

TESTIMONY

SB 1622

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

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

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

February 13, 2009

To: The Honorable Dwight Y. Takamine, Chair,
and Members of the Senate Committee on Labor

Date: Tuesday, February 17, 2009

Time: 2:45 p.m.

Place: Conference Room 224
State Capitol

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

**Testimony in Opposition to
S.B. 1622, Relating to Employment Security**

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1622 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by requiring certain employers to retain employees who would be displaced from an employer by divestiture through a transfer of a covered establishment to a new employer. The following requirements would apply to all employees other than persons employed in an executive, administrative, or professional capacity:

- A. In the event of a divestiture of a covered establishment, requires the existing employer to provide to the prospective employer within 10 days of confirmation of the transaction causing the divestiture, a list of all employees, date each employee was hired, and each employee's job classification;
- B. When the prospective employer becomes a covered establishment, the prospective employer shall provide a similar level of products or services, or both, as provided by the existing employer, and shall retain, for a 90-day transition period, all employees of the existing employer;

- C. If the new employer determines that fewer employees are required to perform a level of work or services than required by the existing employer, the new employer shall retain employees by seniority within job classifications;
- D. During the 90-day transition period, the new employer shall hire from the list of employees not retained and hire from this list based on operational needs;
- E. The new employer shall not discharge without cause, an employee retained during the 90-day transition period unless during a written performance evaluation, the new employer deems the employee's performance to be unsatisfactory and the employee is given the opportunity to improve.

In addition, more stringent civil penalties were added.

II. CURRENT LAW

Chapter 394B, HRS, provides employment and training assistance for workers who are 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:

- Requiring employers with fifty 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 are found eligible for unemployment compensation;
- 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 day period under certain circumstances.

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. SENATE BILL

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

- Enacting this law under Chapter 394B as proposed could be detrimental to Hawaii's current economy. State government should not dictate to a buyer who is investing in a local business to retain the products or employees that are no longer needed or that may no longer serve the best interest of the company.
- The requirement may have an adverse effect on the selling employer's current employees. If the company is being sold due to a financial crisis such as a bankruptcy, successor companies may decline purchasing the existing company if they risk losing their own employees in the process, which negates the possibility of the seller's employees being retained.



Hawai'i State Democratic Women's Caucus 1050 Ala Moana Blvd #D-26, Honolulu, HI 96814 Email: hidemocraticwomenscaucus@yahoo.com

February 17, 2009

To: Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair and
Members of the House Committee on Labor

From: Jeanne Ohta, Chair of Legislative Committee, Hawai'i State Democratic Women's Caucus

Re: SB 1622 RELATING TO EMPLOYMENT SECURITY
(2:45 p.m., Tuesday, February 17, 2009, Conf. Room 224)

Position: SUPPORT

Thank you for allowing me to present written testimony today, in support of SB 1622 which requires certain employers to retain employees who were displaced from an employer by divestiture through transfer of a covered establishment to a new employer.

This measure would assist workers in keeping their jobs in the event of a divestiture and provide a 90-day transition employment period. The measure would also require that seniority of employees be recognized as a factor in employee retention.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is in keeping with our mission that we support the rights of workers to be treated fairly and without discrimination.

Long-time and older employees are at a disadvantage when a new business entity takes over. Their loyalty to the original employer is ignored and they may not be considered for positions with the new owner; especially if the new business owner is looking to cut labor costs. Employees should not be forced to reapply for positions they currently hold.

This measure provides a level of protection for existing employees. It also provides for fair and respectful treatment by the new owners. We urge the committee to pass SB 1622. Thank you for this opportunity to provide testimony.



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February 14, 2009

Senator Dwight Y. Takamine, Chair
Committee on Labor
Hawaii State Senate
State Capitol Rm. 204
Honolulu, Hawaii 96813

Dear Chair Takamine,

The Hawaii Restaurant Association stands in strong opposition to SB 1622 dealing with conditions for successor employers in the case of a business sale.

The majority of our members represent businesses that will normally be considered small to medium sizes with non supervisory employees fewer than 100.

The conditions spelled out in this bill will make it very difficult for restaurants or many small businesses to be able to be sold. This bill will result in weaker businesses to shut down instead of being able to be sold. The consequences of this will be that employees will lose their jobs while the seller of the business will have no equity to take with them. This is really a lose/lose situation for all parties.

