

JAN 18 2012

A BILL FOR AN ACT

RELATING TO COLLECTIVE BARGAINING.

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

1 SECTION 1. The purpose of this bill is to amend the
2 collective bargaining law to allow the State and the four
3 counties to bargain separately and independently with the public
4 sector unions.

5 SECTION 2. Section 76-1, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§76-1 Purposes; merit principle. It is the purpose of
8 this chapter to require each jurisdiction to establish and
9 maintain a separately administered civil service system based on
10 the merit principle. The merit principle is the selection of
11 persons based on their fitness and ability for public employment
12 and the retention of employees based on their demonstrated
13 appropriate conduct and productive performance. It is also the
14 purpose of this chapter to build a career service in government,
15 free from coercive political influences, to render impartial
16 service to the public at all times, according to the dictates of
17 ethics and morality and in compliance with all laws.



1 In order to achieve these purposes, it is the declared
2 policy of the State that the human resource program within each
3 jurisdiction be administered in accordance with the following:

4 (1) Equal opportunity for all in compliance with all laws
5 prohibiting discrimination. No person shall be
6 discriminated against in examination, appointment,
7 reinstatement, reemployment, promotion, transfer,
8 demotion, or removal, with respect to any position
9 when the work may be efficiently performed by the
10 person without hazard or danger to the health and
11 safety of the person or others;

12 (2) Impartial selection of individuals for public service
13 by means of competitive tests which are fair,
14 objective, and practical;

15 (3) Incentives for competent employees within the service,
16 whether financial or promotional opportunities and
17 other performance based group and individual awards
18 that encourage continuous improvement to achieve
19 superior performance;

20 (4) Reasonable job security for competent employees and
21 discharge of unnecessary or inefficient employees with

1 the right to grieve and appeal personnel actions
2 through the:

3 (A) Contractual grievance procedure for employees
4 covered by chapter 89; or

5 (B) Internal complaint procedures and the merit
6 appeals board for employees excluded from
7 coverage under chapter 89;

8 (5) Equal pay for equal work shall apply between classes
9 in the same bargaining unit [~~among jurisdictions~~] for
10 those classes determined to be equal through
11 systematic classification of positions based on
12 objective criteria and adequate job evaluation, unless
13 it has been agreed in accordance with chapter 89 to
14 negotiate the repricing of classes; and

15 (6) Harmonious and cooperative relations between
16 government and its employees, including employee
17 organizations representing them, to develop and
18 maintain a well-trained, efficient, and productive
19 work force that utilizes advanced technology to ensure
20 effective government operations and delivery of public
21 services."



1 SECTION 3. Section 89-2, Hawaii Revised Statutes, is
2 amended by amending the definitions of "Employer" or "public
3 employer", "Jurisdiction", and "Legislative body" to read as
4 follows:

5 "Employer" or "public employer" means the governor in the
6 case of the State, the [~~respective mayors~~] mayor of each county
7 in the case of the counties, the chief justice of the supreme
8 court in the case of the judiciary, the board of education in
9 the case of the department of education, the board of regents in
10 the case of the University of Hawaii, or the Hawaii health
11 systems corporation board in the case of the Hawaii health
12 systems corporation, [~~and~~] or any individual who represents one
13 of these employers or acts in their interest in dealing with
14 public employees. In the case of the judiciary, the
15 administrative director of the courts shall be the employer in
16 lieu of the chief justice for purposes which the chief justice
17 determines would be prudent or necessary to avoid conflict.

18 "Jurisdiction" means the State, the city and county of
19 Honolulu, the county of Hawaii, the county of Maui, the county
20 of Kauai, the judiciary, [~~and~~] or the Hawaii health systems
21 corporation.



1 "Legislative body" means the legislature in the case of the
2 State, including the judiciary, the department of education, the
3 University of Hawaii, and the Hawaii health systems corporation;
4 the city council, in the case of the city and county of
5 Honolulu; [~~and~~] or the respective county councils, in the case
6 of the counties of Hawaii, Maui, and Kauai."

