequent month shall be computed."

7 SECTION 5. Section 383-68, Hawaii Revised Statutes, is  
8 amended by amending subsection (c) to read as follows:

9 "(c) Effective with calendar year 1992 and thereafter,  
10 before December 31 of the previous year the contribution rate  
11 schedule for the following calendar year shall be determined on  
12 the basis of the relationship between the most recent current  
13 reserve fund and the most recent adequate reserve fund, in  
14 accordance with this subsection and subsection (d) ~~(-)~~, as  
15 follows:

16 (1) Whenever the ratio of the current reserve fund to the  
17 adequate reserve fund is greater than 1.69,  
18 contribution rate schedule A shall apply.

19 (2) Whenever the ratio of the current reserve fund to the  
20 adequate reserve fund is 1.3 to 1.69, contribution  
21 rate schedule B shall apply.



- 1 (3) Whenever the ratio of the current reserve fund to the  
2 adequate reserve fund is 1.0 to 1.29, contribution  
3 rate schedule C shall apply.
- 4 (4) Whenever the ratio of the current reserve fund to the  
5 adequate reserve fund is .80 to .99, contribution rate  
6 schedule D shall apply.
- 7 (5) Whenever the ratio of the current reserve fund to the  
8 adequate reserve fund is .60 to .79, contribution rate  
9 schedule E shall apply.
- 10 (6) Whenever the ratio of the current reserve fund to the  
11 adequate reserve fund is .40 to .59, contribution rate  
12 schedule F shall apply.
- 13 (7) Whenever the ratio of the current reserve fund to the  
14 adequate reserve fund is .20 to .39, contribution rate  
15 schedule G shall apply.
- 16 (8) Whenever the ratio of the current reserve fund to the  
17 adequate reserve fund is less than .20, contribution  
18 rate schedule H shall apply.

19 Notwithstanding the ratio of the current reserve fund to  
20 the adequate reserve fund, contribution rate schedule D shall  
21 apply for calendar year 2010, and contribution rate schedule F  
22 shall apply for calendar year 2011."



# H.B. NO. 2201

1 SECTION 6. This Act shall apply retroactively to  
2 January 1, 2010, for determinations of the employer's  
3 contribution rate for calendar year 2010.

4 SECTION 7. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 8. This Act shall take effect upon approval.

7

INTRODUCED BY:

Calvin H. Day

BY REQUEST

JAN 20 2010



**Report Title:**

Employment Security; Contribution Rate Schedules; Adequate Reserve Fund; Assessments

**Description:**

Applies contribution rates schedules D and F to calendar years 2010 and 2011, respectively, notwithstanding the ratio of the current reserve fund to the adequate reserve fund. Requires assessments upon employers to avoid federal penalties on outstanding loan balances on loans received from the U.S. Secretary of Labor when the balance in the unemployment compensation fund is insufficient to pay expected benefit claims. Permanently retains the adequate reserve fund at one times the product of the benefit cost rate multiplied by the total remuneration paid. Sets the taxable wage base at 90% of the average annual wage from calendar year 2010 and thereafter.

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