

JAN 22 2008

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**A BILL FOR AN ACT**

RELATING TO INTEREST ARBITRATION.

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

1           SECTION 1. Section 89-11, Hawaii Revised Statutes, is  
2 amended by amending subsections (f) and (g) to read as follows:

3           " (f) An arbitration panel in reaching its decision shall  
4 give weight to the following factors and shall include in its  
5 written report or decision an explanation of how the factors  
6 were taken into account:

7           (1) The lawful authority of the employer, including the  
8 ability of the employer to use special funds only for  
9 authorized purposes or under specific circumstances  
10 because of limitations imposed by federal or state  
11 laws or county ordinances, as the case may be;

12           (2) Stipulations of the parties;

13           (3) The interests and welfare of the public;

14           (4) The financial ability of the employer to meet these  
15 costs[+] and the additional potential costs as  
16 presented by the employer as if the arbitration cost  
17 item parameters were to be applied to all other  
18 bargaining units; provided that the employer's ability

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1 to fund cost items shall be based on constitutional,  
2 statutory, and ordinance provisions governing  
3 appropriations and budgeting, and shall not be  
4 predicated on the premise that the employer may  
5 increase or impose new taxes, fees, or charges, or  
6 develop other sources of revenues;

7 (5) The present and future general economic condition of  
8 the counties and the State;

9 (6) Comparison of wages, hours, and conditions of  
10 employment of the employees involved in the  
11 arbitration proceeding with the wages, hours, and  
12 conditions of employment of other persons performing  
13 similar services [~~and of other state and county~~  
14 ~~employees~~] in Hawaii [~~and~~]. Wage comparison to employees  
15 outside of the State of Hawaii is prohibited;

16 (7) The average consumer prices for goods or services,  
17 commonly known as the cost of living;

18 (8) The overall compensation presently received by the  
19 employees, including direct wage compensation,  
20 vacation, holidays and excused time, insurance and  
21 pensions, medical and hospitalization benefits, the

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1 continuity and stability of employment, and all other  
2 benefits received; and

3 (9) Changes in any of the foregoing circumstances during  
4 the pendency of the arbitration proceedings [~~and~~

5 ~~(10) Such other factors, not confined to the foregoing,~~  
6 ~~which are normally or traditionally taken into~~  
7 ~~consideration in the determination of wages, hours,~~  
8 ~~and conditions of employment through voluntary~~  
9 ~~collective bargaining, mediation, arbitration, or~~  
10 ~~otherwise between the parties, in the public service~~  
11 ~~or in private employment].~~

12 (g) The decision of the arbitration panel shall be final  
13 and binding upon the parties on all provisions submitted to the  
14 arbitration panel. If the parties have reached agreement with  
15 respect to the amounts of contributions by the State and  
16 counties to the Hawaii employer-union health benefits trust fund  
17 by the tenth working day after the arbitration panel issues its  
18 decision, the final and binding agreement of the parties on all  
19 provisions shall consist of the panel's decision and the amounts  
20 of contributions agreed to by the parties. If the parties have  
21 not reached agreement with respect to the amounts of  
22 contributions by the State and counties to the Hawaii employer-

1 union health benefits trust fund by the close of business on the  
2 tenth working day after the arbitration panel issues its  
3 decision, the parties shall have five days to submit their  
4 respective recommendations for such contributions to the  
5 legislature, if it is in session, and if the legislature is not  
6 in session, the parties shall submit their respective  
7 recommendations for such contributions to the legislature during  
8 the next session of the legislature. In such event, the final  
9 and binding agreement of the parties on all provisions shall  
10 consist of the panel's decision and the amounts of contributions  
11 established by the legislature by enactment, after the  
12 legislature has considered the recommendations for such  
13 contributions by the parties. It is strictly understood that no  
14 member of a bargaining unit subject to this subsection shall be  
15 allowed to participate in a strike on the issue of the amounts  
16 of contributions by the State and counties to the Hawaii  
17 employer-union health benefits trust fund. The parties shall  
18 take whatever action is necessary to carry out and effectuate  
19 the final and binding agreement. The parties may, at any time  
20 and by mutual agreement, amend or modify the panel's decision.  
21       Agreements reached pursuant to the decision of an  
22 arbitration panel and the amounts of contributions by the State

