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2023-24

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Date: February 6, 2024

To: Sen. Henry J.C. Aquino, Chair
Sen. Sharon Y. Moriwaki, Vice Chair
Members of Committee on Labor and Technology

From: Victor Lim, Legislative Lead

Subj: SB 2711 Related to Worker Retention

The Hawaii Restaurant Association representing 4,000 Eating and Drinking Place locations in Hawaii, oppose SB2711 that requires a successor employer to employ all employees of the predecessor business.

In today's tight labor market, such legislation is not necessary because most buyers of an existing business will definitely try and reemploy as many of the staff as possible.

In a buy and sell situation of a business, forcing the buyer to have to hire everyone could prevent the seller from getting the best price for the business in the sale. Being forced to do might also result in a lower success rate for the buyer by having a bloated expense to start with.

We feel that a government mandate such as this is not necessary and is bad for both the seller and buyer of any business.

Thank you for this opportunity to share our point of view





INTERNATIONAL LONGSHORE & WAREHOUSE UNION

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LOCAL 142

February 7, 2024

The Thirty-Second Legislature
Regular Session of 2024

THE SENATE

Committee on Labor and Technology

Senator Henry J.C. Aquino, Chair

Senator Sharon Y. Moriwaki, Vice Chair

State Capitol, Conference Room 224 & Videoconference

Friday, February 9, 2024; 3:15 p.m.

STATEMENT OF THE ILWU LOCAL 142 IN STRONG SUPPORT OF SB2711 RELATED TO WORKER RETENTION

On behalf of the International Longshore and Warehouse Union, I am writing to express our **Strong Support** for Senate Bill 2711, which addresses critical issues related to worker retention during divestitures. We believe that the proposed amendments to Chapter 394B of the Hawaii Revised Statutes, as outlined in SB2711, are essential for protecting the rights and livelihoods of so many local working families during times of ownership transition.

Our union represents nearly 9,000 hotel workers across Hawai'i, and we have witnessed the significant challenges faced by our members when hotels undergo changes in ownership. Hotels are especially susceptible to ownership change - a practice that has only increased over the past 20 years as business models of buy-flip-sell become more commonplace. In some cases, hundreds of hotel workers may be subject to layoffs in one fell swoop. In places where hospitality dominates industry, such as Lahaina, this can have devastating effects, not just on many individual families, but on an entire community. SB2711 provides a framework that ensures a fair and just transition for workers during divestitures, promoting stability in their employment and safeguarding their rights.

As a union, we work hard to establish protections against such things in our collective bargaining agreements. Many, though not all, of our members in hospitality enjoy such protections. Hotel workers in non-union facilities have no protections at all. No matter the case, it is appropriate that the state codify protections for workers across the board and recognize the economic stability of our communities as priority over tactics used by entities such as private investment



firms, who are often responsible for such practices. Of all the strategies to increase profit, targeting our local working families who make our economy run, should not be one of them. The hotel industry plays a crucial role in Hawaii's economy, and the well-being of its workers is paramount. SB2711 strikes a balance between protecting the rights of employees and allowing for necessary business adjustments, thereby contributing to a more equitable and stable workforce.

The ILWU Local 142 urges the committee to support SB2711, recognizing its importance in safeguarding the rights and livelihoods of hotel workers during divestitures.

We appreciate the opportunity to voice our support for SB2711.

Mahalo,

A handwritten signature in cursive script that reads "Christian West".

Christian West
President, ILWU Local 142



**Testimony to the Senate Committee on Labor and Technology
Friday, February 9, 2024, at 3:15 P.M.
Conference Room 224 & Videoconference**

RE: SB2711 Related to Workforce Retention

Chair Aquino, Vice Chair Moriwaki, and Members of the Committee:

A Coalition comprised of the Chamber of Commerce Hawaii (“The Chamber”) and the Society of Human Resource Management – Hawaii (“SHRM”) respectfully express opposition to SB 2711, which mandates successor employers to employ all employees of the predecessor business.

In the current landscape of a tightly constrained labor market, such legislation is unnecessary. Most buyers of existing businesses inherently strive to retain and reemploy as many staff members as feasible. Mandating the automatic transfer of employees from predecessor to successor without regard for operational needs or workforce dynamics could impose undue burdens on both parties involved in the transaction.

In the context of business acquisitions, the imposition of mandatory employment transfer requirements could undermine the negotiation process and hinder the ability of sellers to secure optimal prices for their businesses, or to sell the business at all. Compelling buyers to inherit existing employees, regardless of fit or necessity, could impede their capacity to streamline operations and adapt to evolving market demands.

