

JAN 25 2012

A BILL FOR AN ACT

RELATING TO NOTIFICATION OF CHAPTER 91 HEARINGS.

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

1 SECTION 1. Section 91-9.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~f~~]§91-9.5[~~f~~] **Notification of hearing; service.** (a)
4 Unless otherwise provided by law, all parties shall be given
5 written notice of hearing by [~~registered or certified~~] first
6 class mail [~~with return receipt requested~~] at least fifteen days
7 before the hearing.

8 (b) Unless otherwise provided by law, if service by
9 [~~registered or certified~~] first class mail is not made because
10 [~~of the refusal to accept service or~~] the board or its agents
11 have been unable to ascertain the address of the party after
12 reasonable and diligent inquiry, the notice of hearing may be
13 given to the party by publication at least once in each of two
14 successive weeks in a newspaper of general circulation. The
15 last published notice shall appear at least fifteen days prior
16 to the date of the hearing."


S.B. NO. 2836

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 Statutory material to be repealed is bracketed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

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

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INTRODUCED BY: 

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BY REQUEST

Report Title:

Notification of Chapter 91 Hearing

Description:

Authorizes notification of chapter 91, Hawaii Revised Statutes, agency hearings, by written notice of hearing by first class mail and eliminates requirement for notice by registered or certified mail with return receipt.

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

DEPARTMENT: Labor and Industrial Relations

TITLE: A BILL FOR AN ACT RELATING TO NOTIFICATION OF CHAPTER 91 HEARINGS.

PURPOSE: To authorize notification of chapter 91 agency hearings by written notice of hearing by first class mail and eliminate requirement for notice by registered or certified mail with return receipt.

MEANS: Amend section 91-9.5, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 91-9.5, HRS requires notices of hearing be sent by registered or certified mail with return receipt requested at least fifteen days before the hearing. Each notice of hearing that is sent by certified mail with return receipt requested at the time of mailing costs \$5.15. Each notice of hearing that is sent by registered mail (minimum declared value of \$0.00) with return receipt requested at the time of mailing costs \$13.05. An amendment of section 91-9.5 to allow a notice of hearing by first class mail would bring down the cost of mailing of the notice to \$.44 (one ounce).

For state agencies such as the Labor and Industrial Relations Appeals Board (Board) that expects to send about 400 notices by certified mail with return receipt for the year 2011, the change would mean substantial savings. It costs the Board \$2,060.00 to send 400 notices by certified mail with return receipt ($400 \times \$5.15 = \$2,060.00$). In comparison, it would cost \$176.00 ($400 \times \$.44 = \176.00) to send 400 notices by first class mail. By allowing notices to be sent by first class mail, the Board stands to save about \$1,884.00 in mailing costs per year. Other State administrative agencies or divisions in the Department of Labor and Industrial Relations that conduct chapter 91 hearings (such as the Hawaii Labor Relations Board, Civil Rights Commission,

and Wage Standards Division) would also benefit from the cost savings if notices of hearing are allowed to be sent by first class mail.

The Hawaii Labor Relations Board spent \$939.12 for certified mailing of notices of hearing in 2009, \$603.72 in 2010 and \$301.86 in 2011. The Wage Standards Division spent about \$600.00 for certified mailing of notices of hearing in 2011. The Civil Rights Commission spent \$10.00 for certified mailing of notices of hearing in 2011.

The department of labor and industrial relations could save close to \$3,000.00 per year in certified mailing costs under this proposed legislation.

Sending notices of hearing by first class mail is an effective method of service of notice and constitutes reasonable service. At the Board, notices of initial, settlement and status conferences and notices of motions, which are not required to be sent by certified or registered mail under section 91-9.5, are being sent by first class mail. Less than one percent of all notices sent to parties return to the Board as undeliverable.

The basis for chapter 91 was the Model State Administrative Procedures Act (1961). The model act contains a provision similar to section 91-9.5, HRS, regarding the content of a notice of hearing, but it did not contain a provision similar to Section 91-9.5 with respect to the mailing of a notice of hearing.

Section 91-9.5 was added to chapter 91 in 1976. According to the legislative committee reports, the provision was added because the Legislature was interested in establishing some consistency regarding what constituted "reasonable notice." The committee reports stated that if other laws provide for different methods of giving notice, then those laws would control. It appears from the committee reports that the Legislature was not wedded to the requirement of sending notices by registered or certified mail. In fact, there

is statutory authority under section 383-38(a), HRS, that allows notices of hearing in unemployment claims appeals to be sent by first class mail.

Impact to the public: Party litigants will continue to receive reasonable notice of hearing as first class mail has demonstrated to be an effective method of service.

Impact on the department and other agencies: Substantial savings for costs of mailing notices of chapter 91 hearings for this department and all other administrative agencies required to send notices of chapter 91 hearings by registered or certified mail with return receipt.

GENERAL FUND: None.

OTHER FUNDS: None.

PBBS PROGRAM
DESIGNATION: LBR-812.

OTHER AFFECTED
AGENCIES: Civil Rights Commission, Hawaii Labor Relations Board, Wage Standards Division, Land Use Commission, Public Utilities Commission, Department of Commerce and Consumer Affairs, Department of Human Services, Liquor Commission, etc.

EFFECTIVE
DATE: Upon approval.