



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
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March 17, 2015

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: March 17, 2015

Time: 9:00 a.m.

Place: Conference Room 016, State Capitol

From: Elaine N. Young, Acting Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 951 HD1 Relating to Notice of Hearing by the Labor  
and Industrial Relations Appeals Board**

**I. OVERVIEW OF PROPOSED LEGISLATION**

To allow the Labor and Industrial Relations Appeals Board (LIRAB) the option to provide notice of hearing by online posting on the LIRAB's webpage if service by first class mail is undeliverable.

The department strongly supports the HD1 of this Administration proposal, which is consistent with the Administration's efforts to make government more efficient without sacrificing levels of service.

**II. CURRENT LAW**

The LIRAB is currently subject to chapter 91, Hawaii Revised Statutes, which requires the Board to provide notice of hearing by publication in a newspaper of general circulation if service by first class mail cannot be made.

**III. COMMENTS ON THE HOUSE BILL**

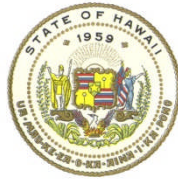
One strategy to preserve services during the "Great Recession" was to severely reduce the operating budgets in the department and no restoration has occurred. The DLIR has addressed this by using Administration proposals to improve business processes and using technology to improve the delivery of DLIR's

programs and quality of services to Hawaii's people [Act 261 (SLH, 2012), Act 262 (SLH, 2012), Act 14 (SLH, 2013), Act 15 (SLH, 2013), Act 96 (SLH, 2013), Act 98 (SLH, 2013)].

HB951HD1 offers the opportunity for the LIRAB to use the operational savings to help meet the increased need to service persons with Limited English Proficiency (LEP) and take small steps towards going paperless, among other costs.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT  
GOVERNOR



DANNY J. VASCONCELLOS  
CHAIR

MELANIE S. MATSUI  
MEMBER

LABOR & INDUSTRIAL RELATIONS APPEALS BOARD  
KEELIKOLANI BUILDING  
830 PUNCHBOWL STREET, ROOM 404  
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March 16, 2015

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

DATE: Tuesday, March 17, 2015  
TIME: 9:00 A.M.  
PLACE: Conference Room 016, State Capitol

FROM: Danny J. Vasconcellos, Chair  
Labor and Industrial Relations Appeals Board

**RE: H.B. 951 HD 1 Relating to Notice of Hearing by the Labor and Industrial Relations Appeals Board (LIRAB)**

## **I. OVERVIEW OF PROPOSED LEGISLATION**

HB951HD1 is an Administration proposal that authorizes LIRAB the option to provide notice of hearing to a party by online posting on LIRAB's webpage if service of the notice by first class mail is returned as undeliverable and a forwarding address for the party cannot be ascertained after a reasonable and diligent effort. The bill provides that the online posting shall be removed from the webpage no less than five business days after the date of the hearing.

LIRAB strongly supports HB951HD1 because online posting of notice of hearing provides an effective and cost-saving option to publication of the notice by newspaper.

## **II. CURRENT LAW**

LIRAB is subject to the Administrative Procedures Act (APA) in Chapter 91 of the Hawaii Revised Statutes (HRS). The APA requires LIRAB to provide notification of hearing to a party who has a pending appeal at LIRAB. Under section 371-4(c), HRS, the manner of providing such notice is by first class mail. If, however, the notice is returned as undeliverable or a party moves away and a forwarding address cannot be ascertained after a reasonable and diligent effort, LIRAB is required by section 371-4(d), HRS to provide notice of hearing by publication in a newspaper of general circulation.

### **III. COMMENTS ON THE BILL**

Notice by newspaper publication is costly and has not been an effective means of providing notice to a party. An average newspaper ad costs the LIRAB \$383.00. LIRAB spent close to \$5,000 in newspaper ads in the last four years. At least for the last twenty-five years, no party has ever appeared at LIRAB for a hearing after notice by newspaper publication.

