

HB169

TESTIMONY

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

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March 18, 2011

To: The Honorable Clayton Hee, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Monday, March 21, 2011
Time: 8:30 a.m.
Place: Conference Room 016, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. No. 169 H.D. 2 Relating to Employment Security

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 169 H.D. 2 proposes an optional total unemployment rate (TUR) trigger of 6.5% for the extended benefit (EB) provisions under sections 383-168 through 383-176, Hawaii Revised Statutes (HRS) if 100% federal sharing is available under federal law. To determine the EB TUR trigger, the seasonally adjusted TUR, as determined by the Secretary of Labor, for the most recent 3-month period must equal or exceed 6.5% and the average TUR in the state must equal or exceed 110% of the TURs for either or both of the corresponding 3-month periods in the preceding calendar years. The bill also appropriates an amount to be determined to develop the system for the EB program.

II. CURRENT LAW

Currently, EB is payable for 13 additional weeks when the insured unemployment rate (IUR) during a 13-week period is at least 120% of the average of such rate for a corresponding 13-week period ending in each of the 2 preceding calendar years and at least 5%. An IUR of 6% by itself may also cause EB to trigger on. While states are required to conform to the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 by providing the IUR trigger for EB, the TUR trigger is optional.

The federal government pays half the costs of EB for private companies and non-profit

agencies. Claims based on employment with state and local governments and federally-recognized Indian tribes are subject to 100% reimbursement of the EB payments. Under the Assistance for Unemployed Workers and Struggling Families Act, of Public Law No. 111-5, the federal government will pay for the full cost for EB claims filed in 2011, except for government and Indian tribe employers.

III. HOUSE BILL

The Department supports the intent of this measure. However, the US Department of Labor has recently pointed out serious flaws in the present bill as follows:

1. Under section 3304 (a)(11) of the Federal Unemployment Compensation Act (FUTA), the state EB provisions must conform to the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 as a condition of certification for the normal tax credit. Since EUCA does not have any provision for paying EB only when there is 100% federal funding, this proposed amendment as written with a permanent open-ended clause to pay EB will create an issue under federal law. According to EUCA, EB must be paid when an EB period is triggered regardless of whether 100% federal funding is available.
2. If the state is not certified by the Secretary of Labor for FUTA tax offset credit, all contributory employers will be required to pay an additional 5.8% (for a total of 6.2%) to the federal government. Denial of offset credit would also result in the withholding of the UI administrative grant since such grants are only available for programs approved under FUTA. Withdrawal of administrative grants would end state operations of the UI program.
3. If the intent is only to trigger on to EB when there is 100% federal funding available, the USDOL strongly recommends that temporary triggers be put in when the situation arises and to cite the applicable federal law.
4. The bill does not address the amount an individual receives as required by section 202(b) EUCA. The bill is confusing, as it appears to do this in section 383- (a) 1(A), however, the EB period is determined by when the state triggers on and off EB, and not for a set duration. The amount can be spelled out under section 383-172 (i.e., 20 x weekly benefit amount or 46 weeks reduced by the amount of regular UI).
5. The TUR off indicator occurs when the EB trigger is no longer met and has nothing to do with the preceding 12 weeks.

In addition, the following concerns are raised by the Department:

6. When 100% federal sharing is available, government and Indian tribe employers would not be reimbursed for EB and would be liable for the full cost of EB payments. There is no federal sharing for EB attributable to employment with state and local governments or Indian tribes because these entities pay no FUTA tax. The claims based on state and county governments are estimated to account for 2.6% and .4% respectively of the total claims paid, amounting to approximately \$140,000 per month (\$1.7 million per year).
7. There is also no federal funding for the rounding up of benefit amounts as required under our state law. The UI trust fund would be liable for roughly \$10,800 per month (about \$130,000 per year) in costs associated with the rounding up of the weekly benefit amount on EB claims. Currently, the trust fund is insolvent and there is an outstanding balance of \$35 million in federal loans to pay benefits.
8. There are additional eligibility requirements for the EB program, e.g. tangible evidence of search for work efforts each week and acceptance of "suitable work", defined as any work which is within the individual's capabilities, pays the minimum wage, and meets the labor standards.

The Department is open to further discussion and has drafted alternatives for consideration. Currently, we are asking the U.S. Department of Labor to review our drafts for conformity with federal law.



Randy Perreira
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The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii State AFL-CIO
March 21, 2011

H.B. 169, HD2 – RELATING TO
EMPLOYMENT SECURITY

The Hawaii State AFL-CIO supports H.B. 169, HD2 which enacts the optional total unemployment rate trigger.

Currently, Hawaii's unemployment rate stands at 6.3%. We hope that this number continues to decline, but must accept that predicting what the unemployment rate will be in the months ahead is nearly impossible. As a result, it is critical that Hawaii pass H.B. 169, HD2 which would extend the benefit period an additional thirteen weeks or twenty weeks if the unemployment rate reaches 6.5% or 8% respectively.

Thank you for the opportunity to testify.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "RyR", written over the typed name.

Randy Perreira
President

The Twenty-Sixth Legislature
Regular Session of 2011

THE SENATE

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

State Capitol, Conference Room 016
Monday March 21, 2011; 8:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 169, HD2
RELATING TO EMPLOYMENT SECURITY**

The ILWU Local 142 supports H.B. 169, HD2, which enacts the optional total unemployment rate trigger and provides funds for an automated extended benefit claims system.

For many years, Hawaii's unemployment rate had been the lowest in the country. However, during the recent economic downturn (i.e., "recession"), our unemployment rate had crept up to more than 6%, resulting in the Unemployment Insurance Trust Fund going broke and necessitating a loan from the federal government.

Today, Hawaii's economy is improving and prospects look hopeful. However, the unemployment rate is at 6.4%, a far cry from the 2% and 3% of the past. As fragile as our economy is, particularly in light of the recent disaster in Japan, we cannot rely on the unemployment rate continuing to improve. While we are hopeful that the rate will not increase, we cannot be certain that we will not be hit by another economic crisis, leaving more people requiring unemployment benefits.

H.B. 169, HD2 is intended as a hedge against that dire possibility. With this measure, if the unemployment rate exceeds 6.5%, the State can access federal extended benefits to allow unemployed workers to receive benefits beyond the 26 weeks provided by the State. This measure may not be needed if Hawaii's economy continues to improve and the unemployment rate goes down. However, it would be foolish not to act now to prepare for a scenario where unemployment does go up.

H.B. 169, HD2 also calls for an appropriation for an automated extended benefit claims system. Rather than appropriate additional General Fund monies, the Department may consider use of funds available for administrative expenses under H.B. 1076, HD1. By deleting this appropriation from H.B. 169, HD2, the bill will revert to its original purpose--that is, to allow the State to access federal extended benefit funds in the event that Hawaii's UI rate exceeds 6.5%.

With this amendment, the ILWU urges passage of H.B. 169. Thank you for the opportunity to testify.