

**STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR**
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813-2437

March 29, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Thursday, March 30, 2017
2:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR, OFFICE OF COLLECTIVE BARGAINING

**Senate Bill No. 410, S.D. 1 H.D. 1
Relating to Collective Bargaining**

CHAIRPERSON LUKE, VICE CHAIR CULLEN AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE:

S.B. No. 410, S.D. 1 H.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

The Office of Collective Bargaining **opposes** this measure and provides the following comments for consideration:

- The removal as proposed of the provision “.... as a permissive subject of bargaining” implies by inference that the “permissive subject” would become “mandatory subjects of bargaining”.
- The current language balances promotion of joint decision making between the employers and exclusive representative while ensuring balance between the role of the Employer to manage and direct operations and the exclusive representative to advocate and negotiate for its members as it relates to wages, hours and working conditions.

- The addition of language “.... or the implementation by the employer of paragraphs (1) through (8), if it affects terms and conditions of employment,” appears to conflict with existing language in Section 89-9(d) which forbids the parties to agree to any proposal that interferes with management rights listed in paragraphs (1) through (8).
- The proposed insertion of the language to require incorporation of language relating to subparagraphs 1 through 8 could be interpreted as requiring that practically everything management implemented would affect terms and conditions of employment and therefore subject to mutual agreement.
- The proposed amended language goes beyond clarification and appears to be contrary to the original intent of Section 89-9(d), which states, “The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer.” The removal of the clarifying language “as a permissive subject of bargaining” from the existing statute has the potential of curtailing management rights expressly protected by the Hawai‘i Supreme Court in United Public Workers v. Hannemann, 106 Hawai‘i 359, 365, 105 P. 3d 236, 242 (2005) in particular with respect to paragraphs (3) through (5) of 89-9(d) relating to the rights and obligations of a public employer to (3) hire, promote, transfer, assign and retain employees in positions; (4) suspend, demote, discharge, or take other disciplinary action against employees for proper cause; and (5) relieve an employee from duties due to the lack of work or other legitimate reasons.
- Further, the potential impact of the proposed revision would essentially strip management of its current rights by requiring mutual agreement regarding the conduct of business and such actions that may be initiated such as:

- Management's authority to direct its workforce to perform work that they were hired e.g., the amendatory language might be interpreted by employees as empowering them to refuse to perform assigned duties and responsibilities unless such duties have been mutually agreed to as a term and condition of employment;
- Management's authority to determine minimum qualifications, standards for work and nature and contents of examinations (interview questions, panel members selected, scoring method, etc.) unless such have been mutually agreed to between the employer and exclusive representatives;
- Management's ability and authority to take appropriate action when its employees fail to perform satisfactorily or for disciplinary action in the event of employee's misconduct;
- Management's ability to initiate reduction in force or layoffs of employees due to lack of work or other legitimate reasons and otherwise take action necessary to carry out the missions of the employer in cases of emergencies.

Based upon the above, the Office of Collective Bargaining respectfully recommends that further considerations of the above concerns be given before moving this measure forward.

Thank you for the opportunity to testify on this important measure.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RYKER WADA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 29, 2017

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Thursday, March 30, 2017
2:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 410, S.D. 1 H.D. 1
Relating to Collective Bargaining

CHAIRPERSON LUKE, VICE CHAIR CULLEN AND MEMBERS OF THE HOUSE
COMMITTEE ON FINANCE:

S.B. No. 410, S.D. 1 H.D. 1, clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

The Department of Human Resources Development **opposes** this measure as it would interfere with the rights and obligations of a public employer by allowing negotiations on rights reserved to management. This is contrary to Section 89-9(d), which states, "The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit principle or the principle of equal pay for equal work pursuant to section 76-1 or which would interfere with the rights and obligations of a public employer."

Based upon the above, the Department of Human Resources Development respectfully requests that this measure **be held**.

Thank you for the opportunity to testify on this important measure.

Written Only

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/30/2017
Time: 02:00 PM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 0410, SD1, HD1 RELATING TO COLLECTIVE BARGAINING.

Purpose of Bill: Clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. (SB410 HD1)

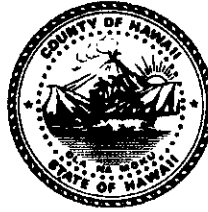
Department's Position:

The Department of Education (Department) respectfully opposes SB 410, S.D. 1, H.D. 1.

The proposed deletion of "permissive subject of bargaining" and requiring bargaining over "implementation" interferes with the rights of the employer by compelling negotiations over permissive subjects. Not only would this bill require the employer to bargain "permissive" subjects, it adds "implementation" as another topic beyond procedures and criteria. The supposed intent of SB 410, S.D. 1, H.D.1 to clarify the scope of collective bargaining negotiations in actuality, causes more confusion.

