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# A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

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

1           SECTION 1. Chapter 89, Hawaii Revised Statutes, is amended  
2 by adding two new sections to be appropriately designated and to  
3 read as follows:  
4           "§89- Streamlining union certification. (a) When an  
5 employee, group of employees, or any individual or employee  
6 organization acting on their behalf, files a petition alleging  
7 that a majority of employees in bargaining unit (14)  
8 (nonsupervisory legislative employees) wish to be represented by  
9 an individual or employee organization for those purposes, the  
10 board shall investigate the petition. If the board finds that a  
11 majority of the employees in bargaining unit (14) have signed  
12 valid authorizations designating the individual or employee  
13 organization specified in the petition as their bargaining  
14 representative, and that no other individual or employee  
15 organization is currently certified or recognized as the  
16 exclusive representative of any of the employees in the unit,  
17 the board shall certify the individual or employee organization



1 as the representative without directing an election similar to  
2 that under section 89-7.

3 (b) The board shall adopt rules governing the  
4 certification of an exclusive representative under this section  
5 and shall have the final determination on any controversy  
6 concerning the eligibility of an employee to sign an  
7 authorization card and the validity of an employee's signature  
8 on an authorization card.

9 §89- Facilitating initial collective bargaining  
10 agreements. (a) No later than ten days after receiving a  
11 written request for collective bargaining from an individual or  
12 employee organization that has been newly organized or certified  
13 as a representative for bargaining unit (14) (nonsupervisory  
14 legislative employees), the parties shall meet and commence to  
15 bargain collectively and shall make every reasonable effort to  
16 conclude and sign a collective bargaining agreement; provided  
17 that the collective bargaining agreement for bargaining unit  
18 (14) shall not restrict the rights of the employer to hire and  
19 terminate the employee at will.

20 (b) If, after the expiration of the ninety-day period  
21 beginning on the date on which bargaining commenced, or upon  
22 such additional period as the parties may agree, the parties



1 have failed to reach an agreement, either party may notify the  
2 board of the existence of a dispute and request conciliation  
3 under section 89-11.

4 (c) If, after the expiration of the twenty-day period  
5 beginning on the date on which the request for conciliation is  
6 made under subsection (b), or upon such additional period as the  
7 parties may agree, the conciliator is not able to bring the  
8 parties to agreement by conciliation, the board shall refer the  
9 dispute to an arbitration panel established in accordance with  
10 section 89-11(e) (2) and rules as may be prescribed by the board.  
11 The arbitration panel shall render a decision settling the  
12 dispute, and the decision shall be binding upon the parties for  
13 a period of two years, unless amended during that period by  
14 written consent of the parties."

15 SECTION 2. Section 23-8, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17 "(b) All employees shall be hired by the auditor subject  
18 to the approval of the president of the senate and the speaker  
19 of the house of representatives and shall serve at the auditor's  
20 pleasure; provided that ~~[in the establishment of the salary of~~  
21 ~~each employee, the auditor shall consult with the department of~~  
22 ~~human resources development and shall follow as closely as~~



1 ~~possible the recommendations of the department; provided further~~  
2 ~~that]~~ effective July 1, 2007, the salary of the first assistant  
3 or first deputy shall be not more than ninety-two per cent of  
4 the salary of the auditor."

5 SECTION 3. Section 23G-2, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7 "(b) ~~[In determining the salary of the employees of the~~  
8 ~~bureau, the]~~ The director shall consult with the department of  
9 human resources development; provided that, effective July 1,  
10 2007, the salary of the first assistant shall be not more than  
11 ninety-two per cent of the salary of the director."

