TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
H.B. NO. 2122, H.D. 2, RELATING TO EMPLOYMENT SECURITY.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 16, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Li-Ann Yamashiro, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides comments regarding legal concerns about this bill.

This bill increases the maximum potential unemployment benefits from twenty-six to thirty-nine weeks. It conditions the receipt of unemployment benefits by eligible individuals terminated or laid-off by Hawaiian Commercial & Sugar Company, however, on the completion of a training or retraining program. This provision is not in conformity with federal law.

In a letter, dated March 4, 2016, Gay M. Gilbert, Administrator, Office of Unemployment Insurance of the United States Department of Labor, stated that this bill is not in conformity with federal law because "a state may not, consistent with Sections 3304(a)(4), FUTA [Federal Unemployment Tax Act], and 303(a)(5), SSA [Social Security Act], condition maximum eligibility for certain individuals based on whether they 'complete a training or retraining program' if they were terminated or laid off by a specific employer." A copy of the letter is attached.

As stated by the Department of Labor and Industrial Relations' testimony submitted to the House Committee on Finance, dated February 29, 2016, Hawaii may lose its certification for the employer FUTA tax offset credits and $14,000,000 in federal grants to operate the unemployment insurance program if the program is not in conformity with federal law. Employers would be required to pay higher federal payroll taxes and the unemployment insurance division would lose federal funding.

We respectfully ask the Committee to delete section 2.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210

MAR 4 - 2016

Linda Chu Takayama
Director
Department of Labor and Industrial Relations
830 Punchbowl Street
Room 321
Honolulu, HI 96813

Dear Ms. Takayama:

We have reviewed House Draft (HD) 1 of Hawaii House Bill (HB) 2122 for conformity with Federal unemployment compensation (UC) law. HB 2122 would amend the state UC law to increase the maximum potential benefits an eligible individual may receive in a benefit year from twenty-six (26) to thirty-nine (39) times the individual's weekly benefit amount. This provision does not create any issue with Federal law. However, HB 2122 would also provide that certain individuals would have to complete a training or retraining program to receive the increased maximum potential benefits. This provision does create an issue with the requirements of Federal UC law. A detailed explanation follows.

HB 2122 would amend Section 383-24, Hawaii Revised Statutes to provide that the maximum potential benefits of an eligible individual in a benefit year shall be thirty-nine times the eligible individual's weekly benefit amount. As drafted, this would apply to any individual who was eligible for UC.

It further provides that:

> Eligible individuals terminated or laid off by Hawaiian Commercial and Sugar Company shall complete a training or retraining program to receive the maximum potential benefits pursuant to this Act.

Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA) requires, as a condition for employers in a state to receive credit against the Federal tax, that state law provide that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund . . . ." Section 303(a)(5), SSA, provides a similar requirement as a condition for a state to receive administrative grants. Section 3306(h), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment."

The Secretary of Labor's decision in the 1964 conformity case involving South Dakota interpreted these sections of law to mean UC eligibility must be based on the "fact or cause" of unemployment:

> Read together, these provisions of the Federal law expressly require that all money withdrawn from the unemployment fund of a State be used solely in the payment of benefits to individuals with respect to their unemployment. The legislative history is abundantly clear that Congress, through these provisions, intended to insure and

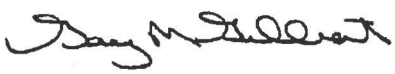
> make certain that State unemployment compensation laws would be genuine unemployment compensation laws, genuinely protective of the unemployed, under which the expenditure of funds would be devoted exclusively to the payment of unemployment insurance benefits.
>
> [I]t was the intent of Congress to create a social insurance system under which entitlement to benefits was *a matter of right* on the part of those who became involuntarily unemployed because of lack of work, e.g., laid off from work or otherwise unemployed through no fault of their own, and who are able to work and available for work, but who are unable to find suitable work. In short, what Congress was prescribing was wage insurance for the relief of the unemployed, to compensate for wage loss resulting from unemployment due to lack of work, without regard to any . . . criteria of entitlement *having no reasonable relationship to 'unemployment.'* [Emphasis added.]

Therefore, a state may not, consistent with Sections 3304(a)(4), FUTA, and 303(a)(5), SSA, condition maximum eligibility for certain individuals based on whether they "complete a training or retraining program" if they were terminated or laid off by a specific employer. To do so would not condition the receipt of UC on the fact or cause of their unemployment, but rather on whether they complete specific training and on the identity of their previous employer.

Hawaii could, consistent with Federal UC law, establish an additional benefits (AB) program for individuals who were terminated or laid off by Hawaiian Commercial and Sugar Company and are participating in or have completed a training or retraining program. However, it is not permissible to condition eligibility for regular UC in such a manner. If Hawaii were to provide for an AB program, it would have to be identified as such, and would be payable only to individuals who met specified eligibility criteria after they exhaust eligibility for regular UC.

Please contact Sherry Smith, your Regional office's legislative liaison, should you have questions regarding this letter at Smith.Sherry.l@dol.gov or at (415) 625-7982.

