

S.B. NO. 2896

JAN 27 2016

A BILL FOR AN ACT

RELATING TO THE PREVENTION OF UNFAIR LABOR PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 377-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any party in interest may file with the board a written complaint, on a form provided by the board, charging any person with having engaged in any specific unfair labor practice. The board shall serve or require the complainant to serve a copy of the complaint upon the person charged, hereinafter referred to as the respondent. If the board has reasonable cause to believe that the respondent is a member of or represented by a labor union, then service upon an officer of the union shall be deemed to be service upon the respondent. Service may be by delivery to the person, or by mail or ~~[by telegram.]~~ electronic service through a company designated by the board, to the person's last known address. Any other person claiming interest in the dispute or controversy, as an employer, an employee or their representative, shall be made a party upon proof of the interest. The board may bring in additional parties by service of a copy of the complaint. Only one complaint shall issue against a person with respect to a single

1 controversy, but any complaint may be amended in the discretion of
2 the board at any time prior to the issuance of a final order based
3 thereon. The respondent may file an answer to the original or
4 amended complaint but the board may find to be true any allegation
5 in the complaint in the event either no answer is filed or the
6 answer neither specifically denies nor explains the allegation nor
7 states that the respondent is without knowledge concerning the
8 allegation. The respondent shall have the right to appear in
9 person or otherwise give testimony at the place and time fixed in
10 the notice of hearing. The hearing on the complaint shall be
11 before either the board or a hearings officer of the board, as the
12 board may determine.

13 The board shall fix a time for the hearing on the complaint,
14 which shall be not less than ten nor more than forty days after the
15 filing of the complaint or amendment thereof [~~and notice shall be~~
16 ~~given to each party by service on the party personally or by~~
17 ~~mailing a copy thereof to the party at the party's last known post~~
18 ~~office address at least ten days before the hearing]~~.

19 Notwithstanding section 91-9.5, in any hearing conducted by the
20 board, all parties shall be given written notice of the hearing by
21 first class mail or by electronic service through a company
22 designated by the board at least fifteen days before the scheduled

1 date of the hearing. In case a party in interest is located
2 without the State and has no known [~~known post office~~] address
3 within the State[~~7~~] and no known electronic mail address, a copy of
4 the complaint and copies of all notices shall be filed in the
5 office of the lieutenant governor and shall also be sent by
6 [~~registered~~] first class mail to the last known [~~post office~~]
7 address of the party. Such filing and mailing shall constitute
8 sufficient service with the same force and effect as if served upon
9 a party located within the State. The hearing may be adjourned
10 from time to time in the discretion of the board and hearings may
11 be held at such places as the board shall designate.

12 In all proceedings under this chapter before the board, each
13 member of the board may issue subpoenas and administer oaths.
14 Depositions may be taken in the manner prescribed by law. No
15 person shall be excused from attending and testifying or from
16 producing books, records, correspondence, documents, or other
17 evidence in obedience to the subpoena on the ground that the
18 testimony or evidence required of the person may tend to
19 incriminate the person or subject the person to a penalty or
20 forfeiture under the laws of the State, but such person shall not
21 be prosecuted or subjected to any penalty or forfeiture for or on
22 account of any transaction, matter, or thing concerning which the

1 person may testify or produce evidence, documentary or otherwise,
2 in such proceedings. Such person so testifying shall not be exempt
3 however, from prosecution and punishment for perjury committed in
4 so testifying.

5 Any person who wilfully and unlawfully fails or neglects to
6 appear or to testify or to produce books, papers, and records as
7 required, shall, upon application to a circuit judge, be ordered to
8 appear before the board, [~~there to testify or produce evidence if~~
9 ~~so ordered,~~] and failure to obey the order may be punished as a
10 contempt of court.

11 Each witness who appears before the board by subpoena shall
12 receive for the witness' attendance the fees and mileage provided
13 for witnesses in civil cases in courts of record, which shall be
14 audited and paid by the State in the same manner as other expenses
15 are audited and paid, upon the presentation of properly verified
16 vouchers approved by the board."

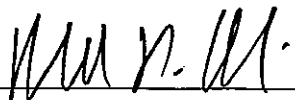
17 SECTION 2. Statutory material to be repealed is bracketed and
18 stricken. New statutory material is underscored.

19 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:



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BY REQUEST

Report Title:

Hawaii Employment Relations Act; Prevention of Unfair Labor Practices

Description:

Allows the Hawaii Labor Relations Board the option of serving complaints and notices of hearings via first class mail and also allow service by electronic means.

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

JUSTIFICATION SHEET

SB. NO. 2896

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO THE PREVENTION OF UNFAIR LABOR PRACTICES.

PURPOSE: To clarify that the Hawaii Labor Relations Board (Board) may serve complaints and notices of hearings on parties by first class mail and also allow service by electronic means.

MEANS: Amend section 377-9(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 377-9(b), HRS, requires unfair labor practice complaints to be served "by delivery to the person, or by mail or by telegram." This proposal deletes the reference to telegram and replaces it with electronic service, to keep up with changes in technology.

Additionally, the proposal provides that notice of the hearing may be provided by written notice by first class mail or by electronic service through a company designated by the Board at least fifteen days before the hearing. This revision is similar to the language currently used in section 89-5.1, which governs collective bargaining in public employment, which is the public employment counterpart to the Hawaii Employment Relations Act.

Therefore, if the measure is enacted, the procedures before the Board will be identical whether the complaint involves an unfair labor practice under chapter 377, HRS, or a prohibited practice complaint under chapter 89, HRS.

The Board desires to implement an electronic filing system to save the Board and parties

the cost of postage and paper, as well as accommodate parties who are not located on Oahu and who may be disadvantaged by having to mail documents.

Impact on the public: The electronic service of complaints and notices is a faster and less expensive way to provide notice to parties. The Board intends to provide in its administrative rules that a party not represented by counsel may elect to continue filing paper documents with the board and continue to serve, and be served, paper copies of documents by mail.

Impact on the department and other agencies: A significant, positive fiscal impact will result for the department and the Board and potentially the Department of the Attorney General. In addition to the cost savings from electronic notice instead of mailing, clerical labor savings would result and make operations more efficient.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LBR161.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.