12 SECTION 4. Section 84-35, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "§84-35 Staff. The ethics commission may employ and at  
15 pleasure remove such persons, including an executive director,  
16 as it may deem necessary for the performance of its functions.  
17 Effective July 1, 2005, the salary of the executive director  
18 shall be the same as the salary of the director of health. ~~[The~~  
19 ~~commission shall fix the compensations of its employees within~~  
20 ~~the amounts made available by appropriation therefor.]"~~

21 SECTION 5. Section 89-6, Hawaii Revised Statutes, is  
22 amended as follows:



1 1. By amending subsections (a) and (b) to read:

2 "(a) All employees throughout the State within any of the  
3 following categories shall constitute an appropriate bargaining  
4 unit:

- 5 (1) Nonsupervisory employees in blue collar positions;
- 6 (2) Supervisory employees in blue collar positions;
- 7 (3) Nonsupervisory employees in white collar positions;
- 8 (4) Supervisory employees in white collar positions;
- 9 (5) Teachers and other personnel of the department of  
10 education under the same pay schedule, including part-  
11 time employees working less than twenty hours a week  
12 who are equal to one-half of a full-time equivalent;
- 13 (6) Educational officers and other personnel of the  
14 department of education under the same pay schedule;
- 15 (7) Faculty of the University of Hawaii and the community  
16 college system;
- 17 (8) Personnel of the University of Hawaii and the  
18 community college system, other than faculty;
- 19 (9) Registered professional nurses;
- 20 (10) Institutional, health, and correctional workers;
- 21 (11) Firefighters;
- 22 (12) Police officers; [~~and~~]



1           (13) Professional and scientific employees, who cannot be  
2           included in any of the other bargaining units~~[-]~~; and  
3           (14) Nonsupervisory staff of the legislative branch of the  
4           State, including the office of the auditor,  
5           legislative reference bureau, ethics commission, and  
6           office of the ombudsman, who shall include any  
7           individual not having authority in the interest of the  
8           employer, to hire, transfer, suspend, layoff, recall,  
9           promote, discharge, assign, reward, or discipline  
10           other employees, or the responsibility to assign work  
11           to and direct them, or to adjust their grievances, or  
12           effectively to recommend such action, if, in  
13           connection with the foregoing, the exercise of such  
14           authority is not of a merely routine or clerical  
15           nature, but requires the use of independent judgment.

16           (b) Because of the nature of work involved and the  
17           essentiality of certain occupations that require specialized  
18           training, supervisory employees who are eligible for inclusion  
19           in units (9) through [~~(13)~~] (14) shall be included in units (9)  
20           through [~~(13)~~,] (14), respectively, instead of unit (2) or (4)."

21           2. By amending subsection (d) to read:



1           "(d) For the purpose of negotiating a collective  
2 bargaining agreement, the public employer of an appropriate  
3 bargaining unit shall mean the governor together with the  
4 following employers:

5           (1) For bargaining units (1), (2), (3), (4), (9), (10),  
6           and (13), the governor shall have six votes and the  
7           mayors, the chief justice, and the Hawaii health  
8           systems corporation board shall each have one vote if  
9           they have employees in the particular bargaining unit;

10          (2) For bargaining units (11) and (12), the governor shall  
11          have four votes and the mayors shall each have one  
12          vote;

13          (3) For bargaining units (5) and (6), the governor shall  
14          have three votes, the board of education shall have  
15          two votes, and the superintendent of education shall  
16          have one vote;

17          (4) For bargaining units (7) and (8), the governor shall  
18          have three votes, the board of regents of the  
19          University of Hawaii shall have two votes, and the  
20          president of the University of Hawaii shall have one  
21          vote [-]; and



1       (5) For bargaining unit (14), the president of the senate  
2       shall have one vote and the speaker of the house of  
3       representatives shall have one vote.

4 Any decision to be reached by the applicable employer group  
5 shall be on the basis of simple majority, except when a  
6 bargaining unit includes county employees from more than one  
7 county. In such case, the simple majority shall include at  
8 least one county."

