

HOUSE OF REPRESENTATIVES
Committee on Economic Revitalization, Business & Military Affairs
Rep. Angus L.K. McKelvey, Chair
Rep. Isaac W. Choy, Vice Chair

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

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 396, HD1
RELATING TO EMPLOYMENT**

The ILWU Local 142 strongly supports H.B. 396, HD1, which establishes job security requirements upon the divestiture of a covered establishment if the covered establishment employs 100 or more persons.

As is the rest of the country and the world, Hawaii is experiencing tough economic times with businesses challenged as never before. In this climate, some companies will likely be up for sale.

H.B. 396, HD1 is intended to minimize disruption in such sales, particularly for employees. The bill calls for all incumbent workers to be retained by the new employer while permitting any pre-hire screening not prohibited by law and allowing employers to retain management rights. If the business is substantially changed, however, the new employer may retain fewer employees, commensurate with the reduction in business. If the employer fails to comply with the law, the employer is obligated to compensate the dislocated worker the difference between his salary under the former employer and his unemployment insurance benefits.

The bill would prevent fewer layoffs due to the sale of a business. This objective is in keeping with the State's desire to keep people employed, thus allowing them the income to purchase goods and services and help to stimulate the economy. Instead of job creation, H.B. 396 is designed for job preservation. Management will retain the right to evaluate employees and assess their ability to meet the company's needs. However, the initial changeover of business should be as seamless as possible under this law.

Most companies concede that this type of seamless transition is important to continuity of business. For example, when Outrigger took over management of Pacific Beach Hotel in January 2007, no one was displaced and business continued uninterrupted. However, when the owner of Pacific Beach Hotel cancelled the contract with Outrigger and decided to operate the hotel again, everyone had to reapply for their old jobs and 32 were terminated. In the Pacific Beach Hotel situation, there are other issues, but if worker retention was law, the workers may be faring far better than they are today.

Another example is Hawaii Naniloa Resort. In 2006, the owner lost its State land lease to another bidder, which required all employees to reapply for their jobs. The result was that some 100 workers were laid off and only 20 retained. Many of the workers, especially those with long seniority were out of work for a long time. Some of them tried occupational training for a new career, others had to drive from Hilo to the Kohala Coast for work. For most of them, their lives were irrevocably disrupted by the new employer's actions.

H.B. 396, HD1 makes good business sense. When a business is taken over by a successor employer, the requirement to retain incumbent employees will provide for an orderly transition from one employer to another. The employees, their families and the community can be spared needless disruption and distress resulting from a mass layoff. The employer will retain management rights and can be assured of productivity and loyalty from an experienced and skilled incumbent workforce. We think it's a win-win situation by any standard.

H.B. 396, HD1 amended the original bill by including language that "covered establishment" is defined "for the purposes of this subsection" as a business entity that employs 100 or more persons in the preceding 12-month period. We wish to have the committee report clarify that this definition of covered establishment only applies to worker retention requirements when a business is sold and not for notice requirements under the State Dislocated Worker Law.

The ILWU urges strongly passage of H.B. 396, HD1. Thank you for the opportunity to share our views and concerns.



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LATE TESTIMONY

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

Testimony by
Hawaii State AFL-CIO
February 17, 2009

H.B. 396 HD1 - RELATING TO EMPLOYMENT

Unfortunately, Hawaii and the rest of the United States are facing some of the worst economic conditions in our lifetimes. Unemployment levels are continually rising, home prices are sliding at a rapid rate, and consumer confidence is at an all-time low. Unless something is done in the very near future, conditions will get worse and quite frankly, a depression could be imminent. That is why labor supports H.B. 396 HD1.

While H.B. 396 HD1 will not entirely fix Hawaii's economy, it will help protect workers' jobs which are so vital in today's economy. If people are working, they will hopefully be spending their wages and if they are spending, Hawaii businesses will do better.

Furthermore, something must be done to change the mind set of lower consumer confidence. H.B. 396 HD1 can add some additional comfort to those worried tomorrow may be their last day of work in the event of a divestiture. It is not in Hawaii's best interest to potentially increase unemployment in today's economic crisis through the divestiture of business entities with no assurance of continued employment for its workers.

It is imperative that we in Hawaii adopt the spirit and intent of President Obama and seek to strengthen our middle class workers. Working families have been on the short end of economic policy for too long – it is time that we provide job stability and economic freedom to these workers and their families to allow them to live out the American Dream.

The passage of H.B. 396 HD1 is critical in today's economy. We must protect workers' jobs and we must do everything we possibly can to change the economy for the better. Thank you for the opportunity to testify in support of H.B. 396 HD1.

Respectfully submitted,

Randy Perreira
President

LATE TESTIMONY

HOUSE OF REPRESENTATIVES
25th LEGISLATURE
REGULAR SESSION of 2009

COMMITTEE ON ECONOMIC REVITALIZATION, BUSINESS & MILITARY AFFAIRS
Representative Angus McKelvey, Chair

2/17/09
8:30 AM – Room 312

HB 396, HD 1
Relating to Employment

Chair McKelvey and members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to offer our opposition to this bill.

The basic premise of HB 396 is to require a new owner, or a transferee of an existing business, to retain all of the employees of the seller. While I understand the concerns that this bill brings up regarding employees losing their jobs, this bill is another black eye to the Hawaii business climate. This is an anti-business bill that will discourage investment in Hawaii.

This requirement also stifles opportunities for workers who may want to seek a position with the new owner and possess excellent skills, which would be an asset to the new owner. If the new buyer had to rehire all the existing employees, new entrants to the workforce like that would never even get a chance to apply. A buyer should be able to pick the best, most qualified workers. Many times, that will be the existing employees - but not in every situation. When any employer promotes, they seek the best qualified personnel. All employers, even new buyers of an existing business, should have that right.

There are situations where a business will only survive if the new owner can make changes in the number and or quality of employees. We have seen downsizing occur in businesses around the world where the alternative is the business perishes.

In summary, we must allow new owners to make their own decisions on employees in order to make their businesses viable.

Mahalo for allowing me to testify and we urge not passing out this bill.