

SCR111

Measure Title: URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

Report Title: HLRB; Janus Case; Free Ride

Description:

Companion:

Package: None

Current Referral: LBR

Introducer(s): TOKUDA, BAKER, S. CHANG, ENGLISH, INOUE, K. KAHELE, KEITH-AGARAN, KIDANI, K. RHOADS, Dela Cruz, Galuteria, Nishihara

<u>Sort by</u> <u>Date</u>	Status Text
3/9/2018	S Offered.
3/15/2018	S Referred to LBR.
3/21/2018	S The committee(s) on LBR has scheduled a public hearing on 03-27-18 2:45PM in conference room 229.

S = Senate | **H** = House | **D** = Data Systems | **\$** = Appropriation measure | **ConAm** = Constitutional Amendment

Some of the above items require Adobe Acrobat Reader. Please visit [Adobe's download page](#) for detailed instructions.

SCR111

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SHAN S. TSUTSUI
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ACTING DIRECTOR, DLIR



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STATE OF HAWAII
HAWAII LABOR RELATIONS HLRB
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March 23, 2018

To: The Honorable Jill N. Tokuda, Chair,
The Honorable J. Kalani English, Vice Chair, and
Members of the Senate Committee on Labor

Date: Tuesday, March 27, 2018
Time: 2:45 p.m.
Place: Conference Room 229, State Capitol

From: Hawaii Labor Relations HLRB (HLRB)
Dept. of Labor and Industrial Relations (DLIR)

Re: SCR 111/SR 69

URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

I. OVERVIEW OF PROPOSED LEGISLATION

These resolutions request the HLRB to submit a report of its findings and recommendations on the status and consequences of *Janus v. American Fed'n of State, County, and 2 Mun. Employees, Council 31*, 851 F.3d 746 (7th Cir. 2017), cert. 3 granted, 138 S.Ct. (Mem), 198 L.Ed. 2d 780 (2017), (*Janus*), including any proposed legislation, to this body no later than twenty days prior to the convening of the Regular Session of 2019.

II. COMMENTS

The Hawaii Labor Relations Board's jurisdiction is set forth in Hawaii Revised States (HRS) Chapter 89, §89-5 (a), (i) (1) through (10). The Board's authority extends to the implementation of collective bargaining under Chapter 89 and the orderly resolution of disputes that arise under the statute.

HRS §26-7, sets forth that the Department of the Attorney General "...shall administer and render state legal services, including furnishing of *written legal opinions to the governor, legislature*, and such state departments and officers as the governor may direct..." (*emphasis added*).

Therefore, the Board recommends that SCR 111 and SR 69 should be amended by the inclusion of the Attorney General in its title, and the substitution of the Department of the Attorney General for the Hawaii Labor Relations Board with respect to the report to the Legislature prior to the 2019 legislative session with respect to the decision of the United States Supreme Court in the *Janus* case. See the proposed changes listed below.

TITLE: URGING THE ATTORNEY GENERAL, THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE".

Page 3, line 14-19. BE IT FURTHER RESOLVED that the [~~Hawaii Labor Relations Board~~] Department of the Attorney General is requested to submit a report of its findings and recommendations on the status and consequence of *Janus*, including any proposed legislation, to this body no later than twenty days prior to the convening of the Regular Session of 2019; and

Page 3, line 21-24. BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor, Attorney General, Chairperson of the Hawaii Labor Relations Board, and Chief Justice of the Supreme Court of Hawaii.



The Senate Committee on Labor

Tuesday, March 27, 2018, 2:45 PM, Conference Room 229

RE: **SCR 111/SR 69 Urging the Hawai'i Labor Relations Board...**

Attention: Chair Jill Tokua, Vice Chair J. Kalani English and members of the Committee

The University of Hawaii Professional Assembly (UHPA) strongly encourages the committee to support S.C.R NO.111. Support affirms that the purpose of Chapter 89, Hawai'i Revised Statutes should continue to ensure exclusive representatives have the financial resources that support collective bargaining. Hawai'i has long supported the sharing of collective bargaining costs across all employees of a bargaining unit. These agency fee provisions make it possible for public sector unions to provide sufficient representation to employees in negotiations and the continuing obligations to enforce the contract.

On February 26, 2018 the United States Supreme Court heard *Janus v. American Federation of State, County, and Municipal Employees Council 31, et al.*, which could result in no longer requiring unionized employees to financially support the costs of collective bargaining and maintenance of benefits and protections that are provided through negotiations. The potential loss of agency fee means that exclusive representatives could be sufficiently wounded and their obligations to represent employees will be undermined thru a loss of financial resources.

Should the Supreme Court find that mandatory agency fees are illegal S.C.R NO.111 establishes the intent of the legislature to support adaptive changes in Hawai'i law that will maintain the financial viability of unions. The resolution notes that there are periods of time where the legislature is not in session yet there may be a need for a state agency, such as the Hawai'i Labor Relations Board, to take action that will limit the financial impact on unions where bargaining unit members refuse to pay a pro rata share of collective bargaining costs.

