



NEIL ABERCROMBIE
GOVERNOR

DWIGHT Y. TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY

DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor

April 2, 2013

To: The Honorable David Ige, Chair,
The Honorable Michelle Kidani, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Thursday, April 4, 2013
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Dwight Y. Takamine, Director
Department of Labor and Industrial Relations (DLIR)

Re: H.B. No. 634 HD1 SD1 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

DLIR supports this proposal provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget.

HB634 HD1SD1 proposes to amend Chapter 394B of the Hawaii Revised Statutes (HRS) by requiring the retention of employees who would be displaced from an employer by divestiture of a covered establishment to the successor employer. This amendment, for employers with 100 or more workers, would establish the following for the successor employer:

- Require the hiring of all incumbent non-supervisory and non-confidential employees;
- Shall not require incumbent employees to file employment applications to be considered for hire (unless existing files are incomplete);
- May conduct pre-hire screening of the incumbent employees not prohibited by law, including criminal conviction record checks and substance abuse testing;
- May retain less than one hundred percent of incumbent employees if:
 - ✓ The successor employer is substantially dissimilar to the former

employer's business; or

- ✓ The human resource needs of the successor employer are reduced, resulting in the reduction of employees needed, provided that the number of employees to be dislocated shall be in direct proportion to the reduction in the total human resource needs of the successor employer.

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:

- 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;
- 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
- 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.
- The definition of a "divestiture" is 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.

III. COMMENTS ON THE HOUSE BILL

The Department would be required to develop rules and respond to public inquiries to carry out the purposes of this law for which additional State funds would be necessary as the Workforce Development Division is largely federally funded. At a time when Federal funds for administrative responsibilities have been drastically reduced, it is critical that the Department receive State funds to implement actions required by this bill.

DLIR supports this proposal provided that its passage does not replace or adversely impact priorities indicated in the Executive Budget.

HB634 HD1SD1
April 2, 2013
Page 3

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Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
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Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 4, 2013

TO: HONORABLE DAVID IGE, CHAIR, HONORABLE MICHELLE KIDANI,
VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON WAYS
AND MEANS

SUBJECT: **OPPOSITION TO H.B. 634, HD1, SD1** Establishes job security requirements for certain employees upon the divestiture of a covered establishment if, among other things, the covered establishment employs one hundred or more persons. (SD1)

Decision Making Only

DATE: Thursday, April 4, 2013
TIME: 9:00 a.m.
PLACE: Capitol Room 211

Dear Chair Ige, Vice Chair Kidani and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over six hundred (600) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

The GCA is **opposed** to H.B. 634, HD1, SD1 and believes that this bill will make it much more difficult for Hawaii businesses to sell or/and receive the full value of a going business in this economic climate. Non profitable businesses may be forced into bankruptcy in order to reorganize without retaining all employees employed under existing contracts because no new buyer would be willing to take over if it has to retain all existing employees. The new buyer must be able to reorganize and change operations, which may require staff reduction.

The GCA believes that this bill runs counter to the concept of free enterprise and infringes on the ability of a business to manage its operations.

The GCA **opposes** the passage of H.B. 634, HD1, SD1 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.



Hawaii Automobile Dealers' Association

Mike Niethammer, President
Dave Rolf, Executive Director

Testimony in STRONG OPPOSITION to
HB634, HD1, SD1
Relating to Employment
noting HADA's GRAVE CONCERNS

submitted to the Senate Committee on Ways and Means
for the public hearing 9 a.m. Thursday, April 4, 2013
in Conference Room 211, Hawaii State Capitol

by the Hawaii Automobile Dealers Association
Hawaii's franchised new car dealers

Chair Ige, Vice Chair Kidani and members of the committee:

Any bill which would serve to destroy the value of businesses in Hawaii should be viewed with grave concern by all.

The members of the Hawaii Automobile Dealers Association are in STRONG OPPOSITION to HB634, HD1, SD1.

This measure, found in no other state in the U.S., to our knowledge, would render the value of certain businesses here in Hawaii LESS VALUABLE and LESS CAPABLE OF BORROWING against business value, by requiring that any purchaser RETAIN all incumbent non-supervisory and non-confidential employees except as provided in the bill.

Some large family-owned auto dealerships in Hawaii employ more than 100 people.

Here is just one example of how this measure LOWERS A BUSINESS' VALUE.

A dealership whose business model is to employ highly-skilled flat-rate technicians, who work by-the-job, instead of by-the-hour, and which subsequently are paid considerably higher than hourly-wage technicians, would find that a purchase of another dealership which has hourly-wage technicians would require it to retain MORE technicians than may be necessary.

