

HB665 HD1 RELATING TO COLLECTIVE BARGAINING

House Committee on Labor & Public Employment

 February 9, 2016
 9:30 a.m.
 Room 309

The Office of Hawaiian Affairs **OPPOSES** HB665, HD1, which proposes to grant collective bargaining rights to OHA officers and employees.

This bill raises serious concerns, as follows:

Infringement on OHA's Autonomy

This bill, with its sweeping inclusion of OHA in the state collective bargaining process, including subordinating OHA's Trustees to the vote of the governor in that process, undermines OHA's autonomy and may well be unconstitutional.

OHA's autonomy has its roots in both Hawai'i law, and the general principles of trust law. Under the authority of the state constitution, Hawai'i Revised Statutes (HRS) Chapter 10 gives OHA many attributes of autonomy, including its status as a body corporate independent of the executive branch, whose Trustees have the power to determine the necessity of its obligations and expenditures and any other powers necessary to fully effectuate OHA's purposes. HRS Section 10-4 further reinforces OHA's autonomy, giving OHA the power to make all necessary and appropriate disbursements of its funds by issuing checks in its own name, and by any other means.

In addition, the Hawai'i attorney general and state and federal courts have recognized and honored the autonomous nature of OHA. For example, according to an opinion of the Hawai'i attorney general, the majority of OHA's revenues -- the income and the proceeds of the public land trust -- do not belong to the State, and are therefore not public moneys. The independent nature of these revenues goes hand-in-hand with OHA's autonomy, and clearly distinguishes OHA from executive branch and other governmental agencies.

Infringement on OHA Trust Management

Under general trust principles, OHA's Trustees have a responsibility to prudently protect and manage OHA's trust assets. Legally, trustees are generally afforded great discretion in carrying out such a responsibility. The impact of collective bargaining requirements could hinder the ability of OHA's Trustees to fulfill their fiduciary obligation in this regard.

For example, with OHA pressed to negotiate union matters, the resources of the Native Hawaiian Trust Fund may be significantly strained. OHA moneys would be constantly needed to support the collective bargaining process, from preliminary negotiations to repeated legal analyses of draft collective bargaining agreements. Any resulting higher wages and benefits would also have a direct impact on the OHA trust. In addition, additional resources would be needed to orchestrate the major administrative changes in OHA's personnel system, policies, and procedures that collective bargaining could bring. All these tasks would further burden the OHA trust, and its Trustees' ability to fulfill their fiduciary responsibilities to OHA's beneficiaries.

In light of the above, we ask that your committee HOLD this bill.

Mahalo for the opportunity to testify on this matter.

DAVID Y. IGE GOVERNOR



JAMES K. NISHIMOTO DIRECTOR

STATE OF HAWAII OFFICE OF COLLECTIVE BARGAINING EXECUTIVE OFFICE OF THE GOVERNOR 235 S. BERETANIA STREET, SUITE 1201 HONOLULU, HAWAII 968/13-2437

February 8, 2016

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT For Hearing on Tuesday, February 9, 2016 9:30 a.m., Conference Room 309

By

JAMES K. NISHIMOTO OFFICE OF COLLECTIVE BARGAINING, CHIEF NEGOTIATOR

House Bill No. 665, H.D. 1 Relating to Collective Bargaining

WRITTEN TESTIMONY ONLY

CHAIRPERSON NAKASHIMA, VICE CHAIR KEOHOKALOLE, AND MEMBERS OF THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

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

H.B. No. 665, H.D. 1, would amend §10-12, HRS and §89-6, HRS to grant Office

of Hawaiian Affairs (OHA) officers and employees collective bargaining rights, and also

to give OHA voting rights as a public employer.

The Office of Collective Bargaining has CONCERNS regarding this bill and

requests that the bill be held.

