

Honolulu, Hawaii

March 17, 2010

RE: S.B. No. 2883  
S.D. 1  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2010  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred S.B. No. 2883, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYMENT PRACTICES,"

begs leave to report as follows:

The purpose of this bill is to protect the rights and benefits of employees by specifying that, with regard to an employer's sick leave benefits, policies, or provisions, when a conflict exists between a collective bargaining agreement and any rules or policies adopted by the employer, the terms of the collective bargaining agreement shall prevail.

The Hawaii State AFL-CIO, International Brotherhood of Electrical Workers (IBEW), IBEW Local 1260, IBEW Local 1357, Hawaii Government Employees Association, Hawaii Laborers' Union, and United Public Workers testified in support of this bill. The Department of Labor and Industrial Relations, Chamber of Commerce of Hawaii, Hawaiian Telcom, and Starwood Hotels and Resorts Worldwide, Inc., testified in opposition to this measure. The Office of Collective Bargaining and General Contractors Association offered comments.



Programs such as the Workers' Compensation Program and Temporary Disability Insurance laws were enacted to afford certain protections for ill or injured workers. However, no public policy exists to protect the use of sick leave for illnesses of a non-chronic and short-term nature although most employers do offer sick leave as an employee benefit.

Your Committee has been informed that some companies, although they do provide sick leave benefits, have developed company rules or policies that severely limit the legitimate use of sick leave and that employees have been disciplined, reprimanded, and suspended from employment for the legitimate use of sick leave. However, your Committee also recognizes that abuse of sick leave does occur and that those individuals who abuse an employer's sick leave policy do not deserve the same protections as those legitimately ill employees who use accrued and available sick leave offered by their employers.

While the legitimate use of sick leave should not result in negative actions taken against an employee, the necessity of statutorily establishing provisions stipulating that a collective bargaining agreement takes precedence over an employer's policy is unclear as an employer's policy should be established in accordance with a collective bargaining agreement. Accordingly, your Committee has amended this bill by replacing its substance with the substance of H.B. No. 2935, H.D. 1. As amended, this measure protects employees by making it an unlawful practice for an employer or labor organization to bar or discharge from employment, withhold pay from, or demote an employee because the employee legitimately uses accrued and available sick leave.

Your Committee has further amended this bill by clarifying that an employee must legitimately use accrued and available sick leave to be protected by the provisions of this bill.

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 S.B. No. 2883, S.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2883, S.D. 1, H.D. 1, and be referred to the Committee on Judiciary.



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

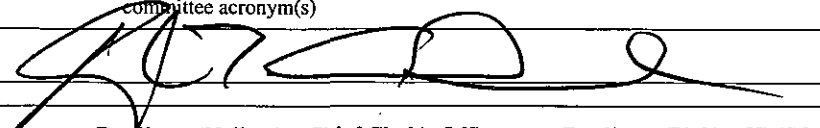
*Karl Rhoads*

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KARL RHOADS, Chair



Record of Votes of the Committee on Labor & Public Employment

Bill/Resolution No.: <b>SB 2883, SDI</b>	Committee Referral: <b>LAB, FIN</b>	Date: <b>3-12-10</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
LAB Members	Ayes	Ayes (WR)	Nays	Excused
1. RHOADS, Karl (C)	/			
2. YAMASHITA, Kyle T. (VC)	/			
3. AQUINO, Henry J.C.	/			
4. AWANA, Karen Leinani	/			
5. HANOHANO, Faye P.		/		
6. KEITH-AGARAN, Gilbert S.C.	/			
7. LEE, Marilyn B.	/			
8. NAKASHIMA, Mark M.	/			
9. SAIKI, Scott K.		/		
10. SOUKI, Joseph M.		/		
11. TAKUMI, Roy M.				/
12. PINE, Kymberly Marcos		/		
<b>TOTAL (12)</b>	<b>7</b>	<b>4</b>	<b>-</b>	<b>1</b>
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <small>committee acronym(s)</small>				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee    Duplicate (Yellow) – Chief Clerk's Office    Duplicate (Pink) – HMSO				