



**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 9, 2011

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

Date: Thursday, February 9, 2011

Time: 2:00 p.m.

Place: Conference Room 308, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations

Re: H.B. 1077 H.D. 1 Relating to Employment Security Law

I. OVERVIEW OF PROPOSED LEGISLATION

Act 2, approved by the Legislature in 2010, gave the Director of the Department of Labor and Industrial Relations (DLIR) the authority to assess all employers the amounts necessary to pay interest costs on the Title XII loans. However, as the method determined most feasible to collect the special surtax requires statutory amendments, the intent of this housekeeping measure is to satisfy any legal requirements to accomplish the purposes of Act 2.

H.B. 1077 H.D. 1 will permit a temporary increase in the E&T assessment beginning January 2011, for one year only, for purposes of collecting the interest payment surtax from all contributory employers. The bill also provides a refund of the increased rate amount if the interest on Title XII loans is waived by federal law. As the interest due must be paid on September 30, 2011, passage of this measure by early March 2011 is critical. In January 2012, the special assessment will sunset and the previous statutory provisions will be reinstated.

II. CURRENT LAW

Currently, section 383-128, Hawaii Revised Statutes, provides for employers to be assessed a rate of .01% of UI taxable wages for purposes of funding training programs

administered by the DLIR Workforce Development Division. The assessment is collected with the UI contributions on a quarterly basis.

III. HOUSE BILL

The Department strongly supports this measure and recommends passage of this bill.

1. Hawaii's UI trust fund is currently insolvent and Title XII loans were received beginning December 2010. Federal law requires that the interest payment on outstanding loans be paid by September 30, 2011. Current projections show that the outstanding loan balances will be \$7 million in September 2011 and the interest due will be approximately \$1 million. Barring any further changes to the law which could affect solvency, the UI trust fund is expected to repay all advances due in 2012.
2. Failure to pay interest when due may result in the loss of the employer's 5.4% FUTA tax offset credit and the loss of approximately \$15,000,000 in administrative grants to operate the UI program in Hawaii. Employers will be liable for the full 6.2% FUTA tax resulting in an increase from \$56 to \$434 per employee annually. If the administrative grant is withheld, jobless workers will not be able to file UI claims due to the total shutdown of all UI offices.
3. Section 383-61.5 provides that the director (of DLIR) may assess all employers the amounts that are sufficient to pay the principal and interest costs on the Title XII loans; provided that the director develops a mechanism of distributing these payments among employers in a fair and equitable manner.

The E&T assessment provides the most cost effective mechanism available to collect the interest due. As such, the current law under section 383-128 is temporarily amended by this measure to include the payment of interest on Title XII loans as one of the uses of the E&T fund. Section 383-129 is amended to provide authority to the director to determine the amount of increase in the E&T assessment rate for 2011 sufficient to pay interest costs.

4. The E&T assessment is applicable to a calendar year and must be retroactive to the beginning of 2011. The experience rating for calendar year 2011 must be done by mid-March and the UC-B6 quarterly contribution rate forms (which include the E&T assessment rate) must be generated and mailed out to the employers before the first quarter report is due from April 1 to April 30, 2011. Fast tracking this measure is essential because of the tight schedule to run the

experience rating job, print the experience rating notices, mail out the experience rating notices, run the UC-B6 quarterly contribution rate job, print the UC-B6 forms, mail out the UC-B6 forms and allow enough time for employers to appeal their experience rating notices. This information is essential if employers are expected to file and pay their contributions on time as required by existing law.

5. H.D. 1 further provides that the increased rate amount be refunded to the employers if the interest payment on Title XII loans is waived by federal law. If the interest payment is waived after employers have already submitted their contribution forms and payment based on the increased rate amount, 31,000+ employers must be individually re-rated manually on a quarterly basis by UI tax staff since there is no process at the present time in the HUI Tax System to automatically mass re-rate all employers. It is estimated that approximately 62,000 staff hours would be required to individually re-rate all 31,000+ employers, verify each employer's credits and mail employer credit notices and refunds. In addition, postage costs will be approximately \$30,000. Since the current staff of eight would not be able to perform the aforementioned tasks in a timely manner, the Department recommends that the increased amount collected be applied to the 2012 tax year and employers will not be liable to pay an E&T assessment in 2012.

Based on the above concerns and costs involved in processing refunds of this magnitude, the Department recommends the following language:

"If interest is due on a Title XII advance under the provisions of Section 1202(b) of the Social Security Act, as amended, the employment and training fund assessment shall be increased to pay the interest due. The director shall have the discretion to determine the amount of the increase in the employment and training assessment rate for the calendar year 2011. The increase in the employment and training assessment rate shall be in increments of .01 per cent. Notwithstanding any provisions of this chapter to the contrary, if interest payments on a Title XII advance are subsequently waived by federal law, the aggregate amount of interest payments collected shall constitute the total employment and training assessments payable by employers for 2012 only, and no employment and training assessment will be collected from any employer in that year and no refund will be paid retroactively to any employer based on the federal waiver of interest payments."