7 SECTION 4. Section 89-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§89-6 **Appropriate bargaining units.** (a) All employees
10 throughout the State within any of the following categories
11 shall constitute an appropriate bargaining unit:

- 12 (1) Nonsupervisory employees in blue collar positions;
- 13 (2) Supervisory employees in blue collar positions;
- 14 (3) Nonsupervisory employees in white collar positions;
- 15 (4) Supervisory employees in white collar positions;
- 16 (5) Teachers and other personnel of the department of
17 education under the same pay schedule, including part-
18 time employees working less than twenty hours a week
19 who are equal to one-half of a full-time equivalent;
- 20 (6) Educational officers and other personnel of the
21 department of education under the same pay schedule;



1 (7) Faculty of the University of Hawaii and the community
2 college system;

3 (8) Personnel of the University of Hawaii and the
4 community college system, other than faculty;

5 (9) Registered professional nurses;

6 (10) Institutional, health, and correctional workers;

7 (11) Firefighters;

8 (12) Police officers; and

9 (13) Professional and scientific employees, who cannot be
10 included in any of the other bargaining units.

11 (b) Because of the nature of work involved and the
12 essentiality of certain occupations that require specialized
13 training, supervisory employees who are eligible for inclusion
14 in units (9) through (13) shall be included in units (9) through
15 (13), respectively, instead of unit (2) or (4).

16 (c) The classification systems of each jurisdiction shall
17 be the bases for differentiating blue collar from white collar
18 employees, professional from institutional, health and
19 correctional workers, supervisory from nonsupervisory employees,
20 teachers from educational officers, and faculty from nonfaculty.
21 In differentiating supervisory from nonsupervisory employees,
22 class titles alone shall not be the basis for determination.



1 The nature of the work, including whether a major portion of the
2 working time of a supervisory employee is spent as part of a
3 crew or team with nonsupervisory employees, shall be considered
4 also.

5 (d) For the purpose of negotiating a collective bargaining
6 agreement, the public employer of an appropriate bargaining unit
7 shall mean ~~[the governor together with the following employers]:~~

8 (1) For bargaining units (1), (2), (3), (4), (9), (10),
9 and (13), ~~[the governor shall have six votes and the~~
10 ~~mayors, the chief justice, and the Hawaii health~~
11 ~~systems corporation board shall each have one vote if~~
12 ~~they have employees in the particular bargaining~~
13 ~~unit,]~~ the mayor of each county or the mayor's
14 designated representative for county employees, the
15 governor or the governor's designated representative
16 for state employees, the chief justice or the chief
17 justice's designated representative for judiciary
18 employees, and the board of directors of the Hawaii
19 health systems corporation for employees of the
20 corporation. Each public employer shall have the sole
21 authority to negotiate collective bargaining
22 agreements for their respective jurisdiction;



- 1 (2) For bargaining [~~units~~] unit (11) [~~and (12)~~], the
2 ~~governor shall have four votes and the mayors shall~~
3 ~~each have one vote;~~ the mayor of each county or the
4 mayor's designated representative for county employees
5 and the governor or the governor's designated
6 representative for state employees. Each public
7 employer shall have the sole authority to negotiate
8 collective bargaining agreements for their respective
9 jurisdiction;
- 10 (3) For bargaining [~~units (5) and (6)~~], the ~~governor shall~~
11 ~~have three votes, the board of education shall have~~
12 ~~two votes, and the superintendent of education shall~~
13 ~~have one vote;~~ unit (12), the mayor of each county or
14 the mayor's designated representative for county
15 employees. Each public employer shall have the sole
16 authority to negotiate collective bargaining
17 agreements for their respective jurisdiction.
- 18 ~~[(4) For bargaining units (7) and (8), the governor shall~~
19 ~~have three votes, the board of regents of the~~
20 ~~University of Hawaii shall have two votes, and the~~
21 ~~president of the University of Hawaii shall have one~~
22 ~~vote.~~



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

6 (e) For the purpose of negotiating a collective bargaining
7 agreement, the public employer of bargaining units (5), (6), (7)
8 and (8) shall mean the governor together with the following
9 employers:

10 (1) For bargaining units (5) and (6), the governor shall
11 have three votes, the board of education shall have
12 two votes, and the superintendent of education shall
13 have one vote;

14 (2) For bargaining units (7) and (8), the governor shall
15 have three votes, the board of regents of the
16 University of Hawaii shall have two votes, and the
17 president of the University of Hawaii shall have one
18 vote.

19 Any decision to be reached in the case of bargaining units (5),
20 (6), (7) and (8) by the applicable employer group shall be on
21 the basis of simple majority.



