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

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March 12, 2009

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor and Public Employment

Date: Friday, March 13, 2009

Time: 10:00 a.m.

Place: Conference Room 309
State Capitol

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

**Testimony in Strong Opposition of
S.B. 688, Relating to Employment**

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 688 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by adding a new section regarding worker retention in the event of a divestiture. The bill states that successor employers:

- a. Shall hire all incumbent nonsupervisory and nonconfidential employees of the affected establishment;
- b. Shall not require incumbent employees to file employment applications for hiring purposes with the successor employer unless existing employee files are incomplete;
- c. May conduct pre-hire screening of incumbent employees not prohibited by law, including criminal history record checks and during screening.
- d. May lower 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 be proportionate to the reduction in total human resource needs.

- e. In addition, the bill creates new penalties for employees found in violation of the law.
- f. The bill states the employer shall pay the dislocated worker the difference between the employee's salary earned under the former employer and the unemployment insurance benefits received for the covered period.

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:

- a. 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;
- b. 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;
- c. 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.

III. SENATE BILL

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

1. This legislation will damage Hawaii's fragile economy and send a negative message to individuals seeking to do business in our State. State government cannot dictate the terms and conditions for prospective employers looking to invest money in a business. It makes no sense to require a prospective employer to take on the failed business strategy of the current employer and to retain all employees.

2. The requirement in this bill will have an adverse effect on the selling employer's current employees. If the company in question is being sold due to a financial crisis, possible successor companies will choose not to purchase the existing company, 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, is 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?
5. 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?

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.

Testimony to the House Committee on Labor & Public Employment
Friday, March 13, 2009
10:00 a.m.
State Capitol - Conference Room 309

RE: SENATE BILL NO. 688 RELATING TO EMPLOYMENT

Chair Rhoads, Vice Chair Yamashita, 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. 688, relating to Employment.

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 Senate Bill 688 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, Senate Bill 688, 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.

Thus, The Chamber respectfully requests SB 688 be held.

Thank you for the opportunity to testify.



INTERNATIONAL LONGSHORE & WAREHOUSE UNION

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LOCAL 142

The House of Representatives
The Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor & Public Employment
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

DATE: Friday, March 13, 2009
TIME: 10:00 a.m.
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

TESTIMONY OF THE INTERNATIONAL LONGSHORE & WAREHOUSE UNION LOCAL 142 ON S.B. 688 RELATING TO EMPLOYMENT

This testimony on S.B. 688, is submitted on behalf of the International Longshore and Warehouse Union, Local 142 (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 this legislature passing a measure that will provide employment security to all but a limited group of workers displaced from their employment by divestiture of a business through no fault of their own. S.B. 688 is one of those measures being considered this session. It sets minimum state standards for all but supervisory and confidential employees who otherwise would be displaced when their employer sells the business to a prospective employer.

“AN INJURY TO ONE IS AN INJURY TO ALL”

Also being heard today by this committee is S.B. 1622, S.D. 1, another bill designed to address and minimize the adverse impact on employees and the community when a business is sold. While either bill would be a welcome improvement to the way business sales are handled now, the procedural provisions in S.B. 1622, S.D. 1, are more extensive than S.B. 688 and, with the additional penalty provisions, S.B. 1622, S.D. 1, would assure better understanding and compliance of the new law.

As outlined in our testimony in support of S.B. 1622, S.D. 1, 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. The negative experience is demonstrated by what occurred at Hawaii Nanihoa Resort in 2006 when some 100 workers were laid off and only 20 retained. For workers not retained, all that many will receive is the 60-day notice now required under Hawaii's Dislocated Workers Act. For workers who live through the negative experience of a sale and divestiture their lives are irrevocably disrupted.

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. Both of the bills being considered today do not require businesses to hire more employees than their operations need. The buyers of businesses 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 impact on the business community from these measures is minimal. The minimal impact on business is offset by the current economic climate where it is likely more companies will be up for sale while other companies will take advantage of an opportunity to purchase the business thereby increasing the adverse impact on our workers and the community.

