

**SB 2366**

**SD2**

**RELATING TO  
COLLECTIVE  
BARGAINING**

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# 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 377-9, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "§377-9 Prevention of unfair labor practices. (a) Any  
14 controversy concerning unfair labor practices may be submitted  
15 to the board in the manner and with the effect provided in this  
16 chapter, but nothing herein shall prevent the pursuit of relief  
17 in courts of competent jurisdiction.

18           (b) Any party in interest may file with the board a  
19 written complaint, on a form provided by the board, charging any  
20 person with having engaged in any specific unfair labor  
21 practice. The board shall serve or require the complainant to



1 serve a copy of the complaint upon the person charged,  
2 hereinafter referred to as the respondent. If the board has  
3 reasonable cause to believe that the respondent is a member of  
4 or represented by a labor union, then service upon an officer of  
5 the union shall be deemed to be service upon the respondent.  
6 Service may be by delivery to the person, or by mail or  
7 electronic service through a company designated by the board, to  
8 the person's last known address. Any other person claiming  
9 interest in the dispute or controversy, as an employer, an  
10 employee or their representative, shall be made a party upon  
11 proof of the interest. The board may bring in additional  
12 parties by service of a copy of the complaint. Only one  
13 complaint shall issue against a person with respect to a single  
14 controversy, but any complaint may be amended in the discretion  
15 of the board at any time prior to the issuance of a final order  
16 based thereon. The respondent may file an answer to the  
17 original or amended complaint but the board may find to be true  
18 any allegation in the complaint in the event either no answer is  
19 filed or the answer neither specifically denies nor explains the  
20 allegation nor states that the respondent is without knowledge  
21 concerning the allegation. The respondent shall have the right



1 to appear in person or otherwise give testimony at the place and  
2 time fixed in the notice of hearing. The hearing on the  
3 complaint shall be before either the board or a hearings officer  
4 of the board, as the board may determine.

5 The board shall fix a time for the hearing on the  
6 complaint ~~[7]~~ or a hearing on a dispositive motion, which shall  
7 be not less than ten nor more than ~~[forty]~~ ninety days after the  
8 filing of the complaint or amendment thereof. Notwithstanding  
9 section 91-9.5, in any hearing conducted by the board, all  
10 parties shall be given written notice of the hearing by first  
11 class mail or by electronic service through a company designated  
12 by the board at least fifteen days before the scheduled date of  
13 the hearing. ~~[In case]~~ If a party in interest is located  
14 without the State and has no known address within the State and  
15 no known electronic mail address, a copy of the complaint and  
16 copies of all notices shall be filed in the office of the  
17 lieutenant governor and shall also be sent by first class mail  
18 to the last known address of the party. ~~[Such]~~ The filing and  
19 mailing shall constitute sufficient service with the same force  
20 and effect as if served upon a party located within the State.  
21 The hearing may be adjourned from time to time in the discretion



1 of the board, and hearings may be held at [~~such~~] places [~~as~~]  
2 designated by the board [~~shall designate~~].

3 In all proceedings under this chapter before the board,  
4 each member of the board may issue subpoenas and administer  
5 oaths. Depositions may be taken in the manner prescribed by  
6 law. No person shall be excused from attending and testifying  
7 or from producing books, records, correspondence, documents, or  
8 other evidence in obedience to the subpoena on the ground that  
9 the testimony or evidence required of the person may tend to  
10 incriminate the person or subject the person to a penalty or  
11 forfeiture under the laws of the State, but [~~such~~] the person  
12 shall not be prosecuted or subjected to any penalty or  
13 forfeiture for or on account of any transaction, matter, or  
14 thing concerning which the person may testify or produce  
15 evidence, documentary or otherwise, in such proceedings. [~~Such~~]  
16 A person so testifying shall not be exempt, however, from  
17 prosecution and punishment for perjury committed in so  
18 testifying.

