

ACT 74

S.B. NO. 2551

A Bill for an Act Making an Appropriation for Collective Bargaining Cost Items.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that on March 25, 2004, the governor, jointly with the president of the University of Hawaii (UH), members of the UH board of regents, and the University of Hawaii professional assembly (UHPA) announced that they had reached an unprecedented six-year collective bargaining contract between the State and the UH professors. Among other things, the contract provided for pay increases equating to raises of over thirty-four per cent over the next six years, with the cost borne entirely by the State for the first three years, and then shared between the State and UH over the last three. Total obligations will be \$124,000,000 to the State and \$39,000,000 to UH.

The legislature further finds that UHPA, the exclusive bargaining representative of bargaining unit (7), reported that the 2003-2009 contract was ratified by its membership on April 7, 2004. Subsequently, on April 16, 2004, the governor transmitted to the legislature the cost items applicable to the ratified contract in accordance with section 89-10(b), Hawaii Revised Statutes.

In the governor's transmittal letter of the cost items, the governor informed the legislature that precedent exists for the approval of appropriations for future fiscal bienniums. Pursuant to Act 63, Session Laws of Hawaii 1994, the legislature authorized appropriations to pay for collective bargaining cost items for fiscal biennium 1993-1995, and authorized the implementation of cost items in fiscal biennium 1995-1997, as provided in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (3).

However, on January 27, 2000, the attorney general opined that due to constitutional limitations, legislative approval of collective bargaining cost items must occur on a biennial basis. Citing article VII, sections 5, 9, and 11 of the State Constitution, the floor debates of the 1978 Constitutional Convention, and *Frost v. State*, 172 N.W.2d 575 (Iowa 1969), the attorney general asserted that, "it is a fundamental principle that one legislature cannot restrict the power of future legislatures to legislate. . . 'The authority of the legislature is limited to the period of its own existence. One general assembly cannot bind a future one.' " (citing *Frost v. State*, supra at 583.)

Furthermore, the attorney general cited Stewart E. Sterk, "The Continuity of Legislatures: Of Contracts and the Contracts Clause," 88 Colum. L. Rev. 647 (1988), when the attorney general clarified that "... the reasons for this principle have been explained as:

- (1) Legislatures are agents of a constantly changing constituency;

- (2) A current legislature may not adequately account for the interests of future constituents;
- (3) Legislatures are collective bodies requiring a consensus of many individuals; and
- (4) Legislative membership changes at frequent intervals.”

The legislature firmly agrees with these principles and declares that appropriations for collective bargaining cost items can only be approved during the fiscal biennium to which the legislature is constituted.

The purpose of this Act is to provide the necessary appropriations to fund the cost items applicable to the ratified contract with UHPA for fiscal biennium 2003-2005.

PART I

SECTION 2. The purpose of this part is to provide the necessary appropriations or authorization, as the case may be, to allow for the implementation of salary adjustments and other cost items during fiscal biennium 2003-2005, as provided in the agreement with the exclusive bargaining representative of collective bargaining unit (7).

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 all collective bargaining cost items in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (7):

	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Biennium</u>
General funds	\$1,799,551	\$7,628,378	\$9,427,929
Special funds	\$ 20,293	\$ 81,807	\$ 102,100
Other funds	\$ 3,220	\$ 12,973	\$ 16,193

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance in the respective years for the purposes of this part.

PART II

SECTION 5. The purpose of this part is to provide the necessary appropriation or authorization, as the case may be, to allow for the implementation of salary adjustments and other costs items during fiscal biennium 2003-2005 for state officers and employees excluded from collective bargaining.

SECTION 6. There are appropriated or authorized from the sources of funding indicated below to program planning, analysis, budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 the salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-04</u>	<u>FY 2004-05</u>	<u>Biennium</u>
General funds	\$ 206,853	\$ 925,253	\$1,132,106
Special funds	\$ 3,871	\$ 15,589	\$ 19,460

SECTION 7. Funds appropriated or authorized by this part shall be allotted by the director of finance in the respective years for the purposes of this part.

PART III

SECTION 8. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 9. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2005, shall lapse as of that date.

SECTION 10. This Act, upon its approval, shall take effect retroactive to July 1, 2003.

(Approved May 17, 2004.)