
A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES.

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

1 SECTION 1. The legislature finds that Hawaii's collective
2 bargaining in public employment law, chapter 89, Hawaii Revised
3 Statutes, was enacted to promote labor management harmony in the
4 public sector by:

- 5 (1) Establishing guidelines for employment relations
6 relating to wages, hours, and working conditions;
7 (2) Providing a method for dealing with disputes and work
8 stoppages; and
9 (3) Maintaining a favorable political and social
10 environment.

11 The legislature further finds that the policy to promote
12 harmonious and cooperative relations between government and its
13 employees rests on the right of public employees to organize for
14 the purpose of collective bargaining, in accordance with article
15 XIII, section 2, of the Constitution of the State of Hawaii.

16 The legislature also finds that changes in federal
17 constitutional law could have an impact on public employee



1 collective bargaining in Hawaii. In *Friedrichs v. California*
2 *Teachers Association*, the petitioners asked the United States
3 Supreme Court whether:

4 (1) *Abood v. Detroit Board of Education* should be
5 overruled and public-sector agency shop arrangements
6 invalidated under the First Amendment; and

7 (2) The First Amendment prohibits the practice of
8 requiring public employees to affirmatively opt-out of
9 subsidizing nonchargeable speech rather than to
10 affirmatively consent.

11 An equally divided United States Supreme Court affirmed the
12 judgment of the United States Court of Appeals in favor of the
13 California Teachers Association.

14 Nevertheless, the legislature also finds that these issues
15 could be revisited after President Trump's nominee fills the
16 vacancy on the United States Supreme Court. The outcome and
17 disposition of such a landmark case could result in huge
18 ramifications on the application and adherence to both chapters
19 76 and 89, Hawaii Revised Statutes.

20 The legislature finds that should the United States Supreme
21 Court strike down laws requiring the payment of union dues by



1 public sector employees, such a ruling would fundamentally
2 undermine this legislature's consistent efforts to ensure labor
3 management peace. Not only would such a ruling effectively
4 hamstring the collective bargaining representative's ability to
5 collect resources from its membership, it would greatly diminish
6 the public employee's ability to negotiate with management.

7 Accordingly, the purpose of this Act is to ensure that
8 public employees are able to effectively collectively bargain
9 with the public employer by establishing a mechanism that will
10 provide the exclusive bargaining representative with the
11 resources necessary to adequately represent public employees.

12 SECTION 2. Chapter 89, Hawaii Revised Statutes, is amended
13 by adding a new section to be appropriately designated and to
14 read as follows:

15 "§89- Public employees' collective bargaining fund. (a)
16 There is established in the treasury the public employees'
17 collective bargaining fund into which shall be deposited an
18 amount not less than per cent of the total compensation
19 provided by the State to every public employee during the
20 previous fiscal year. The amount shall be deposited not later
21 than the close of business of the first day of each fiscal year.



1 (b) Moneys from the fund shall be disbursed pursuant to a
2 contract between the department of budget and finance and the
3 exclusive bargaining representative. The amount disbursed to
4 the exclusive bargaining representative shall equal the amount
5 deposited into the fund on the first day of each fiscal year
6 pursuant to subsection (a), multiplied by the number of
7 employees classified in the unit represented by the exclusive
8 bargaining representative, and divided by the total number of
9 public employees at the end of business on June 30 of the
10 previous fiscal year.

11 (c) After disbursements are made to the exclusive
12 bargaining representative for every collective bargaining unit,
13 any remaining balance in the fund shall be transferred to the
14 general fund."

15 SECTION 3. Section 89-1, Hawaii Revised Statutes, is
16 amended by amending subsection (b) to read as follows:

17 "(b) The legislature declares that it is the public policy
18 of the State to promote harmonious and cooperative relations
19 between government and its employees and to protect the public
20 by assuring effective and orderly operations of government.
21 These policies are best effectuated by:



- 1 (1) Recognizing the right of public employees to organize
- 2 for the purpose of collective bargaining;
- 3 (2) Requiring public employers to negotiate with and enter
- 4 into written agreements with exclusive representatives
- 5 on matters of wages, hours, and other conditions of
- 6 employment, while, at the same time, maintaining the
- 7 merit principle pursuant to section 76-1; [and]
- 8 (3) Enabling exclusive representatives to maintain
- 9 financial viability, organizational capacity, and the
- 10 ability to effectively represent public employees; and
- 11 (4) Creating a labor relations board to administer the
- 12 provisions of chapters 89 and 377."