In these tough economic 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.

As stated above, of the two measures being heard today on divestiture of workers, the ILWU strongly urges passage of a measure in the form of S.B. 1622, S.D. 1. Thank you for this opportunity to share our comments on both of these bills.

EDWIN D. HILL
International President

LINDELL K. LEE
International
Secretary-Treasurer

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS®

The House of Representatives
Twenty-Fifth Legislature
Regular Session of 2009

Committee on Labor & Public Employment

Rep. Karl Rhodes, Chair
Rep. Kyle T. Yamashita, Vice Chair

Hearing: Friday March 13, 2009
Time: 10:00 a.m.
Place: Conference Room 309

Testimony of the International Brotherhood of Electrical Workers
(IBEW)

Re: S.B 688 Relating To Employment

S.B 688 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



Randy Perreira
President

HAWAII STATE AFL-CIO

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii State AFL-CIO
March 13, 2009

S.B. 688 - RELATING TO EMPLOYMENT

Hawaii and the rest of the United States are facing some of the worst possible economic conditions. Unemployment levels have reached a quarter-century high in Hawaii, and home prices continue to slide. Consumer confidence is at an all-time low. Unless something is done in the very near future, conditions will likely get worse. That is why Labor supports S.B. 688.

While S.B. 688 will not fix Hawaii's economy, it will help protect workers' jobs which are so vital today. If people are working, they will be spending their wages and helping Hawaii businesses do better. That is why it is imperative to pass S.B. 688. Hawaii must do all it can to reduce unemployment levels. The lower the unemployment rate, the better the economy will hopefully be.

Furthermore, something must be done to change the mind set of lower consumer confidence. S.B. 688 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 look to our elected leaders to come up with the means to offset the gloomy economic climate. The passage of S.B. 688 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. 688.

Respectfully submitted,

Randy Perreira
President

HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996

Affiliated with the International Brotherhood of Teamsters

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Rep. Karl Rhoads, Chair
Rep. Kyle Yamashita, Vice-Chair
Committee on Labor & Public Employment

Glenn Ida
Representative

Friday, Mar. 13, 2009, 10 AM
Conference Room 309

Support of SB 688, Relating to Employment

The Hawaii Teamsters Local 996 negotiates and enforces over 50 contracts covering more than 6000 members. One of our companies was, ASIG, the WikiWiki Tram Service employees at the Airport.

Local 996 had represented these members for over 20 years through 4 management changes. Last year the contract was awarded to Robert's Hawaii after the results of the first bid was revealed to all bidders. Our contract with ASIG expired at the same time. The Airport Project Manager added the service to a satellite parking location to the contract, which resulted in a second round of bids. Two of the bids are higher than the original bid to meet the additional service required. Robert's Hawaii, however, puts in a bid that is lower than their original bid before the increase in service and won the contract by being the lowest bidder.

Robert's then re-hires only enough of the previous workforce because they have security clearances, Ramp badges and CDL licenses necessary to drive all the WikiWiki Tram routes throughout the airport and to provide training to new hires. The rest of the new hires will drive the shuttles that pass through the general/public areas in the front of the airport until such time as they can upgrade their drivers' licenses to CDL and get security clearances and ramp badges.

The Hawaii Teamsters Local 996 strongly supports SB 688, not only to stabilize the employment of these highly qualified and credentialed workers but also as a means to support the Homeland Security requirements of all workers at the Airport.

Thank you for allowing me to testify this morning.



**HAWAII HOTEL & LODGING
ASSOCIATION**

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**TESTIMONY OF MURRAY TOWILL
PRESIDENT
HAWAII HOTEL & LODGING ASSOCIATION**

March 13, 2009

**RE: SB 688 Relating to Employment
SB 1622 SD1 Relating to Employment Security**

Good morning Chairman Rhoads and members of the House Committee on Labor & Public Employment. I am Murray Towill, President of the Hawaii Hotel & Lodging Association.