19 Any person who wilfully and unlawfully fails or neglects to  
20 appear or to testify or to produce books, papers, and records as  
21 required, shall, upon application to a circuit judge, be ordered



1 to appear before the board, and failure to obey the order may be  
2 punished as a contempt of court.

3 Each witness who appears before the board by subpoena shall  
4 receive for the witness' attendance the fees and mileage  
5 provided for witnesses in civil cases in courts of record[~~7~~  
6 which shall be audited and paid by the State in the same manner  
7 as other expenses are audited and paid, upon the presentation of  
8 properly verified vouchers approved by the board].

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

18 (d) After the final hearing, the board shall promptly make  
19 and file an order or decision, incorporating findings of fact  
20 upon all the issues involved in the controversy and the  
21 determination of the rights of the parties. Notwithstanding



1 section 91-12, within a reasonable time after the board issues  
2 each written order or decision, the board shall provide to each  
3 party a copy of the written order or decision. The written  
4 order or decision shall be hand delivered, provided by the  
5 United States Postal Service with delivery confirmation, or  
6 transmitted via electronic service through a company designated  
7 by the board. Pending the final determination of the  
8 controversy the board may, after hearing, make interlocutory  
9 orders [~~which~~] that may be enforced in the same manner as final  
10 orders. Final orders may dismiss the complaint or require the  
11 person complained of to cease and desist from the unfair labor  
12 practices found to have been committed, suspend the person's  
13 rights, immunities, privileges, or remedies granted or afforded  
14 by this chapter for not more than one year, and require the  
15 person to take affirmative action, including reinstatement of  
16 employees and make orders in favor of employees making them  
17 whole, including back pay with interest, costs, and attorneys'  
18 fees. Any order may further require the person to make reports  
19 from time to time showing the extent to which the person has  
20 complied with the order. Furthermore, an employer or employee  
21 who wilfully or repeatedly commits unfair or prohibited





1 practices that interfere with the statutory rights of an  
2 employer or employees or discriminates against an employer or  
3 employees for the exercise of protected conduct shall be subject  
4 to a civil penalty not to exceed \$10,000 for each violation. In  
5 determining the amount of any penalty under this section, the  
6 board shall consider the gravity of the unfair or prohibited  
7 practice and the impact of the practice on the charging party,  
8 on other persons seeking to exercise rights guaranteed by this  
9 section, or on public interest. All monetary penalties  
10 collected under this subsection shall be deposited into the  
11 collective bargaining dispute resolution special fund  
12 established pursuant to subsection (m).

13 (e) If any person fails or neglects to obey an order of  
14 the board while the [same] order is in effect, the board may  
15 petition the circuit judge of the judicial circuit [~~wherein~~]  
16 where the person resides or usually transacts business for the  
17 enforcement of the order and for appropriate temporary relief or  
18 restraining order, and shall certify and file in the court the  
19 record in the proceedings, including all documents and papers on  
20 file in the matter, the pleadings and testimony upon which the  
21 order was entered, and the decision and order of the board.



1 Upon [~~such~~] the filing the board shall cause notice thereof to  
2 be served upon the person by mailing a copy to the person's last  
3 known post office address, and thereupon the judge shall have  
4 jurisdiction in the premises.

5 (f) Any person aggrieved by the decision or order of the  
6 board may obtain a review thereof as provided in chapter 91 by  
7 instituting proceedings in the circuit court of the judicial  
8 circuit in which the person or any party resides or transacts  
9 business, subject [~~however~~] to the general provisions of law  
10 for a change of the place of trial or the [~~ealling-in~~]  
11 substitution of another judge. Where different parties in the  
12 same proceeding file petitions for review in two or more courts  
13 having proper jurisdiction, the jurisdiction of the judge first  
14 petitioned shall be exclusive and the other petitions shall be  
15 transferred to the judge. The petition shall state the grounds  
16 upon which a review is sought and copies thereof shall be served  
17 upon the other parties and the board. Service may be made by  
18 mailing [~~such~~] copies to the last known post office address of  
19 the parties concerned. When the proceedings are at issue, they  
20 may be brought on for hearing before the court upon the record  
21 by any party on ten days' written notice to the others. Upon



1 the hearing, the court may confirm, modify, or set aside the  
2 decision or order of the board and enter an appropriate decree.  
3 No objection that has not been urged before the board shall be  
4 considered by the court unless the failure or neglect to urge  
5 the objection shall be excused because of extraordinary  
6 circumstances.