1 [~~(e)~~] (f) In addition to a collective bargaining agreement
2 under subsection (d), each employer may negotiate[~~7~~
3 ~~independently of one another,~~] supplemental agreements that
4 apply to their respective employees; provided that any
5 supplemental agreement reached between the employer and the
6 exclusive representative shall not extend beyond the term of the
7 applicable collective bargaining agreement and shall not require
8 ratification by employees in the bargaining unit.

9 [~~(f)~~] (g) The following individuals shall not be included
10 in any appropriate bargaining unit or be entitled to coverage
11 under this chapter:

- 12 (1) Elected or appointed official;
- 13 (2) Member of any board or commission; provided that
14 nothing in this paragraph shall prohibit a member of a
15 collective bargaining unit from serving on a local
16 school board of a charter school or the charter school
17 review panel established under chapter 302B;
- 18 (3) Top-level managerial and administrative personnel,
19 including the department head, deputy or assistant to
20 a department head, administrative officer, director,
21 or chief of a state or county agency or major
22 division, and legal counsel;

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



1 (17) Employees of the Hawaii national guard youth challenge
2 academy; or

3 (18) Employees of the office of elections.

4 [~~(g)~~] (h) Where any controversy arises under this section,
5 the board shall, pursuant to chapter 91, make an investigation
6 and, after a hearing upon due notice, make a final determination
7 on the applicability of this section to specific individuals,
8 employees, or positions."

9 SECTION 5. Section 89-8, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) Employee participation in the collective bargaining
12 process conducted by the exclusive representative of the
13 appropriate bargaining unit shall be permitted during regular
14 working hours without loss of regular salary or wages. The
15 number of participants from each bargaining unit with over 2,500
16 members shall be limited to one member for each five hundred
17 members of the bargaining unit. For bargaining units with less
18 than 2,500 members, there shall be at least five participants [~~7~~
19 ~~one of whom shall reside in each county; provided that there~~
20 ~~need not be a participant residing in each county for the~~
21 ~~bargaining unit established by section 89-6(a)(8)]. The
22 bargaining unit shall select the participants from~~



1 representative departments, divisions or sections to minimize
2 interference with the normal operations and service of the
3 departments, divisions or sections."

4 SECTION 6. Section 89-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§89-9 Scope of negotiations; consultation. (a) [The] An
7 employer and the exclusive representative shall meet at
8 reasonable times, including meetings sufficiently in advance of
9 the February 1 impasse date under section 89-11, and shall
10 negotiate in good faith with respect to wages, hours, the
11 amounts of contributions by the State [~~and respective counties~~]
12 to the Hawaii employer-union health benefits trust fund to the
13 extent allowed in subsection (e), and other terms and conditions
14 of employment which are subject to collective bargaining and
15 which are to be embodied in a written agreement as specified in
16 section 89-10, but such obligation does not compel either party
17 to agree to a proposal or make a concession; provided that the
18 parties may not negotiate with respect to cost items as defined
19 by section 89-2 for the biennium 1999 to 2001, and the cost
20 items of employees in bargaining units under section 89-6 in
21 effect on June 30, 1999, shall remain in effect until July 1,
22 2001.



1 (b) The employer or the exclusive representative desiring
2 to initiate negotiations shall notify the other party in
3 writing, setting forth the time and place of the meeting desired
4 and the nature of the business to be discussed, sufficiently in
5 advance of the meeting.

6 (c) Except as otherwise provided in this chapter, all
7 matters affecting employee relations, including those that are,
8 or may be, the subject of a rule adopted by the employer or any
9 director, shall be subject to consultation with the exclusive
10 representatives of the employees concerned. The employer shall
11 make every reasonable effort to consult with exclusive
12 representatives and consider their input, along with the input
13 of other affected parties, prior to effecting changes in any
14 major policy affecting employee relations.

15 (d) Excluded from the subjects of negotiations are matters
16 of classification, reclassification, benefits of but not
17 contributions to the Hawaii employer-union health benefits trust
18 fund, recruitment, examination, initial pricing, and retirement
19 benefits except as provided in section 88-8(h). The employer
20 and the exclusive representative shall not agree to any proposal
21 which would be inconsistent with the merit principle or the
22 principle of equal pay for equal work pursuant to section 76-1



1 or which would interfere with the rights and obligations of a
2 public employer to:

- 3 (1) Direct employees;
- 4 (2) Determine qualifications, standards for work, and the
5 nature and contents of examinations;
- 6 (3) Hire, promote, transfer, assign, and retain employees
7 in positions;
- 8 (4) Suspend, demote, discharge, or take other disciplinary
9 action against employees for proper cause;
- 10 (5) Relieve an employee from duties because of lack of
11 work or other legitimate reason;
- 12 (6) Maintain efficiency and productivity, including
13 maximizing the use of advanced technology, in
14 government operations;
- 15 (7) Determine methods, means, and personnel by which the
16 employer's operations are to be conducted; and
- 17 (8) Take such actions as may be necessary to carry out the
18 missions of the employer in cases of emergencies.

