MAUI CHAMBER OF COMMERCE
OUR BUSINESS IS MAUI BUSINESS

Late Testimony

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:

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 House Bill No. 396 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 as 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