The notice of hearing that the LIRAB seeks authority to post online is not a public notice directed at a group or the general population. It is directed at a specific party who, at one time, was a participant in a pending LIRAB appeal, but has since abandoned the appeal, moved away without a forwarding address, or whose address cannot be ascertained.

The option to provide notice of hearing by posting on the LIRAB's webpage is effective and economical. The LIRAB already has an online presence on the department's website ([labor.hawaii.gov](http://labor.hawaii.gov)). Information posted online is more readily accessible than information buried in legal print ads.

Online posting of information has become commonplace in today's digital world. Many State departments and boards already post notices of meetings and other events on their websites.

HB951HD1 is consistent with the Administration's efforts to use technology to improve efficiency and reduce costs without sacrificing customer service.

## COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair Senator Maile S.L. Shimabukuro, Vice Chair, and committee members.

### Support with Reservations of HB 951

My name is Yolanda Phelan I am testifying on behalf of the Hawaii Association of the Blind.

While online access can be of assistance to the disabled, it is necessary for the website to provide that information in a manner that is accessible for individuals with disabilities. Because many of Hawaii's webpages are not accessible, I have a concern about online posting especially since the state does not have a policy to provide for accessibility. Many state webpages fail to comply with the requirements of the Americans with Disabilities Act. Until this failure is addressed, a person with a disability could be prevented from accessing the hearing notice that this bill proposes to post electronically. Therefore, any implementation of electronic posting should take place after the particular website is made available.

I have personal knowledge of the problems that individuals with disabilities encounter when online services are not accessible for the disabled and my problems illustrate the problems that disabled individuals encounter when trying to participate in government. I was interested in submitting testimony on two bills that were important to me; House Bill 1008, Relating To Blind Pedestrian Safety and House Bill 1272, Relating To Movie Theaters. I could not file my testimony electronically because the webpage was not designed to be navigated by the software used by individuals with disabilities. I understand that there were many other similarly situated people who also could not file their testimony electronically. Because of the importance of these issues to me, I took a bus from Hawaii Kai so that I could hand-deliver my testimony and testimony for another person. I believe that government represents all individuals; however, until the accessibility of the state government websites is improved, individuals with vision impairments will have to jump over hurdles that other people do not.

The same problems that exist for the legislature's website are present for the Appeal Board website. In both cases, the web master needs educate himself on making the web site accessible for all individuals and not just the sighted community. I have brought my problems with the Legislature's website to the attention of the House and Senate and I am attempting raise awareness for about other state websites.. However, I am not aware of any action that has been taken by the Legislature beyond advising me that someone will investigate this issue. I am aware that other states such as Washington have actively sought to make their websites accessible and that it is possible for Hawaii to do the same.

I support passage of this bill provided that it include provisions that ensure accessibility by the members of the disabled community. Our blind children are learning the process but the teachers cannot even show them the format of the web site or the progress of a bill. Imagine if it was your child. We always talk about the children are our future do you ever think about the disable community of children?

Landa Phelan  
Hawaii Association of the Blind  
Member- Board of Directors  
Legislative Chair

E-mail: [sharpersenses@hawaii.rr.com](mailto:sharpersenses@hawaii.rr.com)

PETER L. FRITZ  
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HONOLULU, HAWAII 96817

THE SENATE  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

COMMITTEE ON JUDICIARY AND LABOR  
Testimony on H.B. 951 H.D. 1  
Hearing: March 17, 2015

(RELATING TO NOTICE OF HEARING BY THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD)

Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Committee. My name is Peter Fritz. I am an individual with a disability and an attorney in private practice specializing in state tax and disability law. I am offering comments concerning this bill's potential to discriminate against individuals with disabilities and deny these individuals due process by posting notices online.

H.B. 951H.D. 1 would authorize the Labor and Industrial Relations Appeals Board ("LIRAB") to provide notice of hearing to a party by online posting on LIRAB's webpage if service of the notice by first class mail is returned as undeliverable and a forwarding address for the party cannot be ascertained after a reasonable and diligent effort.

