



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

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January 25, 2012

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

The Honorable Angus L.K. McKelvey, Chair, Isaac W. Choy, Vice Chair,
and Members of the House Committee on Economic Revitalization
& Business

Date: Friday, January 27, 2012

Time: 10:30 a.m.

Place: Conference Room 309

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

Re: HB 963 - Relating to Employment Security

I. OVERVIEW OF PROPOSED LEGISLATION

H.B. 963 proposes to do the following:

- Amend section 383-1, Hawaii Revised Statutes (HRS), to include sole proprietor in the definition of "employing unit."
- Amend section 383-7, HRS, to permanently exclude the sole proprietor with no other employees besides the sole proprietor from the employment security law regardless of incorporation, but allows coverage to be elected.

The department opposes this bill for the reasons cited below.

II. CURRENT LAW

Currently, a sole proprietor who is ***not*** incorporated is considered to be an "employing unit" under section 383-1, HRS. Only the employees of a sole proprietor, if any, are covered for unemployment insurance (UI) purposes. If the

sole proprietor has no employees, no UI coverage is required.

In the case of sole proprietors who are incorporated, however, the corporation is considered to be the employing unit and the sole proprietor is an employee of the corporation. Services of employees of corporations are not excluded under state or federal law; thus, UI taxes are payable on the wages paid by the corporation for services performed by its employees.

III. COMMENTS ON HOUSE BILL

The department opposes this bill as the proposal is contrary to the Federal Unemployment Tax Act (FUTA) and could present a conformity issue with federal law.

1. FUTA requires states to cover services to which section 3309(a)(1), FUTA, applies such as state and local governmental entities, certain nonprofit organizations, and federally recognized Indian tribes.

If a state law does not cover these services as required by federal law, the result is the loss of certification for tax credits for all employers liable for the FUTA tax. There is also the potential for loss of federal administrative funding which would result in the closure of all unemployment offices and operations.

2. No changes to Chapter 383, HRS, are necessary if the sole proprietor is not incorporated. Section 383-1, HRS, already considers an individual, including a sole proprietor, to be an employing unit. Since being an employing unit and an employee are mutually exclusive, there is no coverage issue for unincorporated sole proprietors.