Therefore, the Department respectfully opposes SB 410, S.D. 1, H.D. 1 and requests the measure be held.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA. 74-5044 Ane Keohokalole Hwy, Bldg C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

March 28, 2017

Rep. Sylvia Luke, Chair
Committee on Finance
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Luke and Committee Members:

RE: SB 410, SD 1, HD 1
Re: SB 410, SD1, HD1 Collective bargaining

Thank you for this opportunity to comment on SB 410, SD1, HD1.

SB 410, SD1, HD1 says its purpose is to "clarify" the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer, and also "clarify" prohibited practices for parties to a public employment collective bargaining agreement. However, as we read the bill, its provisions would take away rights of the employer, and that is not acceptable.

We appreciate that this draft, and the latest draft of the House companion (HB232) have removed some wording that was contained in the original. However, collective bargaining language can be extremely technical, and every change can have unforeseen consequences.

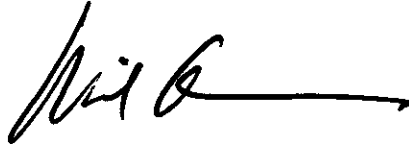
As we read SB 410, SD1, HD1, it still would provide a union another subject area to grieve, by alleging that an action by the employer to implement affects the terms and conditions of employment. So, the amendment does not clarify, it muddies the current bright line of understanding between employer rights and employee rights.

It would remove from HRS 89- 9 "permissive subjects of bargaining" which currently (1) are not mandatory, (2) are permissive and (3) are limited to 'procedures and criteria.' HRS 89-9 properly recognizes "permissive subjects of bargaining"; there is no duty to bargain, and a party cannot be compelled to bargain on permissive subjects.

S. Luke
March 28, 2017
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Therefore, the County of Hawaii must oppose passage of SB 410, SD1, HD1. It goes beyond mere clarification, and gets into substantive changes in the rights of the parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wil Okabe', with a long horizontal line extending to the right.

Wil Okabe
Managing Director



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 30, 2017

S.B. 410, S.D. 1, H.D. 1 – RELATING TO
COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 410, S.D. 1, H.D. 1 which clarifies the allowable scope of collective bargaining negotiations and prohibited practices for parties to a collective bargaining agreement.

This important measure makes necessary amendments to Ch. 89-9, Hawaii Revised Statutes, to clarify and delineate the scope of bargaining between the public sector employers and the exclusive representatives. The amendments to Ch. 89-9, HRS contained in S.B. 410, S.D. 1, H.D. 1 are necessary to ensure fairness in the process of negotiations. We respectfully request the Committee to support this measure.

Thank you for the opportunity to testify in strong support of the passage of S.B. 410, S.D. 1, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director





UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
March 30, 2017 at 2:00 p.m.

By
Richard H. Thomason
Director of Collective Bargaining and Labor Relations
University of Hawai'i

SB 410 SD1 HD1 – RELATING TO COLLECTIVE BARGAINING

Chair Luke, Vice Chair Cullen, and members of the Committee:

The University of Hawai'i opposes Senate Bill 410 SD1 HD1 Relating to Collective Bargaining. This measure seeks to clarify the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer.

Rather than creating clarity, this measure proposes to amend HRS, Section 89-9(d) directly impinging upon fundamental management rights recognized and protected by the Hawai'i Supreme Court in United Public Workers v. Hanneman, 106 Hawai'i 359, 365, 105 P. 3d 236, 242 (2005). As a representative employer group, the University opposes any degradation of employer rights and obligations to ensure optimal and efficient working conditions.

In sum, this bill does not “*clarify the allowable scope of collective bargaining*,” on the contrary; it seeks to dismantle management rights presently protected by HRS, §89-9(d), and it seeks to expand mandatory bargaining obligations beyond the four corners of public sector collective bargaining agreements.

Thank you for the opportunity to provide testimony on this measure.