The Hawaii 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 Hawaii Hotel & Lodging Association opposes SB 688 Relating to Employment and SB 1622 SD1 Relating to Employment Security.

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 mandates 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 concepts like the ones in these bills, 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 a 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.



March 12, 2009

The Honorable Karl Rhoads, Chair
The Honorable Kyle T. Yamashita, Vice Chair
House Committee on Labor and Public Employment

Re: SB 688 – Relating to Employment

Dear Chair Rhoads, Vice Chair Yamashita and Members of the Committee:

My name is Rick Jackson and I am Chief Operating Officer of MDX Hawai‘i, a health care third party administrator formerly known as Queen’s Health Plans. I am testifying in opposition to SB 688, which proscribes certain conditions on a company which purchases a Hawai‘i based employer’s business.

My former employer, The Queen’s Health Systems, sold its health care third party administration business to Medical Data Exchange, a California corporation, in 2002. As an employee of the predecessor and successor companies, I have personally been in a situation contemplated by SB 688. The proposed law would, if enacted, put procedural barriers in place that would make it more difficult to accomplish the sale of a Hawai‘i employer’s business to another entity, and thereby diminishes the valuation of all Hawai‘i businesses in these difficult economic times. And, instead of protecting Hawai‘i workers, it will have the unintended effect of creating premature termination of some employees so that such transactions can meet the requirements of this new law.

Most sales of Hawai‘i business happen for economic reasons: death of an owner, change in business climate, need for cash that exceeds the capacity of local banks to finance, change in corporate strategy and focus, etc. The requirement described in the draft law to hire all former employees of the predecessor company will, if enacted, force the seller of a business to terminate all employees not needed or required by the purchasing company prior to completion of the transaction. To the extent that stay bonuses and severance agreements are in place for displaced employees and need to be funded, this creates the requirement for additional cash prior to such a transaction which the current owner may not have. If such agreements are not in place, the proposed law in effect will cause the premature termination of employees prior to the transaction in order to avoid the well-intended effects of SB 688.

In short, making wise and necessary business transactions more difficult to accomplish diminishes business valuation and will not protect existing employees.

Best regards,

Rick Jackson
Chief Operating Officer



Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair
Committee on Labor & Public Employment

HEARING Friday, March 13, 2009
 10:00 am
 Conference Room 309
 State Capitol, Honolulu, Hawaii 96813

RE: SB688, Relating to Employment

Chair Rhoads, Vice Chair Yamashita, 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.

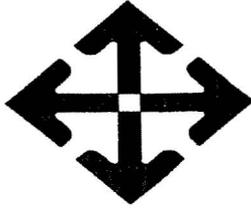
RMH strongly opposes SB688, relating to employment, which essentially requires successor employers to retain certain incumbent employees upon the divestiture of a covered establishment.

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 SB688**. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
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The Hawaii Business League

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March 13, 2009

Testimony To: House Committee on Labor & Public Employment
Representative Karl Rhoads, Chair

Presented By: Tim Lyons
President

Subject: S.B. 688 – RELATING TO EMPLOYMENT
S.B. 1622, SD 1 – RELATING TO EMPLOYMENT SECURITY

Chair Rhoads and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization.

We are opposed to the passage of both these bills.

These bills make an attempt at placating the employment security of employees who find their company sold. We think it will have an extremely "chilling" effect on the sale of businesses throughout the state and we think that is ill advised.

It is typical that when an employer purchases a company they do so because they think that they can manage it, administer it, and direct it better than the previous employer. All employers have their own way of doing things and most of them would feel that it is beneficial to be given the flexibility to operate the new business in such a way that meets with their management

style. In many cases, the businesses that are purchased are ones that are already in trouble financially and the employer needs to be able to react quickly. The ninety (90) day transition period provided for in these bills is a disincentive to buy, in fact the entire bill based on that clause plus, the seniority clause and the discharge clause all add up to purchasing a worthless business. The employer would be better off to start a new business and not worry about it. That affects and undermines the efforts of the previous owner and their goal of building a business to the point where it is worth something and they can sell it and retire.

