

JAN 24 2018

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# A BILL FOR AN ACT

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RELATING TO COLLECTIVE BARGAINING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. Section 89-5.1, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "**§89-5.1 Hearing notice[-]; order; decision.** (a)

4 Notwithstanding section 91-9.5, in any hearing conducted by the  
5 board, all parties shall be given written notice of the hearing  
6 by first class mail or by electronic service through a company  
7 designated by the board at least fifteen days before the  
8 scheduled date of the hearing.

9       (b) Notwithstanding section 91-12, within a reasonable  
10 time after the board issues each written order or decision, the  
11 board shall provide to each party a copy of the written order or  
12 decision. The written order or decision shall be hand  
13 delivered, provided by the United States Postal Service with  
14 delivery confirmation, or transmitted via electronic service  
15 through a company designated by the board."

16       SECTION 2. Section 89-18, Hawaii Revised Statutes, is  
17 amended to read as follows:



1       **"§89-18 Penalty.** (a) Any person who wilfully assaults,  
2       resists, prevents, impedes, or interferes with any member of the  
3       board or any of its agents or employees in the performance of  
4       duties pursuant to this chapter, shall be fined not more than  
5       \$500 or imprisoned not more than one year, or both. The term  
6       "agent" includes a neutral third party who assists in a  
7       resolution of an impasse under section 89-11.

8       (b) All fines collected under this section shall be  
9       deposited into the collective bargaining dispute resolution  
10      special fund established pursuant to section 377-9(m)."

11      SECTION 3. Section 91-12, Hawaii Revised Statutes, is  
12      amended to read as follows:

13      **"§91-12 Decisions and orders.** ~~[Every]~~ Except as provided  
14      under sections 89-5.1(b) and 377-9(d), every decision and order  
15      adverse to a party to the proceeding, rendered by an agency in a  
16      contested case, shall be in writing or stated in the record and  
17      shall be accompanied by separate findings of fact and  
18      conclusions of law. If any party to the proceeding has filed  
19      proposed findings of fact, the agency shall incorporate in its  
20      decision a ruling upon each proposed finding so presented. The  
21      agency shall notify the parties to the proceeding by delivering



1 or mailing a certified copy of the decision and order and  
2 accompanying findings and conclusions within a reasonable time  
3 to each party or to the party's attorney of record."

4 SECTION 4. Section 377-9, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§377-9 Prevention of unfair labor practices.** (a) Any  
7 controversy concerning unfair labor practices may be submitted  
8 to the board in the manner and with the effect provided in this  
9 chapter, but nothing herein shall prevent the pursuit of relief  
10 in courts of competent jurisdiction.

11 (b) Any party in interest may file with the board a  
12 written complaint, on a form provided by the board, charging any  
13 person with having engaged in any specific unfair labor  
14 practice. The board shall serve or require the complainant to  
15 serve a copy of the complaint upon the person charged,  
16 hereinafter referred to as the respondent. If the board has  
17 reasonable cause to believe that the respondent is a member of  
18 or represented by a labor union, then service upon an officer of  
19 the union shall be deemed to be service upon the respondent.  
20 Service may be by delivery to the person, or by mail or  
21 electronic service through a company designated by the board, to



1 the person's last known address. Any other person claiming  
2 interest in the dispute or controversy, as an employer, an  
3 employee or their representative, shall be made a party upon  
4 proof of the interest. The board may bring in additional  
5 parties by service of a copy of the complaint. Only one  
6 complaint shall issue against a person with respect to a single  
7 controversy, but any complaint may be amended in the discretion  
8 of the board at any time prior to the issuance of a final order  
9 based thereon. The respondent may file an answer to the  
10 original or amended complaint but the board may find to be true  
11 any allegation in the complaint in the event either no answer is  
12 filed or the answer neither specifically denies nor explains the  
13 allegation nor states that the respondent is without knowledge  
14 concerning the allegation. The respondent shall have the right  
15 to appear in person or otherwise give testimony at the place and  
16 time fixed in the notice of hearing. The hearing on the  
17 complaint shall be before either the board or a hearings officer  
18 of the board, as the board may determine.

19 The board shall fix a time for the hearing on the  
20 complaint[7] or a hearing on a dispositive motion, which shall  
21 be not less than ten nor more than [~~forty~~] ninety days after the



1 filing of the complaint or amendment thereof. Notwithstanding  
2 section 91-9.5, in any hearing conducted by the board, all  
3 parties shall be given written notice of the hearing by first  
4 class mail or by electronic service through a company designated  
5 by the board at least fifteen days before the scheduled date of  
6 the hearing. In case a party in interest is located without the  
7 State and has no known address within the State and no known  
8 electronic mail address, a copy of the complaint and copies of  
9 all notices shall be filed in the office of the lieutenant  
10 governor and shall also be sent by first class mail to the last  
11 known address of the party. Such filing and mailing shall  
12 constitute sufficient service with the same force and effect as  
13 if served upon a party located within the State. The hearing  
14 may be adjourned from time to time in the discretion of the  
15 board, and hearings may be held at ~~[such]~~ places ~~[as]~~ designated  
16 by the board ~~[shall designate]~~.