Moreover, forcing successor employers to absorb all “non-supervisory and non-confidential employees” of the predecessor business, especially without any definitions to determine which employees reasonably fall into those categories, may lead to a bloated expense structure at the outset, potentially jeopardizing the long-term viability and success of the acquiring entity. This could ultimately diminish job opportunities and hinder economic growth, contrary to the intended objectives of the proposed legislation.

Additionally, the bill prohibits the acquiring employer from requesting employment applications prior to being hired by the successor “unless the employee’s existing file is incomplete”. Again, there is no guidance as to when an employment file would be deemed “incomplete”. Furthermore, this could significantly adversely impact the successor’s business. For



example, the new employer may have different educational or experience requirements or may wish to perform updated background checks or contact references.

Similarly, the blanket requirement for a successor to recognize all collective bargaining agreements in place if the number of employees is sufficient will not enable the new employer to manage its business.

The bill further provides that these provisions do not apply only if the successor business is “substantially dissimilar” to the prior business. This will inhibit the sale of businesses which are designed to maintain the existing business and provide a succession plan for the business. Such a provision also invites litigation to the extent one needs to determine the definition of “substantially dissimilar”.

While acknowledging the importance of protecting workers' rights and ensuring a smooth transition during business transactions, we urge careful consideration of the unintended consequences associated with mandating successor employer employment of predecessor business employees. Rather than imposing blanket mandates, policymakers should explore more flexible and equitable approaches that balance the interests of all stakeholders involved.

SHRM Hawaii serves and represents nearly 600 members and employers’ statewide and human resource management is a critical component to the success and survival of the many businesses that make up our local economy. HR professionals are responsible for evaluating and balancing the needs of both the employers and employees and caring for businesses’ most valuable asset: the working people of our state.

The Chamber is Hawaii’s leading statewide business advocacy organization, representing about 2,000+ 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 members and the entire business community to improve the state’s economic climate and to foster positive action on issues of common concern.

Thank you for this opportunity to provide testimony.

Erin Kogen and Rosanne M. Nolan
Co-chairs, SHRM Legislative Affairs Committee



SB-2711

Submitted on: 2/8/2024 12:34:34 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Faatasiga Tupua	Testifying for ILWU	Support	Written Testimony Only

Comments:

Support



**TESTIMONY OF TINA YAMAKI, PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 9, 2024
SB 2711 RELATED TO WORKER RETENTION**

Good afternoon, Chair Aquino and members of the Senate Committee on Labor and Technology. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii was founded in 1901 and is a statewide, not for profit trade organization committed to supporting the growth and development of the retail industry in Hawaii. Our membership includes small mom & pop stores, large box stores, resellers, luxury retail, department stores, shopping malls, on-line sellers, local, national, and international retailers, chains, and everyone in between.

We respectfully oppose SB711. This measure in an event of a divestiture of a covered establishment, requires the successor employer to employ incumbent employees under certain circumstances; establishes a penalty; declares that the general fund expenditure ceiling is exceeded; and makes an appropriation.

Hawaii is already known as one of the worst states in the nation to do business in due to the high taxes and the massive amounts of governmental red tape. Passing measures like this one could deter even more businesses from coming to Hawaii or for a locally owned business to start up.

New owners will normally try to keep as many employees as they are able to as there is a shortage of workers. However, we must keep in mind that the new owner may have different strategic goals or operational requirements that do not align with the current skill set or roles of the existing employees. The new owner will be prevented from being able to implement necessary changes to improve efficiency and competitiveness and it may hinder the business's ability to adapt and grow effectively.

This is true for many locally owned businesses do not have corporate backing from a mainland company to offset these types of costs. Many locally owned businesses run on very thin margins.

Hawaii needs to become more businesses friendly to attract new businesses to our state. We ask that you please hold this bill.

Mahalo again for this opportunity to testify.

SB-2711

Submitted on: 2/7/2024 9:45:34 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Vernon L Kwan	Individual	Support	Written Testimony Only

Comments:

I strongly support bill SB2711 !!

SB-2711

Submitted on: 2/8/2024 8:53:06 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
B. Hansen	Individual	Support	Written Testimony Only

Comments:

I Support SB2711

SB-2711

Submitted on: 2/8/2024 8:49:33 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Corey	Individual	Support	Written Testimony Only

Comments:

February 7, 2024

Re: Bill SB 3317 Relating to Worker Retention

My name is Corey Asano. I am born and raised on the island of Oahu. I am a Hotel Worker at the Sheraton Waikiki and a Unite Here Local 5 union member. I am in SUPPORT of SB 2711. Hawaii's workers need protection against their employers. As a hotel worker for over 20 years in Waikiki I know for a fact the workers, and their families are never considered during a buyout. Not having protections like successorship only benefits the corporations. Our laws and our tax dollars should be to support Hawaii people and not corporate greed.