--continued next page--

HADA testimony in STRONG OPPOSITION to HB634, HD1, SD1, page 2

Thus, this measure, if passed, would penalize 1) successor owners, as well as 2) owners who are trying to sell their businesses, AND 3) owners who are seeking to BORROW AGAINST THE VALUE of their business.

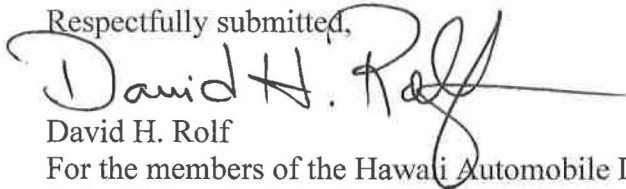
Employees too are hurt when businesses lose value and borrowing power.

The business chill created by a measure such as this will affect all businesses in Hawaii.

It would send a chilling message out to the rest of the country.

HADA respectfully requests that this measure be held.

Respectfully submitted,

A handwritten signature in black ink that reads "David H. Rolf". The signature is written in a cursive style with a long horizontal stroke extending to the right.

David H. Rolf

For the members of the Hawaii Automobile Dealers Association

1100 Alakea St. Suite 2601

Honolulu, Hawaii 96813

Tel: 808 593-0031

Fax: 808 593-0569

Email: drolf@hawaiiidealer.com

Website: www.hawaiiautodealer.com



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor
Committee on Commerce and Consumer Protection

Testimony by
Hawaii Government Employees Association
March 19, 2013

H.B. 634, H.D. 1 – RELATING TO EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the intent of H.B. 634, H.D. 1, which establishes job security requirements upon the divestiture of a covered establishment, if that covered establishment employs 100 or more persons.

The divestiture of an establishment – whether it is via sale, transfer, merger, bankruptcy, takeover or transaction – causes heightened anxiety for the incumbent employees. Passage of this legislation, which only affects establishments with 100 or more employees, will ensure that there is a smooth transition between business owners and will also alleviate the stress caused by unemployment and an uncertain financial future for Hawaii's families. Further, this legislation still enables Employers the right to evaluate employee job performance and the employee's ability to meet the new company's needs.

Thank you for the opportunity to testify in support of H.B. 634, H.D. 1.

Respectfully submitted,


Randy Perreira
Executive Director

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 368



PETER A. GANABAN
*Business Manager
Secretary-Treasurer*

ALFONSO OLIVER
President

JOBY NORTH II
Vice President

TONI FIGUEROA
Recording Secretary

THOMAS CATHCART
Executive Board

JAMES DRUMGOLD JR.
Executive Board

LEIMOMI JOHNSON
Executive Board

MARK MAGUSARA
Auditor

MARK TRAVALINO
Auditor

JOSEPH YAW
Auditor

LEUMA L. LEATUMAUGA
Sergeant-At-Arms

Testimony in **SUPPORT** of HB634 HD1 SD1

RELATING TO EMPLOYMENT

From Al Lardizabal, Government Relations

Hawaii Laborers' Union

To the Senate Ways and Means Committee

April 4, 2013, 9:00 a.m., Rm. 211

State Capitol

Chair David Ige, Vice Chair; Vice Chair Michelle Kidani and members of the committee:

The Hawaii Laborers' Union strongly supports HB634 HD1 SD1 which establishes job security requirements for certain employees upon the divestiture of a covered establishment with 100 or more employees. The new employer will be able to evaluate these employees on the job, as well as in personal interviews.

There is a public consciousness that qualified Hawaii workers need to be given consideration in being hired in a divestiture situation. They are already on the job and know how to do it with some alteration by the new management. It is similar to the "Buy Local" consciousness that exist today for agricultural products. There is a move to support local businesses; there should be a move to consider local workers that are qualified relative to other applicants. This is Hawaii. Some non-Hawaii companies enter the Hawaii market and throw out the meaning and spirit of Aloha and caring for others. Employees are treated as commodities to be bought and sold or discarded when a new company takes over. Where is the "ALOHA"?

This bill is an "Aloha Spirit" for employees in a divestiture situation. As the bumper stickers say out loud, "LIVE ALOHA". Please pass this bill.

Thank you for the opportunity to submit this testimony.



Randy Perreira
President

HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Telephone: (808) 597-1441
Fax: (808) 593-2149

The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii State AFL-CIO
April 4, 2013

H.B. 634, HD1, SD1 – RELATING TO
EMPLOYMENT

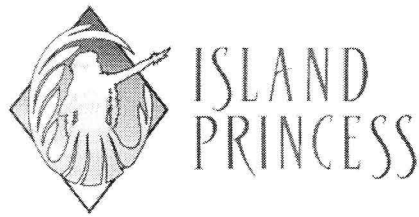
The Hawaii State AFL-CIO supports H.B. 634, HD1, SD1 which establishes job security requirements for certain employees upon the divestiture of a covered establishment if, among other things, the covered establishment employs one hundred or more persons.

