

JAN 27 2010

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# A BILL FOR AN ACT

RELATING TO SCHOOL TEACHERS.

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

1           SECTION 1. The legislature recognized in 1970 the right of  
2 public employees to organize for the purpose of collective  
3 bargaining and enacted Hawaii's collective bargaining law which  
4 is codified in chapter 89, Hawaii Revised Statutes. In enacting  
5 Hawaii's collective bargaining law, the legislature found that  
6 joint decision-making was the modern way of administering  
7 government and in cases where public employees had been granted  
8 the right to share in the decision-making process affecting  
9 wages and working conditions, they had become more responsive  
10 and better able to exchange ideas and information on operations  
11 with their administrators.

12           Since 1970, Hawaii's collective bargaining law has been  
13 reevaluated and amended more than fifty times, with each  
14 amendment reflecting the need for legislative action to respond  
15 to changing times, needs and circumstances. The legislature  
16 finds that it is again at a point in time where Hawaii's  
17 collective bargaining law must be reevaluated and amended to  
18 repair the deteriorating bargaining process that has plagued



1 Hawaii's public school system under Hawaii's present collective  
2 bargaining law.

3 In 1973, Hawaii experienced its first public workers strike  
4 which was between Hawaii's teachers union and the department of  
5 education. This strike lasted eighteen days and resulted in  
6 lost instructional days for Hawaii's public school students that  
7 were never recovered. In 2001, another statewide teachers  
8 strike lasted for twenty days and again resulted in the loss of  
9 instructional days for public school students. Although new  
10 contracts were achieved by reaching agreement between the  
11 teachers union and the department of education in 1972, 1984,  
12 and 1997, teacher strikes were averted in the eleventh hour with  
13 disruption and distractions in classrooms and school operations  
14 because of the uncertainty and disharmony leading up to the new  
15 agreements. In 2009, budgetary restrictions applicable to the  
16 department of education for fiscal years 2009-2010 and 2010-2011  
17 have resulted in a collective bargaining agreement that requires  
18 approximately thirteen thousand public school teachers to take  
19 seventeen furlough days, beginning in the current school year.  
20 This reduction of the public school year by seventeen furlough  
21 days gives Hawaii the shortest school year in the nation and



1 deprives Hawaii's public school students of educational  
2 opportunities they will never get back.

3       The purpose of this Act is to bring stability back to  
4 Hawaii's public school system by changing the collective  
5 bargaining law to allow teachers to exercise their  
6 constitutional right to organize and negotiate as a collective  
7 group, while protecting the rights, needs, and dreams of  
8 Hawaii's public school students by keeping teachers in Hawaii's  
9 classrooms during the contract negotiation process.

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

12       "(d) If an impasse exists between a public employer and  
13 the exclusive bargaining representative of bargaining unit (1),  
14 nonsupervisory employees in blue collar positions; [bargaining  
15 unit (5), ~~teachers and other personnel of the department of~~  
16 ~~education,~~] or bargaining unit (7), faculty of the University of  
17 Hawaii and the community college system, the board shall assist  
18 in the resolution of the impasse as follows:

19       (1) Voluntary mediation. During the first twenty days of  
20 the date of impasse, either party may request the  
21 board to assist in a voluntary resolution of the  
22 impasse by appointing a mediator or mediators,



1 representative of the public from a list of qualified  
2 persons maintained by the board;

3 (2) Mediation. If the impasse continues more than twenty  
4 days, the board shall appoint a mediator or mediators  
5 representative of the public from a list of qualified  
6 persons maintained by the board, to assist the parties  
7 in a voluntary resolution of the impasse. The board  
8 may compel the parties to attend mediation, reasonable  
9 in time and frequency, until the fiftieth day of  
10 impasse. Thereafter, mediation shall be elective with  
11 the parties, subject to the approval of the board;

12 (3) Report of the board. The board shall promptly report  
13 to the appropriate legislative body or bodies the  
14 following circumstances as each occurs:

15 (A) The date of a tentative agreement and whether the  
16 terms thereof are confidential between the  
17 parties;

18 (B) The ratification or failure of ratification of a  
19 tentative agreement;

20 (C) The signing of a tentative agreement;

21 (D) The terms of a tentative agreement; or



1 (E) On or about the fiftieth day of impasse, the  
2 failure of mediation.

3 The parties shall provide the board with the requisite  
4 information; and

5 (4) After the fiftieth day of impasse, the parties may  
6 resort to such other remedies that are not prohibited  
7 by any agreement pending between them, other  
8 provisions of this chapter, or any other law.