Pursuant to §10-12, HRS, all OHA officers and employees are exempt from civil

service, since they are hired "without regard to chapter 76." Despite their exempt

status, H.B. No. 665, H.D. 1, would grant all of these employees collective bargaining

rights under Chapter 89, which would essentially make their wages, hours and conditions of employment mandatory subjects of negotiation.

By extending the provisions of Chapter 89 to all OHA officers and employees, the potential exists that as a consequence of negotiating wages, hours and conditions of employment, there would be significant changes in the current policies, procedures and operating practices at OHA. For instance, current discretion exercised in accordance with OHA's authority to make appointments exempt from the civil service may be amended to more closely reflect civil service policies and procedures, e.g., recruitment and appointments, wages, working conditions, etc.

In addition, the bill's proposed amendment to §89-6, HRS, grants the OHA Board of Trustees status as a public employer for purposes of negotiating a collective bargaining agreement for bargaining units (1), (2), (3), (4), (9), (10), (13) and (14) without amending the number of votes afforded the Governor. Under the new scheme, the Governor would continue to have only six (6) votes, whereas the mayors, the chief justice, the Hawai'i health systems corporation board and the board of trustees of OHA would each have one vote for a total of seven (7) votes. The proposed voting structure would create the situation that for the cited bargaining units, the governor (with 6 votes) could be out-voted by the other jurisdictions (with a potential total of 7 votes), since only a simple majority is required. This is inconsistent with the voting structure for the remaining bargaining units, and would diminish the voting power of the governor, who has statutory responsibility to maintain a balanced budget for the State.

Based upon the above, the Office of Collective Bargaining respectfully requests that this measure **be held**.

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LABtestimony

From: Sent: To:	mailinglist@capitol.hawaii.gov Tuesday, February 09, 2016 12:34 AM LABtestimony	LATE
Cc: Subject:	kamakane73@gmail.com *Submitted testimony for HB665 on Feb 9, 2016 09:30AN	٨*

<u>HB665</u>

Submitted on: 2/9/2016 Testimony for LAB on Feb 9, 2016 09:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Oppose	No

Comments:

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The Twenty-Eighth Legislature, State of Hawaii House of Representatives Committee on Labor and Public Employment

Testimony by Hawaii Government Employees Association

February 9, 2016

H.B. 665, H.D. 1 – RELATING TO COLLECTIVE BARGAINING

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of granting officers and employees within the Office of Hawaiian Affairs collective bargaining rights, as proposed in H.B. 665.

HGEA represents more than 42,000 members employed by the state and county, in eight bargaining units and also serves a large associate membership composed of retirees, other state and county employees and officials, and federal and private sector employees. As the state's largest labor organization, we firmly believe in the fundamental right for employees, like those employed by the Office of Hawaiian Affairs, to have the right to collectively bargain their wages, benefits, and terms and conditions of employment. These beliefs concur with and are upheld by the Hawaii State Constitution, Article XIII, Section 2, which states, "Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law."

Thank you for the opportunity to provide our support on the passage of H.B. 665, H.D. 1.

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Randy Perreira Executive Director

DAVID Y. IGE GOVERNOR

EMPLOYEES' RETIREMENT SYSTEM

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND OFFICE OF THE PUBLIC DEFENDER

DEPARTMENT OF BUDGET AND FINANCE P.O. BOX 150 HONOLULU, HAWAII 96810-0150

WESLEY K. MACHIDA DIRECTOR

RODERICK K. BECKER DEPUTY DIRECTOR

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TESTIMONY BY WESLEY K. MACHIDA DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT ON HOUSE BILL NO. 665, H.D. 1

February 9, 2016 9:30 a.m.

RELATING TO COLLECTIVE BARGAINING

This measure gives the Office of Hawaiian Affairs (OHA) officers and employees

collective bargaining rights and gives OHA voting rights as a public employer.

The Department of Budget and Finance takes no position of giving OHA

employees collective bargaining rights. However, if OHA is going to be given a vote as

a public employer, the number of votes for the Governor should be increased from six to

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seven to maintain existing voting balance.

STATE OF HAWAII