Janus will not change the union's obligation to represent all bargaining unit members but could harm a unions ability to do so by stripping it's financial resources through allowing "free riders". Free Riders enjoy the benefits of negotiations and expect their colleagues to pay for the costs of collective bargaining. This is an insidious manner to make unions ineffectual by stripping them of resources.

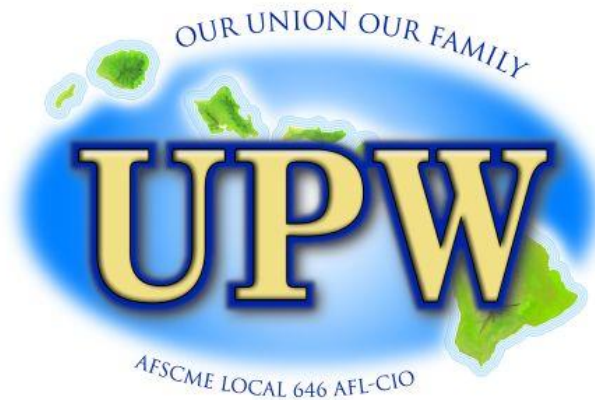
S.C.R NO. 111 attests to the Legislature's continuing commitment to support the purpose of Chapter 89 and ensuring that duly-elected exclusive representatives be able to fulfill their statutory duties. UHPA strongly urges the committee support S.C.R. NO. 111.

Respectfully submitted,

Kristeen Hanselman, Executive Director

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THE HAWAII STATE SENATE
The Twenty-Ninth Legislature
Regular Session of 2018

COMMITTEE ON LABOR

Senator Jill N. Tokuda, Chair
Senator J. Kalani English, Vice Chair

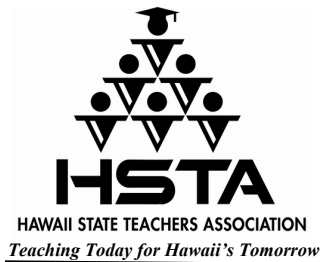
DATE OF HEARING: Tuesday, March 27, 2018
TIME OF HEARING: 2:45 p.m.
PLACE OF HEARING: State Capitol
415 South Beretania Street
Conference Room 229

**TESTIMONY ON SCR111/SR69 URGING HLRB AND OTHER AGENCIES TO TAKE
NOTICE OF THE LEGISLATURE'S INTENT**

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

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 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.

Resolution SR69 and Senate Concurrent Resolution SCR111 urges the HLRB and other concerned agencies to take notice of the Legislature's intent to enable exclusive representatives to maintain financial viability and organizational capacity and effectively represent public employees and to remove or reduce financial incentives for employees to "free ride". The UPW strongly supports these resolutions.



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TESTIMONY BEFORE THE SENATE COMMITTEE ON
LABOR

RE: SCR 111/ SR 69 - URGING THE HAWAII LABOR RELATIONS BOARD, AND OTHER CONCERNED AGENCIES OR JUDICIAL BODIES, TO TAKE NOTICE OF THE LEGISLATURE'S INTENT TO ENABLE EXCLUSIVE REPRESENTATIVES TO MAINTAIN FINANCIAL VIABILITY AND ORGANIZATIONAL CAPACITY AND EFFECTIVELY REPRESENT PUBLIC EMPLOYEES, AND TO REMOVE OR REDUCE FINANCIAL INCENTIVES FOR EMPLOYEES TO "FREE RIDE"

TUESDAY, MARCH 27, 2018

COREY ROSENLEE, EXECUTIVE DIRECTOR
HAWAII STATE TEACHERS ASSOCIATION

Chair Tokuda and Members of the Committee:

The Hawaii State Teachers Association **supports SCR 111/SR 69**, urging the Hawai'i Labor Relations Board and other concerned agencies or judicial bodies to take notice of the Legislature's intent to enable exclusive representatives to maintain financial viability and organizational capacity, and effectively represent public employees, and to remove or reduce financial incentives for employees to "free ride."

Labor rights are human rights. This resolution clarifies the Legislature's intent to protect collective bargaining in light of *Janus v. AFSCME*, a case that could alter the application of chapters 76 and 89, Hawai'i Revised Statutes. In *Janus v. AFSCME*, the petitioners asked the United States Supreme Court to determine if *Abood v. Detroit Board of Education* should be overruled and public-sector agency shop arrangements invalidated under the First Amendment, and, additionally, if the First Amendment prohibits the practice of requiring public employees to affirmatively opt-out of subsidizing nonchargeable speech, rather than to affirmatively consent to such speech.

If the Supreme Court strikes down laws requiring the payment of union dues by public sector employees, the ruling would fundamentally undermine Hawai'i's dedication to labor management peace by constraining collective bargaining representatives' ability to collect resources from their members and, in turn, diminishing public employees' ability to negotiate with management and represent their members' interests. Put simply, the ability hardworking families to fight for fair treatment from their employers would be endangered and their livelihoods would be placed at risk.

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. Our state's promise to protect collective bargaining is urgent under the pending threat of *Janus v. AFSCME*, which jeopardizes the union workforce that forms the heart of Hawai'i's economy.

To preserve the islands' longstanding devotion to the protection of workers' rights, the Hawaii State Teachers Association asks your committee to **support** this resolution.