Mahalo,

Corey

SB-2711

Submitted on: 2/7/2024 9:42:59 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Zorich Palimoo	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 6:25:12 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Neill Amasaki	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-2711

Submitted on: 2/7/2024 5:57:10 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Jay Amina III	Individual	Support	Written Testimony Only

Comments:

I support SB2711.

SB-2711

Submitted on: 2/7/2024 5:49:28 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Travis Rabellizsa	Individual	Support	Written Testimony Only

Comments:

I am in strong support

SB-2711

Submitted on: 2/7/2024 4:21:26 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
richard gideon	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 4:16:04 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Conan K Donahue	Individual	Support	Written Testimony Only

Comments:

I support of SB2711

SB-2711

Submitted on: 2/7/2024 4:05:47 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Clarence k chun	Individual	Support	Written Testimony Only

Comments:

Support

SB-2711

Submitted on: 2/7/2024 3:58:00 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Hunter Mako Morton	Individual	Support	Written Testimony Only

Comments:

I support sb2711

SB-2711

Submitted on: 2/7/2024 3:52:43 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Seth Holck	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 3:31:15 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Kaleo Buck	Individual	Support	Written Testimony Only

Comments:

I support SB2711!

SB-2711

Submitted on: 2/7/2024 3:26:50 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Mansanas jr	Individual	Support	Written Testimony Only

Comments:

I strongly support this bill

SB-2711

Submitted on: 2/7/2024 3:10:09 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Noah Campbell	Individual	Support	Written Testimony Only

Comments:

IN STRONG SUPPORT FOR SB2711

SB-2711

Submitted on: 2/7/2024 2:46:41 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
jeffery Robert Ramos	Individual	Support	Written Testimony Only

Comments:

Strongly support this bill

SB-2711

Submitted on: 2/7/2024 2:41:39 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
jose miramontes jr	Individual	Support	Written Testimony Only

Comments:

I am in strong support of this Bill

SB-2711

Submitted on: 2/7/2024 2:37:42 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Douglas Hiu	Individual	Support	Written Testimony Only

Comments:

I support this bill.

SB-2711

Submitted on: 2/7/2024 2:16:27 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Dave Chew	Individual	Support	Written Testimony Only

Comments:

Aloha,

I strongly support SB2711.

Thank you

SB-2711

Submitted on: 2/7/2024 2:15:50 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Lauren Taijeron	Individual	Support	Written Testimony Only

Comments:

I support SB 2711. We must protect workers rights.

SB-2711

Submitted on: 2/7/2024 2:03:51 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Lucie Knor	Individual	Support	Written Testimony Only

Comments:

Aloha,

my name is Lucie Knor and I'm a researcher at the University of Hawaii, living in Kaimukī (Senate district 9).

I wholeheartedly support SB711, which will be crucial to protect workers' rights as large companies known to undermine employee rights establish themselves in Hawai'i.

SB-2711

Submitted on: 2/7/2024 1:51:40 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Aaron Miyashiro	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 1:50:43 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Kelsey Beck	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 1:48:46 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Alfred Horner	Individual	Support	Written Testimony Only

Comments:

Hi Alfred Horner support SB 2711

SB-2711

Submitted on: 2/7/2024 1:41:40 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Keoni Mendiola	Individual	Support	Written Testimony Only

Comments:

I Keoni Mendiola, supports Bill SB2711.

Mahalo.

SB-2711

Submitted on: 2/7/2024 1:39:34 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Wade Terlep	Individual	Support	Written Testimony Only

Comments:

In strong support

SB-2711

Submitted on: 2/7/2024 1:39:05 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Stephen Paling IV	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 1:38:48 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Tyler Yuu	Individual	Support	Written Testimony Only

Comments:

I support SB2711

SB-2711

Submitted on: 2/7/2024 1:38:13 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Jonovan Tuinei	Individual	Support	Written Testimony Only

Comments:

I stand in strong support!

SB-2711

Submitted on: 2/7/2024 1:38:04 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Robert Enriquez	Individual	Support	Written Testimony Only

Comments:

I strongly support SB2711.