It is our feeling that we would be much better off providing for employment and training programs so that employees that are displaced by the purchase by a new owner are able to move if they do not like the new employer or if the new employer does not like them.

In essence, these bills are a disaster to the small business community throughout the state and we would urge your Committee to reject them.

Thank you.



The Voice of Small Business®

Before the House Committee on Labor & Public Employment

DATE: March 13, 2009

TIME: 10:00 a.m.

PLACE: Conference Room 309

Re: SB 688 Relating to Employment 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 688. 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.



est. 1947

Hawaii Restaurant Association

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March 12, 2009

Rep. Karl Rhoads, Chair
Committee on Labor & Public Employment
House of Representatives
Hawaii State Capitol, Rm 326
Honolulu, Hawaii 96813

Dear Chair Rhoads,

The Hawaii Restaurant Association stands in opposition to SB 688 and SB 1622 SD1 regarding worker retention in the event of a divesture.

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 these bills will make it very difficult for many businesses to be able to be sold resulting in weaker businesses shutting down. Stipulations such as these greatly reduce the value of the businesses as an ongoing entity. The net result is that jobs will disappear instead of being retained.

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

Sincerely,

Victor Lim
Chair



HAWAII CREDIT UNION LEAGUE

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Testimony before the House Committee on Labor & Public Employment
Friday, March 13, 2009 at 10:00 am

Testimony opposing SB 688, Relating to Employment

To: The Honorable Karl Rhoads, Chair
The Honorable Kyle Yamashita, Vice-Chair
Members of the Committee on Labor & Public Employment

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, which represents 91 credit unions serving approximately 810,000 credit union members throughout the state.

We understand the commendable intent of SB688. However, we respectfully ask that this measure be held because it will likely have adverse effects on our credit union members. Our concern is that this measure would not allow a surviving credit union (in the event of a merger) to reorganize and improve their internal structure, which may be necessary to continue services to their members. Credit unions have a goal of serving those of modest means, and others who would otherwise be unbanked. Legislation such as this holds great potential in hindering credit unions' ability to maintain a high level of service.

Thank you for the opportunity to testify.

BIA-HAWAII

BUILDING INDUSTRY ASSOCIATION

March 13, 2009

Honorable Karl Rhoades, Chair
Committee on Labor & Public Employment
State Capitol, Room 309
Honolulu, HI 96813

RE: SB 688 “Relating to Employment”

Dear Chair Rhoades and Members of the Committee on Labor & Public Employment:

I am Karen Nakamura, Chief Executive Officer of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii.

BIA-Hawaii is **strongly opposed to SB 688**, “Relating to Employment”. We believe that SB 688 would be detrimental to the purpose of saving jobs because it forces a successor employer to retain a proportion of the incumbent employees if the human resource 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

In the attempt to keep some of the employees of the predecessor employer, this bill may be hurting local businesses (and all of their employees) which may have had an opportunity to sell their business to a successor company. There is no incentive for a company to invest in an existing company and turn it around if there are such burdensome laws. A bill such as SB 688 does not allow any company to manage its business when it is mandated to retain employees even if the company believes they do not have a need for such employees. The “new” business may be doomed to the same results of its predecessor.

Our State and our Nation need creative thinking with new ideas for economic recovery. The fact that so many companies are going out of business should be an indication that as hard as they have tried to operate under current conditions, they were not able to remain in business. Selling their businesses to another entity was one way in which they could salvage something from their businesses. Passing such a bill would discourage any business from wanting to buy an existing business.