9 (e) If an impasse exists between a public employer and the  
10 exclusive representative of bargaining unit (2), supervisory  
11 employees in blue collar positions; bargaining unit (3),  
12 nonsupervisory employees in white collar positions; bargaining  
13 unit (4), supervisory employees in white collar positions;  
14 bargaining unit (5), teachers and other personnel of the  
15 department of education; bargaining unit (6), educational  
16 officers and other personnel of the department of education  
17 under the same salary schedule; bargaining unit (8), personnel  
18 of the University of Hawaii and the community college system,  
19 other than faculty; bargaining unit (9), registered professional  
20 nurses; bargaining unit (10), institutional, health, and  
21 correctional workers; bargaining unit (11), firefighters;  
22 bargaining unit (12), police officers; or bargaining unit (13),



1 professional and scientific employees, the board shall assist in  
2 the resolution of the impasse as follows:

3 (1) Mediation. During the first twenty days after the  
4 date of impasse, the board shall immediately appoint a  
5 mediator, representative of the public from a list of  
6 qualified persons maintained by the board, to assist  
7 the parties in a voluntary resolution of the impasse.

8 (2) Arbitration. If the impasse continues twenty days  
9 after the date of impasse, the board shall immediately  
10 notify the employer and the exclusive representative  
11 that the impasse shall be submitted to a three-member  
12 arbitration panel who shall follow the arbitration  
13 procedure provided herein.

14 (A) Arbitration panel. Two members of the  
15 arbitration panel shall be selected by the  
16 parties; one shall be selected by the employer  
17 and one shall be selected by the exclusive  
18 representative. The neutral third member of the  
19 arbitration panel, who shall chair the  
20 arbitration panel, shall be selected by mutual  
21 agreement of the parties. In the event that the  
22 parties fail to select the neutral third member



1 of the arbitration panel within thirty days from  
2 the date of impasse, the board shall request the  
3 American Arbitration Association, or its  
4 successor in function, to furnish a list of five  
5 qualified arbitrators from which the neutral  
6 arbitrator shall be selected. Within five days  
7 after receipt of such list, the parties shall  
8 alternately strike names from the list until a  
9 single name is left, who shall be immediately  
10 appointed by the board as the neutral arbitrator  
11 and chairperson of the arbitration panel.

12 (B) Final positions. Upon the selection and  
13 appointment of the arbitration panel, each party  
14 shall submit to the panel, in writing, with copy  
15 to the other party, a final position which shall  
16 include all provisions in any existing collective  
17 bargaining agreement not being modified, all  
18 provisions already agreed to in negotiations, and  
19 all further provisions which each party is  
20 proposing for inclusion in the final agreement.

21 (C) Arbitration hearing. Within one hundred twenty  
22 days of its appointment, the arbitration panel



1 shall commence a hearing at which time the  
2 parties may submit either in writing or through  
3 oral testimony, all information or data  
4 supporting their respective final positions. The  
5 arbitrator, or the chairperson of the arbitration  
6 panel together with the other two members, are  
7 encouraged to assist the parties in a voluntary  
8 resolution of the impasse through mediation, to  
9 the extent practicable throughout the entire  
10 arbitration period until the date the panel is  
11 required to issue its arbitration decision.

12 (D) Arbitration decision. Within thirty days after  
13 the conclusion of the hearing, a majority of the  
14 arbitration panel shall reach a decision pursuant  
15 to subsection (f) on all provisions that each  
16 party proposed in its respective final position  
17 for inclusion in the final agreement and transmit  
18 a preliminary draft of its decision to the  
19 parties. The parties shall review the  
20 preliminary draft for completeness, technical  
21 correctness, and clarity and may mutually submit  
22 to the panel any desired changes or adjustments





1 that shall be incorporated in the final draft of  
 2 its decision. Within fifteen days after the  
 3 transmittal of the preliminary draft, a majority  
 4 of the arbitration panel shall issue the  
 5 arbitration decision."

6 SECTION 3. Section 2 of this Act shall not apply to  
 7 collective bargaining agreements applicable to the 2009-2010 and  
 8 2010-2011 school years.

9 SECTION 4. Statutory material to be repealed is bracketed  
 10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

School Teachers; Bargaining Unit 5; Binding Arbitration

**Description:**

Requires mediation and binding arbitration for an impasse in collective bargaining between a public employer and bargaining unit 5 teachers and other personnel of the department of education.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