19 This subsection shall not be used to invalidate provisions
20 of collective bargaining agreements in effect on and after June
21 30, 2007, and shall not preclude negotiations over the
22 procedures and criteria on promotions, transfers, assignments,



1 demotions, layoffs, suspensions, terminations, discharges, or
2 other disciplinary actions as a permissive subject of bargaining
3 during collective bargaining negotiations or negotiations over a
4 memorandum of agreement, memorandum of understanding, or other
5 supplemental agreement.

6 Violations of the procedures and criteria so negotiated may
7 be subject to the grievance procedure in the collective
8 bargaining agreement.

9 (e) Negotiations relating to contributions to the Hawaii
10 employer-union health benefits trust fund shall be for the
11 purpose of agreeing upon the amounts which the State [~~and~~
12 ~~counties~~] or a county shall contribute under section 87-4,
13 toward the payment of the costs for a health benefits plan, as
14 defined in section 87-1(8), and group life insurance benefits,
15 and the parties shall not be bound by the amounts contributed
16 under prior agreements; provided that section 89-11 for the
17 resolution of disputes by way of arbitration shall not be
18 available to resolve impasses or disputes relating to the
19 amounts the State [~~and counties~~] or a county shall contribute to
20 the Hawaii employer-union health benefits trust fund.



1 (f) The repricing of classes within an appropriate
2 bargaining unit in a jurisdiction may be negotiated with the
3 employer as follows:

4 (1) At the request of the exclusive representative and at
5 times allowed under the collective bargaining
6 agreement, the employer shall negotiate the repricing
7 of classes within the bargaining unit. The negotiated
8 repricing actions that constitute cost items shall be
9 subject to the requirements in section 89-10; and

10 (2) If repricing has not been negotiated under paragraph
11 (1), the employer of each jurisdiction shall ensure
12 establishment of procedures to periodically review, at
13 least once in five years, unless otherwise agreed to
14 by the parties, the repricing of classes within the
15 bargaining unit~~[-]~~ in the jurisdiction. The repricing
16 of classes based on the results of the periodic review
17 shall be at the discretion of the employer. Any
18 appropriations required to implement the repricing
19 actions that are made at the employer's discretion
20 shall not be construed as cost items."

21 SECTION 7. Section 89-10, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§89-10 Written agreements; enforceability; cost items.

2 (a) Any collective bargaining agreement reached between the
3 employer and the exclusive representative shall be subject to
4 ratification by the employees [~~concerned,~~] in the bargaining
5 unit in the employer's jurisdiction, except for an agreement
6 reached pursuant to an arbitration decision. Ratification is
7 not required for other agreements effective during the term of
8 the collective bargaining agreement, whether a supplemental
9 agreement, an agreement on reopened items, or a memorandum of
10 agreement, and any agreement to extend the term of the
11 collective bargaining agreement. The agreement shall be reduced
12 to writing and executed by both parties. Except for cost items
13 and any non-cost items that are tied to or bargained against
14 cost items, all provisions in the agreement that are in
15 conformance with this chapter, including a grievance procedure
16 and an impasse procedure culminating in an arbitration decision,
17 shall be valid and enforceable and shall be effective as
18 specified in the agreement, regardless of the requirements to
19 submit cost items under this section and section 89-11.

20 (b) All cost items shall be subject to appropriations by
21 the appropriate legislative bodies. The employer shall submit
22 within ten days of the date on which the agreement is ratified



1 by the employees [~~concerned~~] in the bargaining unit in the
2 employer's jurisdiction all cost items contained therein to the
3 appropriate legislative bodies, except that if any cost items
4 require appropriation by the state legislature and it is not in
5 session at the time, the cost items shall be submitted for
6 inclusion in the governor's next operating budget within ten
7 days after the date on which the agreement is ratified. The
8 state legislature or the legislative [~~bodies~~] body of [~~the~~
9 ~~counties~~] a county [~~acting in concert~~], as the case may be, may
10 approve or reject the cost items submitted to them, as a whole.
11 If the state legislature or the legislative body of [~~any~~] a
12 county rejects any of the cost items submitted to [~~them,~~] it,
13 all cost items submitted shall be returned to the parties for
14 further bargaining.