We ask that the bill be held. Thank you for the opportunity to share our views with you.

yamashita1- Kathy

From: jlk@torkildson.com
Sent: Thursday, March 12, 2009 9:56 AM
To: LABtestimony
Subject: Take Action Now

John L. Knorek
700 Bishop Street, 15th Floor
Honolulu, HI 96813-4116

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.
State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

I am a private attorney managing a small law firm in Honolulu. I see and hear numerous stories from clients of the difficult economic times we are experiencing. Senate Bills 1622 and 688 do not achieve the goals we need in Hawaii of preserving and creating jobs. Instead it artificially could extend employment 90 days but in reality will more likely cause faltering businesses to fail and ensure more bankruptcies and lost jobs. Now is not the time to impose onerous legislation that will cost Hawaii's people jobs.

Thank you for your time and please vote to hold these bills. is bi

yamashita1- Kathy

From: myexquisitewedding@gmail.com
Sent: Thursday, March 12, 2009 10:39 AM
To: LABtestimony
Subject: Take Action Now

Jana Heetland
3771 Leahi Ave. Unit A
Honolulu, HI 96815-4489

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.
State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

I am the owner of Exquisite Hawaiian Weddings and Event Productions L.L.C. We specialize in creating custom weddings, corporate and lifetime events for our clients. I can be contacted at (808) 497-6878 or by email at myexquisitewedding@gmail.com

As a small business owner here on Oahu, I vehemently oppose the above stated bills. It doesn't make good business sense to require that a company who has purchased another, be required to keep workers based on seniority. In the fast paced world of business, companies need to be able to be competitive and stay on the edge of new technologies and current trends in the workplace. Having to keep long term employees simply based on their long term status will continue to keep Hawaii from really gaining an edge in these tough economic times. This bill will also continue the air of complacency that has come to many businesses here in the islands, where employees feel entitled to their jobs, instead of needing to stay on top of their games in order to grow and maintain their positions in the workforce.

I beg you to vote no on both of these bills.

Mahalo,
Jana Heetland
Exquisite Hawaiian Weddings and Event Productions L.L.C.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

LATE

March 12, 2009

TO: THE HONORABLE REPRESENTATIVE KARL RHOADS, CHAIR AND
MEMBERS OF COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

SUBJECT: S.B. 688, RELATING TO EMPLOYMENT

NOTICE OF HEARING

DATE: Friday, March 13, 2009
TIME: 10:00 A.M.
PLACE: Conference Room 309

Dear Chair Rhoads and Committee Members:

The General Contractors Association of Hawaii (GCA), an organization comprised of over five hundred and sixty (560) general contractors, subcontractors, and construction related firms, **opposes** the passage of S.B. 688, Relating to Employment.

The GCA believes that this bill will make it much more difficult for Hawaii businesses to sell or/and receive the full value of a going business in this difficult economic climate. Non profitable businesses may be forced into bankruptcy in order to reorganize without retaining all employees employed under existing contracts because no new buyer would be willing to take over if it has to retain all existing employees. The new buyer must be able to reorganize and change operations, which may require staff reduction.

The GCA believes that this bill runs counter to the concept of free enterprise and infringes on the ability of a business to manage its operations.

The GCA **opposes** the passage of S.B. 688 and recommends that this bill not be passed.

Thank you for the opportunity to provide our views on this issue.

yamashita1- Kathy

From: Kurt [kakamine@ohanapacific.com]
Sent: Thursday, March 12, 2009 9:05 PM
To: LABtestimony
Subject: Testimony on SB 688

LATE



3- 3420 Kuhio Highway, Suite 300
Lihue, HI 96766

March 9, 2009

SB 688 "Successor Employer"

Strongly Oppose

Honorable Colleen Hanabusa

My name is Kurt Akamine and I am the Chair of the Kauai Chamber of Commerce and the Director of Operation of a business on Kauai that employs 250 residents. I am testifying in opposition of HB 1622.

This bill creates a business environment that discourages growth and limit opportunities for businesses to perpetuate.

