



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

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March 30, 2011

To: The Honorable Marcus Oshiro, Chair
and Members of the House Committee on Finance

Date: Thursday, March 31, 2011
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

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

Re: S.B. No. 1089, S.D. 1, H.D. 1, Relating to Dislocated Workers

I. OVERVIEW OF PROPOSED LEGISLATION

Senate Bill 1089, S.D. 1, H.D. 1, proposes to add 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. The effective date is July 1, 2011.

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:

- A. 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;
- B. 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;

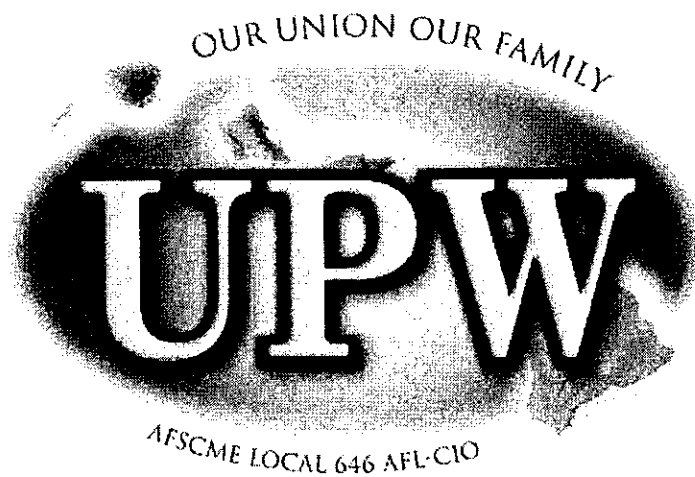
- C. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty (60) days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation; and
- D. 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 supports the intent to provide relief to affected dislocated workers, but is concerned about the need for additional resources to effectively carry out the enforcement responsibilities.

- A. By giving the Department enforcement authority, the bill imposes an increase in additional responsibilities without any additional resources. Because of the wide scope of layoffs, it would be difficult to provide effective and meaningful enforcement with existing state resources. The division's general fund budget is currently 0.2 FTE positions and \$99,898, which support the state's apprenticeship program and the Senior Community Service Employment Program. Federal funds cannot be used for this purpose.
- B. Enforcement responsibilities also will involve the Attorney General's staff in providing legal services in the interpretation of the law, conducting investigations, developing administrative rules, and determining the applicability for each alleged infraction. In addition, with less than three months remaining before July 1, 2011 and insufficient resources, it is unlikely that administrative rules and procedures will be developed by the effective date. Again, federal funds cannot be used for this purpose.

The Department is open to further discussion regarding resources to carry out this measure.



**Twenty-Sixth Legislature, State of Hawaii
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Hearing Date: March 31, 2011**

Testimony By United Public Workers

Re: SB 1089, SD1, HD1(HSCR1155) - RELATING TO DISLOCATED WORKERS

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for public employees in bargaining Unit 1 blue collar non-supervisory and Unit 10 institutional, health and correctional facilities.

The United Public Workers support the intent and purpose of S.B. 1089, SD1, HD1, which authorizes the Department of Labor and Industrial Relations to exercise enforcement powers against an employer in a covered establishment.

Thank you for the opportunity to testify in support of S.B. 1089, SD1, HD1.

The Twenty-Sixth Legislature
Regular Session of 2011

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

State Capitol, Conference Room 308
Thursday, March 31, 2011; 2:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1089, SD1, HD1
RELATING TO DISLOCATED WORKERS**

The ILWU Local 142 supports S.B. 1089, SD1, HD1, which authorizes the Department of Labor and Industrial Relations to exercise enforcement powers against an employer in a covered establishment.

The 2007 Legislature amended the Dislocated Worker Act to include penalties against an employer for failure to provide notice in the event of a closure, divestiture, partial closing or relocation of a business. However, to enforce the penalties, an aggrieved worker must file a claim in court, subjecting the worker to expense and delays that ultimately serve as a disincentive to seeking compliance and the penalties.

S.B. 1089, SD1, HD1 will authorize the Department of Labor and Industrial Relations to enforce the penalties section of the Dislocated Worker Act. While the Department's resources may have been diminished due to budget cuts, it still has far more resources at its disposal than a dislocated worker who has lost his job and may not know what lies ahead for him in the future.

Furthermore, most employers already comply with requirements of the law, even those not required to do so. We anticipate violations will be negligible, if at all. However, in the event of such violation, the Department will be best situated to enforce the law.

The ILWU urges passage of S.B. 1089, SD1, HD1. Thank you for the opportunity to testify on this matter.