

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

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February 13, 2009

To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Economic Revitalization, Business,
and Military Affairs

Date: Tuesday, February 17, 2009
Time: 8:30 a.m.
Place: Conference Room 312
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

Testimony in Strong Opposition of H.B. 396, H.D. 1 Relating to Employment

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 396, H.D. 1 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by adding a section regarding worker retention in the event of a divestiture that the successor employer:

1. Shall hire all incumbent non-supervisory and non-confidential employees of the affected establishment;
2. Shall not require incumbent employees to file employment applications for hiring purposes with the successor employer unless existing employee files are incomplete;
3. May conduct pre-hire screening of incumbent employees not prohibited by law, including criminal history record checks and drug screening; and
4. Lowers the retention rate if the nature of the succeeding business is substantially dissimilar to the former establishment or the human resource needs are reduced; provided that the number of dislocated employees is proportionate to the reduction in total human resource needs.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for 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 transactions by:

1. 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;
2. 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 are found eligible for unemployment compensation; and
3. Requiring employers to provide prompt payment of wages and benefits on the effective date of closing to each employee.

The law was amended in June 2001 to extend the advance notification period from forty-five (45) to sixty (60) days, and in July 2007 to include a definition of "divestiture"; amend the definition of "closing"; include penalties for non-compliance; and allow for an extension of the sixty (60) day period under certain circumstances.

III. HOUSE BILL

The Department of Labor and Industrial Relations strongly opposes this bill for the following reasons:

1. The State should not dictate to a buying company, that is investing money in a local business, to keep those employees that are not needed or not serving in the best interest of their company. This is an over-reaching and improper action that interferes with a business's ability to make decisions relating to their economic well-being.
2. The requirement may also have an adverse affect on the selling employer's current employees. If a company is being sold due to a financial crisis, possible successor companies will choose not to purchase the existing company if the proposed bill takes effect, ensuring a greater likelihood that the company will go bankrupt and all the employees will become unemployed.

3. Requiring a successor employer in a divestiture to retain all of the incumbent employees of an affected establishment, or a number proportionate to total human resource needs, seems overly prescriptive because it would not allow the successor employer to bring its own employees, except for supervisory or confidential workers.
4. Additionally, the bill is vague on how to measure human resource needs. For example, a successor employer retains only 200 of 300 employees because the business can be successfully operated at that lower staffing amount. How would the employer (or Department) verify that the human resource needs of the company merited the release of 100 employees?

If the employer is found in violation, he is responsible for compensation to affected workers. Why should an employer compensate persons who were not their employees?

5. Collective bargaining agreements, which were developed to protect the interests of employees, exist in larger companies and must be taken into consideration by all parties involved in a divestiture.

It would not be in the best interest of the general public for the Legislature to dictate to private companies on who they should hire and terminate under these circumstances.



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www.hgea.org

House of Representatives
The Twenty-Fifth Legislature
Committee on Economic Revitalization, Business & Military Affairs

Testimony by HGEA/AFSCME, Local 152, AFL-CIO
February 17, 2009

H.B. 396, H.D. 1 – RELATING TO EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H. B. 396, H.D. 1 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. 396, H.D. 1.

Respectfully submitted,


Nora A. Nomura
Deputy Executive Director



HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

GENTRY PACIFIC DESIGN CENTER, STE. 215A • 560 N. NIMITZ HIGHWAY, #50 • HONOLULU, HAWAII 96817
(808) 524-2249 • FAX (808) 524-6893

NOLAN MORIWAKI

President
Bricklayers & Ceramic Tile Setters
Local 1 & Plasterers/Cement
Masons Local 630

February 16, 2009

JOSEPH O'DONNELL

Vice President
Iron Workers Local 625

Honorable Representative Angus L. K. McKelvey, Chair
Honorable Representative Issac W. Choy, Vice Chair
Members of the House Committee on Economic Revitalization,
Business, and Military Affairs
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

DAMIEN T. K. KIM

Financial Secretary
International Brotherhood of
Electrical Workers Local 1186

ARTHUR TOLENTINO

Treasurer
Sheet Metal Workers I.A. Local 293

RE: **IN SUPPORT OF HB 396 HD1**
RELATING TO EMPLOYMENT
Hearing: Tuesday, February 17, 2009, 8:30 a.m.

MALCOLM K. AHLG

Sergeant-At-Arms
Carpet, Linoleum, & Soft Tile
Local 1296

Dear Chair McKelvey, Vice Chair Choy and the House Committee on
Economic Revitalization, Business, and Military Affairs:

REGINALD CASTANARES

Trustee
Plumbers & Fitters Local 575

For the Record my name is Buzz Hong the Executive Director for
the Hawaii Building & Construction Trades Council, AFL-CIO. Our
Council is comprised of 16-construction unions and a membership
of 26,000 statewide.