Many company owners seek to continue the business legacy that they created through their hard work and personal sacrifices. When they move to sell their business, this bill will severely impact the flexibility that any potential successor will have. Consequently, if there is no successor then not only will this legacy be unable to continue, but all of their employees will no longer have employment.

During these perilous economic times, we should be encouraging and supporting growth opportunities rather than limiting it, as what HB 1622 intends to do.

Please defeat this measure.

Respectfully,

Kurt Akamine

Garden Isle Healthcare & Hale Kupuna Heritage Home

Ohana Pacific Management Co.

3-3420 Kuhio Hwy. Ste. 300

Liliue, HI 96766

(808) 245-1802 fax (808) 245-6515

LATE

HOUSE OF REPRESENTATIVES
25th LEGISLATURE
REGULAR SESSION of 2009

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair

3/13/09
10:00 AM – Room 309

SB 688 & SB 1622, SD 1
Relating to Employment & Employment Security

Chair Rhoads and members of this Committee, my name is Max Sword, here on behalf of Outrigger Hotels, to speak in opposition to these bills.

The basic premise of both SB 688 & SB 1622 is to require a new owner, or a transferee of an existing business, to retain all or most 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.

In SB 688, the new owner must retain some employees, even if the new owner transforms the new business into one that is substantially dissimilar to the former business.

In SB 1622, besides requiring the retainment of employees for an extended period of time, it spells out which employees the new owners should hire from a list based on seniority.

In both measures there are punitive measures that would make a new buyer think twice about buying the business.

A buyer should be able to retain the best, most qualified workers. Many times, that will be from the ranks of the existing employees - but not in every situation. 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 identity of employees. The alternative if the new owner is not allowed to make changes, is that the business perishes.

In summary, this is an anti-business bill that will discourage investment in Hawaii. 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.

yamashita1- Kathy

From: jtoth@netenterprise.com
Sent: Thursday, March 12, 2009 3:33 PM
To: LABtestimony
Subject: Testimony for SB 688 and SB 1622

J Toth
1132 Bishop Street, Suite 700
Honolulu, HI 96813-2847

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.

State Capitol - Room 309

Re: SB 688 and SB 1622

Chair Rhoads, Vice Chair Yamashita and members of the committee:

My name is J Toth and I am with NetEnterprise Inc., a Hawaii-based network services integrator with 45 employees.

I respectfully request that you oppose SB 688 and SB 1622, relating to employment. These bills pose a threat to businesses that are facing difficult times under our current economic situation. They will discourage investment in struggling businesses due to their stringent requirements and severely restrict the ability of a company to restructure, to become more efficient and in many cases survive. This will net a higher loss of jobs the companies will simply cease to exist rather than continuing to survive employing a more efficient, albeit smaller, workforce.

These bills also remove an employer's rights to select employees appropriate for its goals and objectives based on its business plan, and potentially straddle them with workers that do not result in proportionate revenues. This again will inevitably lead to an excessive financial burden and ultimately result in a total collapse of the company.

Should you have any questions or concerns, I can be reached at 808-441-5000 or via email at jtoth@netenterprise.com.

Respectfully,

J.Toth

yamashita1- Kathy

From: randall@kauaichamber.org
Sent: Thursday, March 12, 2009 2:55 PM
To: LABtestimony
Subject: Please vote no on these bills

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.
State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

Discourages investment in a struggling business due to the stringent requirements and inability to turn around the company so that it is more efficient. In turn, net loss of jobs will be higher because the existing company will go bankrupt and go out of business, thus the term, "Guarantee Bankruptcy" bill. This contradicts the intent of the bill which is job security.

Removes the new employer's rights to select employees appropriate for its goals and objectives.

Undermines efforts to revitalize the economy as passage of this bill will paint a negative image on doing business in Hawaii and further weaken efforts to make Hawaii a business-friendly state.

Mahalo,

Randall Francisco, President on behalf of the Kauai Chamber of Commerce 475+ members.

