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February 22, 2010

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: February 22, 2010
Time: 1:00 p.m.
Place: Conference Room 308, State Capitol

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

# H.B. 2702 HD 1 - Relating to Employment Security

## I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 2702 H.D. 1 provides the following:

1. Requires the Department of Labor and Industrial Relations to conduct a study on the cost and feasibility of converting the present unemployment taxing system from an annual to semi-annual basis and provide the Legislature with its findings no later than 20 days prior to the 2011 session.
2. Provides that new employers in calendar years 2010 and 2011 to be assigned with a .0800 to .0899 reserve ratio.
3. Provides that existing employers who hires new employees in 2010 or rehires former employees who were laid off prior to 1/1/10 to be assigned a reserve ratio that is five reserve ratios lower than what the employer is currently assigned or the lowest reserve ratio on the schedule and that ratio shall only be applicable to the new hires or rehired former employees.
4. Requires the DLIR to review and reassess the findings and recommendations of the 1982 Legislative Auditor's study and prepare a report to the Legislature no later than 20 days prior to the 2011 session.

## II. CURRENT LAW

The current unemployment tax system is only capable of calculating one contribution rate per year for each employer. A previous analysis done in 2007 by the Information and Communication Services Division of the Department of Accounting and General Services estimated a $23 million price tag to redo the tax system. The last major redesign took 5 years to design, program, test and implement.

Under section 383-66(a)(2), new employers are assigned the contribution rate of a reserve ratio of .0000 until the employer's account has been chargeable with benefits throughout the 12 consecutive calendar month period ending on December 31 of the preceding calendar year.

## III. HOUSE BILL

The Department strongly objects to section 3 for the following reasons:

1. New Employer Rate

   The provision to provide lower tax rates for new employers under section 383-68(d) is in direct conflict with section 383-66(a)(2) which governs new employer rates. Unless section 383-66(a)(2) is amended, there will be 2 new employer rates in effect at the same time.

   A new employer rate will be applicable to all employers considered new and to existing employers who have not met experience rating requirements. The new employer rate may not be lower than 1 percent and it must be on a "reasonable basis" related to the general principles of experience rating. Assigning a .0800 to .0899 reserve ratio would raise an issue under section 3303(a)(ii), Federal Unemployment Tax Act, if the Legislature designates schedules A and B for 2010 and 2011 as the tax rate under those schedules would be less than 1 percent. Violation of this federal conformity requirement would cause all contributory employers to lose the additional credit.

   Furthermore, existing employers must be rated over the same time period using the same factors which bear a direct relation to the employers' experience with unemployment. Reducing the rate for certain individuals hired by an employer violates this principle. The hiring of new employees or former employees is not a factor related to experience rating. Violation of this federal conformity requirement, as stated above, would cause all contributory employers to lose the FUTA additional offset credit and their FUTA taxes will increase.

2. Reduced Rates for Existing Employers

This measure proposes to have two tax rates for an employer already in operation if that employer hires new employees or former employees in the 2010 calendar year. The taxable wages of the new or former employees hired would be subject to a new lower tax rate while the rest of the employees are subject to the original tax rate. This change would require a major redesign of the UI tax system and cannot be completed by the effective date of the legislation. In addition, employers would also incur additional software reprogramming costs to redesign their payroll systems to meet the CY 2010 deadline.

3. Study of the UI Tax System

The Department requests that monies be appropriated to provide an analysis of the UI tax system and to review the recommendations of the Legislative Auditor's 1982 study on the financing of the UI trust fund. We would like to note that, according to recent projections compiled by the Department on the various tax moderation alternatives, doing a semi-annual rate change does not make a significant difference and the perceived costs do not outweigh any benefits.

NFIB
The Voice of Small Business®

# Before the House Committee on Finance

DATE: Feb. 22, 2010

TIME: 1:00 p.m.

PLACE: Conference Room 309

## Re: HB 2702 Relating to Employment Security

## Testimony of Melissa Pavlicek for NFIB Hawaii

We are testifying on behalf of the National Federation of Independent Business (NFIB) regarding unemployment insurance rate relief.

Although we support the intent of the measures intended to minimize the impact of the unemployment insurance tax increase, NFIB Hawaii supports amending the bills by holding the tax rate schedule to D in 2010 and F in 2011, permanently setting the taxable wage base at 90% and maintaining the adequate reserve multiplier at 1.0. However, our first and foremost priority is to secure rate relief for Hawaii's small businesses which are so critically important to the state's economy. We therefore support efforts to advance rate relief as expeditiously as possible.

NFIB is the largest advocacy organization representing small and independent businesses in Washington, D.C. and all 50 state capitols, with more than 1,000 members in Hawaii and 600,000 members nationally. NFIB members are a diverse group consisting of high-tech manufacturers, retailers, farmers, professional service providers and many more.

We welcome the opportunity to engage with legislators on this and other issues during this session.

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