17 In all proceedings under this chapter before the board,  
18 each member of the board may issue subpoenas and administer  
19 oaths. Depositions may be taken in the manner prescribed by  
20 law. No person shall be excused from attending and testifying  
21 or from producing books, records, correspondence, documents, or



1 other evidence in obedience to the subpoena on the ground that  
2 the testimony or evidence required of the person may tend to  
3 incriminate the person or subject the person to a penalty or  
4 forfeiture under the laws of the State, but ~~[such]~~ the person  
5 shall not be prosecuted or subjected to any penalty or  
6 forfeiture for or on account of any transaction, matter, or  
7 thing concerning which the person may testify or produce  
8 evidence, documentary or otherwise, in such proceedings. ~~[Such]~~  
9 A person so testifying shall not be exempt, however, from  
10 prosecution and punishment for perjury committed in so  
11 testifying.

12 Any person who wilfully and unlawfully fails or neglects to  
13 appear or to testify or to produce books, papers, and records as  
14 required, shall, upon application to a circuit judge, be ordered  
15 to appear before the board, and failure to obey the order may be  
16 punished as a contempt of court.

17 Each witness who appears before the board by subpoena shall  
18 receive for the witness' attendance the fees and mileage  
19 provided for witnesses in civil cases in courts of record[~~7~~  
20 ~~which shall be audited and paid by the State in the same manner~~



1 ~~as other expenses are audited and paid, upon the presentation of~~  
2 ~~properly verified vouchers approved by the board].~~

3 (c) A full and complete record shall be kept of all  
4 proceedings had before the board and all testimony and  
5 proceedings shall be taken down by a reporter engaged for such  
6 purpose or by use of a mechanical recording device. It shall  
7 not be necessary to transcribe the record unless requested for  
8 purposes of rehearing or court review. In the proceedings the  
9 board shall not be bound by technical rules of evidence[~~.—No~~];  
10 provided that no hearsay evidence[~~, however,~~] shall be admitted  
11 or considered.

12 (d) After the final hearing, the board shall promptly make  
13 and file an order or decision, incorporating findings of fact  
14 upon all the issues involved in the controversy and the  
15 determination of the rights of the parties. Notwithstanding  
16 section 91-12, within a reasonable time after the board issues  
17 each written order or decision, the board shall provide to each  
18 party a copy of the written order or decision. The written  
19 order or decision shall be hand delivered, provided by the  
20 United States Postal Service with delivery confirmation, or  
21 transmitted via electronic service through a company designated



1 by the board. Pending the final determination of the  
2 controversy the board may, after hearing, make interlocutory  
3 orders [~~which~~] that may be enforced in the same manner as final  
4 orders. Final orders may dismiss the complaint or require the  
5 person complained of to cease and desist from the unfair labor  
6 practices found to have been committed, suspend the person's  
7 rights, immunities, privileges, or remedies granted or afforded  
8 by this chapter for not more than one year, and require the  
9 person to take affirmative action, including reinstatement of  
10 employees and make orders in favor of employees making them  
11 whole, including back pay with interest, costs, and attorneys'  
12 fees. Any order may further require the person to make reports  
13 from time to time showing the extent to which the person has  
14 complied with the order. Furthermore, an employer or employee  
15 who wilfully or repeatedly commits unfair or prohibited  
16 practices that interfere with the statutory rights of an  
17 employer or employees or discriminates against an employer or  
18 employees for the exercise of protected conduct shall be subject  
19 to a civil penalty not to exceed \$10,000 for each violation. In  
20 determining the amount of any penalty under this section, the  
21 board shall consider the gravity of the unfair or prohibited





1 practice and the impact of the practice on the charging party,  
2 on other persons seeking to exercise rights guaranteed by this  
3 section, or on public interest. All monetary penalties  
4 collected under this subsection shall be deposited into the  
5 collective bargaining dispute resolution special fund  
6 established pursuant to subsection (m).

7 (e) If any person fails or neglects to obey an order of  
8 the board while the [~~same~~] order is in effect, the board may  
9 petition the circuit judge of the judicial circuit [~~wherein~~]  
10 where the person resides or usually transacts business for the  
11 enforcement of the order and for appropriate temporary relief or  
12 restraining order, and shall certify and file in the court the  
13 record in the proceedings, including all documents and papers on  
14 file in the matter, the pleadings and testimony upon which the  
15 order was entered, and the decision and order of the board.  
16 Upon [~~such~~] the filing the board shall cause notice thereof to  
17 be served upon the person by mailing a copy to the person's last  
18 known post office address, and thereupon the judge shall have  
19 jurisdiction in the premises.

