



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 885, RELATING TO COLLECTIVE BARGAINING.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, February 1, 2013 **TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Maria C. Cook or Richard H. Thomason, Deputy Attorneys General

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Chair Hee and Members of the Committee:

The Department of the Attorney General has serious concerns about this bill.

The purpose of this bill is to amend chapter 89 of the Hawaii Revised Statutes (HRS) to transfer from the Legislature to an arbitration panel the authority to decide amounts of contributions paid by public employers to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) in case of disputes or impasses between the unions and the public employers. This would make the arbitration award as to EUTF contributions final and binding on the parties.

First, amounts of contributions to health benefits comprise a substantial portion of the State's overall budget. Consequently, the current wording of section 89-11, HRS, which gives the authority to the Legislature to decide the amounts of contributions if an impasse occurs, is preferable over the provisions in this bill that give such authority to an arbitration panel. We believe that the Legislature should seriously consider whether it wishes to delegate its current authority over these matters to an arbitration panel, subject to legislative approval. Giving the decision-making authority over amounts of contributions to an arbitration panel reduces legislative oversight and involvement. Although the statutes provide legal criteria for the arbitrators to consider in reaching their decisions, there may be significant variances among arbitrators in the weight that they attach to the different criteria. The employer's ability to pay and overall economic conditions, two important legal criteria, seem to play little role in shaping arbitral decisions. Further, the ability to maintain a well-paid workforce must be balanced against other government priorities and public needs. An arbitration panel need not keep all these interests in mind, unlike elected officials accountable to the public. Allowing an arbitration

panel to make these decisions reduces the ability of the government to control its budget. The net effect is that binding arbitration takes critical decisions out of the hands of elected leaders and puts them in the hands of unelected and unaccountable arbitrators.

Second, there is the increased likelihood of variability in the EUTF contribution amounts for all state employees. The involvement of multiple arbitration panels from different bargaining units subject to interest arbitration will increase the likelihood of variability in the EUTF contribution amounts. Similarly, bargaining units subject to interest arbitrations and those that are not subject to interest arbitrations such as bargaining unit 1 (non-supervisory employees in blue collar), bargaining unit 5 (teachers and other personnel of the department of education), and bargaining unit 7 (faculty of the University of Hawaii and the community college system) will have variations in the EUTF contribution amounts. Having variations in the amounts of contributions would make the planning and administration of health premiums more difficult.

Third, although section 89-11, HRS, provides that all items requiring any moneys for implementation shall be subject to appropriation, there may be some significant legal issues if the Legislature decides to reject the arbitration award relating to amounts of contributions. Section 89-11, HRS, which governs interest arbitration, is silent on the issue of what happens if the Legislature decides to reject any cost items, such as the amounts of contributions. This is not true of agreements negotiated pursuant to section 89-10, HRS. Section 89-10 provides that in the event the Legislature rejects any cost items negotiated by the parties, *all* cost items submitted would be returned to the parties for further bargaining. It is our opinion that sections 89-10 and 89-11 must be read together so that, if the Legislature rejects any cost items awarded by an arbitration panel, all cost items must be returned to the parties for further bargaining. Thus, under this bill, if the Legislature decides to reject the amounts of contributions awarded by an arbitration panel, the Legislature will have to return to the parties for further bargaining all cost-items awarded in arbitration. Under the current statute, however, impasses on the amounts of contributions are decided by the Legislature through legislative enactment and are, therefore, not tied to other cost items submitted to arbitration.

The Department of the Attorney General respectfully requests that the Committee consider these comments in determining whether to pass this bill.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

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The Twenty-Seventh Legislature, State of Hawaii  
The Senate  
Committee on Judiciary and Labor

Testimony by  
Hawaii Government Employees Association  
February 1, 2013

**S.B. 885 – RELATING TO**  
**COLLECTIVE BARGAINING**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 885, which clarifies that negotiations relating to contributions to the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) shall be subject to the impasse procedure as delineated in Ch. 89, Hawaii Revised Statutes, and makes other technical, conforming amendments.

As currently written, Ch. 89, HRS lacks a dispute resolution mechanism to address the Employee and Employer share of the contributions to medical premiums in the EUTF. As written, if the Employer and the Exclusive Representative cannot agree on the contribution amount, then the pro-rata share shall be determined by the Legislature, while all other negotiable items can proceed to impasse. The amendments contained in S.B. 885 allow for the dispute over contributions to be inclusively – similarly to any other negotiable item – resolved via the impasse procedure and subsequently by either interest arbitration or strike, depending upon the bargaining unit. Adoption of this language increases conformity between public-sector and private-sector employee bargaining, as both parties can fully utilize their dispute resolution mechanisms for all negotiable items, and also allows for consideration of a full benefits and compensation package.

Thank you for the opportunity to testify in strong support of S.B. 885.

Respectfully submitted,

Randy Perreira  
Executive Director

**hee2 - Kathleen**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, January 31, 2013 6:27 AM  
**To:** JDLTestimony  
**Cc:** gwrodrigues@yahoo.com  
**Subject:** Submitted testimony for SB885 on Feb 1, 2013 10:30AM

**SB885**

Submitted on: 1/31/2013  
Testimony for JDL on Feb 1, 2013 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Gary W. Rodrigues	Individual	Oppose	No

Comments: SB885 needs to be held based on the same reasons I submitted in testimony on SB868.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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