

HB 2053

RELATING TO COLLECTIVE BARGAINING

A BILL FOR AN ACT

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:

De Alt

[Signature]
[Signature]
[Signature]

[Signature]
Cindy Evans
[Signature]

JAN 19 2018



H.B. NO. 2053

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.

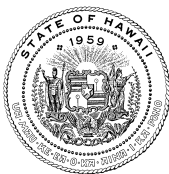
The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



HB 2053

TESTIMONY

DAVID Y. IGE
GOVERNOR



LAUREL A. JOHNSTON
ACTING DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY LAUREL A. JOHNSTON
ACTING DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 2053

February 8, 2018
10:30 a.m.
Room 309

RELATING TO COLLECTIVE BARGAINING

House Bill No. 2053 requires the Hawaii Labor Relations Board to deliver its orders and decisions by hand, United States Postal Service 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; and establishes a Collective Bargaining Dispute Resolution Special Fund, which shall be deposited: 1) appropriations made by the Legislature to the fund; 2) gifts, donations, and grants from public agencies and private persons; and 3) civil, criminal, and administrative penalties, fines and other charges collected under this chapter and Chapter 89 or any rule adopted pursuant to this chapter or Chapter 89.

The measure states that all interest earned or accrued on moneys deposited in the fund shall become part of the fund. Subject to legislative authorization, the board may expend moneys from the fund to resolve collective bargaining disputes and to carry out the board's duties, including conducting mediation and investigations.

While the Department of Budget and Finance does not take any position on the policies of the Hawaii Labor Relations Board and the collective bargaining process, as a matter of general policy, the department does not support the creation of special funds which do not meet the requirements of Section 37-52.3, HRS. Special funds should:

- 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process;
- 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue;
- 3) provide an appropriate means of financing for the program or activity; and
- 4) demonstrate the capacity to be financially self-sustaining.

In regards to House Bill No. 2053, it is difficult to determine whether the special fund meets the criteria to establish a special fund.

Thank you for your consideration of our comments.

HB 2053

**LATE
TESTIMONY**

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GOVERNOR

DOUG S. CHIN
LIEUTENANT GOVERNOR

LEONARD HOSHIJO
ACTING DIRECTOR, DLIR



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February 6, 2018

LATE

To: The Honorable Aaron Ling Johanson, Chair,
The Honorable Daniel Holt, Vice Chair, and
Members of the House Committee on Labor & Public Employment

Date: Thursday, February 8, 2018
Time: 10:30 a.m.
Place: Conference Room 309, State Capitol

From: Hawaii Labor Relations HLRB (HLRB)
Dept. of Labor and Industrial Relations (DLIR)

Re: H.B. 2053 Relating to Collective Bargaining

I. OVERVIEW OF PROPOSED LEGISLATION

This proposal seeks to amend sections 89-5.1, 89-18, 91-12, and 377-9, and 377-15, Hawaii Revised Statutes (HRS) by the following:

A. adding an additional means of serving the HRLB's orders and decisions by electronic service through a company designated by the HLRB;

B. changing the statutory requirement that a hearing on a complaint be held within ninety days after filing a complaint or an amended complaint; and

C. by amending §89-18, HRS, by adding new language to payment of a penalty resulting from the wilfull act of a person who "...assaults, resists, prevents, impedes, or interferes with any member of the board or any of its agents or employees in the performance of duties..." to pay such fines collected as a result of such acts to a collective bargaining dispute resolution special fund established pursuant to section 377-9(m) under the control of the HLRB.

II. CURRENT LAW

Section 91-12, HRS, allows service of orders and decisions by delivery or mail, but not by electronic service.

Section 377-9, HRS, which is made applicable to HRS chapter 89 prohibited practices by section 89-14, HRS, requires that hearings be held no more than forty (40) days after the filing of a complaint.

Currently, should the HLRB impose a monetary fine on a party pursuant to §89-18, HRS, the funds are deposited into the general fund of the state of Hawai`i. This allows any public employer in the State of Hawaii found to have wilfully committed a prohibited practice to simply pay the fine to the State general fund. In other words, when the State is fined, any monetary penalty returns to the same fund that pays the penalty. There is no “incentive” for any public employer to avoid actions or behaviors that would warrant the issuance of such a penalty and there is no deterrent or corrective affect. Additionally, there is no benefit for the aggrieved party, often a public union or public employee who files the complaint against a public employer and prevails.

III. COMMENTS IN SUPPORT OF THE BILL

The HLRB is in support of this bill because this bill will:

A. promotes office efficiency and reduces postage costs for the state. Since January 1, 2014, the HLRB has offered an electronic filing service to all parties appearing before the HLRB. Currently, more than 95% of all parties appearing before the HLRB have registered for this service which includes an agreement to receive of all documents electronically.

B. extend the requirement to hold a hearing on the complaint from forty **(40)** to ninety **(90)** days to allow more time for discovery and the filing of dispositive motions (motions to dismiss or for summary judgment) by all parties. Also with an increase in self-represented litigants (SRL), this will allow the HLRB to ensure that the SRL is afforded due process. And,

C. allow monetary penalties to be used to assist in the HLRB’s statutory requirements and FOR benefitting the aggrieved party rather than MERELY returning SAID FINES back to the general fund. PRESENT PRACTICE ‘REWARDS” BAD ACTIONS AND BEHAVIORS. LIKEWISE, MONETARY PENALTIES MAY BE AVAILABLE TO ALSO PROVIDE RELIEF TO SELF REPRESENTED LITIGANTS. (?) (note: I thought this might be another reason for this retention of fines and use of funds)

[such monetary penalties that directly and indirectly benefit the public employers].

Thank you for the opportunity to testify in support of this bill.