This bill may violate the I have some concerns about this bill because the LIRAB's website does not comply with Title II of the Americans with Disabilities Act ("ADA"), Section 508 of the Rehabilitation Act ("Section 508") and/or Comptroller's Memorandum 2010-28 and therefore, it is not fully accessible to individuals with disabilities. Posting notices for a hearing that are not accessible to an individual with a disability would violate the ADA and the individual's due process rights. I have had discussions with the LIRAB and they are exploring how to provide accessible notices. It is respectfully submitted that online posting of notices should only occur after the LIRAB has cured the defects that raise barriers to the disabled and bring the website into compliance with disability laws.

I offer the following suggestions and comments:

**Effective Date:** Posting should only begin after the website complies with the ADA. The effective date could be 30 days after the publication of Rules specifying the requirements for an accessible notice and after the website or the part of the website that where the notices will be posted is brought into compliance with the ADA. The Committee should consider an appropriation to enable the LIRAB to retain an outside company to address accessibility issues related to online posting and bring the website into compliance with the ADA. It should be noted that the Architectural and Transportation Barriers Compliance Board is revising the standards for electronic and information technology developed, procured, maintained, or used by agencies covered by Section 508 of the Rehabilitation Act of 1973.

**Lack of Accessibility at Public Libraries:** The Public Access room in the Capital does not have a computer that has software that will allow visually impaired individuals to access online documents. The same is true for many State Libraries. State Libraries often have computers with outdated screen reader software that cannot take advantage of the newer HTML code. This means that the information is not be accessible.

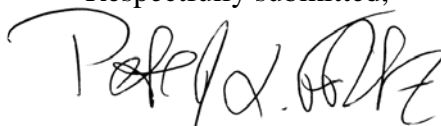
**Website Issues:**

An examination of the first 5 pages of the LIRAB's site, <http://labor.hawaii.gov/lirab/> revealed accessibility issues creating problems for older users and/or people with disabilities or accessibility needs. Examples of some of the errors are:

- Missing tags. A tag must contain text or an IMG with an ALT attribute. If there is no link text or the ALT tag is blank, screen readers have nothing to read.
- Some pages have markup errors like missing end tags which means that screen readers, used by visually impaired individuals, may skip important content.
- The website uses general text like "Click Here" and has no surrounding text to make the context clear. Screen readers read text around links to help understand what the link does. If there's no surrounding text and the link text is very general there's no way to work out what the link does.
- The IMG WIDTH and HEIGHT attributes don't match the actual image size. This means the image will be scaled or distorted.

It is respectfully submitted that online posting of notices should only occur after the LIRAB has cured the defects that raise barriers to the disabled and bring the website into compliance with disability laws.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Fritz", written in a cursive style.

Peter L. Fritz

URL: <http://labor.hawaii.gov/lirab/>

Category	Benchmark against sites	
Overall Quality	5 pages with quality issues	⊗ worse than average
<a href="#">Errors</a>	1 pages with broken links or other errors	⊗ worse than average
<a href="#">Accessibility</a>	5 pages with accessibility problems	⊗ worse than average
<a href="#">Compatibility</a>	0 pages with browser specific issues	⊕ better than average
<a href="#">Privacy</a>	1 pages with privacy issues	⊕ better than average
<a href="#">Search</a>	5 pages with search engine issues	⊗ worse than average
<a href="#">Standards</a>	5 pages have W3C standards issues	⊗ worse than average
<a href="#">Usability</a>	5 pages with usability issues	⊗ worse than average
Totals	10 pages and files checked <i>The evaluation version is limited to checking 10 pages and images.</i>	

**Accessibility issues, indicating problems for older users, people with disabilities or accessibility needs.**

WCAG2	Section	Key
A	508	● Priority A - accessibility users will find it impossible to use some pages
AA		● Priority AA - accessibility users will find it difficult to use some pages

**Priority URL / Description      Guideline**

## Priority 1 Issues (Level A)

- Each A tag must contain text or an IMG with an ALT attribute. [WCAG 2.0 A F89](#)

Add text to the link, or ALT text if the link contains an image. If there is no link text or the ALT tag is blank, screen readers have nothing to read, so read out the URL instead.