LATE

yamashita1- Kathy

From: MSteiner@SteinerAssoc.com
Sent: Thursday, March 12, 2009 6:51 PM
To: LABtestimony
Subject: Testimony in Opposition to SB 1622 and SB 688

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.
State Capitol - Room 309

Re: Testimony in Opposition to SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

My name is Michael Steiner and I live in Kailua. I am the Principal of Steiner & Associates, a Business and Management consulting firm.

I am opposed to SB 1622 and SB 688 as these Bills will discourage investment in a struggling business due to overly stringent requirements. These Bills will hamper a new owner's ability to obtain overall efficiency and turn the company from doom to a profitable ongoing concern. If a potential buyer is unable to control all aspects of his or her new undertaking, it is doubtful they will invest which will result in all current employees losing their employment.

Investors must see a profit margin before they will invest. A business buyer must be able to put the best assets of the company to work to ultimately create new jobs down the line. SB 1622 and SB 688 will only serve to repel potential investors from helping businesses in need. Furthermore, these Bills will severely weaken efforts to make Hawaii a business-friendly state.

Please do not pass these Bills.

Thank you for your consideration.

Michael Steiner, CLM
Principal
Steiner & Associates
702 Kanaha Street
Kailua, HI 96734

Phone: (808) 221-5955
Email: MSteiner@SteinerAssoc.com
Web: www.SteinerAssoc.com

LATE

yamashita1- Kathy

From: highwayinnhr@hawaiiintel.net
Sent: Thursday, March 12, 2009 8:00 PM
To: LABtestimony
Subject: OPPOSE SB 1622 & 688

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.

State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

Poor policymaking will affect the State's revenues by preventing more businesses to fail. This is another example of VERY POOR POLICYMAKING and LACK OF CRITICAL THOUGHT about the unintended consequences this bill will impose.

Businesses should not be DICTATED to, but allowed to freely buy and sell as they feel is in their company's best interests. PLEASE OPPOSE THIS BILL.

I oppose these bills for the following reasons:

1. It will discourage investment in a struggling business due to the stringent requirements and inability to turn around the company so that it is more efficient.
2. In turn, net loss of jobs will be higher because the existing company will go bankrupt and go out of business, thus the term, "Guarantee Bankruptcy" bill. This contradicts the intent of the bill which is job security.
3. It removes the new employer's rights to select employees appropriate for its goals and objectives. Employers should retain based on PERFORMANCE and SKILL, not seniority.
4. Undermines efforts to revitalize the economy as passage of this bill will paint a negative image on doing business in Hawaii - albeit we are one of the WORST in the country as it stands - and further weaken efforts to make Hawaii a business-friendly state.

"Thank you for the opportunity to submit written testimony."

Monica Toguchi
VP of Administration & Planning
Highway Inn Inc.

yamashita1- Kathy

From: dale@menehunemagichawaii.com
Sent: Thursday, March 12, 2009 12:18 PM
To: LABtestimony
Subject: Take Action Now

Dale Rosin
91-400 Malakole Street
Kapolei, HI 96707-1807

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00
a.m.
State Capitol - Room 309

Re: SB 1622 and SB 688

Reason for opposition:

It removes the employers rights to select employees appropriate for its goals and objectives.
Chair Rhoads, Vice Chair Yamashita and members of the committee:

yamashita1- Kathy

From: kaeo@koolinalm.com
Sent: Thursday, March 12, 2009 2:18 PM
To: LABtestimony
Subject: Please Consider the Long Term Impact

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.

State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

My name is Ka'eo Gouveia and I have the great fortune of being in charge of running a small business locally. Our company name is Mokulua Contracting LLC and we are a full service grounds, building and janitorial maintenance company serving the island of O'ahu. We pride ourselves as the "one-stop-shop" of property maintenance. I feel compelled to testify against this bill as I went through a company purchase a little over a year ago. If this law were in place, we would not have made the purchase and 67 people would have been left unemployed.

