

DAVID Y. IGE
GOVERNOR



RYKER WADA
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
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**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE**

For Hearing on Tuesday, March 1, 2022 at 11 a.m.
Conference Room 308 and Via Video Conference

By

RYKER WADA
CHIEF NEGOTIATOR

House Bill No. 1789 HD2
Relating to Collective Bargaining

WRITTEN TESTIMONY ONLY

CHAIRPERSON LUKE, VICE-CHAIR YAMASHITA AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE:

The Office of Collective Bargaining (OCB) **OPPOSES** HB1789 HD2, which establishes that the representative of labor on the Hawaii Labor Relations Board be a person selected by a majority of the exclusive representatives of the collective bargaining units.

OCB is concerned that this bill diminishes the Governor's authority by compelling him to appoint a single individual identified by the exclusive representatives as a labor representative to the Hawaii Labor Relations Board. Current practice is for the Governor to make an appointment from a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives. We believe there is no compelling reason to limit the pool of nominees from three to one.

Based on the above, the OCB respectfully requests that this measure be **held**. Thank you for considering our concerns and for the opportunity to testify on this measure.

MARCUS R. OSHIRO
CHAIRPERSON



SESNITA A.D. MOEPONO
BOARD MEMBER

J N. MUSTO
BOARD MEMBER

To: The Honorable Sylvia Luke, Chair,
The Honorable Kyle T. Yamashita, Vice Chair, and
Members of the House Committee on Finance

Date: Tuesday, March 1, 2022

Time: 11:00 a.m.

Place: Conference Room 308
State Capitol
415 South Beretania Street
Via Videoconference

From: Marcus R. Oshiro, Chairperson
Sesnita A.D. Moepono, Member
J N. Musto, Member

Re: H.B. No. 1789 H.D. 2 RELATING TO COLLECTIVE BARGAINING

I. OVERVIEW OF PROPOSED LEGISLATION

HB 1789 HD 2 proposes to amend HRS § 89-5 by 1) amending the method of appointment of one Board member.

The Hawai'i Labor Relations Board provides the following comments about this measure.

II. CURRENT LAW

The Hawai'i Labor Relations Board consists of a Board chairperson, who is representative of the public, and two Board members, one of whom is representative of management and one of whom is representative of labor.

HRS § 89-5 specifies that all three members are appointed to six-year terms by the governor. For the representative of labor, the governor is given a list of three nominees

submitted by mutual agreement from a majority of the exclusive representatives. Accordingly, every representative of labor who sits on the Hawai'i Labor Relations Board has been selected by a majority of the public sector unions. Therefore, to say that, at present, the public sector unions only provide "input" as to who sits in the seat representative of labor or to say that labor is not included in the current process is uninformed at best and deliberately disingenuous at worst. The current law does not provide the Governor with the ability to select anyone who has not been put forward by a majority of the exclusive representatives.

In short, every person who has been appointed to the HLRB Board seat representative of labor has been selected by the public sector unions. That is the mandate of the current law.

III. COMMENTS ON THE HOUSE BILL

HLRB's Jurisdiction

The Hawai'i Labor Relations Board, as created by HRS § 89-5, is a quasi-judicial Board with original jurisdiction over two chapters of the HRS, HRS Chapter 89 (state public sector collective bargaining) and HRS Chapter 377 (state private sector collective bargaining), and *de novo* appellate review of a third HRS Chapter 396 (state occupational safety and health citation and whistleblower discrimination cases). In appointing the representative of labor under HRS § 89-5, the governor is given a list of three nominees submitted by mutual agreement from a majority of the exclusive representatives.

Although the HLRB has jurisdiction over three laws, only **one** of the three constituencies served under these laws, the state public employment collective bargaining sector, currently has a voice as to who sits on the HLRB.

Approximately **50%** of the cases before the HLRB in recent years have been appeals under HRS § 396 (HIOSH). Yet, HIOSH, private employers and the private sector unions whose members may bring discrimination or other types of protected activity appeals under HRS § 396 have no voice as to who sits on the Board.

Private sector employers and unions, whose areas of work do not fall under the National Labor Relations Board's (NLRB) jurisdiction, comprise a small number of HLRB cases, but they also have no say as to who sits on the Board.

The Board respectfully notes that, should the Legislature wish to alter the way that a member of the HLRB is nominated, the Legislature should take into account the Board's other constituencies as well.

Constitutional Concerns

In the last Legislative session, a bill containing a similar provision raised constitutional concerns. Specifically, Senator Ihara raised the concern that mandating that the Governor appoint a particular individual—rather than providing him with options of individuals to appoint—could violate Article V, Section 6 by making the Governor’s role merely ministerial.

Further, HB 1789 HD 2 goes further than last session’s bill by potentially removing the Governor from the process of appointment completely by permitting “the simple majority of exclusive representatives” to “transmit [their nominee’s] name directly to the senate for confirmation.”

The Board feels a responsibility to bring forth this concern to the attention of this Committee in its deliberations over HB 1789 HD 2.