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

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

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

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



1 (k) A substantial compliance with the procedure of this  
2 chapter shall be sufficient to give effect to the decisions and  
3 orders of the board, and they shall not be declared inoperative,  
4 illegal, or void for any nonprejudicial irregularity in respect  
5 thereof.

6 (l) No complaints of any specific unfair labor practice  
7 shall be considered unless filed within ninety days of its  
8 occurrence.

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

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

12 (2) Gifts, donations, and grants from public agencies and  
13 private persons; and

14 (3) Civil, criminal, and administrative penalties, and  
15 finances collected under this chapter and chapter 89 or  
16 any rule adopted pursuant to this chapter or chapter  
17 89.

18 All interest earned or accrued on moneys deposited in the fund  
19 shall become part of the fund. Subject to legislative  
20 authorization, the board may expend moneys from the fund to  
21 resolve collective bargaining disputes and to carry out the



1 board's duties, including conducting mediations and  
2 investigations."

3 SECTION 4. Section 377-15, Hawaii Revised Statutes, is  
4 amended to read as follows:

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

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

14 SECTION 5. There is appropriated out of the general  
15 revenues of the State of Hawaii the sum of \$ or so  
16 much thereof as may be necessary for fiscal year 2018-2019 for  
17 the Hawaii labor relations board to be distributed as follows:

- 18 (1) \$ for one full-time equivalent (1.0 FTE)  
19 attorney position;  
20 (2) \$ for one full-time equivalent (1.0 FTE)  
21 chief clerk position; and



1 (3) \$10,000 for travel and interpreter costs.

2 The sum appropriated shall be expended by the department of  
3 labor and industrial relations for the purposes of this Act.

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

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

9 SECTION 8. This Act shall take effect on January 1, 2050.



**Report Title:**

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

**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. Appropriates funds for 1 full-time equivalent (1.0 FTE) attorney position, 1 full-time equivalent (1.0 FTE) chief clerk position, and travel and interpreter costs. Effective 1/1/2050. (SD2)

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



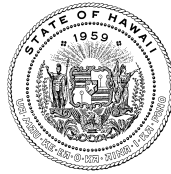
**SB 2366**

**SD-2**

**TESTIMONY**



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GOVERNOR



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KEN N. KITAMURA  
ACTING DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
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**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

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ADMINISTRATIVE AND RESEARCH OFFICE  
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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 HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
ON  
SENATE BILL NO. 2366, S.D. 2**

**March 15, 2018  
9:00 a.m.  
Room 309**

**RELATING TO COLLECTIVE BARGAINING**

Senate Bill No. 2366, S.D. 2, 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; appropriates an unspecified amount of general funds for FY 19 for 1.00 full-time attorney and chief clerk positions and \$10,000 for travel and interpreter costs; 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 Senate Bill No. 2366, S.D. 2, 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.

**SB 2366**

**SD-2**

**LATE**

**TESTIMONY**

**LATE**

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GOVERNOR

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March 13, 2018

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, March 15, 2018  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

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

**Re: S.B. 2366, S.D. 2 Relating to Collective Bargaining**

**I. OVERVIEW OF PROPOSED LEGISLATION**

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

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. adding new language to sections 89-18 and 377-15, HRS, providing for payment of a penalty resulting from the willful 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..." and to the penalty provision under section 377-9(d), HRS for willful prohibited practice violations 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.

This proposal also adds (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, 377-9(d), or 377-15 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 better 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.