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

Sincerely,

Victor Lim
Chairman



INTERNATIONAL LONGSHORE & WAREHOUSE UNION

LOCAL OFFICE • 451 ATKINSON DRIVE • HONOLULU, HAWAII 96814 • PHONE 949-4161

HAWAII DIVISION: 100 West Lanikoula Street, Hilo, Hawaii 96720 • OAHU DIVISION: 451 Atkinson Drive, Honolulu, Hawaii 96814
MAUI COUNTY DIVISION: 896 Lower Main Street, Wailuku, Hawaii 96793 • KAUAI DIVISION: 4154 Hardy Street, Lihue, Hawaii 96766

LOCAL 142

The Senate
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

DATE: Tuesday, February 17, 2009
TIME: 2:45 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

TESTIMONY OF THE INTERNATIONAL LONGSHORE & WAREHOUSE UNION LOCAL 142, AFL-CIO ON S.B. 1622 RELATING TO EMPLOYMENT SECURITY

My name is Fred Galdones and I am the president of the International Longshore and Warehouse Union, Local 142, AFL-CIO (ILWU). The ILWU represents approximately 20,000 private sector employees for the purpose of collective bargaining in a number of industries including agriculture, tourism and resorts, health care, and the general trades. We are in strong support of Senate Bill No. 1622 which provides a measure of employment security to lower wage workers displaced from their employment by divestiture of a business through no fault of their own. The bill sets minimum state standards for all employees who are not executive, administrative, or professional employees and who otherwise would be displaced when their employer sells the business to a prospective employer.

Our members are all too familiar with the destructive effect to them and their family from the sales of business,

particularly hotels in the tourism industry. The positive experiences of a purchaser hiring and keeping on the workforce is few in number. The negative experiences are more the norm, including sales where hundreds of workers are given termination notices and only a small percentage offered jobs with the new employer. For those employees all that many will receive is the 60-day notice now required under Hawaii's Dislocated Workers Act. In 1998 over 900 employees of the Grand Wailea Resort were terminated, required to apply with the new employer, and only 70% were hired, leaving experienced and well-trained employees to start over again in the job market. By comparison, when the management changed in 2006 no one was displaced, business continued uninterrupted, and the new employer began its relationship with its employees on a positive note. More recently when Outrigger took over management of Pacific Beach Hotel in January 2007, no one was displaced and business continued uninterrupted. When the owner of Pacific Beach Hotel cancelled the contract with Outrigger and decided to operate the hotel itself, all the bargaining unit employees had to reapply for their old jobs and many were terminated.

Businesses, despite the objections that have been raised in the past to this type of measure, in fact benefit. The bill does not require them to hire more employees than their operations need. They will gain workers knowledgeable about the product or operations and experienced with working with the customers or clients the new owner will be seeking to retain. The bill contains a 90-day transition employment period that encourages productivity and high standards from the employees eager to perform well during the review period.

Finally, this bill advances the interest of the State. In these economic hard times it is in the State's best interest to assure that the workers who do have jobs keep those jobs.

While arguably employees otherwise on unemployment might be hired in these jobs and come off of unemployment, the mass layoff that comes with the sale and transfer of a business displacing the existing workforce causes more disruption and economic distress, adding an additional toll to the system. The loss of a job to an employed employee means sudden loss of income for the worker and the family. This domino effect hurts us all.

The ILWU strongly urges passage of S.B. 1622. Thank you for this opportunity to share our comments and show our support of the bill.



Before the Senate Committee on Labor

DATE: February 17, 2009

TIME: 2:45 p.m.

PLACE: Conference Room 224

Re: SB 1622 Relating to Employment Security Testimony of Melissa Pavlicek for NFIB Hawaii

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Business in Hawaii, we ask that you reject SB 1622. 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 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.

EDWIN D. HILL
International President

LINDELL K. LEE
International
Secretary-Treasurer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®



The Senate
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor

Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Hearing: Tuesday February 17, 2009
Time: 2:45 p.m.
Place: Conference Room 224

Testimony of the International Brotherhood of Electrical Workers
(IBEW)

Re: S.B 1622, Relating To Employment Security

S.B 1622 would establish job security requirements to protect employees when the business for which the employees work is sold or transferred to another employing entity.

The IBEW strongly supports this measure.

