

# S.B. NO. 2723

JAN 25 2010

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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 to fulfill the employer's wage  
16 obligations to the balance of the workforce if the  
17 arbitration cost item parameters were universally  
18 applied to all other bargaining units; provided that

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1 the employer's ability to fund cost items shall be  
2 based on constitutional, statutory, and ordinance  
3 provisions governing appropriations and budgeting  
4 (including article VII, sections 5, 8, and 9 of the  
5 state constitution, and the six-year financial plan  
6 pursuant to section 37-75) and shall not be predicated  
7 on the premise that the employer may increase or  
8 impose new taxes, fees, or charges, or develop other  
9 sources of revenues;

10 (5) The present and future general economic condition of  
11 the counties and the State;

12 (6) Comparison of wages, hours, and conditions of  
13 employment of the employees involved in the  
14 arbitration proceeding with the wages, hours, and  
15 conditions of employment of other persons performing  
16 similar services [~~, and of other state and county~~  
17 ~~employees~~] in Hawaii [~~+~~], but not services outside of  
18 the State of Hawaii;

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

21 (8) The overall compensation presently received by the  
22 employees, including direct wage compensation,

1 vacation, holidays and excused time, insurance and  
2 pensions, medical and hospitalization benefits, the  
3 continuity and stability of employment, and all other  
4 benefits received; and

5 (9) Changes in any of the foregoing circumstances during  
6 the pendency of the arbitration proceedings[, ~~and~~

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

14 If the arbitration panel issues a decision that includes  
15 terms and conditions different from the terms and conditions  
16 proposed by the employer in its final position, the panel shall  
17 define the unique factors justifying the decision and explain  
18 the basis of the decision.

19 (g) The decision of the arbitration panel shall be final  
20 and binding upon the parties on all provisions submitted to the  
21 arbitration panel. If the parties have reached agreement with  
22 respect to the amounts of contributions by the State and

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

1 of contributions by the State and counties to the Hawaii  
2 employer-union health benefits trust fund. The parties shall  
3 take whatever action is necessary to carry out and effectuate  
4 the final and binding agreement. The parties may, at any time  
5 and by mutual agreement, amend or modify the panel's decision.

6 Agreements reached pursuant to the decision of an  
7 arbitration panel and the amounts of contributions by the State  
8 and counties to the Hawaii employer-union health benefits trust  
9 fund, as provided herein, shall not be subject to ratification  
10 by the employees concerned. All items requiring any moneys for  
11 implementation shall be subject to appropriations by the  
12 appropriate legislative bodies and the employer shall submit all  
13 such items within ten days after the date on which the agreement  
14 is entered into as provided herein, to the appropriate  
15 legislative bodies. To assist the legislature in evaluating the  
16 decision, the employer may also report to the respective  
17 legislative bodies any perceived failures by the arbitration  
18 panel to properly apply any of the factors in subsection (f)."

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

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1 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; Cost Considerations

**Description:**

Ensures fiscal solvency of public employers by modifying the factors that an arbitration panel must consider when making binding contract decisions—including consideration of the impact of pay increases on other bargaining units.

JUSTIFICATION SHEET

DEPARTMENT: Human Resources Development

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 a decision on the employer's wage obligations to the rest of the workforce; (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 wage changes on other bargaining units when determining the amount of wage increases or decreases. 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—which in the current fiscal situation can no longer be afforded by public employers.

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 decisions with available resources.

Impact on the department and other agencies:  
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION: None.

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.