The House Committee on Finance
Thursday, March 30, 2017
2:00 pm, Room 308

RE: SB 410, SD1, HD1, Relating to Collective Bargaining

Attention: Chair Sylvia Luke, Vice Chair Ty Cullen and
Members of the Committee

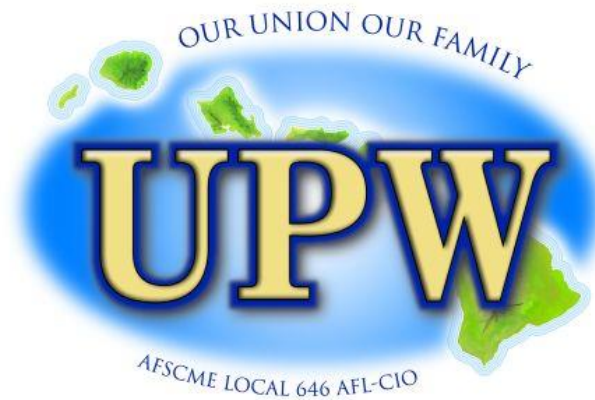
The University of Hawaii Professional Assembly (UHPA) urges the committee to **support SB 410, SD1, HD1** which encourages the parties to a collective bargaining agreement to negotiate in a manner that effectuates the purpose of Chapter 89. Such purpose includes recognizing that public employees have a voice in determining their working conditions. This proposed measure advances the cooperative relations between employers and employees that establishes a healthy collective bargaining environment.

UHPA encourages the Committee to **support SB 410, SD1, HD1**.

Respectfully Submitted,

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Ninth Legislature
Regular Session of 2017

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

DATE OF HEARING: March 30, 2017
TIME OF HEARING: 2:00 p.m.
PLACE OF HEARING: State Capitol, Rm. 308
415 South Beretania Street

**TESTIMONY ON SENATE BILL 410, SD1, HD1 RELATING TO COLLECTIVE
BARGAINING**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

SB410, SD1, HD1 clarifies the allowable scope of collective bargaining negotiations regarding the rights and obligations of a public employer. The UPW strongly **supports** this bill. Collective bargaining in public employment has had a rich history for several decades in Hawaii. The collective negotiations between the public employers and the exclusive representatives has brought relative labor peace which is vital for the reliable provision of core services like public safety, health, environmental protection, infrastructure and education to our communities throughout the state. This is the basic reason HRS 89-1 expressed the Legislature's intent and wise policy in the joint-decision making process

for administering government.

SB410, SD1, HD1 amends the collective bargaining law HRS 89-9, to put emphasis on the importance of the joint-decision process to wit, "...and shall not preclude negotiations over either the procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions [~~as a permissive subject of bargaining~~] or the implementation by the employer of paragraphs (1) through (8), if it affects terms and conditions of employment,..."

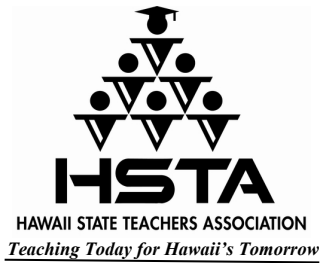
The term "permissive" is proposed to be deleted in the amendment. This should help to level the playing field and support the Legislative policy of joint-decision making. According to Matt Austin Labor Law, there are basically three types of bargaining: Illegal subjects of bargaining, Permissive subjects of bargaining, and Mandatory subjects of bargaining. Illegal subjects of bargaining are obvious i.e., they are unenforceable subjects that violate state or federal law.

Mandatory subjects of bargaining are subjects related to the terms and conditions of employment and include wages, grievances, arbitration procedures, contract length, union security clauses, and other terms and conditions of employment. Neither the employer nor the union can refuse to bargain over mandatory subjects of bargaining. Permissive subjects of bargaining are those that either party can propose to discuss and the other side may voluntarily bargain on those subjects. Neither side may insist on bargaining that subject to the point of impasse. Once bargaining begins on a permissive subject, either side can end the bargaining on that subject without penalty.

A word about Impact and Implementation bargaining. In general terms, when an employer wants to exercise its "management rights" the union may not be able to bargain over the substance of an issue. But the union may be able to bargain over how the issue would "impact" employees or be "implemented." The union could propose solutions to improve the implementation and thereby lessen the negative impact of the change on affected employees.

SB410, D1, HD1 does not preclude negotiations over the implementation by the employer of paragraphs (1) through (8) HRS 89-9 (d) if it affects the terms and conditions of employment. The bill also provides a grievance process in case of any violations of the procedures, criteria, and implementation so negotiated. The bill increases the opportunity for improved communications and understanding between the employer and exclusive representative and that government will continue to provide reliable public services. This is a goal of HRS 89-1.

The UPW **supports** this measure and requests the committee to pass it out. Thank you for the opportunity to submit this testimony.



1200 Ala Kapuna Street ♦ Honolulu, Hawaii 96819
Tel: (808) 833-2711 ♦ Fax: (808) 839-7106 ♦ Web: www.hsta.org

Corey Rosenlee
President

Justin Hughey
Vice President

Amy Perruso
Secretary-Treasurer

Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
FINANCE

RE: SB 410, SD 1, HD 1 - RELATING TO COLLECTIVE BARGAINING

THURSDAY, MARCH 30, 2017

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Luke and Members of the Committee:

The Hawaii State Teachers Association **supports SB 410, SD 1, HD 1**, relating to collective bargaining.