Today, all too often when businesses are sold or change ownership it is the poor employees who are used as pawns to broker the deal. Workers are heartlessly dumped and made to reapply for their old jobs at reduced pay and benefits. Employees should be treated as a valued stakeholder in any sale or ownership change in this State and at a minimum be afforded this type of protection, dignity and respect.

Thank you for the opportunity to provide testimony.

Harold J. Dias, Jr
International Representative
IBEW

Testimony in **Support** of SB1622
Relating to Employment Security

By
Al Lardizabal, Director of Government Relations
Laborers' International Union of North America, Local 368

To the Senate Committee on Labor
Tuesday, February 17, 2009
Room 224, 2:45 p.m.

Honorable Dwight Takamine, Chair; Honorable Brian Taniguchi, Vice Chair
and Members of the Committee:

The Laborers' International Union of North America Local 368 **supports**
SB1622 providing for the retention of certain workers during a divestiture
process from a covered employer to a new employer.

President Barack Obama over turned several of former President Bush's
anti-worker polices. A new policy now requires federal service contractors
to provide for employment of current employees when there is a change in
contractors. President Obama recognized the importance of employment
stability in a time where workers as consumers lack the confidence in the
market because of the uncertainty of continued employment. This type of
legislation will help to create worker/consumer confidence and assist in
turning the economy around.

Thank you for the opportunity to submit this testimony.

**Testimony to the Senate Committee on Labor
Tuesday, February 17, 2009
2:45 p.m.
State Capitol - Conference Room 224**

RE: SENATE BILL NO. 1622 RELATING TO EMPLOYMENT SECURITY

Chair Takamine, Vice Chair Taniguchi, 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 Senate Bill No. 1622, relating to Employment Security. This bill will undermine economic revitalization at a time when our state needs it most. It's a disincentive for investment, which could possibly result in further job loss than jobs saved, thereby increasing unemployment claims.

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 requires prospective employers to provide similar level of products or services, retain all employees for a 90-day transition employment period, and keep employees by seniority rather than skill, ability or performance if the new employer decides that fewer employees are required. This bill changes the definition of "covered establishment" from 50 to 20 employees.

The Chamber well recognizes the hardship that business failures and ownership changes place on employees. However, The Chamber does not believe that Senate Bill 1622 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.
- 2) The bill places a mandate on the new business to provide a similar level of products of services and retain all employees for a 90-day transition period. This provision does not

recognize that one of the reasons why an existing employer may sell the company is due to financial burdens caused by inefficiencies.

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 immediately change or reduce staff to increase efficiency, to bring in better qualified or more skilled employees, or to bring in employees with different skill sets. Saddling a new business with the predecessor's employees may undermine the livelihood and continued employment of other employees.

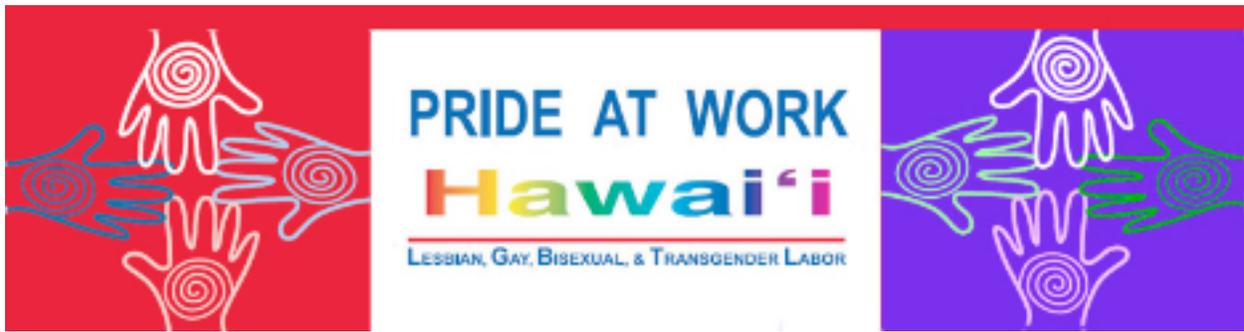
Those businesses which would normally be sold to a buyer that can make necessary changes will simply go out of business and the employees will lose their jobs. Or the assets of the business will be sold off and the employees will lose their jobs.

Therefore, 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 sum, Senate Bill 1622, 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.