9       3. By amending subsection (f) to read:

10       "(f) The following individuals shall not be included in  
11 any appropriate bargaining unit or be entitled to coverage under  
12 this chapter:

13       (1) Elected or appointed official;

14       (2) Member of any board or commission; provided that  
15 nothing in this paragraph shall prohibit a member of a  
16 collective bargaining unit from serving on a local  
17 school board of a charter school or the charter school  
18 review panel established under chapter 302B;

19       (3) Top-level managerial and administrative personnel,  
20 including the department head, deputy or assistant to  
21 a department head, administrative officer, director,





- 1 or chief of a state or county agency or major  
2 division, and legal counsel;
- 3 (4) Secretary to top-level managerial and administrative  
4 personnel under paragraph (3);
- 5 (5) Individual concerned with confidential matters  
6 affecting employee-employer relations;
- 7 (6) Part-time employee working less than twenty hours per  
8 week, except part-time employees included in unit (5);
- 9 (7) Temporary employee of three months' duration or less;
- 10 (8) Employee of the executive office of the governor or a  
11 household employee at Washington Place;
- 12 (9) Employee of the executive office of the lieutenant  
13 governor;
- 14 (10) Employee of the executive office of the mayor;
- 15 (11) [~~Staff~~] Supervisory staff of the legislative branch of  
16 the State;
- 17 (12) Staff of the legislative branches of the counties,  
18 except employees of the clerks' offices of the  
19 counties;
- 20 (13) Any commissioned and enlisted personnel of the Hawaii  
21 national guard;



- 1 (14) Inmate, kokua, patient, ward, or student of a state
- 2 institution;
- 3 (15) Student help;
- 4 (16) Staff of the Hawaii labor relations board;
- 5 (17) Employees of the Hawaii national guard youth challenge
- 6 academy; or
- 7 (18) Employee of the office of elections."

8 SECTION 6. Section 89-11, Hawaii Revised Statutes, is  
 9 amended by amending subsection (e) to read as follows:

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



1 or bargaining unit (14), nonsupervisory staff of the legislative  
2 branch of the State, the board shall assist in the resolution of  
3 the impasse as follows:

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

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

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



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

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



1                   proposing for inclusion in the final  
2                   agreement [-] i  
3           (C) Arbitration hearing. Within one hundred twenty  
4           days of its appointment, the arbitration panel  
5           shall commence a hearing at which time the  
6           parties may submit either in writing or through  
7           oral testimony, all information or data  
8           supporting their respective final positions. The  
9           arbitrator, or the chairperson of the arbitration  
10          panel together with the other two members, are  
11          encouraged to assist the parties in a voluntary  
12          resolution of the impasse through mediation, to  
13          the extent practicable throughout the entire  
14          arbitration period until the date the panel is  
15          required to issue its arbitration decision [-] i  
16          and  
17          (D) Arbitration decision. Within thirty days after  
18          the conclusion of the hearing, a majority of the  
19          arbitration panel shall reach a decision pursuant  
20          to subsection (f) on all provisions that each  
21          party proposed in its respective final position  
22          for inclusion in the final agreement and transmit



1 a preliminary draft of its decision to the  
 2 parties. The parties shall review the  
 3 preliminary draft for completeness, technical  
 4 correctness, and clarity and may mutually submit  
 5 to the panel any desired changes or adjustments  
 6 that shall be incorporated in the final draft of  
 7 its decision. Within fifteen days after the  
 8 transmittal of the preliminary draft, a majority  
 9 of the arbitration panel shall issue the  
 10 arbitration decision."

11 SECTION 7. Section 96-3, Hawaii Revised Statutes, is  
 12 amended by amending subsection (b) to read as follows:

13 "(b) [~~In determining the salary of each employee, the~~] The  
 14 ombudsman shall consult with the department of human resources  
 15 development and shall follow as closely as possible the  
 16 recommendations of the department. Effective July 1, 2007, the  
 17 first assistant's salary shall be not more than ninety-two per  
 18 cent of the salary of the ombudsman."

19 SECTION 8. Statutory material to be repealed is bracketed  
 20 and stricken. New statutory material is underscored.

21 SECTION 9. This Act shall take effect on July 1, 2011.



**Report Title:**

Legislative Employees; Unionization

**Description:**

Authorizes nonsupervisory legislative employees to unionize through the card check and expedited bargaining process and specifically includes the Office of the Auditor, Legislative Reference Bureau, Ethics Commission, and Office of the Ombudsman. Effective July 1, 2011. (HB385 HD1)

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

