



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

S.B. NO. 2460, RELATING TO PRIVATE SECTOR COLLECTIVE BARGAINING RIGHTS.

BEFORE THE:

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

DATE: Wednesday, February 04, 2026 **TIME:** 3:01 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Gary Kam, Deputy Attorney General

Chair Elefante and Members of the Committee:

The Department of the Attorney General offers the following comments.

The purpose of this bill is to ensure that the labor rights of covered private-sector workers are protected by the Hawaii Employment Relations Act during periods of thirty days or more when the National Labor Relations Board (NLRB) lacks a quorum and has not successfully exercised jurisdiction over the workers pursuant to a federal district court order during that period.

The NLRB has exclusive jurisdiction over matters covered by the National Labor Relations Act (NLRA). *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959). Under the doctrine of *Garmon* preemption, state law is precluded where the conduct regulated is arguably protected or prohibited by sections 7 or 8 of the NLRA. *Id.* at 244-45. Courts have applied this preemption even when the NLRB lacks a quorum and is unable to act. See *Amazon.com Servs. LLC v. N.Y. State Pub. Emp. Rels. Bd.*, No. 25-CV-5311(EK)(MMH), 2025 WL 3295071 at *3-4 (E.D.N.Y. 2025).

Accordingly, although the bill seeks to address a legitimate concern, the State may lack jurisdiction to regulate conduct that is arguably protected or prohibited under sections 7 and 8 of the NLRA, as such regulation would be subject to challenge that is preempted by federal law.

We respectfully ask that the Committee consider our comments. Thank you for the opportunity to testify on this bill.



UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

THE SENATE
KA 'AHA KENEKOA

THE THIRTY-THIRD LEGISLATURE
REGULAR SESSION OF 2026

COMMITTEE ON LABOR AND TECHNOLOGY

Senator Brandon J.C. Elefante, Chair
Senator Rachele Lamosao, Vice Chair

Wednesday, February 4, 2026, 3:01 PM
Conference Room 225 & Videoconference

Re: Testimony on SB2460 – RELATING TO PRIVATE SECTOR COLLECTIVE BARGAINING RIGHTS

Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) supports HB2460, which expands under certain circumstances the types of employees protected by the Hawai‘i Employment Relations Act to include independent contractors and all individuals subject to the jurisdiction of the National Labor Relations Act of 1935.

The National Labor Relations Board (“NLRB”) was established by Congress in 1945, via the Wagner Act, to guarantee and enforce the working rights of private sector employees. While federal laws regarding these rights generally preempt state law, state law can supersede federal in certain situations if it provides greater protections. With the current challenges at the NLRB, which have recently included lack of quorum, case backlog, legal challenges, and chronic underfunding, the agency has been deemed ineffective in addressing worker grievances.

UPW is known primarily as one of Hawaii’s largest public sector unions, but we also represent approximately 1,500 healthcare workers in the private sector. While UPW has been able to successfully negotiate contracts for our private sector members in the last two years, we recognize that provisions in this bill may be needed in the future if problems the NLRB is currently plagued with are not sustainably resolved.

We would like to note that there is concern that this bill would add to the current backlog at the Hawaii Labor Relations Board and could possibly delay decisions that impact employees in the public sector. Despite this concern, it appears that this measure is needed given the recent troubles at the NLRB.

Mahalo for the opportunity to testify in support of this measure.

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WRITTEN TESTIMONY ONLY

LATE

Testimony Presented Before the
Senate Committee on Labor and Technology
The Honorable Brandon J.C. Elefante, Chair
The Honorable Rachele Lamosao, Vice Chair

Wednesday, February 4, 2026 at 3:01 p.m.
Via Videoconference
Conference Room 225, State Capitol

by Dwight Takamine
Chairperson, Hawaii Labor Relations Board

S.B. No. 2460, Relating to Private Sector Collective Bargaining Rights

Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

The Hawaii Labor Relations Board (HLRB) takes no position on S.B. No. 2460, which seeks “to ensure that the labor rights of covered private sector workers in the State are protected by the Hawaii Employment Relations Act during periods of thirty days or more when the National Labor Relations Board lacks a quorum and has not already successfully exercised jurisdiction over the workers,” but respectfully submits comments on this measure.

As presently drafted, S.B. No. 2460 would expand coverage under HRS Chapter 377, the Hawaii Employment Relations Act (HERA), to private sector employees subject to the National Labor Relations Act (NLRA) under certain circumstances but would abolish existing rights provided by HERA to individuals subject to the NLRA but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction unless those same certain circumstances exist.

In addition, S.B. No. 2460 would not provide any additional resources to HLRB at this time due to the “intermittent” nature of this proposal. HLRB respectfully requests that an appropriation provision for additional staff and operating expenses be included in this bill so that HLRB can immediately prepare to implement this measure, if enacted, upon its effective date.

Thank you for the opportunity to comment on S.B. No. 2460.