

S.B. NO. 1234

JAN 24 2019

A BILL FOR AN ACT

RELATING TO THE OFFICE OF COLLECTIVE BARGAINING AND MANAGED
COMPETITION.

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

1 SECTION 1. The chief negotiator in the office of
2 collective bargaining and managed competition serves a vital
3 role as the key representative of the governor during collective
4 bargaining negotiations. This position also advises the
5 governor on labor relations policy. While it is necessary for
6 the chief negotiator position to remain a direct appointment by
7 the governor, the office of collective bargaining as a
8 functional unit should be transferred to the department of human
9 resources development to maintain institutional knowledge and
10 support across executive administrations. Further, in light of
11 the fact that part II (privatization) of Act 90, Session Laws of
12 Hawaii 2001, sunsetted in 2007, managed competition pursuant to
13 chapter 89A, Hawaii Revised Statutes, is arguably not viable
14 absent an analog to part II being enacted.

15 The purposes of this Act are to transfer the position of
16 chief negotiator and related organizational functions and
17 funding from the office of the governor to the department of

1 human resources development to maintain such institutional
2 knowledge and support and to eliminate references to managed
3 competition.

4 SECTION 2. Section 89A-1, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§89A-1 Office of collective bargaining [~~and managed~~
7 ~~competition~~]. (a) There shall be established an office of
8 collective bargaining [~~and managed competition~~] in the [~~office~~
9 ~~of the governor~~] department of human resources development to
10 assist the governor in [~~implementation and review of the managed~~
11 ~~process of public-private competition for particular government~~
12 ~~services through the managed competition process and~~]
13 negotiations between the State and the exclusive representatives
14 on matters of wages, hours, and other negotiable terms and
15 conditions of employment.

16 (b) The position of chief negotiator for the State is
17 hereby established in the department of human resources
18 development to head the office. The chief negotiator shall be
19 experienced in labor relations. The governor shall appoint the
20 chief negotiator [~~and may also appoint deputy negotiators to~~
21 ~~assist the chief negotiator.~~], without regard to chapter
22 76. The appointment of the chief negotiator shall not be
23 subject to senate confirmation. The governor, at pleasure, may

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1 remove the chief negotiator [~~and any deputy negotiator~~. All
2 other employees shall be appointed by the chief negotiator. All
3 employees in the office of collective bargaining and managed
4 competition. The chief negotiator shall be included in any
5 benefit programs generally applicable to employees of the State.

6 (c) Subject to the approval of the governor, the office of
7 collective bargaining [~~and managed competition~~] shall [+

8 ~~(1)~~ [Assist] assist the governor in formulating the
9 State's philosophy for public collective bargaining
10 [~~and for the managed process for public private~~
11 ~~competition for government services, including which~~
12 ~~particular service can be provided more efficiently,~~
13 ~~effectively, and economically considering all relevant~~
14 ~~costs, and~~

15 ~~(2)~~ ~~Coordinate and negotiate the managed competition~~
16 ~~process on behalf of the State with exclusive~~
17 ~~representatives of affected public employees and~~
18 ~~private contractors].~~

19 [~~(d)~~ ~~No employee of the office of collective bargaining~~
20 ~~and managed competition] shall be included in the civil service,~~
21 ~~any civil service classification system, or any appropriate~~
22 ~~bargaining unit, provided that any civil service position in~~

1 ~~existence on July 1, 2002, shall not be exempted from civil~~
2 ~~service until the incumbent in that position on July 1, 2002,~~
3 ~~vacates that position.~~

4 ~~(c) If the State executes a contract with a private~~
5 ~~contractor pursuant to the managed competition process~~
6 ~~authorized under this section, the State may use the layoff~~
7 ~~provisions of the civil service laws and the respective~~
8 ~~collective bargaining contracts to release employees displaced~~
9 ~~from their positions by the managed competition process. Prior~~
10 ~~to implementing any layoff provision of the civil service laws~~
11 ~~or a collective bargaining contract, the State shall use its~~
12 ~~resources for placing, retraining, and providing voluntary~~
13 ~~severance incentives for displaced employees. Methods that may~~
14 ~~be used to minimize or avoid the adverse effects of an agency's~~
15 ~~decision to secure needed services from contractors may include:~~

16 ~~(1) Coordination with the private service provider awarded~~
17 ~~the contract under this section to continue a~~
18 ~~displaced employee's employment as an employee of the~~
19 ~~contractor;~~

20 ~~(2) Reassignment to another civil service position the~~
21 ~~employee is qualified to fill;~~

22 ~~(3) Retraining to qualify the employee for reassignment;~~
23 ~~and~~

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1 ~~(4) Severance incentives.~~