<http://labor.hawaii.gov/>

[362](#)

[368](#)

[374](#)

<http://labor.hawaii.gov/dcd/>

[328](#)

[334](#)

[340](#)

<http://labor.hawaii.gov/lirab/>

[326](#)

[332](#)

[338](#)

[398](#)

- This site uses general text like "Click Here" and has no surrounding text to make the context clear. [WCAG 2.0 A F63](#)

Screen readers read text around links to help understand what the link does. If there's no surrounding text and the link text is very general there's no way to work out what the link does.

Additional link text added with the TITLE attribute doesn't work in:

- - NVDA 2014.1 with IE11 (the link title isn't read when tabbing)
  - JAWS 14 with IE11 or Firefox 29 (the link title isn't read when tabbing)
  - WindowEyes 8.4 with IE11 (the link title isn't read when tabbing)

Link text: "Read More"

[364](#)

<a href="http://labor.hawaii.gov/">http://labor.hawaii.gov/</a>	<a href="#">370</a>
	<a href="#">376</a>
Link text: "Read More"	<a href="#">330</a>
<a href="http://labor.hawaii.gov/dcd/">http://labor.hawaii.gov/dcd/</a>	<a href="#">336</a>
	<a href="#">342</a>
Link text: "Read More"	<a href="#">328</a>
<a href="http://labor.hawaii.gov/lirab/">http://labor.hawaii.gov/lirab/</a>	<a href="#">334</a>
	<a href="#">340</a>

- This page has links to a PDF file, but does not provide a link to download Acrobat Reader. [Section 508 1194.22 \(m\)](#)

There should include a link to download Acrobat Reader. When a web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with 1194.21(a) through (l).

<a href="http://labor.hawaii.gov/">http://labor.hawaii.gov/</a>	<a href="#">339</a>
<a href="http://labor.hawaii.gov/dcd/">http://labor.hawaii.gov/dcd/</a>	<a href="#">311</a>
<a href="http://labor.hawaii.gov/hlrb/">http://labor.hawaii.gov/hlrb/</a>	<a href="#">315</a>
	<a href="#">316</a>

- This page has markup errors, causing screen readers to miss content. [WCAG 2.0 A F70](#)

Fix the errors listed on the Standards tab of this report. Markup errors like missing end tags mean screen readers may skip important content.

<a href="http://labor.hawaii.gov/">http://labor.hawaii.gov/</a>	<a href="#">324</a>	<a href="#">403</a>
	<a href="#">406</a>	
<a href="http://labor.hawaii.gov/dcd/">http://labor.hawaii.gov/dcd/</a>	<a href="#">369</a>	<a href="#">372</a>
<a href="http://labor.hawaii.gov/hcrc/">http://labor.hawaii.gov/hcrc/</a>	<a href="#">364</a>	<a href="#">367</a>
<a href="http://labor.hawaii.gov/lirab/">http://labor.hawaii.gov/lirab/</a>	<a href="#">360</a>	<a href="#">363</a>

**General usability issues, indicating navigation problems for all users.**

- ⊗ Usability.gov Guidelines - Some pages violate these guidelines.
- ⊗ W3C Best Practices - Some pages violate these guidelines.
- ✓ Readability - No issues found.

Priority	URL / Description	Guideline
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Line

**Priority 1 Issues**

- Users should be able to quickly look at each link and tell where it goes. [Usability.gov 10:1](#)

**Priority 2 Issues**

- Omitting IMG WIDTH or HEIGHT attributes means page text jumps about as images load. [Usability.gov 14:3](#)
- The IMG WIDTH and HEIGHT attributes don't match the actual image size. This means the image will be scaled or distorted. [W3C](#)

**Priority 3 Issues**

- Use bold text sparingly - for one or two words or a short phrase. [Usability.gov 11:5](#)
- Use link text between 3 and 80 characters so it's long enough to be understood, but avoids line wrapping. [Usability.gov 10:11](#)

**Priority 5 Issues**

- Capitalize the first letter of the first word in lists. [Usability.gov 12:9](#)