The divestiture of a company can be a stressful and uncertain time for workers and their families. H.B. 634, HD1, SD1 will likely reduce the stress and uncertainty by helping to retain jobs ensuring workers' lives are not disrupted and their families remain financially stable and secure. Having a healthy, qualified workforce and the potential for lower unemployment is a win-win for everyone. Businesses would perform better, consumers would be more content and families would remain intact.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President



Committee on Ways and Means
Senator David Ige, Chair
Senator Michelle Kidani, Vice
Chair
Hawaii State Capitol, Room 211

HB 634 SD1 Relating to
Employment
April 4, 2013 at 9:00 a.m.
Testimony in Opposition

Chair Ige, Vice Chair Kidani, and Members of the Committee:

We STRONGLY OPPOSE HB 634 SD1, because it is harmful towards employers, detrimental for employees, and bad for the economy. In addition, the proposed law would likely be unconstitutional and a violation of federal law, because it violates the equal protection clause of the Constitution.

Harmful for Employers.

This bill proposes to place severe restrictions on the ability of an employer to sell its business to a prospective buyer, because one condition that would be a part of every sale of a business with 100 or more employees is that the buyer must keep all the current employees. Under this bill, this requirement would not be negotiable, even if both parties to the deal felt otherwise.

As a matter of policy, however, the decision to hire all or some of the current employees of a business should be left to the buyer. As a result of this bill, many buyers would be hesitant to purchase a business if they have no control over personnel or staffing matters. In addition, in cases where an employer is attempting to sell a fledgling business for economic reasons, a prospective buyer would likely *not* purchase the business if it could not make personnel changes. Thus, the fledgling business would remain unsold.

Detrimental to Employees.

Ironically, although it appears the intent of this bill is to preserve the jobs of employees, the likely effect of this bill would be more layoffs, not less.

Where a company is unable to sell its business because the buyer is required to retain all the current employees, the company would likely need to shut down the operations (or file for bankruptcy in the case of a fledgling business), and sell off the assets. In such cases, all employees would lose their jobs because the company would cease to exist.

Alternatively, a company may simply choose to layoff all employees before placing the business up for sale, and allow the buyer to start from scratch. This too would result in massive job loss.

Therefore, if the goal of the legislature is to protect the jobs of employees, this is surely not the way.

Bad for the Economy.

If the result of this bill is an increase in the amount of companies shutting down their operations or filing for bankruptcy because they cannot sell their business, it would certainly be bad for the economy. The legislature should support the business community, and create an environment where businesses can succeed - and in turn, provide jobs for more employees. By creating a law that is incredibly detrimental for businesses, the Hawaii economy will likely suffer as a result of businesses shutting down their operations because they cannot be sold.

In addition, the increase in layoffs would also have a detrimental ripple effect on our state's economy. First, if a mass layoff occurs due to the shutting down of a business, those laid-off individuals will likely not spend money that could help our economy thrive. Second, the unemployment rate in Hawaii would likely increase. This, in turn, could also result in another depletion of the state's UI fund at a time where the DLIR is clearly trying to replenish the fund.

Legal Issues

Finally, this bill would likely face legal challenges from the business community because it violates the equal protection clause of the Constitution. Specifically, this bill affects the collective bargaining process between unions and employers, because it provides unions with a right under the law that they would otherwise need to attempt to obtain through negotiations.

Earlier this year, a federal judge in Hawaii struck down a sick leave law that applied only to large employers with a collective bargaining contract. Many of the bases for striking down the sick leave law could also apply to HB 634 SD1 as well. Specifically, the law would violate the equal protection clause of the Constitution because it targets only a certain class of employers. In addition, federal labor law currently provides a successor employer with the right to pick and choose whom they wish to employ, free from government regulation. This bill proposes to take away that right.

For all of the foregoing reasons, we request that HB 634 SD1 be held or deferred indefinitely. Thank you for the opportunity to present testimony on this bill.