Thus, The Chamber respectfully requests SB 1622 be held.

Thank you for the opportunity to testify.



PO Box 22416 Honolulu, HI 96822
(808) 543-6054
prideatworkhawaii@hawaiiantel.net
www.hawaficio.org/PAWHI

February 17, 2009

Hawaii State Senate
Committee on Labor
Chair, Sen. Takamine
Vice Chair, Sen. Taniguchi

Testimony in favor of S.B. 1622 – RELATING TO EMPLOYMENT

Pride At Work Hawai'i, whose mission is to mobilize lesbian, gay, bisexual, and transgender (LGBT) workers and their supporters for full equality and to build mutual support between the labor movement and the LGBT community, strongly supports S.B. 1622, which establishes job security requirements upon the divestiture of a covered establishment. S.B. 1622 is about job preservation during the initial sale or takeover of a company. It is intended to minimize disruption in such sales, particularly for the employees.

In these difficult and uncertain economic times, it is more likely than ever that more companies will be sold to new owners or managements, leaving workers vulnerable during the changeover. It is the employees who make a business work, and when new owners buy or take over a company, they should keep the same employees. Passage of this bill is especially important for lesbian, gay, bisexual, and transgender workers, who are even more vulnerable when businesses are taken over by new owners - even in Hawai'i, despite legal protections against discrimination.

It is working people - LGBT and straight - that will help revitalize our economy and get us out of this economic crisis we are currently in. A bill that increases job security for workers will help build confidence among Hawaii's workforce and stimulate spending; without such a measure workers are apt to continue to prepare for the worst. That's why passage of this worker retention bill is truly a step in the right direction at this critical time.

Thank you for the opportunity to testify in support of S.B. 1622. On behalf of all LGBT workers in Hawai'i, we hope you will support this bill.

Respectfully submitted by Steve Dinion, President, on behalf of Pride At Work Hawai'i



888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

The Senate
The Twenty-Fifth Legislature
Committee on Labor

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

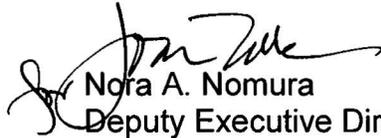
S.B. 1622 – RELATING TO EMPLOYMENT SECURITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 1622 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 S.B. 1622.

Respectfully submitted,


Nora A. Nomura
Deputy Executive Director



HAWAII STATE AFL-CIO

320 Ward Avenue, Suite 209 • Honolulu, Hawaii 96814

Randy Perreira
President

The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

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

Testimony by
Hawaii State AFL-CIO
February 17, 2009

S.B. 1622 - RELATING TO EMPLOYMENT SECURITY

Unfortunately, Hawaii and the rest of the United States are facing horrendous economic conditions. Unemployment levels are continually rising, home prices are sliding, and consumer confidence is at an all-time low. Unless something is done in the very near future, conditions will get worse. That is why Labor supports S.B. 1622.

While S.B. 1622 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. That is why it is imperative to pass S.B. 1622. Hawaii must do all it can to reduce unemployment levels. The lower the unemployment rate, the better the economy will be.

Furthermore, something must be done to change the mind set of lower consumer confidence. S.B. 1622 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.

We must embrace the spirit of President Obama as he works to restore our Middle Class. Middle Class American workers have been on the short end for far too long; as the earning power of workers has diminished, business owners have continued to treat these workers as commodities that can be cast aside when expedient. Clearly, this trend must end.

The passage of S.B. 1622 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 S.B. 1622.

Respectfully submitted,

Randy Perreira
President



Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Friday, February 13, 2009

Senator Dwight Takamine, Chair
Senator Brian Taniguchi, Vice Chair
Senate Committee on Labor

Testimony regarding SB 1622; *relating to Employment Security*

Chair Takamine, Vice Chair Taniguchi, members of the Senate Committee on Labor:

I submit this testimony on behalf of UNITE HERE! Local 5 – a local labor organization representing more than 11,000 hotel and health care workers throughout our State.

Senate Bill 1622 would require certain employers to retain employees who were displaced from an employer by divestiture through a transfer of a covered establishment to a new employer,

On behalf of Local 5, I hereby register our organization's position supporting the intent of SB 1622.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink that reads "Cade M. Watanabe". The signature is fluid and cursive.

Cade M. Watanabe
Community/Political Organizer