Majority of Exclusive Representatives

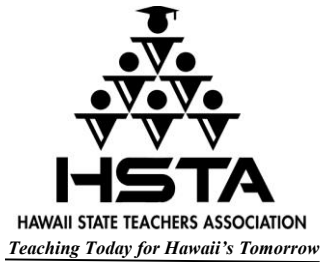
At this time, there are fifteen public sector bargaining units. Of those fifteen units, a majority have the same, certified exclusive representative.

Based on the wording of the bill, it is unclear whether this exclusive representative would be able to select its chosen member, without consent of any other public sector exclusive representative.

Essentially, fifteen exclusive representatives have been certified in accordance with HRS § 89-8. However, most of those certifications refer to the same union. Therefore, under the current language, that union could, theoretically, select an HLRB Board member representative of labor who all other exclusive representatives did not agree to.

Accordingly, if the intent is to allow every union to have a voice in selecting the HLRB Board member representative of labor, HLRB respectfully submits that the language should be clarified to ensure that a single union cannot choose that member on its own.

HLRB takes no position on this bill but feels compelled to raise these concerns. Thank you, and HLRB will be available for any questions.



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Vice President
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Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

RE: HB 1789 HD2 - RELATING TO COLLECTIVE BARGAINING.

TUESDAY, MARCH 1, 2022

WILBERT HOLCK, EXECUTIVE DIRECTOR
HAWAII STATE TEACHERS ASSOCIATION

Chair Luke, and Members of the Committee:

The Hawaii State Teachers Association **supports HB 1789, HD2**, relating to collective bargaining. This bill requires the representative of labor on the Hawaii labor relations board to be a person selected by a majority of the exclusive representatives of the collective bargaining units. Provides a timeframe for the governor to appoint the representative of labor following submission of the nominee's name. Effective 12/25/2040. (HD2)

As the representative of management for the Hawaii Labor Relations Board is appointed by the governor, who first considers any names submitted by the counties; provided that each county may submit no more than one name; the process should be similar for the representative of labor in that a person who is appointed by the governor, but whose name has been submitted to the governor to serve as the representative of labor by the exclusive representatives certified pursuant to section 89-8. The process to determine the nominee whose name is to be submitted to the governor shall be determined by a simple majority of the exclusive representatives certified pursuant to section 89-8. The governor shall transmit the name of the person nominated to serve as the representative of labor to the senate for advice and consent not later than twenty days after submission of the nominee's name to the governor; provided that, if the governor fails to nominate the person whose name has been submitted by a simple majority of exclusive representatives in accordance with this paragraph, the simple majority of exclusive representatives who recommended the person shall transmit the person's name directly to the senate for confirmation.

To be an exclusive representative of labor, shouldn't labor be included in the process for the selection? Therefore, to ensure labor is represented as they should be in HLRB, the Hawaii State Teachers Association asks your committee to **support** this bill.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 1, 2022

H.B. 1789, H.D. 2 – RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1789, H.D. 2 which establishes that the Labor Representative on the Hawaii Labor Relations Board (HLRB) be selected by a majority of the Exclusive Representatives.

The mission of the HLRB is to fairly resolve labor disputes and enforce and protect the rights of unionized public employees and public unions to organize and bargain collectively in balance with the Employer's rights to manager operations. The HLRB is composed of three members – a representative of labor, a representative of management, and the chairperson who shall represent the public interest. The Labor Representative is appointed by the Governor from a list of three nominees submitted by a majority of the Exclusive Representatives and must be confirmed by the Senate, however the Governor also appoints both the Management Representative and the Chairperson of the Board, thus granting the Governor significant influence over all three seats. The current process grants the Governor too much authority over an adjudicatory board in which the Governor, serving as the Employer, is often party. Since decisions and rulings by the HLRB directly impact every unionized state and county government employee in Hawai'i, it is fair and reasonable to allow the Exclusive Representatives the right to collectively nominate our Labor Representative.

While this measure will not completely balance the scales of power between the Employer and the Exclusive Representatives, it will serve to ensure that the Exclusive Representatives' collective voice is strengthened. Thank you for the opportunity to testify in strong support of H.B. 1789, H.D. 2.

Respectfully submitted,

Randy Perreira
Executive Director



HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022

Committee on Finance
Representative Sylvia Luke, Chair
Representative Kyle T. Yamashita, Vice Chair

Tuesday, March 1, 2022, 11:00AM
Conference Room 308 and via Videoconference

Re: Testimony in Support of HB1789, HD2 – RELATING TO COLLECTIVE BARGAINING

Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents 1,500 members in the private sector.

UPW **supports** HB1789, HD2, which requires the representative of labor on the Hawaii Labor Relations Board to be a person selected by a majority of the exclusive representatives of the collective bargaining units and provides a timeframe for the governor to appoint the representative of labor following the submission of the nominee’s name.

Under the current law, the exclusive representatives of labor have been able to provide input on the representative of labor on the Board, but the final decision is made by the Governor. This proposed legislation would help to establish that the exclusive representatives of labor’s interest and voices are reinforced when it comes to the Board’s labor representative.

Thank you for the opportunity to provide testimony.

Sincerely,

Kalani Werner
State Director