Best regards,



Gwendolyn A. Purdy

Vice President

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: manager@iegfcu.com
Subject: Submitted testimony for HB634 on Apr 4, 2013 09:00AM
Date: Tuesday, April 02, 2013 5:53:30 PM

HB634

Submitted on: 4/2/2013

Testimony for WAM on Apr 4, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Bernard Balsis Jr	Individual	Oppose	No

Comments: HB 634 is a horrible bill. If you are purchasing a business with greater than 100 employees sometime during the preceding 12 months of the closing date of your purchase, and you think the business can best be run with say 76 people to make it profitable, this bill will require you to keep all 100 employees, even if not employed by the business. That is ridiculous. If you run a bank branch and with automation you can run just as efficiently with 3 less people, I know you will run with operation effectively with 3 less people, and you can easily lay off 3 workers, and you will do that. But if you are buying a business with 100 employees or more, you would not be allowed to do that. I do not support this bill Bernard Balsis

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB634 on Apr 4, 2013 09:00AM*
Date: Tuesday, April 02, 2013 12:51:49 PM

HB634

Submitted on: 4/2/2013

Testimony for WAM on Apr 4, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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From: [Jon Ogoshi](#)
To: [WAM Testimony](#)
Subject: HB 634 SD1 - Testimony in Strong Opposition
Date: Wednesday, April 03, 2013 5:00:25 AM

Committee on Ways and Means

Senator David Ige, Chair

Senator Michelle Kidani, Vice Chair

Hawaii State Capitol, Room 211

HB 634 SD1 Relating to Employment

April 4, 2013 at 9:00 a.m.

Testimony in Opposition

Chair Ige, Vice Chair Kidani, and Members of the Committee:

I am the CFO of a small business.

I STRONGLY OPPOSE HB 634 SD1, because it is harmful towards employers, detrimental for employees, and bad for the economy. In addition, the proposed law would likely be unconstitutional and a violation of federal law anyway, because it violates the equal protection clause of the Constitution, similar to how the sick leave law from 2011 was found to be unlawful by a federal judge earlier this year.

Harmful for Employers

This bill proposes to place severe restrictions on the ability of an employer to sell its business to a prospective buyer, because one condition that would be a part of every sale of a business with 100 or more employees is that the buyer must keep all the current employees. Under this bill, this requirement would not be negotiable, even if both parties to the deal felt otherwise.

As a matter of policy, however, the decision to hire all or some of the current employees of a business should be left to the buyer. As a result of this bill, many buyers would be hesitant to purchase a business if they have no control over personnel or staffing matters. In addition, in cases where an employer is attempting to sell a fledgling business for economic reasons, a prospective buyer would likely *not* purchase the business if it could not make personnel changes. Thus, the fledgling business would remain unsold.

Detrimental to Employees

Ironically, although it appears the intent of this bill is to preserve the jobs of employees, the likely effect of this bill would be more layoffs, not less.

Where a company is unable to sell its business because the buyer is required to retain all the

current employees, the company would likely need to shut down the operations (or file for bankruptcy in the case of a fledgling business), and sell off the assets. In such cases, all employees would lose their jobs because the company would cease to exist.

Alternatively, a company may simply choose to layoff all employees before placing the business up for sale, and allow the buyer to start from scratch. This too would result in massive job loss.

Therefore, if the goal of the legislature is to protect the jobs of employees, this is surely not the way to do it.

Bad for the Economy

If the result of this bill is an increase in the amount of companies shutting down their operations or filing for bankruptcy because they cannot sell their business, it would certainly be bad for the economy. The legislature should support the business community, and create an environment where businesses can succeed – and in turn, provide jobs for more employees. By creating a law that is incredibly detrimental for businesses, the Hawaii economy will likely suffer as a result of businesses shutting down their operations because they cannot be sold.

In addition, the increase in layoffs would also have a detrimental ripple effect on our state's economy. First, if a mass layoff occurs due to the shutting down of a business, those laid-off individuals will likely not spend money that could help our economy thrive. Second, the unemployment rate in Hawaii would likely increase. This, in turn, could also result in another depletion of the state's UI fund at a time where the DLIR is clearly trying to replenish the fund.

Legal Issues

Finally, this bill would likely face legal challenges from the business community because it violates the equal protection clause of the Constitution. Specifically, this bill affects the collective bargaining process between unions and employers, because it provides unions with a right under the law that they would otherwise need to attempt to obtain through negotiations.

Earlier this year, a federal judge in Hawaii struck down a sick leave law that applied only to large employers with a collective bargaining contract. Many of the bases for striking down the sick leave law could also apply to HB 634 SD1 as well. Specifically, the law would violate the equal protection clause of the Constitution because it targets only a certain class of employers. In addition, federal labor law currently provides a successor employer with the right to pick and choose whom they wish to employ, free from government regulation. This bill proposes to take away that right.

For all of the foregoing reasons, I request that HB 634 SD1 be held or deferred indefinitely. Thank you for the opportunity to present testimony on this bill.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Maria@tjrworks.com
Subject: *Submitted testimony for HB634 on Apr 4, 2013 09:00AM*
Date: Tuesday, April 02, 2013 3:44:49 PM

HB634

Submitted on: 4/2/2013

Testimony for WAM on Apr 4, 2013 09:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Tadd Rienstra	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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