This bill discourages investment in a struggling business due to the stringent requirements and inability to turn around the company so that it is more efficient. In turn, net loss of jobs will be higher because the existing company will go bankrupt and go out of business, thus the term, "Guarantee Bankruptcy" bill. This contradicts the intent of the bill which is job security.

This bill also removes the new employer's rights to select employees appropriate for its goals and objectives. Developing a company culture is difficult enough and this bill would prevent a new employer from getting the right people on it's team dooming the new employer to repeat the same inefficiencies that plagued the prior employer. Failure would be inevitable under this law.

Finally, this bill undermines efforts to revitalize the economy as passage of this bill will paint a negative image on doing business in Hawaii and further weaken efforts to make Hawaii a business-friendly state. Hawaii already has a reputation as being a difficult place to start a business due to the excessive costs. Adding in laws that would determine the way a new employer is required to manage their business would doom the economy to additional years of suffering.

I can be reached at 222-4083 or kaeo@koolinalm.com if there are any concerns or questions that need to be discussed. Mahalo for the opportunity to submit written testimony.

LATE

yamashita1- Kathy

From: stefan@1132cafe.com
Sent: Thursday, March 12, 2009 1:33 PM
To: LABtestimony
Subject: Take Action Now

Stefan Kruger
1132 CAFE & CATERING
1132 Bishop Street, Suite 131
Honolulu, HI 96813-2849

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.
State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

Above-mentioned bills discourage investment in small and large business due to the stringent requirements and inability to turn around the company so that it is more efficient. Business reality contradicts the intent of the bill which is job security.

The bills also remove the new employer's rights to select employees appropriate for its goals and objectives. And they undermine efforts to revitalize the economy as passage of this bill will paint a negative image on doing business in Hawaii and further weaken efforts to make Hawaii a business-friendly state.

Thank you for the opportunity to submit written testimony.

Stefan Kruger 1132 CAFE & CATERING
stefan@1132Cafe.com

yamashita1- Kathy

From: shelley@wilsonhomecare.net
Sent: Thursday, March 12, 2009 10:58 AM
To: LABtestimony
Subject: Take Action Now

LATE

Wilson Homecare
1221 Kapiolani Blvd. #940
Honolulu, HI 96814

Shelley Wilson
1080 S. Beretania St. PH#3
Honolulu, HI 96814

Testimony to the House Labor & Public Employment Committee Friday, March 13, 2009 at 10:00 a.m.

State Capitol - Room 309

Re: SB 1622 and SB 688

Chair Rhoads, Vice Chair Yamashita and members of the committee:

I, Shelley Wilson, President of Wilson Homecare, a home healthcare agency with over 250 employees wishes to express grave concern for the above mentioned bills.

Unfortunately Hawaii has the long standing reputation for being a difficult place to do business. In these challenging economic times, we are not positioned to be competitive in encouraging new business and commerce to come to Hawaii. It is beyond me why we continue to put up additional barriers for companies and to do business here and keep new business away. There should be legislation to make Hawaii a business friendly state instead of the complete opposite, especially now. We need active voices, such as yours, to protect what we have in encouraging investment and growth in our community.

As you already are aware, some of the glaring negative points of this bill include:

- removing the new employer's right to select employees most appropriate for its goals and objectives.
- discouraging investment in a struggling business due to the strigent requirements and inability to turn around the company to remain viable.
- undermining efforts to revitalize the economy as passage of this bill will paint, yet another, negative image of doing business in Hawaii.

My final comment is blunt...this is un-American and anti-entrepreneurial. It is absurd to think that someone will buy something with private funds and in turn the government will tell them how to run their company and how it will be structured. A significant part of the definition of free enterprise is "a business governed by the laws of supply and demand, not restrained by government interference".

Thank you for your attention to this significant issue.

Best Regards,
Shelley Wilson
President
Wilson Homecare