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1 and counties to the Hawaii employer-union health benefits trust  
2 fund, as provided herein, shall not be subject to ratification  
3 by the employees concerned. All items requiring any moneys for  
4 implementation shall be subject to appropriations by the  
5 appropriate legislative bodies and the employer shall submit all  
6 such items within ten days after the date on which the agreement  
7 is entered into as provided herein, to the appropriate  
8 legislative bodies. The employer may also report to the  
9 respective legislative bodies any perceived failures by the  
10 arbitration panel to properly apply any of the factors in  
11 subsection (f). The respective legislative bodies may reject  
12 the cost items submitted to them and may do so for any reason,  
13 including, but not limited to, a determination that the  
14 arbitration panel failed to properly apply the factors in  
15 subsection (f). If the state legislature or the legislative  
16 body of any county rejects any of the cost items submitted to  
17 them, all cost items submitted shall be returned to the parties  
18 for further bargaining."

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

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

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INTRODUCED BY:

  
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BY REQUEST

**Report Title:**

INTEREST ARBITRATION

**Description:**

Modifies the factors that an arbitration panel must consider when reaching collective bargaining wage decisions including considering the impact of pay increases on other bargaining units, compliance with budget provisions, and ensuring that wage comparisons are kept within Hawaii's labor market.

## JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor,  
Office of Collective Bargaining

TITLE: A BILL FOR AN ACT RELATING TO INTEREST  
ARBITRATION.

PURPOSE: To modify the factors that the arbitration  
panel must consider in interest arbitration  
decisions to include: (1) the impact of pay  
increase to other bargaining units in  
determining the amount of pay increase; (2)  
compliance with constitutional and statutory  
appropriation and budgeting provisions; and  
(3) the comparison of wages, hours, and  
conditions of employment to that of other  
persons performing similar services in  
Hawaii.

MEANS: Amend section 89-11(f) and (g), Hawaii  
Revised Statutes.

JUSTIFICATION: A major concern of public employers is that  
the statutory factors for consideration by  
the arbitration panel do not reflect the  
"fiscal reality" faced by the Executive  
Branch in collective bargaining. The  
factors assume that one arbitrated decision  
has no impact on arbitrations and  
negotiations with other units.  
Historically, the leading arbitration  
decision has become the benchmark for  
subsequent arbitrations and negotiations  
with the other units. Arbitrators have not  
considered the impact of pay increases on  
other bargaining units in determining the  
amount of pay raises. The reality is that  
the economic awards to one bargaining unit  
influence subsequent negotiations involving  
other bargaining units. Therefore, the  
public employers' ability to pay should be  
measured not only in terms of whether the  
public employers have the ability to pay the  
particular bargaining unit in dispute, but  
whether the public employers have the



ability to pay all the other bargaining units.

In addition, the factors do not consider the constitutional and statutory requirements related to appropriations and budgeting. The Executive Branch is bound by a balanced six-year financial plan and must use the official revenue forecasts of the Council on Revenues. In the past, arbitrators have not considered the Council's forecasts or the out-year impact in their decisions.

Finally, there is some confusion and ambiguity as to what should be compared under factor (6) in section 89-11(f). The State's position is that the arbitration panel should be required to compare the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services in Hawaii. No wage comparison should be made to people working outside of Hawaii. The rationale for this is because Hawaii's labor market is highly localized and relatively immobile. Accordingly, the comparison should be limited to other persons performing similar services in Hawaii.

Impact on the public: This measure clarifies some of the factors that the arbitration panel is required to consider, and will help improve collective bargaining and the arbitration process. This measure will also help better match arbitrated decision with available resources.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

Not applicable.

OTHER AFFECTED  
AGENCIES:

Department of Budget and Finance, and all public sector employers involved in interest arbitration, including the City and County of Honolulu, the Counties of Hawaii, Kauai, and Maui, the Hawaii Health Systems Corporation, and the Judiciary.

EFFECTIVE DATE:

Upon approval.