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**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**  
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February 8, 2012

To: The Honorable Clayton Hee, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, February 9, 2012  
Time: 9:30 a.m.  
Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Director  
Department of Labor and Industrial Relations (DLIR)

**RE: S.B. NO. 2671 RELATING TO COLLECTIVE BARGAINING**

**I. OVERVIEW OF PROPOSED LEGISLATION**

SB2671 clarifies that the Hawaii Labor Relations Board (HLRB) has the authority to hire attorneys and paralegals and authorizes attorneys hired by the Board to represent the Board, draft legal documents and provide other legal services for the Board.

**II. COMMENTS ON THE SENATE BILL**

DLIR supports this measure, as it will give the HLRB more flexibility and the ability to efficiently allocate its resources. HLRB, like many other agencies within DLIR, has encountered severe budget restraints over the last few budget cycles and has significant case backlogs. The measure, if enacted, will strengthen the ability of the Board to accomplish its mission of deciding appeals from the Occupational Safety and Health Division and promoting the harmonious and cooperative relations between government and its employees to the benefit of the state.

The department notes that the measure does not have a fiscal impact.

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February 8, 2012

TO: The Honorable Clayton Hee, Chair; Maile S. L. Shimabukuro, Vice-Chair; and  
Members of the Senate Committee on Judiciary and Labor

DATE: Thursday, February 9, 2012

TIME: 09:30 A.M.

PLACE: Conference Room 016, State Capitol

FROM: Hawaii Labor Relations Board, Department of Labor and Industrial Relations

RE: Testimony in Support of S.B. No. 2671 Relating to Collective Bargaining

Aloha, my name is Sesnita Moepono, Board Member of the Hawaii Labor Relations Board and I am testifying in support of S.B. No. 2671 for the Hawaii Labor Relations Board (HLRB) and on behalf of my fellow Board Members, who are not able to be here today due to a scheduled hearing on a prohibited practice case.

## I. OVERVIEW OF PROPOSED LEGISLATION

S.B. No. 2671 clarifies the Hawaii Labor Relations Board's authority to hire attorneys and paralegals. The bill further authorizes attorneys hired by the Board on a part-time or contract basis to represent the Board in litigation, draft legal documents for the Board, and provide other necessary legal services to the Board.

## II. CURRENT LAW

Hawaii Revised Statutes (HRS) §89-5, allows the board the discretion to appoint an executive officer, mediators, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions. This statute currently permits an attorney employed by the Board as a full-time staff member to represent the Board in litigation, draft legal documents and provide other legal services to the Board and shall not be deemed to be a deputy attorney general.

### III. COMMENTS ON THE SENATE BILL

The Board supports this bill as it will allow the Board to hire more than one attorney and employ attorneys on a part-time or contractual basis in the event the Board has any savings in its budget at the end of the fiscal year. The bill will also allow the Board to hire paralegals. This bill will assist the Board with:

- A) Drafting administrative rules to implement HRS 377-4.6 - streamlining union certification or “card check” provision passed by the legislature in 2009 and any other amendments to HRS Chapters 89 and 377 passed by the 2012 Legislature;
- B) Updating the Board’s administrative rules that have not been changed since 1981;
- C) Drafting decisions and orders to reduce the backlog of cases; and
- D) Providing legal services as needed.

The Board currently employs an Executive Officer, a Secretary and a legal file clerk. In 1997, the Board’s staff consisted of six positions including the Board’s current staff; two attorneys and a paralegal. Since 1997, the Board has lost three positions (two attorneys and one paralegal). The secretary position is the only permanent position; the other two staff positions and the three Board Member positions are temporary.

Board decisions and orders are drafted by the Executive Officer, who is an attorney, and Board Members when they are not in hearings. The Executive Officer also schedules the hearings and motions and drafts all hearing notices, appeals to Hawaii’s Circuit Court, Intermediate Court of Appeal and Supreme Court. Unfortunately, the HLRB does not have a position that is dedicated to writing decisions and orders. As our annual reports have noted, we have an average backlog of ninety (90) cases and some cases date more than two years. Our cases consist of prohibited practice complaints under HRS Chapters 89 and 377 and appeals from the Hawaii Occupational, Safety and Health Division.

Last year, the Board had an unexpected turn of events when the State Ethics Commission required a Board Member to recuse herself from a prohibited practice case. When the Commission invited the Board Member to argue her case before the Commission, she asked the Office of the Attorney General for legal representation and was told the Office could not offer her legal representation because they have to represent the State. The Board is not able to hire an attorney to represent the Board or a Board Member under the current law. This is unfortunate, since the Board Member’s recusal has left the Board with only two members who both must agree or the Board will be deadlocked.

### IV. AMENDMENT REQUEST TO THE SENATE BILL

On page 1, line 5, the Board asks the Committee to make a minor technical amendment by removing the added language “and hire” as it may not be necessary.

The Board thanks you for the opportunity to testify on S.B. No. 2671 and asks for your support and passage of this bill.

The Twenty-Sixth Legislature  
Regular Session of 2012

THE SENATE

Committee on Judiciary and Labor  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
State Capitol, Conference Room 016  
Thursday, February 9, 2012; 9:30 a.m.

**STATEMENT OF THE ILWU LOCAL 142 ON S.B. 2671  
RELATING TO COLLECTIVE BARGAINING**

The ILWU Local 142 supports S.B. 2671, which clarifies the Hawaii Labor Relations Board's authority to hire attorneys and paralegals and authorizes attorneys hired by the Board on a part-time or contract basis to represent the Board in litigation, draft legal documents for the Board, and provide other necessary legal services to the Board.

S.B. 2671 does not request any appropriation but simply asks for clarification of the Hawaii Labor Relations Board's authority to hire attorneys and paralegals and to use them for legal services required by the Board. Among those services is the drafting of draft rules to implement laws that are passed by the Legislature. For example, in 2009, the Legislature passed a law requiring card check recognition of agricultural workers working for companies with \$5 million or more in revenue. To date, we understand, although an initial draft of rules has been done, finalizing the rulemaking process has been stalled for lack of staffing needed to rework the draft, vet, and put the rules out for public hearing.

Using funds at its disposal and not requiring any additional funds, HLRB proposes to use the authority granted to it by S.B. 2671 to contract with attorneys and paralegals to assist the HLRB to accomplish its purposes as set by law.

The ILWU urges passage of S.B. 2671. Thank you for the opportunity to testify on this measure.