15 (c) Because effective and orderly operations of government
16 are essential to the public, it is declared to be in the public
17 interest that in the course of collective bargaining, [~~the~~] each
18 public employer and the exclusive representative for each
19 bargaining unit shall by mutual agreement include provisions in
20 the collective bargaining agreement for that bargaining unit for
21 an expiration date which will be on June 30th of an odd-numbered
22 year.



1 The parties may include provisions for reopening during the
2 term of a collective bargaining agreement; provided that cost
3 items as defined in section 89-2 shall be subject to the
4 requirements of this section.

5 (d) Whenever there is a conflict between the collective
6 bargaining agreement and any of the rules adopted by [~~the~~] an
7 employer, including civil service or other personnel policies,
8 standards, and procedures, the terms of the agreement shall
9 prevail; provided that the terms are not inconsistent with
10 section 89-9(d).

11 Whenever there are provisions in a collective bargaining
12 agreement concerning a matter under chapter 76 or 78 that is
13 negotiable under chapter 89, the terms of the agreement shall
14 prevail; provided that the terms are not inconsistent with
15 section 89-9(d)."

16 SECTION 8. Section 89-11, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§89-11 Resolution of disputes; impasses.** (a) A public
19 employer and an exclusive representative may enter, at any time,
20 into a written agreement setting forth an alternate impasse
21 procedure culminating in an arbitration decision pursuant to
22 subsection (f), to be invoked in the event of an impasse over



1 the terms of an initial or renewed agreement. The alternate
2 impasse procedure shall specify whether the parties desire an
3 arbitrator or arbitration panel, how the neutral arbitrator is
4 to be selected or the name of the person whom the parties desire
5 to be appointed as the neutral arbitrator, and other details
6 regarding the issuance of an arbitration decision. When an
7 impasse exists, the parties shall notify the board if they have
8 agreed on an alternate impasse procedure. The board shall
9 permit the parties to proceed with their procedure and assist at
10 times and to the extent requested by the parties in their
11 procedure. In the absence of an alternate impasse procedure,
12 the board shall assist in the resolution of the impasse at times
13 and in the manner prescribed in subsection (d) or (e), as the
14 case may be. If the parties subsequently agree on an alternate
15 impasse procedure, the parties shall notify the board. The
16 board shall immediately discontinue the procedures initiated
17 pursuant to subsection (d) or (e) and permit the parties to
18 proceed with their procedure.

19 (b) An impasse during the term of a collective bargaining
20 agreement on reopened items or items regarding a supplemental
21 agreement shall not be subject to the impasse procedures in this
22 section. The parties may mutually agree on an impasse



1 procedure, but if the procedure culminates in an arbitration
2 decision, the decision shall be pursuant to subsection (f).

3 (c) An impasse over the terms of an initial or renewed
4 agreement and the date of impasse shall be as follows:

5 (1) More than ninety days after written notice by either
6 party to initiate negotiations, either party may give
7 written notice to the board that an impasse exists.

8 The date on which the board receives notice shall be
9 the date of impasse; and

10 (2) If neither party gives written notice of an impasse
11 and there are unresolved issues on January 31 of a
12 year in which the agreement is due to expire, the
13 board shall declare on January 31 that an impasse
14 exists and February 1 shall be the date of impasse.

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



1 (1) Voluntary mediation. During the first twenty days of
2 the date of impasse, either party may request the
3 board to assist in a voluntary resolution of the
4 impasse by appointing a mediator or mediators,
5 representative of the public from a list of qualified
6 persons maintained by the board;

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

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

19 (A) The date of a tentative agreement and whether the
20 terms thereof are confidential between the
21 parties;

- 1 (B) The ratification or failure of ratification of a
- 2 tentative agreement;
- 3 (C) The signing of a tentative agreement;
- 4 (D) The terms of a tentative agreement; or
- 5 (E) On or about the fiftieth day of impasse, the
- 6 failure of mediation.

7 The parties shall provide the board with the requisite
8 information; and

- 9 (4) After the fiftieth day of impasse, the parties may
- 10 resort to such other remedies that are not prohibited
- 11 by any agreement pending between them, other
- 12 provisions of this chapter, or any other law.

