

STAND. COM. REP. NO.

431

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 1621
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Labor, to which was referred S.B. No. 1621
entitled:

"A BILL FOR AN ACT RELATING TO COLLECTIVE BARGAINING,"

begs leave to report as follows:

The purpose of this measure is to implement and promote the
right to organize for the purpose of collective bargaining as
recognized in Article XIII of the Hawaii State Constitution, as
noted in section 1 of the measure.

The proposed changes in chapters 377 and 380, Hawaii Revised
Statutes, are intended to strengthen and expand the middle class
work force in Hawaii through appropriate changes to our collective
bargaining laws. Specifically, the measure provides as follows:

- (1) Sections 2, 4, and 5 are tailored to the 2008 "Employee
Free Choice Act" before Congress. Section 2 provides
for mediation and arbitration of initial agreements.
Section 4 provides for card check recognitions. Section
5 provides for employee remedies, including back pay,
interest, costs, attorney's fees and liquidated damages;
- (2) The first part of section 3, is intended to create a
"union representation privilege" to protect the
functions of the union as an exclusive bargaining
representative necessary to allow the union to perform
its appropriate role in negotiations and contract
enforcement;



- (3) The second part of section 3, is intended to afford to the union the right to sue to collect unpaid union dues and agency fees for union representational activities in the circuit court. It provides the necessary legal authority to authorize such actions to collect union dues and agency fees uniformly;
- (4) The third part of section 3, is intended to protect union members and others participating or interested in a labor dispute who engage in lawful protected activities in the context of a labor dispute within the meaning of section 380-13(3), Hawaii Revised Statutes; and
- (5) Section 6 is intended to clarify that lawful concerted activities shall not result in civil torts against labor organizations or its members.

Your Committee received testimony in support of this measure from ILWU Local 142; Gordon Lafer; Hawaii State AFL-CIO; Laborers International Union of North America, Local 368; International Brotherhood of Electrical Workers; Pride at Work Hawai'i; Hawaii Building and Construction Trades Council, AFL-CIO; Ironworkers Stabilization Fund; Hawaii Government Employees Association; International Organization of Masters, Mates & Pilots; Marine Engineers' Beneficial Association, AFL-CIO; American Income Life Insurance Company.

Testimony in opposition was received from the Department of Labor and Industrial Relations; State of Hawaii Department of Human Resources Development; Building Industry Association - Hawaii; Judy Engkabo; Hawaii National Federation of Independent Business in Hawaii; Engineering Solutions, Inc.; Larry Jefts; Society for Human Resource Management; Hawaii Crop Improvement Association; The Chamber of Commerce of Hawaii; Associated Builders and Contractors Hawaii; Roy Ogawa; General Contractors Association of Hawaii; Pioneer Hi-Bred International, Inc.; State of Hawaii Department of the Attorney General; State of Hawaii Department of Agriculture; Syngenta Hawaii.

Sections 2, 4, and 5 of the bill are modeled after the federal Employee Free Choice Act (H.R. 800 and S. 1040), presently pending in the United States Congress, that would amend the National Labor Relations Act to establish an efficient system to



enable employees to form, join, or assist labor organizations. Your Committee is in agreement with the principles stated in Congressional Report No. 110-23 to the federal bill on the vital role of labor unions to the creation of the American middle class, the nature of the attacks on worker rights experienced in recent decades that has reduced the percentage of organized workers in the private sector to eight percent (8%), and the economic consequence which has resulted. The Hawaii experience is not substantially different than what is described in the Congressional report. As the opposition to these sections of the bill noted, the use of voluntary recognition of a labor organization with majority support from the workers is not unprecedented. This bill recognizes that a secret ballot alone is not always sufficient to assure fair union elections and the present system, which does not have the numerous protections and safeguards developed for political elections, does not always result in a union representation election that reflects the will of the employees. The will of the employees is protected because the Board is required to verify that in fact a majority of employees do support union representation. The additional remedies in section 5 is necessary in light of the recent Supreme Court ruling in Preble v. Board of Trustees of Employees' Retirement System of State of Hawaii, 111 Hawaii 498, 505-06, 143 P.3d 37, 44-45 (2006), which found similar or analogous statutory language i.e., "affirmative action" insufficient to allow for attorney's fees. The other concerns expressed by the opponents to the bill can be addressed through the procedures the Hawaii Labor Relations Board will establish through rule-making. With respect to mediation and arbitration of first contracts, your Committee finds there are significant impediments in obtaining a first agreement. Providing for mediation and arbitration to obtain a first contract if the parties are unsuccessful in achieving an agreement in a timely manner advances the objective of the Act to promote labor stability.

The first part of section 3, adding a new section to chapter 380, Hawaii Revised Statutes, recognizes the unique role of the union and its duty of fair representation solely to its members. Your Committee found testimony in support of this section compelling and concludes that a privilege to protect confidential information and work product documents obtained by a union in the course of its duties as exclusive bargaining representative is warranted. While the current rules of the court provide some protection of a union's work product, your Committee finds that a specific, clear directive is needed to recognize the



representational privilege. Opponents to the bill argue that a reciprocal privilege is not provided to employers, however, this ignores the unique status the union holds as the exclusive bargaining representative with a duty to fairly represent the employee. Without this protection a union is faced with disclosing confidential communications against the interest of the member to whom it holds a duty to represent. Claims that the bill usurps the power of the courts and other forums to decide evidentiary questions ignore the existence of several rules that establish privileges binding on these forums. The Department of Attorney General's concerns appear to be premature and are more appropriately addressed through the adjudicatory process which have in place adequate safeguards in the legal process.

The second part of section 3 adding a new section to chapter 380, Hawaii Revised Statutes, allows employee organizations a means of obtaining civil relief to collect dues from members and agency fee payers equally in the circuit court. No opposition was raised as to this section of the bill and your Committee agrees with the reasoning as contained in the testimony in favor of this section.

The last part of section 3 adding a new section to chapter 380, Hawaii Revised Statutes, provides needed protection for unions, their agents, and members who engage in lawful concerted activities in a labor dispute as defined in section 380-13(3), Hawaii Revised Statutes. The bill establishes an adequate balance of interest between private property rights and the exercise of the State's constitutional right to organize for the purpose of collective bargaining under Article XIII of the Hawaii Constitution.

Section 6 clarifies and protects lawful concerted activities in light of the developing civil tort law. The protections afforded by this bill are consistent with constitutionally protected activities of private and public employees under Article XIII.

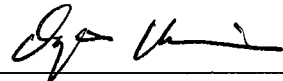
Your Committee has amended this bill by amending the effective date to July 1, 2050, to allow for further discussion on this measure. Technical, nonsubstantive amendments were also made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor that is attached to this report, your Committee



is in accord with the intent and purpose of S.B. No. 1621, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1621, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committee on Labor,

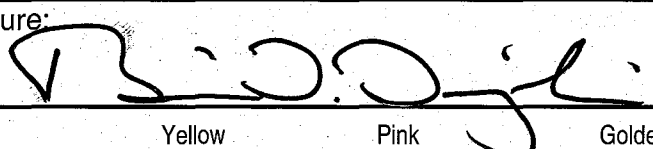


DWIGHT Y. TAKAMINE, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Labor
LBR

Bill / Resolution No.:* SB 1621	Committee Referral: LBR, TGO	Date: 2-17-09		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TAKAMINE, Dwight Y. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
BUNDA, Robert		✓		
HEE, Clayton	✓			(13)
SLOM, Sam			✓	
TOTAL	3	1	1	0
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes