

STAND. COM. REP. NO.

1255

Honolulu, Hawaii

**MAR 25 2021**

RE: H.B. No. 465  
H.D. 1  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirty-First State Legislature  
Regular Session of 2021  
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred H.B. No. 465, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO COLLECTIVE BARGAINING,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require the representative of labor on the Hawaii Labor Relations Board (Board) to be a person whose name has been chosen by the exclusive representatives of the collective bargaining units through a process determined by a simple majority of exclusive representatives and submitted to the Governor for appointment with the advise and consent of the Senate;
- (2) Allow a simple majority of the exclusive representatives who recommended the nominee to transmit the nominee's name directly to the Senate for confirmation if the Governor fails to do so within twenty days after submission of the nominee's name to the Governor; and
- (3) Allow a simple majority of the exclusive representatives of the collective bargaining units to remove, via a written request to the Governor, the representative of labor from the Board during the member's term.



Your Committee received testimony in support of this measure from the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Hawaii State Teachers Association; United Public Workers, AFSCME Local 646, AFL-CIO; and University of Hawaii Professional Assembly. Your Committee received testimony in opposition to this measure from the Office of Collective Bargaining. Your Committee received comments on this measure from the Hawai'i Labor Relations Board.

The Board is a quasi-judicial board with jurisdiction over public and private sector collective bargaining and cases pertaining to state occupational safety and health citations and whistleblower discrimination claims. The Board consists of three members – the Chair, who is the representative of the public, one member who is a representative of management, and one member who is a representative of labor. All three Board members are appointed to six-year terms by the Governor.

Under existing law, the representative of management is appointed by the Governor, who must first consider the names submitted by each county. The representative of labor is appointed by the Governor from a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives of the collective bargaining units.

This measure requires the Governor to appoint as the representative of labor, the one individual chosen by the exclusive representatives of the collective bargaining units; and if the Governor fails to transmit that nominee's name to the Senate for advice and consent within twenty days after the exclusive representatives' submission of the nominee's name to the Governor, allows a simple majority of the exclusive representatives who recommended the nominee to transmit the nominee's name directly to the Senate for confirmation. This measure also allows a simple majority of the exclusive representatives to remove, via a written request to the Governor, the representative of labor from the Board mid-term, if they determine that the member is ineffective.

Your Committee acknowledges testimony from numerous labor unions supporting this measure on the basis that the existing appointment process provides the Governor with too much authority

over the composition of the Board. Your Committee also notes the labor unions' testimony regarding their struggle in finding three nominees with the required qualifications, and their call for an established mechanism for removal and replacement of a labor representative, who fails to represent labor's best interests. Your Committee also acknowledges the testimony of the Office of Collective Bargaining, finding no compelling reason to limit the pool of nominees for the representative of labor from three to one. Since this measure leaves the Governor with no choice but to appoint the single nominee as the representative of labor, the Governor's authority over the process will be diminished from being discretionary to ministerial. According to the Office of Collective Bargaining, there are no other boards or commissions in the State over which the Governor's appointment authority is ministerial.

Your Committee also acknowledges the testimony of the Board itself, raising numerous concerns over the current appointment process and the process provided in this measure. This includes the fact that despite the Board having jurisdiction over three constituencies, only the state public employment collective bargaining sector has a voice as to who sits on the Board. The positions of private sector unions and small businesses are not reflected. The Board also points to its duty to act as a neutral body that does not favor certain parties. To maintain the Board's independence and neutrality, the members are protected from being removed based on political reasons or a party's negative response to an outcome of a case. The Board is concerned that the removal process provided in this measure may jeopardize its duty to remain neutral and take actions based on the facts and the law. Your Committee also notes the concerns raised by the Board as to whether the removal process without due process, i.e., removal without cause and the opportunity to defend and appeal, is constitutional and consistent with legal provisions related to other boards and commissions.

Based on the testimonies and these concerns, your Committee finds that this measure requires further review and consideration.

Your Committee has amended this measure by:


- (1) Repealing unnecessary details relating to section 26-34, Hawaii Revised Statutes; and



- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 465, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 465, H.D. 1, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor, Culture and  
the Arts,



BRIAN T. TANIGUCHI, Chair



The Senate  
 Thirty-First Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Labor, Culture and the Arts**  
**LCA**

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 465, HD1	LCA, JDC/WAM	3/17/21		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
IHARA, Jr., Les (VC)		✓		
CHANG, Stanley	✓			
KEOHOKALOPE, Jarrett	✓			
FEVELLA, Kurt		✓		
<b>TOTAL</b>	3	2	0	0
Recommendation:				
<input checked="" type="checkbox"/> Adopted <span style="margin-left: 200px;"><input type="checkbox"/> Not Adopted</span>				
Chair's or Designee's Signature:				
<i>Les Ihara Jr</i>				
Distribution:				
Original	Yellow	Pink	Goldenrod	
File with Committee Report	Clerk's Office	Drafting Agency	Committee File Copy	

\*Only one measure per Record of Votes