This proposal clarifies the obligation of the state to engage in negotiations in a fair and respectable manner. While HSTA recognizes the right of the state to manage employee work, we strongly affirm the importance of protecting employees' right to negotiate those subjects outlined in HRS 89-9.

Collective bargaining is especially important to public school teachers. It is in the best interest of both the employer and the union to ensure that bargaining occurs in a way that supports an employee's ability to enhance their professionalism, leads to a workplace free from health and safety risks, and is conducted in a fair and equitable manner.

To protect collective bargaining, the Hawaii State Teachers Association asks your committee to **support** this bill.



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
WEBSITE: www.hawaii firefighters.org

HOUSE OF REPRESENTATIVES THE TWENTY-NINTH LEGISLATURE REGULAR SESSION OF 2017

LATE

March 30, 2017

Committee on Finance

Testimony by
Hawaii Fire Fighters Association, Local 1463

S.B. No. 410 SD 1 HD 1

RELATING TO COLLECTIVE BARGAINING

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO, represents more than 1,900 professional active-duty and 800 retired fire fighters throughout the State. The HFFA, on behalf of our members, **strongly supports S.B. No. 410 SD 1 HD 1**, clarifying the allowable scope of collective bargaining negotiations.

The proposed amendment in S.B. No. 410 SD 1 HD 1, clarifies that the subjects of bargaining between the employers and the exclusive representatives are negotiable when the implementation of HRS Section 89-9, paragraphs (1) through (8), *affects the terms and conditions of employment.*" (Emphasis added.) The employers are not prohibited from establishing new policies under this proposed amendment.

However, this proposed legislation requires that the *impact of those policies* on public employment are subject to bargaining. Specifically excluded topics, such as all aspects of the Hawaii Retirement System and the health insurance coverage of the Employer Union Trust Fund, remain outside of the collective bargaining process.

On September 23, 2016, the "Employer Group" filed a Petition for Declaratory Ruling questioning the meaning of the word "permissive" with the Hawaii Labor Relations Board, but subsequently withdrew the petition. The Petitioners questioned whether a number of HFFA's Final Positions that were submitted for Interest Arbitration were prohibited since the State and Counties were asserting that the proposals were permissible subject to the criteria articulated in Section 89-9(d), H.R.S. While HFFA contended the proposals identified by the petitioners have gone through a number of revisions throughout previous negotiations and interest arbitration without any question but as if it was an epiphany, the Petitioners, State and Counties, decided that the sections were questionable as to whether they were permissible subjects of bargaining and subject to arbitration. The petition implied that "permissive" gave the employer the unilateral right to decide not to include in collective bargaining agreements topics that had been **part of public sector contracts for over forty (40) years**, since the original passage of the Chapter 89. This legislative proposal places the responsibility of good faith bargaining on both parties and effectively addresses the rights and benefits for public employees under the collective bargaining law.

HFFA appreciates your Committee's favorable consideration of this measure.

Thank you for the opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honoluluupd.org

LATE

KIRK CALDWELL
MAYOR



LOUIS-M. KEALOHA
CHIEF

CARY OKIMOTO
JERRY INOUE
DEPUTY CHIEFS

OUR REFERENCE **JG-JK**

March 30, 2017

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

SUBJECT: Senate Bill No. 410, SD1, HD1, Relating to Collective Bargaining

I am Jonathon Grems, Captain of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 410, SD1, HD1, Relating to Collective Bargaining.

The new proposed language could be interpreted in a manner that would essentially strip management of its current rights by:


- Requiring a mutual agreement of management's authority to direct its workforce based on operational needs and give an interpretation to the employees that they may refuse to perform certain duties unless mutually agreed upon;
- Requiring management to mutually agree upon minimum qualifications, standards for work, and nature and contents of examinations;
- Reducing management's ability and authority to take appropriate action when its employees fail to perform satisfactorily or discipline for employee misconduct; and
- Reducing management's ability to reduce its workforce or layoff employees due to a lack of work or other legitimate reason and take necessary action to carry out the missions of the employer in cases of emergencies.

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
March 30, 2017
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Based on the above reasons, the HPD opposes Senate Bill No. 410, SD1, HD1, Relating to Collective Bargaining, and asks that further consideration be given before moving this measure forward.

Thank you for the opportunity to testify.

Sincerely,



Jonathon Grems, Captain
Human Resources Division

APPROVED:



Cary Okimoto
Acting Chief of Police