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



1 institutional, health, and correctional workers; bargaining unit
2 (11), firefighters; bargaining unit (12), police officers; or
3 bargaining unit (13), professional and scientific employees, the
4 board shall assist in the resolution of the impasse as follows:

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

10 (2) Arbitration. If the impasse continues twenty days
11 after the date of impasse, the board shall immediately
12 notify the affected employer and the exclusive
13 representative that the impasse shall be submitted to
14 a three-member arbitration panel who shall follow the
15 arbitration 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
22 proposing for inclusion in the final agreement.



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

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



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

8 (f) An arbitration panel in reaching its decision shall
9 give weight to the following factors and shall include in its
10 written report or decision an explanation of how the factors
11 were taken into account:

- 12 (1) The lawful authority of [~~the~~] an employer, including
13 the ability of the employer to use special funds only
14 for authorized purposes or under specific
15 circumstances because of limitations imposed by
16 federal or state laws or county ordinances, as the
17 case may be;
- 18 (2) Stipulations of the parties;
- 19 (3) The interests and welfare of the public;
- 20 (4) The financial ability of [~~the~~] an employer to meet
21 these costs; provided that [~~the~~] an employer's ability
22 to fund cost items shall not be predicated on the



1 premise that the employer may increase or impose new
2 taxes, fees, or charges, or develop other sources of
3 revenues;

4 (5) The present and future general economic condition of
5 the [~~counties and~~] respective county for arbitrations
6 involving a county or the State[+] for arbitrations
7 involving the State, the judiciary, the Hawaii health
8 systems corporation, the department of education or
9 the University of Hawaii;

10 (6) Comparison of wages, hours, and conditions of
11 employment of the employees involved in the
12 arbitration proceeding with the wages, hours, and
13 conditions of employment of other persons performing
14 similar services, and of other state and county
15 employees in Hawaii;

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

18 (8) The overall compensation presently received by the
19 employees, including direct wage compensation,
20 vacation, holidays and excused time, insurance and
21 pensions, medical and hospitalization benefits, the



1 continuity and stability of employment, and all other
2 benefits received;

3 (9) Changes in any of the foregoing circumstances during
4 the pendency of the arbitration proceedings; and

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

12 (g) The decision of the arbitration panel shall be final
13 and binding upon the parties on all provisions submitted to the
14 arbitration panel. If the parties have reached agreement with
15 respect to the amounts of contributions by [~~the State and~~
16 ~~counties~~] a public employer to the Hawaii employer-union health
17 benefits trust fund by the tenth working day after the
18 arbitration panel issues its decision, the final and binding
19 agreement of the parties on all provisions shall consist of the
20 panel's decision and the amounts of contributions agreed to by
21 the parties. If the parties have not reached agreement with
22 respect to the amounts of contributions by [~~the State and~~



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



1 any time and by mutual agreement, amend or modify the panel's
2 decision.

3 Agreements reached pursuant to the decision of an
4 arbitration panel and the amounts of contributions by [~~the State~~
5 ~~and counties~~] a public employer to the Hawaii employer-union
6 health benefits trust fund, as provided herein, shall not be
7 subject to ratification by the employees concerned. All items
8 requiring any moneys for implementation shall be subject to
9 appropriations by the [~~appropriate~~] respective legislative
10 [~~bodies~~] body and [~~the~~] a public employer shall submit all such
11 items within ten days after the date on which the agreement is
12 entered into as provided herein, to the [~~appropriate~~] respective
13 legislative [~~bodies.~~] body.

14 (h) Any time frame provided in an impasse procedure,
15 whether an alternate procedure or the procedures in this
16 section, may be modified by mutual agreement of the parties. In
17 the absence of a mutual agreement to modify time frames, any
18 delay, failure, or refusal by either party to participate in the
19 impasse procedure shall not be permitted to halt or otherwise
20 delay the process, unless the board so orders due to an
21 unforeseeable emergency. The process shall commence or continue
22 as though all parties were participating.

1 (i) Nothing in this section shall be construed to prohibit
2 the parties from reaching a voluntary settlement on the
3 unresolved issues at any time prior to the issuance of an
4 arbitration decision.

