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**Testimony to the House Committees on Economic Revitalization & Business
and Labor & Public Employment
Friday, February 4, 2011
9:00 a.m. – 12:00 p.m.
State Capitol - Conference Room 309**

RE: HOUSE BILL NO. 1166 RELATING TO EMPLOYMENT

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and members of the committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 1166 HD1, relating to Employment.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

The Chamber well recognizes the hardship that business failures and ownership changes place on employees. However, The Chamber does not believe that House Bill 1166 is an appropriate measure in addressing this issue. The following is a list of some of the reasons why this bill should be held:

- 1) This bill interferes with the basic principles of doing business. The measure removes the successor 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 due to the stringent requirements and mandates. This will send a negative message to the nation and potential buys, as well as further undermine Hawaii's efforts in saving and creating jobs during this tough economic period.

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. There is no understanding that a change in human resource needs may change the nature of the skills and abilities of those employees needed to operate the new business. Saddling a new business with the predecessor's employees may undermine the livelihood and continued employment of other employees.

- 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 1166 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.
- 4) Although the bill allows employers to apply substance abuse testing and criminal records check standards it fails to understand that a new employer may have different requirements such as conflict of interest policies or anti-nepotism rules that may not have been applied by the former employer. The bill also fails to recognize that an application form may contain other information important to a new employer that is missing or outdated on the predecessor employer's records.

In sum, Senate HB 1166, while well-intended, will pose negative consequences for Hawaii's future. We cannot afford to pass legislation that will have this kind of result. Hawaii should be cultivating the soil to help our local establishments thrive, so that jobs can be saved and created, especially as Hawaii makes a slow economic recovery. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests HB 1166 held.

Thank you for the opportunity to testify.

LATE



**Before the House Committee on Labor and the
House Committee on Economic Revitalization and Business**

DATE: February 4, 2011
TIME: 9:00 a.m.
PLACE: Conference Room 309

**Re: HB 1166
Relating to Employment
Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to testify in opposition to HB 1166.

We recognize and appreciate the efforts of legislators to address small business concerns. This measure has the potential to negatively impact the valuation of businesses and to impact the ability of struggling companies to survive through the sale of an ongoing operation.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

HOUSE OF REPRESENTATIVES

Committee on Labor and Public Employment

Rep. Karl Rhoads, Chair

Rep. Kyle T. Yamashita, Vice Chair

Committee on Economic Revitalization and Business

Rep. Angus L.K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

State Capitol, Conference Room 309

Friday, February 4, 2011; 9:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1166
RELATING TO EMPLOYMENT**

The ILWU Local 142 supports H.B. 1166, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 50 or more persons.

Under the statute, "divestiture" is defined as "the transfer of any covered establishment from one employer to another because of the sale, transfer, merger, bankruptcy, or other business takeover or transaction of business interests that causes the covered establishment's employees to become dislocated workers." H.B. 1166 will require successor employers in a divestiture situation to retain all incumbent non-supervisory and non-confidential employees unless otherwise indicated.

We support this bill for several reasons. First, it minimizes disruption when a divestiture occurs. Instead of all employees being terminated and asked to reapply for their old jobs, transition to the new employer will be seamless. Customers will see business continuing as usual. Employees will be assured of employment, even though management will retain the right to evaluate employees and assess their ability to meet the company's needs.

Second, mass layoffs are harmful to the economy. When 50 or 100 or even more employees are laid off at one time, workers will have less money in their pockets to pay for goods and services, resulting in less money circulating in the economy and less taxes paid to the government.

Third, if the successor employer maintains the same business as the previous employer, retaining workers who know the business, understand the customer base, and have the skills and know-how to perform the job means less time and effort needed to train workers and acquaint them with the job. The successor employer will save money and maintain good will among both clientele and employees.

Most employers understand that worker retention in a divestiture makes good business sense. However, this law is needed for those employers who need to be reminded of the valuable contribution that workers make to the success of a business. Humane regard for employees will go a long way toward better productivity and loyalty from the workforce.

The ILWU urges passage of H.B. 1166. Thank you for the opportunity to testify on this measure.

LATE



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA
Executive Director
Tel: 808.543.0011
Fax: 808.528.0922

NORA A. NOMURA
Deputy Executive Director
Tel: 808.543.0003
Fax: 808.528.0922

DEREK M. MIZUNO
Deputy Executive Director
Tel: 808.543.0055
Fax: 808.523.6879

The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Labor & Public Employment
Committee on Economic Revitalization & Business

Testimony by
Hawaii Government Employees Association

February 4, 2011

H.B. 1166 – RELATING TO EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H. B. 1166 which provides for job security for employees in the event of a divestiture of a covered establishment, and fair compensation in the event of employee dislocation as a result of the divestiture.

The measure establishes a fair and dignified transition for employees in what is surely a disruptive and distressing circumstance. The bill will benefit the employees, their families and our community as a whole.

Thank you for the opportunity to testify in support of H.B. 1166.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director