



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

GOV. MSG. NO. 852

July 11, 2006

The Honorable Robert Bunda, President
and Members of the Senate
Twenty-Third State Legislature
State Capitol, Room 003
Honolulu, Hawaii 96813

Dear Mr. President and Members of the Senate:

I am transmitting herewith HB266 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB266 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO
LABOR.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

VETO

HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 266
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO LABOR.

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

- 1 SECTION 1. Section 89-9, Hawaii Revised Statutes, is
2 amended as follows:
- 3 1. By amending subsection (d) to read as follows:
- 4 "(d) Excluded from the subjects of negotiations are
5 matters of classification, reclassification, benefits of but not
6 contributions to the Hawaii employer-union health benefits trust
7 fund or a voluntary employees' beneficiary association trust;
8 recruitment; examination; initial pricing; and retirement
9 benefits except as provided in section 88-8(h). The employer
10 and the exclusive representative shall not agree to any proposal
11 that would be inconsistent with the merit principle or the
12 principle of equal pay for equal work pursuant to section 76-1
13 or that would interfere with the rights and obligations of a
14 public employer to:
- 15 (1) Direct employees;
- 16 (2) Determine qualifications, standards for work, and the
17 nature and contents of examinations;



1 (3) Hire, promote, transfer, assign, and retain employees
2 in positions;

3 (4) Suspend, demote, discharge, or take other disciplinary
4 action against employees for proper cause;

5 (5) Relieve an employee from duties because of lack of
6 work or other legitimate reason;

7 (6) Maintain efficiency and productivity, including
8 maximizing the use of advanced technology, in
9 government operations;

10 (7) Determine methods, means, and personnel by which the
11 employer's operations are to be conducted; and

12 (8) Take such actions as may be necessary to carry out the
13 missions of the employer in cases of emergencies.

14 ~~[The employer and the exclusive representative may~~
15 ~~negotiate procedures governing the promotion and transfer of~~
16 ~~employees to positions within a bargaining unit; the suspension,~~
17 ~~demotion, discharge, or other disciplinary actions taken against~~
18 ~~employees within the bargaining unit; and the layoff of~~
19 ~~employees within the bargaining unit. Violations of the~~
20 ~~procedures so negotiated may be subject to the grievance~~
21 ~~procedure in the collective bargaining agreement.] This~~

1 subsection shall not be used to invalidate provisions of
2 collective bargaining agreements in effect on and after June 30,
3 2007; and shall not preclude negotiations over the procedures
4 and criteria on promotions, transfers, assignments, demotions,
5 layoffs, suspensions, terminations, discharges, or other
6 disciplinary actions as a permissive subject of bargaining
7 during collective bargaining negotiations or negotiations over a
8 memorandum of agreement, memorandum of understanding, or other
9 supplemental agreement.

10 Violations of the procedures and criteria so negotiated may
11 be subject to the grievance procedure in the collective
12 bargaining agreement."

13 2. By amending subsection (f) to read as follows:

14 "(f) The repricing of classes within an appropriate
15 bargaining unit may be negotiated as follows:

16 (1) At the request of the exclusive representative and at
17 times allowed under the collective bargaining
18 agreement, the employer shall negotiate the repricing
19 of classes within the bargaining unit. The negotiated
20 repricing actions that constitute cost items shall be
21 subject to the requirements in section 89-10[-]; and



1 (2) If repricing has not been negotiated under paragraph
2 (1), the employer of each jurisdiction shall ensure
3 establishment of procedures to periodically review, at
4 least once in five years, unless otherwise agreed to
5 by the parties, the repricing of classes within the
6 bargaining unit. The repricing of classes based on
7 the results of the periodic review shall be at the
8 discretion of the employer. Any appropriations
9 required to implement the repricing actions that are
10 made at the employer's discretion shall not be
11 construed as cost items."

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

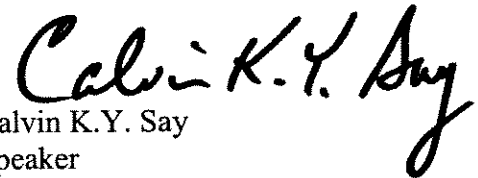
14 SECTION 3. This Act shall take effect upon its approval.

HB No. 266 HD 1 SD 2 CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Calvin K.Y. Say
Speaker
House of Representatives



Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: May 2, 2006
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the Senate of the Twenty-Third Legislature of the State of Hawaii, Regular Session of 2006.



Robert Bunda
President of the Senate



Paul Kawaguchi
Clerk of the Senate

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 266, entitled "A Bill for an Act Relating to Labor," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 266 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, LINDA LINGLE, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 266 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 26th
day of June, 2006.



LINDA LINGLE
Governor of Hawaii

EXECUTIVE CHAMBERS

HONOLULU

July 10, 2006

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 266

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 266, entitled "A Bill for an Act Relating to Labor."

The stated purpose of House Bill No. 266 is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining. However, the bill would not achieve the stated purpose and would blur the delineations that have historically existed in statute.

This bill is objectionable because it constitutes an unacceptable infringement upon management rights currently protected under section 89-9(d), Hawaii Revised Statutes. It attempts to overturn the case of United Public Workers, AFSCME, Local 646, AFL-CIO v. Hannemann, 106 Hawaii 359 (2005), the Supreme Court of Hawaii case that held the City and County of Honolulu's transfer of refuse workers from the Pearl City baseyard to the Honolulu baseyard was not subject to collective bargaining. The Hannemann case reaffirmed management rights as set forth in section 89-9(d). Historically, section 89-9, Hawaii Revised Statutes, has been recognized as the provision that sets into law protections that do not allow management to bargain away the right to direct its workforce and oversee governmental operations. This ensures that Public Employers are able to manage their operations efficiently and effectively to serve the public.

This bill erodes management rights by permitting negotiations over criteria governing promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, and other disciplinary actions. Allowing

negotiations on the criteria management uses to act on matters such as layoffs, transfers, and assignments involves labor in the fundamental decision-making process of management. Whereas negotiating procedures may impact the means used to reach an outcome, negotiating the criteria could impact the nature of the outcome itself, thus interfering with the primary rights and obligations of public employers.

In permitting negotiations over assignments, this bill would adversely impact the delivery of services to the public, particularly in emergency situations. The bill provides for collective bargaining over a supplemental agreement or a memorandum of understanding and such mutual agreements cover individual employees and specific situations. Therefore, this bill would adversely impact the employer's ability to make assignments of specific employees and groups of employees.

The other Public Employer jurisdictions have advised me that this bill would critically impede their ability to manage their workforce and protect the health and safety of the public. State and county governments would face serious difficulties in carrying out civil defense, public safety, health, welfare, and other public service functions. For example, if this bill became law, it could result in restrictions on the deployment of lifeguards, emergency medical services personnel, and other health and safety staff who are expected to respond to and adjust their work locations and hours as emergencies and unanticipated events may dictate. Such restrictions could result in a lowering of services to the public and possibly delay response time in cases where immediate action by government is required.

Furthermore, this bill added a provision to section 89-9(d) stating that section 89-9(d) shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007. However, this provision is confusing and

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 266
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contradictory because it does not address issues covered in the collective bargaining agreements addressed in this bill, but attempts to cover issues which may or may not arise in the future.

For the foregoing reasons, I am returning House Bill No. 266 without my approval.

Respectfully,

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

LINDA LINGLE
Governor of Hawaii