Sincerely,



Gay M. Gilbert
Administrator
Office of Unemployment Insurance

cc: Virginia Hamilton
Regional Administrator
San Francisco

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the Senate Committee on Judiciary & Labor
Wednesday, March 16, 2016 at 9:00 A.M.
Conference Room 016, State Capitol

RE: HOUSE BILL 2122 HD 2 RELATING TO EMPLOYMENT SECURITY

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **provides comments** HB 2122 HD 2, which doubles maximum potential unemployment benefits for employees separated from service commencing on an unspecified date.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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.

We appreciate the intent to provide additional benefits for the laid off sugar workers on Maui. The only concern we would have if this would raise tax rates for the business community by providing this large increase in benefits, and does this set a precedent for layoffs of other companies.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

The Twenty-Eighth Legislature
Regular Session of 2016

THE SENATE
Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Wednesday, March 16, 2016; 9:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2122, HD2
RELATING TO EMPLOYMENT SECURITY

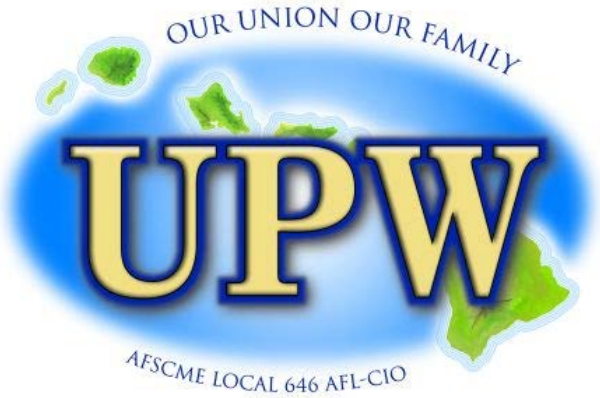
The ILWU Local 142 **supports the intent** of H.B. 2122, HD2, which increases the maximum potential unemployment benefits for employees separated from service from 16 to 29 times the individual's weekly benefit amount commencing on or after March 7, 2016. Requires terminated or laid off Hawaiian Commercial & Sugar Company workers to complete a training or retraining program to receive the maximum potential benefits.

Maximum duration of full unemployment benefits is 26 weeks. Very often for those who find themselves laid off from their jobs, 26 weeks may not be sufficient to find suitable gainful employment for various reasons. Once the 26 weeks is exhausted, the person is left without any resources and must desperately accept any low wage job, often ensuring a lifetime of poverty.

An additional 13 weeks of unemployment benefits will allow the unemployed individual a little more time to look for suitable gainful employment. We understand that this measure is intended to benefit the employees of Hawaiian Commercial & Sugar Company (HC&S), who will begin being laid off on March 7, 2016. For this, we are grateful to the Legislature for its consideration of these sugar workers, who will need all the help they can get as they make their transition from HC&S. Almost 600 of those workers are members of the ILWU.

However, we are concerned about the condition that only HC&S workers must complete a training or retraining program in order to receive the additional benefits. If the bill proposes to provide additional benefits to all workers qualifying for unemployment benefits, we question why HC&S workers are singled out for this condition.

Nevertheless, the ILWU believes this measure deserves further discussion. Thank you for considering our testimony.



THE HAWAII STATE SENATE
The Twenty-Eighth Legislature
Regular Session of 2016

COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

DATE OF HEARING: Wednesday, March 16, 2016
TIME OF HEARING: 9:00 a.m.
PLACE OF HEARING: State Capitol, 415 South Beretania Street
Conference Room 016

TESTIMONY IN SUPPORT OF HB2122, HD2 RELATING TO EMPLOYMENT SECURITY

By DAYTON M. NAKANELUA,
State Director of the United Public Workers (UPW),
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, and AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB2122, HD2 increases the maximum potential unemployment benefits for employees separated from service from 26 to 39 times the individual 's weekly benefit amount commencing on or after March 7, 2016. The bill requires workers terminated or laid off from Hawaiian Commercial & Sugar Company to complete a training or retraining program to receive the maximum potential benefits. The UPW **supports** this measure.

Thank you for the opportunity to submit this testimony.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for HB2122 on Mar 16, 2016 09:00AM*
Date: Tuesday, March 15, 2016 12:15:22 PM

HB2122
Submitted on: 3/15/2016
Testimony for JDL on Mar 16, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Gottlieb	Ponoholo Ranch	Support	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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Testimony to the Senate Committee on Judiciary & Labor
Wednesday, March 16, 2016
9:00 a.m.
State Capitol - Conference Room 016

RE: H.B. 2122 H.D. 2 – Relating to Employment Security

Dear Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

We are in opposition to H.B. 2122 H.D. 2, which would double the maximum potential benefits that an unemployed person may receive from the State. Unemployment benefits are more than sufficient today, and currently, the State's unemployment rate is very low. Raising unemployment benefits would only serve to hurt Hawaii's business community and working people that pay for these benefits. Additionally, the Federal government already provides millions of dollars in federal money to help replace lost wages and cover expenses for job retraining, including tuition, books, and transportation. These federal dollars will give unemployed workers the resources to help support their families and find new jobs.

We are opposed to H.B. 2122 H.D. 2, and appreciate the opportunity to express our views on this matter.