

STAND. COM. REP. NO. 477-06

Honolulu, Hawaii  
Feb 17, 2006

RE: H.B. No. 2951  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 2951 entitled:

"A BILL FOR AN ACT RELATING TO LABOR,"

begs leave to report as follows:

The purpose of this bill is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining. Among other things, this bill:

- (1) Revises statutory language that prohibits an agreement between an employer and an exclusive employee representative that was inconsistent with the merit principle or the principle of equal pay;
- (2) Revises the prohibition of an agreement between an employer and an exclusive employee representative that would interfere with various rights and obligations of a public employer; and
- (3) Provides that an employer may negotiate over permissive subjects of collective bargaining, including:
  - (A) The merit principle;
  - (B) Principle of equal pay for equal work;

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- (C) Qualifications, standards for work, and the nature and content of examinations;
- (D) Standards to maintain efficiency and productivity;
- (E) The method and means by which government operations are to be conducted; and
- (F) Actions as may be necessary to carry out the mission of the employer in cases of emergencies.

The Hawaii Government Employees Association supported this bill. The Department of Human Resources Development, Department of Labor and Industrial Relations, Office of Collective Bargaining, Judiciary, Department of Human Resources of the City and County of Honolulu, Department of Civil Service of the County of Hawaii, Department of Personnel Services of the County of Maui, Fire Department of the County of Hawaii, Honolulu Police Department, Maui Police Department, and Hawaii Police Department opposed this measure.

Your Committee finds that pursuant to Act 399, Session Laws of Hawaii 1988, the Legislature amended subsection 89-9(d), Hawaii Revised Statutes (HRS), to expand the scope of collective bargaining in the public sector. The amendment was intended to protect contract provisions that would otherwise be considered invalid due to a literal interpretation of what are considered to be management rights.

Under current collective bargaining agreements, provisions regarding standards, criteria, and procedures relating to employee hiring, promotions, transfer, assignment, retention, suspension, demotion, discharge, disciplinary actions, layoffs, and displacement for lack of work and other similar personnel actions are widely incorporated and utilized.

However, current language in section 89-9, HRS, that defines the scope and limits on negotiable subjects for collective bargaining purposes in the public sector is contradictory and confusing. For example, section 89-9 (a), HRS, requires public employers and exclusive bargaining representatives to negotiate over "wages, hours, and other terms and conditions of employment." While Section 89-9 (a), HRS, establishes the duty to bargain over these items to be an "obligation" of both employer and employees, section 89-9 (d), HRS, appears to suggest otherwise.



Your Committee finds that negotiations over procedures and criteria of promotions, transfers, assignments demotions, layoffs, suspension, terminations, discharges, or other disciplinary actions, and negotiations over the impact of transfers, assignments, and layoffs, are consistent with the underlying purpose of chapter 89, Hawaii Revised Statutes. Exclusive representatives and public employees have negotiated over these subject matters since 1970. This measure attempts to clarify the rights of public employees to engage in collective bargaining under chapter 89, Hawaii Revised Statutes, in light of recent court decisions, Hoopai v. Civil Service Comm'n, 106 Hawai'i 205 (2004) and United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawai'i 359 (2005).

However, your Committee understands the concerns raised by the public employers. Accordingly, your Committee has amended this measure by:

- (1) Clarifying that negotiations over permissive subjects of collective bargaining does not preclude negotiations during collective bargaining over the procedures for and effects of assignments, transfers, promotions, demotions, layoffs, terminations, discharges, or other disciplinary actions of employees;
- (2) Changing its effective date to July 1, 2050, to facilitate further discussion; and
- (3) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2951, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2951, H.D. 1, and be referred to the Committee on Finance.



Respectfully submitted on  
behalf of the members of the  
Committee on Labor & Public  
Employment,

  
KIRK CALDWELL, Chair