2 ~~(f) As used in this section, "managed competition" means~~
3 ~~the process established in this section by which the State and a~~
4 ~~private contractor compete to provide government services.]~~

5 SECTION 3. Section 89A-2, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§89A-2 Functions of the office of collective bargaining**
8 ~~[and managed competition]~~. In addition to the powers and
9 functions provided in other sections of this chapter, and
10 subject to the approval of the governor, the office of
11 collective bargaining ~~[and managed competition]~~ shall:

12 (1) Assist the governor in formulating plans, including
13 objectives, criteria to measure management's
14 accomplishment of objectives, and programs through
15 which the objectives are to be attained;

16 (2) Assist the governor in formulating management's
17 philosophy for public collective bargaining as well as
18 planning bargaining strategies;

19 (3) Conduct negotiations with the exclusive
20 representatives of each employee organization and
21 designate employer spokespersons for each negotiation;

- 1 (4) Coordinate the State's resources in all mediation,
2 fact-finding and interest arbitration cases as well as
3 in all labor disputes;
- 4 (5) Conduct systematic reviews of collective bargaining
5 agreements for the purpose of contract negotiations;
- 6 (6) Coordinate the systematic compilation of data by all
7 agencies that is required for negotiating purposes;
- 8 (7) Coordinate the establishment of cost data negotiated
9 with each exclusive representative and assist the
10 governor in making recommendations with respect
11 thereto to the legislative bodies;
- 12 (8) Prepare and submit an annual report and such other
13 reports as may be requested to the governor and to the
14 legislature on the implementation of the collective
15 bargaining act."

16 SECTION 4. All rights, powers, functions, and duties of
17 the office of collective bargaining and managed competition are
18 transferred from the office of the governor and placed in the
19 department of human resources development for administrative
20 purposes and the office shall be renamed as the office of
21 collective bargaining.

22 SECTION 5. All appropriations, records, equipment,
23 machines, files, supplies, contracts, books, papers, documents,

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1 maps, and other personal property heretofore made, used,
2 acquired, or held by the office of the governor relating to the
3 functions transferred to the department of human resources
4 development shall be transferred with the functions to which
5 they relate.

6 SECTION 6. The Hawaii Revised Statutes is amended by
7 replacing all reference to "office of collective bargaining and
8 managed competition" or like references with "office of
9 collective bargaining" or like references, as the context
10 requires.

11 SECTION 7. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act, upon its approval, shall take effect
14 on July 1, 2019.

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INTRODUCED BY: 

17

BY REQUEST

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Report Title:

Office of Collective Bargaining and Managed Competition

Description:

Transfers the office of collective bargaining, including the position of chief negotiator, to the department of human resources development.

JUSTIFICATION SHEET

DEPARTMENT: HUMAN RESOURCES DEVELOPMENT

TITLE: A BILL FOR AN ACT RELATING TO THE OFFICE OF COLLECTIVE BARGAINING AND MANAGED COMPETITION.

PURPOSE: To transfer the Office of Collective Bargaining from the Office of the Governor to the Department of Human Resources Development and to eliminate references to managed competition.

MEANS: Amend sections 89A-1 and 89A-2, Hawaii Revised Statutes (HRS).

JUSTIFICATION: In addition to the duties as Director of the Department of Human Resources Development (DHRD), the DHRD Director currently serves a dual-role as Chief Negotiator in the Office of Collective Bargaining (OCB). The OCB has no appropriated staff to support it. However, when acting as Chief Negotiator, the Director of DHRD is naturally supported by staff in DHRD's Labor Relations Division, who are experienced and knowledgeable with respect to the collective bargaining agreements and negotiations. This bill seeks to transfer the OCB, including the position of Chief Negotiator and related organizational functions and funding, from the Office of the Governor to DHRD. This transfer will serve to preserve the institutional knowledge of the OCB with the staff that currently supports the Chief Negotiator (DHRD's Labor Relations Division) and, in turn, will provide for the perpetuation of this institutional knowledge and support for the benefit of future executive administrations. Further, in light of the fact that part II (privatization) of Act 90, Session Laws of Hawaii 2001, sunsetted in 2007, managed competition pursuant to chapter 89A, Hawaii

Revised Statutes, is arguably not viable absent an analog to part II being enacted.

Impact on the public: None expected.

Impact on the department and other agencies:
DHRD will be tasked with administrative oversight of an additional office.

GENERAL FUND: DHRD has a separate biennium budget request to add a Chief Negotiator position and general funds for the OCB.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Office of the Governor.

EFFECTIVE DATE: July 1, 2019.