20 (f) Any person aggrieved by the decision or order of the  
21 board may obtain a review thereof as provided in chapter 91 by



1 instituting proceedings in the circuit court of the judicial  
2 circuit in which the person or any party resides or transacts  
3 business, subject[~~, however,~~] to the general provisions of law  
4 for a change of the place of trial or the [~~calling in~~]  
5 substitution of another judge. Where different parties in the  
6 same proceeding file petitions for review in two or more courts  
7 having proper jurisdiction, the jurisdiction of the judge first  
8 petitioned shall be exclusive and the other petitions shall be  
9 transferred to the judge. The petition shall state the grounds  
10 upon which a review is sought and copies thereof shall be served  
11 upon the other parties and the board. Service may be made by  
12 mailing [~~such~~] copies to the last known post office address of  
13 the parties concerned. When the proceedings are at issue, they  
14 may be brought on for hearing before the court upon the record  
15 by any party on ten days' written notice to the others. Upon  
16 the hearing, the court may confirm, modify, or set aside the  
17 decision or order of the board and enter an appropriate decree.  
18 No objection that has not been urged before the board shall be  
19 considered by the court unless the failure or neglect to urge  
20 the objection shall be excused because of extraordinary  
21 circumstances.



1 (g) In any proceedings for review of a decision or order  
2 of the board, the judge shall disregard any irregularity or  
3 error unless it is made to appear affirmatively that the  
4 complaining party was prejudiced thereby.

5 (h) Commencement of proceedings under subsection (f) of  
6 this section shall not stay enforcement of the board decisions  
7 or order; but the board, or the reviewing court may order a stay  
8 upon [~~such~~] terms as it deems proper.

9 (i) Petitions filed under this section shall have  
10 preference over any civil cause of a different nature pending in  
11 the circuit court, shall be heard expeditiously, and the circuit  
12 courts shall always be deemed open for the trial thereof.

13 (j) Any party may appeal from the judgment of a circuit  
14 court entered under this chapter, subject to chapter 602, in the  
15 manner provided for civil appeals from the circuit courts.

16 (k) A substantial compliance with the procedure of this  
17 chapter shall be sufficient to give effect to the decisions and  
18 orders of the board, and they shall not be declared inoperative,  
19 illegal, or void for any nonprejudicial irregularity in respect  
20 thereof.



1       (1) No complaints of any specific unfair labor practice  
2 shall be considered unless filed within ninety days of its  
3 occurrence.

4       (m) There is established the collective bargaining dispute  
5 resolution special fund into which shall be deposited:

6       (1) Appropriations made by the legislature to the fund;

7       (2) Gifts, donations, and grants from public agencies and  
8 private persons; and

9       (3) Civil, criminal, and administrative penalties, fines,  
10 and other charges collected under this chapter and  
11 chapter 89 or any rule adopted pursuant to this  
12 chapter or chapter 89.

13 All interest earned or accrued on moneys deposited in the fund  
14 shall become part of the fund. Subject to legislative  
15 authorization, the board may expend moneys from the fund to  
16 resolve collective bargaining disputes and to carry out the  
17 board's duties, including conducting mediations and  
18 investigations."

19       SECTION 5. Section 377-15, Hawaii Revised Statutes, is  
20 amended to read as follows:



1       "**§377-15 Penalty.** (a) Any person who wilfully assaults,  
2       resists, prevents, impedes, or interferes with the conciliator  
3       or any member of the board or any of the agents or agencies of  
4       either in the performance of duties pursuant to this chapter  
5       shall be fined not more than \$500 or imprisoned not more than  
6       one year, or both.

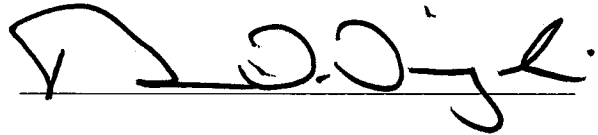
7       (b) All fines collected under this section shall be  
8       deposited into the collective bargaining dispute resolution  
9       special fund established pursuant to section 377-9(m)."

10       SECTION 6. This Act does not affect rights and duties that  
11       matured, penalties that were incurred, and proceedings that were  
12       begun before its effective date.

13       SECTION 7. Statutory material to be repealed is bracketed  
14       and stricken. New statutory material is underscored.

15       SECTION 8. This Act shall take effect upon its approval.

16  
INTRODUCED BY:





# S.B. NO. 2899

**Report Title:**

Collective Bargaining; Labor Relations Board; Delivery of Decisions and Orders; Notice Requirements

**Description:**

Requires the Labor Relations Board to deliver its orders and decisions by hand, USPS mail using a delivery confirmation, or electronically. Extends the time to hold a hearing on a complaint from 40 to 90 days. Repeals the requirement for the State to pay for witness fees and to conduct an audit. Establishes a collective bargaining dispute resolution special fund.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

