

LATE

**Testimony to the House Committee on Finance
Monday, February 25, 2013 at 11:00 A.M.
Conference Room 308, State Capitol
Agenda #1**

RE: HOUSE BILL 634 RELATING TO EMPLOYMENT

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 634 Relating to Employment.

The Chamber is the largest business organization in Hawaii, representing over 1000 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 members and the entire business community 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 sale, merger or other transfer of a business establishment that employs 100 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 No. 634 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. 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 634 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.

In sum, House Bill No. 634, 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 encouraging investment in its failed or struggling businesses. This bill is a disincentive for investment.

Thus, The Chamber respectfully requests HB 634 be held.

Thank you for the opportunity to testify.

LATE



Testimony to the Finance Committee
State Capitol, Conference Room 308 at 11:00am
February 25, 2013

RE: OPPOSE HB634 RELATING TO EMPLOYMENT

Dear Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Committee Members:

Aloha, my name is Pamela Tumpap and I am the President of the Maui Chamber of Commerce. I am writing on behalf of our organization to Oppose HB634 which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons.

While we all want a robust economy with low unemployment and an abundance of job opportunities, we feel this bill, which is intended to protect jobs for existing employees when a company that employs over 100 people is sold, may have the opposite effect.

Such a mandate will hamper a new owner's ability to restructure an organization, which can limit their opportunities for viability and growth. When a company cannot make needed changes, it hurts the organization and jobs can be lost.

The measure may hinder investment in Hawaii as well, by tying new owners' hands in an already heavily regulated environment with a high-cost of doing business, and make other locations far more attractive in terms of investment.

And, you may hurt the ability of local businesses to sell their business with such conditions.

This bill has not been adequately weighed in terms of its impact on businesses. Therefore, for this reason and those noted above, we ask that you hold HB634 in committee and not allow it to advance further.

Thank you for the opportunity to submit testimony. If you have any questions regarding our testimony, please do not hesitate to give me a call.

Sincerely,

Pamela Tumpap
President



HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair
State Capitol, Conference Room 308
Monday, February 25, 2013; 11:00 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 634
RELATING TO EMPLOYMENT**

The ILWU Local 142 strongly supports H.B. 634, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 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. 634 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, while management will retain the right to evaluate employees through probationary periods and assess the employees' ability to meet the company's needs.

Second, mass layoffs are harmful to the economy. When workers are laid off at one time, they 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 customers and employees.

Most employers understand that worker retention in a divestiture makes good business sense. However, this law is needed for 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.

One concern, however, was brought up by the Department about staffing requirements to enforce the law. Currently, the Workforce Development Division has limited staff to perform additional functions such as enforcement and likely will need an appropriation to manage this new requirement.

The ILWU urges passage of H.B. 634 with funding for the staff needed to enforce the law. We appreciate your consideration of this measure and thank you for the opportunity to testify.



LATE

HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair

2/25/2013
Rm 308, 11:00 AM

HB 634
Relating to Employment

Chair Luke and Members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels Hawaii in opposition to this bill.

HB 634 would dramatically and unnecessarily expand the level of government intrusion into any divestiture (as defined in HRS Chapter 394B) involving any business that employed at least 100 employees at any time in the last 12 months. More specifically, HB 634, if adopted, would force a new buyer or transferee of a business, including a distressed business, to retain all of the non-management employees of such business under a divestiture. It is important to remember that HRS Section 394B-2 currently defines a "divestiture" 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 a business interest that causes the covered establishment's employees to become dislocated workers." So the new obligation imposed by HB 634 on a buyer or other transferee of a covered establishment also applies to all of these various types of transactions.

In those cases in which a successful and profitable business undergoes a divestiture, that prior success will already incent the new buyer or transferee to favor retaining the workforce that made that success possible and in this case HB 634 is superfluous. In those cases in which a distressed business undergoes a divestiture, then HB 634 may actually have the effect of increasing the likelihood that the current workforce will ultimately be terminated because HB 634 will deter prospective buyers or transferees from participating in a divestiture. As a result the distressed business will have no alternative but to close for good either through dissolution or bankruptcy. Instead of allowing a new buyer or transferee of such a business the freedom to operate the business in accordance with the new buyers business judgment, including by reducing or replacing part of the existing workforce to improve operational or fiscal efficiencies, HB 634 would tie a new buyer's hands and forces the new buyer to retain all of the current non-management workforce.



Chapter 394B already protects all existing employees of a business with 50 or more full time employees by requiring that a covered entity give at least 60 days advanced notice before any workers are terminated in connection with a divestiture. This advanced notices gives those employees much needed time to seek new jobs with other businesses with the assistance of the state dislocated workers program operated by the Department of Labor and Industrial Relations. If a covered entity fails to give such notice before employees are terminated in connection with a divestiture, then those terminated employees are entitle to payments equivalent to the wages and benefits due to the employee during the violation period. Dislocated employees are also eligible for the Dislocated Workers Allowance under Section 394B-10. These existing statutory provisions strike an appropriate balance between protecting employees terminated as a result of a divestiture and allowing such a divestiture to take place.

We strongly urge the deferment of this bill and mahalo for allowing me to testify.

LATE



Tesoro Hawaii, LLC
91-325 Komohana Street
Kapolei, Hawaii 96707-1713
808 547-3920

February 24, 2013

TO: The Honorable Sylvia Luke, Chair
The Honorable Scott Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair

SUBJECT: House Bill 634, Relating to Employment
Hearing of the House Committee on Finance
Monday, February 25, 2013 – 11:00 a.m.
Conference Room 308, State Capitol

Chair Luke, Vice Chairs Nishimoto and Johanson, and members of the Committee:

My name is Lance Tanaka, and I am the government and public affairs manager for Tesoro Hawaii, LLC. Thank you for allowing me to present testimony **in opposition to House Bill 634**.

Tesoro Hawaii understands and can appreciate the intent behind minimizing disruptions to the livelihoods of employees that can occur during a divestiture. Tesoro continues to make every effort to secure a buyer for its Hawaii business. Through the divestiture process, we intend to transition ownership of our assets in Hawaii to another operator who can continue to provide employment opportunities for our employees.

However, we believe House Bill 634 is likely to have a chilling effect on our ability to attract strong buyers.

Ours is a private and complex sales transaction, and House Bill 634 will tend to impose yet another hurdle to the sales process. Therefore, we respectfully urge your committee to hold this measure.

Thank you for your consideration and for allowing me to testify. I am available to answer any questions you may have.

A handwritten signature in black ink, appearing to read "Lance N. Tanaka".

Lance N. Tanaka
Manager, Government & Public Affairs
Tesoro Hawaii, LLC

LATE

HB634

Submitted on: 2/25/2013

Testimony for FIN on Feb 25, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Myles Kawakami	Individual	Oppose	No

Comments: bad bill. as a businessman, i would never buy another business with that regulation.

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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HB634

Submitted on: 2/25/2013

Testimony for FIN on Feb 25, 2013 11:00AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
DEBRA FINKIEWICZ	Individual	Oppose	No

Comments:

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