SB-2711

Submitted on: 2/7/2024 1:37:55 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Alfonso Pitolo	Individual	Support	Written Testimony Only

Comments:

I support this bill SB2711

SB-2711

Submitted on: 2/7/2024 1:37:51 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
nepo leutu jr	Individual	Support	Written Testimony Only

Comments:

I. Support

SB-2711

Submitted on: 2/7/2024 1:37:21 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Kia Kapana	Individual	Support	Written Testimony Only

Comments:

I strongly support SB2711

SB-2711

Submitted on: 2/7/2024 1:36:07 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
anthony padilla	Individual	Support	Written Testimony Only

Comments:

In strong support of sb2711

SB-2711

Submitted on: 2/7/2024 1:35:56 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Sierra Revilla	Individual	Support	Written Testimony Only

Comments:

I support sb2711

SB-2711

Submitted on: 2/7/2024 1:26:08 PM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Collin Mansanas	Individual	Support	Written Testimony Only

Comments:

I stand in strong support of SB2711

SB-2711

Submitted on: 2/7/2024 11:47:02 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Kawena?ulaokala Kapahua	Individual	Support	Written Testimony Only

Comments:

Aloha,

Mahalo for the opportunity to Testify. I am testifying in **Strong Support** for SB 2711 relating to worker retention. For too long have Hawai'i workers been vulnerable to the whims of major corporations and private equity firms. The bedrock employers of our economy have changed hands like playing cards and left our workers without any control of their workplaces. SB2711 fixes that by ensuring no matter how many times management, ownership, or operators change, the workers can rest assured that they are secure in their employment and can continue to provide a livelihood for their families. I urge you to pass this bill, lets protect Hawai'i's working class from corporate games and ensure that workers are never at risk.

Mahalo,

Kawena'uloakalā Kapahua

SB-2711

Submitted on: 2/7/2024 9:54:19 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Pua'ena Ahn	Individual	Support	Written Testimony Only

Comments:

Support.

SB-2711

Submitted on: 2/7/2024 10:54:30 AM

Testimony for LBT on 2/9/2024 3:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Luke Shinsato	Individual	Support	Written Testimony Only

Comments:

I support



STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA

February 9, 2024

To: The Honorable Henry J.C. Aquino, Chair,
The Honorable Sharon Y. Moriwaki, Vice Chair, and
Members of the Senate Committee on Labor and Technology

Date: Friday, February 9, 2024
Time: 3:15 p.m.
Place: Conference Room 224, State Capitol

From: Jade T. Butay, Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. 2711 RELATING TO WORKER RETENTION

I. OVERVIEW OF PROPOSED LEGISLATION

The DLIR **appreciates the intent** of this measure to help ensure certain incumbent workers maintain gainful employment during a divestiture of a business entity subject to Hawaii's Dislocated Worker Law. The measure raises several issues that the DLIR suggests requires clarification.

SB2711 proposes to amend Chapter 349B of the Hawaii Revised Statutes (HRS) by requiring the retention of 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 the new employer:

- A. Shall hire all incumbent nonsupervisory and non-confidential employees;
- B. Shall not require such employees to file employment applications with the successor employer to be considered for hire unless the existing files are incomplete;
- C. May retain less than one hundred percent of incumbent employees if the successor employer is substantially dissimilar to the former employer's business;
- D. Shall recognize all existing collective bargaining agreements if the number of incumbent employees in the bargaining unit is sufficient to require recognition of the bargaining unit;

- E. If in violation, shall compensate the dislocated worker the difference between the employee's salary or wage earned under the employee's former employer and the dislocated employee's unemployment insurance benefits received for the covered period.

For the purposes of this bill, a "covered establishment" means any industrial, commercial or other business entity that employed twenty-five or more persons at any time in the preceding twelve-month period.

II. **CURRENT LAW**

Chapter 394B, HRS, provides employment and training assistance for workers who are faced with termination due to a closing, divestiture, partial closing or relocation 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: this is the State counterpart to the federal Worker Adjustment and Retraining Notification (WARN) notice.
- B. Requiring employers to provide a 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. Allowing employers in violation to be liable to each affected worker an amount equal to back pay and benefits for the period of violation, not to exceed sixty days. The liability may be reduced by any wages the employer pays during the notice period and voluntary and unconditional payment not required by a legal obligation; and
- D. 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. **COMMENTS ON THE SENATE BILL**

The DLIR offers the following comments:

- The terms "nonconfidential," "employee's wages," and "substantially dissimilar" should be defined to provide guidance to the department on the intent of the law.

- The DLIR is unsure if requiring the recognition of all existing collective bargaining agreements comports with State and Federal law.
- The proposed new subsection provides a different definition of “covered establishment” than the existing one in §394B-2 Definitions.
- The right of the employer in proposed subsection (b) and the provisions 1-4 in the proposed (a) would be difficult for the department to interpret.
- Due to these ambiguities above, and in light of the requirement to adopt rules, it is difficult for the DLIR to ascertain how many staff and what amount of general fund appropriation may be required to carry out the measure.