5 (j) The costs and expenses for mediation provided under
6 subsection (d) or (e) shall be borne by the board. The costs
7 and expenses for any other services performed by neutrals
8 pursuant to mutual agreement of the parties and the costs for a
9 neutral arbitrator shall be borne equally by the parties. All
10 other costs incurred by either party in complying with this
11 section, including the costs of its selected member on the
12 arbitration panel, shall be borne by the party incurring them."

13 SECTION 9. Section 89-12, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§89-12 Strikes, rights and prohibitions. (a) It shall
16 be unlawful for any employee to participate in a strike if the
17 employee:

18 (1) Is not included in the appropriate bargaining unit
19 involved in an impasse; [ø]

20 (2) Is not employed by the employer jurisdiction involved
21 in the impasse; or



1 [~~2~~] (3) Is included in the appropriate bargaining unit
2 involved in an impasse that has been referred to
3 arbitration for a decision.

4 (b) It shall be lawful for an employee, who is not
5 prohibited from striking under subsection (a) and who is in the
6 appropriate bargaining unit in the employer jurisdiction
7 involved in an impasse, to participate in a strike under the
8 following conditions:

9 (1) The requirements of section 89-11 relating to the
10 resolution of disputes have been complied with in good
11 faith;

12 (2) The proceedings for the prevention of any prohibited
13 practices have been exhausted;

14 (3) The collective bargaining agreement and any extension
15 of the agreement has expired; and

16 (4) The exclusive representative has given a ten-day
17 notice of intent to strike, together with a statement
18 of its position on all remaining issues in dispute, to
19 the respective employer and the board.

20 Within three days of receipt of the notice of intent to
21 strike, the respective employer shall submit its position on the
22 remaining issues in dispute that are included in the statement



1 transmitted by the exclusive representative with its notice of
2 intent to strike. The board shall immediately release the
3 information on the positions of the parties to the public.

4 (c) If any employee organization or any employee is
5 violating or failing to comply with the requirements of this
6 section, or if there is reasonable cause to believe that an
7 employee organization or an employee will violate or fail to
8 comply with such requirements, the public employer affected
9 shall, forthwith, institute appropriate proceedings in the
10 circuit in which the violation occurs to enjoin the performance
11 of any acts or practices forbidden by this section, or to
12 require the employee organization or employees to comply with
13 the requirements of this section. Jurisdiction to hear and
14 dispose of all actions under this section is conferred upon each
15 circuit court, and each court may issue in compliance with
16 chapter 380, such orders and decrees, by way of injunction,
17 mandatory injunction, or otherwise, as may be appropriate to
18 enforce this section. The right to a jury trial shall not apply
19 to any proceeding brought under this section."

20 SECTION 10. Section 89-13, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:

1 "(b) It shall be a prohibited practice for a public
2 employee or for an employee organization or its designated agent
3 wilfully to:

4 (1) Interfere, restrain, or coerce any employee in the
5 exercise of any right guaranteed under this chapter;

6 (2) Refuse to bargain collectively in good faith with
7 [the] a public employer, if it is an exclusive
8 representative, as required in section 89-9;

9 (3) Refuse to participate in good faith in the mediation
10 and arbitration procedures set forth in section 89-11;

11 (4) Refuse or fail to comply with any provision of this
12 chapter; or

13 (5) Violate the terms of a collective bargaining
14 agreement."

15 SECTION 11. Section 89-17, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§89-17 List of employee organizations and exclusive**
18 **representatives.** The board shall maintain a list of employee
19 organizations. To be recognized as such and to be included in
20 the list, an organization shall file with the board a statement
21 of its name, the name and address of its secretary or other
22 officer to whom notices may be sent, the date of its



1 organization, and its affiliations, if any, with other
2 organizations. No other qualifications for inclusion shall be
3 required, but every employee organization shall notify the board
4 promptly of any change of name or of the name and address of its
5 secretary or other officer to whom notices may be sent, or of
6 its affiliations.

7 The board shall indicate on the list which employee
8 organizations are exclusive representatives of appropriate
9 bargaining units, the effective dates of their certification,
10 and the effective date and expiration date of any agreement
11 reached between [~~the~~] a public employer and the exclusive
12 representative. Copies of the list shall be made available to
13 interested parties upon request."

14 SECTION 12. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 13. This Act shall take effect on July 1, 2013.

17

INTRODUCED BY:



BY REQUEST



S.B. NO. 2069

Report Title:

Collective Bargaining; Public Sector Unions; City & County of Honolulu Package

Description:

Allows the State and the counties to bargain separately and independently with public sector unions.

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