THADDEUS TOMBI

Elevator Constructors Local 126

JOSEPH BAZEMORE

Drywall, Tapers, & Finishers
Local 1944

The Council SUPPORTS the passage of HB396 HD1 that establishes
job security requirements upon the divestiture of a covered
establishment.

RICHARD TAGGERE

Glaziers, Architectural Metal &
Glassworkers Local Union 1899

Thank you for the opportunity to submit this testimony in support
of HB396, HD1.

JAUGHIN CHONG

Roofers, Waterproofers & Allied
Workers United Union of Roofers
Local 221

MARY AYCOCK

Ironworkers, Ironship Builders
Local 627

Sincerely,

William "Buzz" Hong
Executive Director

LYNN KINNEY

District Council 50
Painters & Allied Trades
Local 1791

WBH/dg

ALANI MAHOE

Operating Engineers Local 3

EDWARD SEBRESOS

International Assoc. of
Heat & Frost Insulators
Allied Workers Local 132

Skilled Craftsmanship Makes the Difference.

UNITE HERE!

LOCAL 5 HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Friday, February 13, 2009

Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Members of the House Committee on Economic Revitalization, Business, & Military Affairs

Supporting the intent of HB 396 HD 1, *relating to employment.*

Chair McKelvey, Vice-Chair Choy and members of the Senate Committee on Labor.

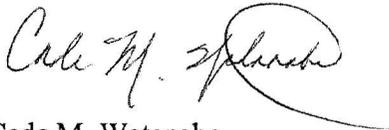
I submit this testimony on behalf of UNITE HERE! Local 5 and hereby register our support for the intent outlined in House Bill 396, HD 1.

If enacted, HB 396 would amend Chapter 394B of the Hawaii Revised Statutes by adding a new section outlining the necessary changes to the Statute that would provide job security to employees in the event of a divestiture.

As an organization representing over 11,000 hotel and health care workers throughout our State, we support the intent of HB 396 in addressing the rightful claim of all workers in securing a reasonable sense of job security on the job.

I thank this Committee for providing me with the opportunity to testify.

Sincerely,



Cade M. Watanabe
Community/Political Organizer



**HAWAI'I HOTEL & LODGING
ASSOCIATION**

2270 Kalakaua Ave., Suite 1506
Honolulu, HI 96815
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Website: www.hawaiihotels.org



31st Anniversary
Are You Walking???
May 16, 2009
(Always the 3rd Saturday in May)
www.charitywalkhawaii.org

**TESTIMONY OF MURRAY TOWILL
PRESIDENT
HAWAI'I HOTEL & LODGING ASSOCIATION**

February 17, 2009

RE: HB 396 HD1 Relating to Employment

Good morning Chairman McKelvey and members of the House Committee on Economic Revitalization, Business & Military Affairs. I am Murray Towill, President of the Hawai'i Hotel & Lodging Association.

The Hawai'i Hotel & Lodging Association is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms and individuals. Our membership includes over 170 hotels representing over 47,300 rooms. Our hotel members range from the 2,523 rooms of the Hilton Hawaiian Village to the 4 rooms of the Bougainvillea Bed & Breakfast on the Big Island.

The Hawai'i Hotel & Lodging Association opposes HB 396 HD 1 Relating to Employment.

We do not believe mandating a purchaser of a business to retain all incumbent employees is an appropriate role for government. A business owner should be entitled to hire or retain employees who can help make the business successful.

The net effect of a mandate of this type will be to discourage investment in Hawaii. Investors whether local or from out of State, may be reluctant to invest in Hawaii businesses if confronted with legislation like this.

Finally, when examining a concept like this, it is important to realize that the economy runs in cycles. While the last few years have been very good in the visitor industry, we are facing major economic crisis. The investments that have occurred in recent years have led to dramatic reinvestments and improvements in our visitor plant. This reinvestment will help us weather the problems we are currently facing.

Given the global competition in tourism and investment capital, we urge you not to support measures that may discourage investment.

Again, mahalo for this opportunity to testify.



Representative Angus McKelvey, Chair
Representative Isaac Choy, Vice Chair
Committee on Economic Revitalization, Business & Military Affairs
State Capitol, Honolulu, Hawaii 96813

HEARING Tuesday, February 17, 2009
 8:30 am
 Conference Room 312

RE: HB396, HD1, Relating to Employment

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii.

RMH strongly opposes HB396, HD1, relating to employment, which essentially requires successor employers to retain certain incumbent employees upon the divestiture of a covered establishment.

