



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2366, S.D. 1, RELATING TO COLLECTIVE BARGAINING.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, February 23, 2018

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For further information, please contact Amy Chan,
Deputy Attorney General at (808) 586-1450)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to allow the Hawaii Labor Relations Board (HLRB) to:

- (a) Electronically deliver to parties its orders and decisions through a company designated by HLRB by amending sections 89-5.1 and 377-9, Hawaii Revised Statutes (HRS); and
- (b) Extend the time to hold a hearing on a complaint from forty to ninety days.

The bill also establishes a collective bargaining dispute resolution special fund.

Section 3 of the bill on page 2, line 13, proposes that section 91-12, HRS, be amended to include the following phrase: "Except as provided under sections 89-5.1(b) and 377-9(d)" to the existing requirement that decisions be in writing or stated on the record with findings of fact and conclusions of law. The proposed amendment to section 91-12 raises two concerns. First, we believe that it would cause undue confusion and create potential inconsistencies with other statutes. Because chapter 91 applies to all administrative agency hearings, not just administrative hearings before HLRB, this proposed amendment could potentially negatively affect other agencies and other statutes. Second, the exception is misplaced because the amendments to

sections 89-5.1(b) and 377-9(d), HRS, deal with delivery of the decision, which is addressed in the third and final sentence of section 91-12, HRS. Thus, the proposed amendment to section 91-12, HRS, does not correspond with the amendments to section 89-5.1(b) and 377-9(d), HRS. Therefore, we recommend that section 91-12, HRS, not be amended.

We respectfully ask that the recommended deletion be made if the Committee decides to pass this bill.

DAVID Y. IGE
GOVERNOR



LAUREL A. JOHNSTON
DIRECTOR

KEN N. KITAMURA
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

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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
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 2366, S.D. 1

**February 22, 2018
10:10 a.m.
Room 211**

RELATING TO COLLECTIVE BARGAINING

Senate Bill No. 2366, S.D. 1, 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, Hawaii Revised Statutes.

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 Senate Bill No. 2366, S.D. 1, 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.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

LEONARD HOSHIJO
ACTING DIRECTOR, DLIR



MARCUS R. OSHIRO
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SESNITA A.D. MOEPONO
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February 21, 2018

To: The Honorable Donovan M. Dela Cruz, Chair,
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair, and
Members of the Senate Committee on Ways and Means

Date: Friday, February 23, 2018
Time: 10:30 a.m.
Place: Conference Room 211, State Capitol

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

Re: S.B. 2366, S.D. 1 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;
- 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; and
- D. by adding (1) one full-time attorney and one full-time chief clerk positions; and (2) \$10,000 (general funds) for travel and interpreter costs

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 results in any public employer in the State of Hawaii found to have wilfully committed a prohibited practice depositing any monetary penalty in the State general fund. Therefore, in the case of the State of Hawaii as a public employer, 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 because the monetary penalty goes into the general fund from which a public employer directly or indirectly receives monetary benefits. There is also no benefit for the aggrieved party who files the complaint against a public employer and prevails.

III. COMMENTS IN SUPPORT OF THE BILL

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

A. cut costs for the state because it will eliminate postage costs and staff time to mail the decisions and orders. 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 to ninety 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;

C. allow monetary penalties to be used to assist in the HLRB's statutory requirements and benefitting the aggrieved party rather than returning back to the general fund such monetary penalties that directly and indirectly benefit the public employers; and

D. allow the board to render its decisions and orders more efficiently and to ensure due process to all parties by adding a full-time attorney, a full-time chief clerk and \$10,000.00 for travel and interpreter costs.

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

SB-2366-SD-1

Submitted on: 2/21/2018 1:58:28 PM

Testimony for WAM on 2/23/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments: