



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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The Thirty-Second Legislature, State of Hawaii  
The House of Representatives  
Committee on Finance

Testimony by  
Hawaii Government Employees Association

February 27, 2023

H.B. 1205, H.D. 1 — RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1205, H.D. 1 which specifies that exclusive representatives of public employees are not required to provide grievance representation to collective bargaining unit members who neither pay dues nor dues equivalents and who decline to pay reasonable costs of representation.

For decades the Hawaii Government Employee Association has fought to advance and protect the rights of employees across the State, Counties, Judiciary, Department of Education, and the University of Hawaii System. Since the 2018 *Janus vs AFSCME US* Supreme Court decision, public sector unions across the country have been required by law to represent non-due paying members who have been adversely affected by the employer through the grievance process. At times the grievance process can be lengthy and can cost the union thousands of dollars. Without the ability to collect fair share fees from all employees', the non-due paying member has access to these expensive services without having to pay a dime. This measure would require the non-due paying members to 'pay their fair share' if they need union representation, which would strengthen the financial stability of all public sector unions in Hawaii.

Thank you for the opportunity to provide testimony in strong support of H.B. 1205, H.D. 1.

Respectfully submitted,

Randy Perreira  
Executive Director



STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS  
" A Police Organization for Police Officers Only "  
Founded 1971

February 24, 2023

**VIA ONLINE**

The Honorable Kyle T. Yamashita  
Chair  
The Honorable Lisa Kitagawa  
Vice-Chair  
House Committee on Finance  
Hawaii State Capitol, Room 306, 435  
415 South Beretania Street  
Honolulu, HI 96813

Re: **HB 1205 HD1– Relating to Collective Bargaining.**

Dear Chair Yamashita, Vice-Chair Kitagawa, and Honorable Committee members:

I serve as the President of the State of Hawaii Organization of Police Officers (“SHOPO”) and write to you on behalf of our Union in **strong support** of HB 1205 HD1, subject to it being effective upon approval as originally proposed. This bill amends HRS § 89-8 to make clear that a public union is not required to provide grievance representation to employees within the bargaining unit that the union represents if that employee declines or refuses to pay for the membership dues which in turn pays for such services or who declines to pay the reasonable costs of that representation.

Under Hawaii law, all public employees that fall within one of the 15 bargaining units enumerated under HRS § 89-6 are represented by the employee organization certified by the Hawaii Labors Relation Board pursuant to section 89-8 for the purpose of negotiating and dealing with public employers. The union’s extensive work involves grievances, labor disputes, wages, hours, amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund, and other terms and conditions of employment. The certified employee organization is the “exclusive” representative of all employees in a bargaining unit under HRS § 89-6 and in turn, the exclusive employee organization is responsible for representing the interests of all such employees without discrimination and without regard to employee organization membership.

The Honorable Kyle T. Yamashita, Chair  
The Honorable Lisa Kitagawa, Vice-Chair  
House Committee on Finance  
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Re: **HB 1205 HD1– Relating to Collective Bargaining.**

In order to pay for the various services that the exclusive representatives provide to the employees in its bargaining unit, HRS § 89-4 authorizes the exclusive representative to deduct union dues from the employee’s payroll through the employee’s public employer. Prior to 2018, regardless of whether an employee within a bargaining unit elected to become a member of the exclusive employee organization, because that employee still reaped the benefits and services provided by the organization to all employees, non-member employees in the bargaining unit still had to pay their fair share for services and benefits they enjoyed because of the exclusive employee organization. Indeed, a nonmember employee had the right to object to the payment of dues used for activities of a political or ideological nature unrelated to terms and conditions of employment and would be entitled to a refund for the percentage of dues used for those purposes. Importantly, these laws were promulgated and/or were consistent with the United States Supreme Court’s 1977 decision in Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977) which held that a public union may charge nonmembers a fee to cover union expenditures attributable to activities “germane” to the union’s collective-bargaining activities but not to cover the union’s political and ideological project.

That all changed in 2018 when the U.S. Supreme Court overruled Abood in Janus v. Am. Fed’n of State, Cnty., & Mun. Employees, Council 31, 138 S.Ct. 2448 (2018). In Janus, the Supreme Court held that public sector employee organizations are prohibited from charging nonmembers their proportionate share of union dues attributable to the union’s activities as collective-bargaining representative because that practice violates the First Amendment to the U.S. Constitution. In response to the argument that allowing “free-riders” (i.e., non-payers who reap all the benefits of the union but do not pay for the services that they benefit from and utilize) was fundamentally unfair and would bankrupt the union, the Court found that

...whatever unwanted burden is imposed by the representation of nonmembers in disciplinary matters can be eliminated “through means significantly less restrictive of associational freedoms” than the imposition of agency fees. *Harris*, 573 U.S., at —, 134 S.Ct., at 2639 (internal quotation marks omitted). **Individual nonmembers could be required to pay for that service or could be denied union representation altogether.**

Janus, 138 S.Ct. at 2468–69 (emphasis added). As such, the proposed amendments to HRS § 89-8 codify a union’s right to refuse to provide grievance representation to employees who neither pay dues nor dues equivalents or who refuse to pay reasonable costs of that representation. This is not only fair, but also prevents a union from going bankrupt, provide financial stability, and is less restrictive of associational freedoms than the imposition of mandatory agency fees.

The Honorable Kyle T. Yamashita, Chair  
The Honorable Lisa Kitagawa, Vice-Chair  
House Committee on Finance  
February 24, 2023  
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Re: **HB 1205 HD1– Relating to Collective Bargaining.**

For these reasons, SHOPO stands in strong support of HB 1205 HD1 provided it is effective upon approval.

We thank you for allowing us to be heard on this very important issue and hope your committee will unanimously support this bill and allow this bill to take effect upon its approval.

Respectfully submitted,

ROBERT “BOBBY” CAVACO  
SHOPO President



The House Committee on Finance  
1:30 PM February 2, 2023  
Room 308

RE: **HB 1205 HD 1, Relating to Collective Bargaining**

Attention: Chair Kyle Yamashita, Vice Chair Lisa Kitagawa and members of the Committee

The University of Hawaii Professional Assembly (UHPA) **strongly supports the passage of HB1205, HD1.**

This amendment to HRS, Chapter 89, §89-8, addresses the impact of the US Supreme Court case in *Janus v American Federation of State, County, and Municipal Employees Council 31, ET. AL.* and the instability in the financial integrity of any given public sector exclusive bargaining representative. Since bargaining unit members are not required to pay any fees to support the exclusive bargaining representative, there is a negative financial impact on the ability of the exclusive bargaining representative to provide appropriate representation on contractual matters to their members.

HB 1205, HD 1, specifies that the exclusive bargaining representatives of public employees are not required to provide grievance representation, to include grievance arbitration, to collective bargaining unit members who neither pay dues nor dues equivalents; and who decline to pay reasonable costs of the representation.

UHPA has the most diverse bargaining unit in the state, not only in type of work performed, but also the terms and conditions of employment, including compensation. The proposed legislation is an essential tool to address the unique demands of a bargaining unit that historically has a significant percentage of non-members, while simultaneously providing all public sector bargaining units with the same essential tools.

Hawai'i has a mature, unique and distinct collective bargaining law that governs collective bargaining for public sector employees. UHPA is seeking clarity in the law that recognizes the changed circumstances and challenges. This measure seeks to provide the flexibility necessary for an alternative approach with a modification of the duty of fair representation. There is nothing in the *Janus* decision that states that individuals get something for nothing. In fact, there is a basis for this approach that is found in the *Janus* decision under footnote 6. This measure does not mandate the exclusive

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bargaining representatives to take any action. It simply provides an option for the exclusive bargaining representatives to consider as a solution for long term viability.

Thank you for the opportunity to provide testimony in **strong support of HB 1205 HD 1**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. L. Fern'.

Christian L. Fern  
Executive Director  
University of Hawaii Professional Assembly

University of Hawaii  
Professional Assembly

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**HB-1205-HD-1**

Submitted on: 2/26/2023 11:46:54 PM

Testimony for FIN on 2/27/2023 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Julie Reyes Oda	Individual	Comments	Remotely Via Zoom

Comments:

This bill does not cover union members who are not members due to their choice. Does this bill still apply to bargaining unit members who the union themselves refuse to allow membership or kick out of the union?

**HB-1205-HD-1**

Submitted on: 2/27/2023 6:58:31 AM

Testimony for FIN on 2/27/2023 1:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Caroline Freudig	Individual	Oppose	Written Testimony Only

Comments:

Good Afternoon,

I am submitting this testimony in opposition to HB1205: Related to Collective Bargaining. This bill is morally unacceptable. As the former Teacher Induction Program Coordinator, I worked closely with newly hired teachers and many of them could barely afford housing and food so they didn't pay union dues when they first started teaching. Teachers repeatedly told me that, while they supported our union wholeheartedly, they had to make hard decisions on how to spend their money.

This bill basically punishes those types of teachers by now saying they would not receive grievance representation. So not only can they not afford to pay their dues, but now the union won't represent them in a time of need? This would be inequitable and by passing this bill we would be punishing some of our beginning teachers who can barely afford to keep up with housing and living costs, especially those not yet certified to teach.

I don't see how this can even be considered. I'm sorely disappointed.

Caroline Freudig

1st Grade Teacher, Kalaheo Elementary, Kaua'i District