

JAN 26 2009

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**A BILL FOR AN ACT**

RELATING TO THE UNIFORM ARBITRATION ACT.

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

1           SECTION 1. The purpose of this Act is to exempt grievance  
2 arbitrations between the public employers and the public  
3 employees' exclusive representatives (collectively referred to  
4 as "public sector") under chapter 89 from chapter 658A, Hawaii  
5 Revised Statutes (the Uniform Arbitration Act), and limit court  
6 involvement to enforcement and review of public sector  
7 arbitration awards. This Act will restore the parties' right to  
8 negotiate their own grievance arbitration procedures with  
9 respect to discovery, and recognizes that public sector  
10 arbitration awards should not be used as stare decisis,  
11 collateral estoppel, res judicata, or binding precedent as to  
12 other public sector arbitration awards.

13           SECTION 2. Section 658A-3, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "**§658A-3 When chapter applies.** (a) Except as provided in  
16 subsection (c), this chapter governs an agreement to arbitrate  
17 made on or after July 1, 2002.

1 (b) This chapter governs an agreement to arbitrate made  
2 before July 1, 2002, if all the parties to the agreement or to  
3 the arbitration proceeding so agree in a record. If the parties  
4 to the agreement or to the arbitration do not so agree in a  
5 record, an agreement to arbitrate that is made before July 1,  
6 2002, shall be governed by the law specified in the agreement to  
7 arbitrate or, if none is specified, by the state law in effect  
8 on the date when the arbitration began or on June 30, 2002,  
9 whichever first occurred.

10 (c) After June 30, 2004, this chapter governs an agreement  
11 to arbitrate whenever made.

12 (d) Notwithstanding any provisions to the contrary, except  
13 for sections 658A-20, 658A-22, 658A-23(a)(1), (2), and (4) and  
14 (b), 658A-24, 658A-25(a), and 658A-28, this chapter shall not  
15 apply to grievance arbitrations authorized by collective  
16 bargaining agreements between public employers and exclusive  
17 representatives under chapter 89."

18 SECTION 3. Section 658A-22, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+]§658A-22[+] **Confirmation of award.** After a party to  
21 an arbitration proceeding receives notice of an award, the party  
22 may make a motion to the court for an order confirming the award

1 at which time the court shall issue a confirming order unless  
2 the award is modified or corrected pursuant to section 658A-20  
3 or 658A-24 or is vacated pursuant to section 658A-23.

4 Confirmation of an award in public sector arbitrations shall  
5 apply only to that award and cannot be used as stare decisis,  
6 collateral estoppel, res judicata, or binding precedent as to  
7 any other public sector arbitration award."

8 SECTION 4. Section 658A-25, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) Upon granting an order confirming, vacating without  
11 directing a rehearing, modifying, or correcting an award, the  
12 court shall enter a judgment in conformity therewith. The  
13 judgment may be recorded, docketed, and enforced as any other  
14 judgment in a civil action. The judgment confirming an award in  
15 public sector arbitrations shall apply only to that award and  
16 cannot be used as stare decisis, collateral estoppel, res  
17 judicata, or binding precedent as to any other public sector  
18 arbitration award."

19 SECTION 5. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

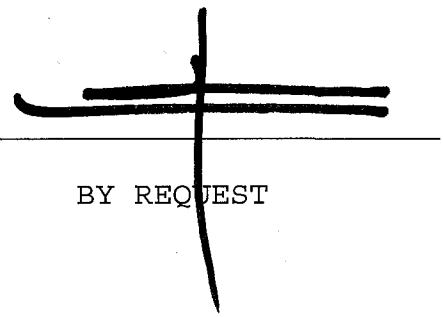
S.B. NO. 925

1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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BY REQUEST

**Report Title:**

Grievance arbitration; Arbitration awards

**Description:**

Protects the rights of public employers by exempting grievance arbitration procedures between public employers and union representatives from the Uniform Arbitration Act, except for awards procedures. Also recognizes that public sector arbitration awards with one public employer should not be used as binding precedent with other public employers not involved with the initial award.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor, Office of Collective Bargaining

TITLE: A BILL FOR AN ACT RELATING TO THE UNIFORM ARBITRATION ACT.

PURPOSE: To exempt grievance arbitrations between the public employers and the public employees' exclusive representatives under chapter 89, Hawaii Revised Statutes, from the Uniform Arbitration Act, chapter 658A, with respect to discovery, and recognizes that public sector arbitration awards should not be used as stare decisis, collateral estoppel, res judicata, or binding precedent as to other public sector arbitration awards.

MEANS: Amend sections 658A-3, 658A-22, and 658A-25(a), Hawaii Revised Statutes.

JUSTIFICATION: Currently, the public employers and the exclusive representatives are required to follow the procedures prescribed in the Uniform Arbitration Act. These procedures have converted grievance arbitrations into court-like proceedings. As a result, grievance arbitrations have become more litigious, time-consuming, and expensive. These are consequences that neither the public employers nor the exclusive representatives want to see in grievance arbitrations. The parties believe that grievance arbitration procedures related to discovery should be subject to negotiations and not statutorily imposed upon the parties. Chapter 658A deprived both the public employers and the labor unions of the right to negotiate these matters.

Further, the bill affirms the nationally recognized position that public sector arbitration awards should not be used as stare decisis, collateral estoppel, res judicata, or binding precedent as to other

public sector arbitration awards. Currently, unions are able to obtain a public sector arbitration award in one jurisdiction and attempt to apply that award against another public employer who was not a party to the original award. This action conflicts with long-standing principles that public sector arbitration awards are not to be used as stare decisis, collateral estoppel, res judicata, or binding precedent in other public sector arbitration awards.

Impact on the public: None.

Impact on the department and other agencies: Protects the rights of employers in different jurisdictions by requiring that an arbitration award to the State of Hawaii only apply to the State of Hawaii and not to other jurisdictions, or vice versa.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESTINATION: None.

OTHER AFFECTED  
AGENCIES: All public employers, including the Board of Education, the Board of Regents, the counties, the Hawaii Health Systems Corporation, and the Judiciary.

EFFECTIVE DATE: Upon approval.