



**STATE OF HAWAII  
OFFICE OF COLLECTIVE BARGAINING  
EXECUTIVE OFFICE OF THE GOVERNOR**  
235 S. BERETANIA STREET, SUITE 1201  
HONOLULU, HAWAII 96813-2437

TESTIMONY TO THE  
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS

For Hearing on Wednesday, March 16, 2022 at 3 p.m.  
Conference Room 225 and Via Video Conference

By

RYKER WADA  
CHIEF NEGOTIATOR

**House Bill No. 1789 HD2  
Relating to Collective Bargaining**

WRITTEN TESTIMONY ONLY

CHAIR TANIGUCHI, VICE-CHAIR IHARA AND MEMBERS OF THE COMMITTEE:

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.



**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  
The Senate  
Committee on Labor, Culture and the Arts

Testimony by  
Hawaii Government Employees Association

March 16, 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



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS  
" A Police Organization for Police Officers Only "  
Founded 1971

March 13, 2022

**ONLINE/FAX: 808-586-6461; 586-6251**

The Honorable Brian T. Taniguchi  
Chair  
The Honorable Les Ihara, Jr.  
Vice-Chair  
Senate Committee on Labor, Culture and the Arts  
Hawaii State Capitol, Room 219, 220  
415 South Beretania Street  
Honolulu, HI 96813

Re: **HB1789 HD2-Relating to Collective Bargaining**

Dear Chair Taniguchi, Vice-Chair Ihara, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers ("SHOPO") and write to you on behalf of our Union in strong **support** of HB1789 HD2. This bill will amend HRS §89-5 to ensure that the public employee unions and their labor interests are at all times competently and fairly represented on the Hawaii Labor Relations Board ("HRLB") by a representative of their choice.

The HLRB is composed of three (3) board members who represent three distinct interests on the board, i.e., labor, management and the public. Unlike other boards and commissions, the respective board members on the HRLB are specifically designated by the interests they statutorily represent on the board. There is a "representative of labor," "representative of management," and a "representative of the public" who also serves as the board's chairperson.

The HLRB is the venue where the public unions and employers seek redress and resolution of various types of labor disputes and issues. Thus, it is imperative that the "representative of labor" serving on the board, which decides cases by majority rule, is a person who is effectively representing labor, competently discharging his/her duties, and is the public unions' choice to serve as our representative. I note that OCB raised a concern with the bill that it would somehow diminish the governor's authority to appoint the labor representative. Contrary to OCB's assertion, the bill maintains that the governor will continue to select the labor representative but provides a time in which the governor must act.

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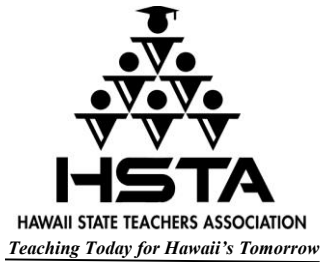
The Honorable Brian T. Taniguchi, Chair  
The Honorable Les Ihara, Jr., Vice-Chair  
Senate Committee on Labor, Culture and the Arts  
Re: HB1789 HD2-Relating to Collective Bargaining  
March 13, 2022  
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Placing time limits on the governor decision ensures that the executive branch will act expeditiously so that the unions have their representative appointed and sitting on the board in a timely manner. If the governor fails to act, the bill provides that the unions will have the option of transmitting the name to the Senate for confirmation which will avoid the consequences of a situation where the governor sits on a nomination for a prolonged period of time leaving the unions without a representative on the board. In addition, OCB seems to forget that the labor representative is the union's choice and is selected by the unions and not OCB. Whether it is one name or three names, the labor representative should be the unions' choice and for the unions to decide because at the end of the day the labor representative is the person the unions want representing them on the board.

By allowing the public unions to select their labor representative by a simple majority, HB1789 HD2 will ensure that the public unions' labor representative on the HLRB is truly their choice and selection. We thank you for allowing us to be heard on this very important issue and hope your committee will unanimously support this bill and allow this bill to take effect upon its approval.

Respectfully submitted,

ROBERT "BOBBY" CAVACO  
SHOPO President



Osa Tui, Jr.  
President  
Logan Okita.  
Vice President  
Lisa Morrison  
Secretary-Treasurer  
Wilbert Holck  
Executive Director

TESTIMONY BEFORE THE SENATE COMMITTEE ON LABOR,  
CULTURE & THE ARTS

RE: HB 1789 HD2 - RELATING TO COLLECTIVE BARGAINING.

WEDNESDAY, MARCH 16, 2022

WILBERT HOLCK, EXECUTIVE DIRECTOR  
HAWAII STATE TEACHERS ASSOCIATION

Chair Taniguchi, 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.

**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.



THE SENATE  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2022

Committee on Labor, Culture, and the Arts  
Senator Brian T. Taniguchi, Chair  
Senator Les Ihara, Jr., Vice Chair

Wednesday, March 16, 2022, 3:00PM  
Conference Room 225 and via Videoconference

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

Chair Taniguchi, Vice Chair Ihara, 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

**UNITED PUBLIC WORKERS**  
**AFSCME Local 646, AFL-CIO**





MARCUS R. OSHIRO  
CHAIRPERSON



SESNITA A.D. MOEPONO  
BOARD MEMBER

J N. MUSTO  
BOARD MEMBER

To: The Honorable Brian T. Taniguchi, Chair,  
The Honorable Les Ihara, Jr., Vice Chair, and  
Members of the Senate Committee on Labor, Culture, and the Arts

Date: Wednesday, March 16, 2022

Time: 3:00 p.m.

Place: Conference Room 225  
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.