This bill is an infringement on the basic rights of ownership that seriously impacts the value of a business and the ability of an owner to divest, sell or transfer that business operation. It further discourages investment in Hawaii by severely restricting the options for potential new owners by dissuading any development and/or diversification possibilities.

At a time when Hawaii should be encouraging new enterprise in our state to accelerate economic recovery, this bill is a giant step in the opposite direction and could have the undesirable result of more companies just closing their doors for lack of viable alternatives.

The members of the Retail Merchants of Hawaii respectfully request that you hold HB396, HD1. Thank you for your consideration and for the opportunity to comment on this measure.

A handwritten signature in cursive script, appearing to read 'Carol Pregill', is written in black ink.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
1240 Ala Moana Boulevard, Suite 215
Honolulu, HI 96814
ph: 808-592-4200 / fax: 808-592-4202

**Testimony to the House Committee on Economic Revitalization, Business Concerns
and Military Affairs
Tuesday, February 17, 2009
8:30 a.m.
Conference Room 312**

RE: HOUSE BILL NO. 396 HD1 RELATING TO EMPLOYMENT

Chair McKelvey, Vice Chair Choy, and Members of the Committee:

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. 396 HD1, relating to Employment. This bill will undermine economic revitalization at a time when our state needs it most.

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.

The Chamber well recognizes the hardship that business failures and ownership changes place on employees. However, The Chamber does not believe that House Bill 396 HD1 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 due to the stringent requirements and mandates. This will send a negative message to the nation and 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 396 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, House Bill 396 HD1, 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 weathers this tough economic storm. This bill is a disincentive for investment and the result of this measure could lead to further job loss than jobs saved.

Thus, The Chamber respectfully requests HB 396 HD1 be held.

Thank you for the opportunity to testify.



**Before the House Committee on Economic Revitalization,
Business & Military Affairs**

DATE: February 17, 2009
TIME: 8:30 a.m.
PLACE: Conference Room 312

Re: HB 396
Relating to Employment
Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify in opposition to HB 396. NFIB **opposes** this measure in its current form.

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.

We believe that HB 396 is impracticable and anti-business and has the potential to hasten the demise of struggling businesses, ultimately hurting Hawaii's economy.

We respectfully ask that you do not advance this measure.



est. 1947

Hawaii Restaurant Association

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February 15, 2009

Rep. Angus McKelvey, Chair
Comm. On Economic Revitalization, Bus. And Military
House of Representatives
Hawaii State Capitol, Rm 427
Honolulu, Hawaii 96813

Dear Chair McKelvey:

The Hawaii Restaurant Association stands in opposition to HB 396 HD1 dealing with successor employer having to hire all non supervisory employees.

Even though the majority of our members represent businesses that might be exempt here with the 100 threshold , we believe that conditions such as these make it difficult for businesses to be bought and sold because they greatly reduce the value of the business as an ongoing entity. Business sales occur when the prospective buyer see the opportunity in being able to tweak the business concept, marketing, or staffing to meet the new needs or potentials. Restrictions make them unattractive and could result in business closings instead of business sales and thus providing jobs.

Thanks you for giving us the opportunity to share our views.

Sincerely,

Victor Lim
Chairman

C L A S S I C R E S O R T S

February 13, 2009

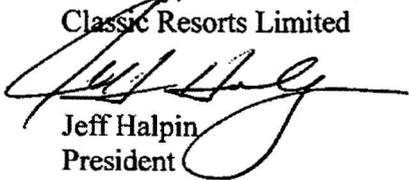
RE: HB 396

Dear Committee on Economic Revitalization, Business & Military Affairs:

I am writing in opposition to HB 396. This is another example of the legislature interfering with the normal conduction of business. My business employs 250 people on Maui and the Big Island. If we purchase a similar company, are you not going to allow us any economies of scale? How illogical and unproductive. Another prime example of Hawaii perpetuating its "unfriendly to business" reputation.

I urge the legislature to focus on the deteriorating infrastructure of the State and encourage businesses that produce revenues. Please stop creating roadblocks to business efficiencies necessary for their productivity and economic health.

Sincerely,
Classic Resorts Limited


Jeff Halpin
President

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 16, 2009 10:19 AM
To: EBMtestimony
Cc: glennida@hotmail.com
Subject: Testimony for HB396 on 2/17/2009 8:30:00 AM

Testimony for EBM 2/17/2009 8:30:00 AM HB396

Conference room: 312
Testifier position: support
Testifier will be present: No
Submitted by: Glenn Ida
Organization: Hawaii Teamsters Local 996
Address: 45-284 Pahikaua St. Hi.
Phone: 808 295-1280
E-mail: glennida@hotmail.com
Submitted on: 2/16/2009

Comments: