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February 1, 2010

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

Date: Tuesday, February 2, 2010

Time: 9:00 a.m.

Place: Conference Room 309
State Capitol

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

**Testimony in Opposition to
H.B. 2636, Relating to Dislocated Workers**

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2636 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by adding an item (e) in Section 394-B-9 giving the Department of Labor and Industrial Relations enforcement powers to penalize employers who fail to provide the required notification to affected workers of a closing, divestiture, partial closing or relocation.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance to 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 transaction 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 found eligible for unemployment compensation; and
3. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation.
4. An employer who fails to provide notice shall be subject to a civil penalty not to exceed \$500 for each day of the violation and the amount deposited in the Employment and Training Fund under section 383-128 unless the employer satisfies its liability to each affected employee within three weeks after the closing.

III. HOUSE BILL

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

- The Department provides Rapid Response services to employers affected under the Law as well as businesses who voluntarily seek the assistance of the Department. The Department provides information, guidance and counseling on the process of filing for unemployment compensation, meeting the job search and availability of work requirements, seeking community resources, and assessing workers' abilities, skills and experiences to complement current labor market needs. A proactive approach to assist all affected parties would be more beneficial than using limited department resources to penalize employers.
- The bill would require the Department to establish a system to track and investigate all closures to identify any violations of the law and develop a mechanism to bill and collect any penalties. The Attorney General's office will also need to be involved to ensure all actions are taken within the boundaries of the law. Federal Funds are not available to support enforcement of a State law. Without financial assistance from State general revenue, the Department will not be able to carry out the added responsibilities required by this bill. Budget constraints preclude State funding for this added responsibility.