13 SECTION 4. Section 89-3, Hawaii Revised Statutes, is
 14 amended to read as follows:

15 "§89-3 Rights of employees. Employees shall have the
 16 right of self-organization and the right to form, join, or
 17 assist any employee organization for the purpose of bargaining
 18 collectively through representatives of their own choosing on
 19 questions of wages, hours, and other terms and conditions of
 20 employment, and to engage in lawful, concerted activities for
 21 the purpose of collective bargaining or other mutual aid or



1 protection, free from interference, restraint, or coercion. An
2 employee shall have the right to refrain from any or all of such
3 activities [~~except for having a payroll deduction equivalent to~~
4 ~~regular dues remitted to an exclusive representative as provided~~
5 ~~in section 89-4]~~."

6 SECTION 5. Section 89-4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§89-4 Payroll deductions.** (a) Upon receiving from an
9 exclusive representative a written statement specifying the
10 amount of regular dues required of its members in the
11 appropriate bargaining unit, the employer shall deduct this
12 amount from the payroll of every member employee in the
13 appropriate bargaining unit and remit the amount to the
14 exclusive representative. Additionally, the employer shall
15 deduct [~~an amount equivalent to the regular dues~~] from the
16 payroll of every nonmember employee in the appropriate
17 bargaining unit, and shall remit [~~the amount~~] to the exclusive
18 representative [~~provided that the deduction from the payroll of~~
19 ~~every nonmember employee shall be made only for an exclusive~~
20 ~~representative which provides for a procedure for determining~~
21 ~~the amount of a refund to any employee who demands the return of~~



1 ~~any part of the deduction which represents the employee's pro~~
2 ~~rata share of expenditures made by the exclusive representative~~
3 ~~for activities of a political and ideological nature unrelated~~
4 ~~to terms and conditions of employment. If a nonmember employee~~
5 ~~objects to the amount to be refunded, the nonmember employee may~~
6 ~~petition the board for review thereof within fifteen days after~~
7 ~~notice of the refund has been received.], an amount agreed~~
8 ~~between the nonmember employee and the exclusive representative.~~

9 If an employee organization is no longer the exclusive
10 representative of the appropriate bargaining unit, the deduction
11 from the payroll of members and nonmembers shall terminate.

12 (b) The employer shall, upon written authorization by an
13 employee, executed at any time [~~after the employee's joining an~~
14 ~~employee organization~~], deduct from the payroll of the employee
15 the amount of membership dues, initiation fees, representation
16 fees, group insurance premiums, [~~and~~] or other association
17 benefits, and shall remit the amount to the employee
18 organization designated by the employee.

19 (c) The employer shall continue all payroll assignments
20 authorized by an employee prior to July 1, 1970 and all
21 assignments authorized under subsection (b) until notification



1 is submitted by an employee to discontinue the employee's
2 assignments.

3 (d) The exclusive representative may establish dues,
4 rates, or charges to support its activities and other programs
5 it may choose to provide to members. The exclusive
6 representative may establish rates or charges for services, or
7 other programs it may choose to provide to nonmembers.

8 (e) The public employer shall be entitled to rely on, and
9 shall not be liable for accurately implementing, reports of
10 employees' deductions supplied by the exclusive representative.
11 Any challenge to rates or charges for services shall be within
12 the exclusive original jurisdiction of the board, as a
13 prohibited practice."

14 SECTION 6. Section 89-8, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) The employee organization which has been certified by
17 the board as representing the majority of employees in an
18 appropriate bargaining unit shall be the exclusive
19 representative of all employees in the unit. As exclusive
20 representative, it shall have the right to act for and negotiate
21 agreements covering all employees in the unit and shall be



1 responsible for representing the interests of all such employees
2 without discrimination [~~and without regard to employee~~
3 ~~organization membership.~~], except that it need not represent
4 employees who do not pay reasonable costs of representation.
5 Any other provision herein to the contrary notwithstanding,
6 whenever two or more employee organizations which have been duly
7 certified by the board as the exclusive representatives of
8 employees in bargaining units merge, combine, or amalgamate or
9 enter into an agreement for common administration or operation
10 of their affairs, all rights and duties of such employee
11 organizations as exclusive representatives of employees in such
12 units shall inure to and shall be discharged by the organization
13 resulting from such merger, combination, amalgamation, or
14 agreement, either alone or with such employee organizations.
15 Election by the employees in the unit involved, and
16 certification by the board of such resulting employee
17 organization shall not be required."

18 SECTION 7. Section 89-3.5, Hawaii Revised Statutes, is
19 repealed.

20 [~~"§89-3.5 Religious exemption from support of employee~~
21 ~~organization.~~ Notwithstanding any other provision of law to the



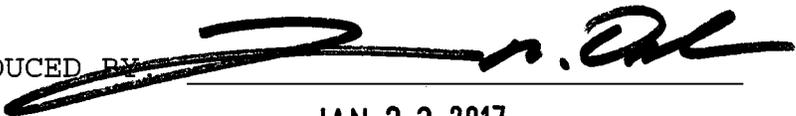
1 ~~contrary, any employee who is a member of and adheres to~~
2 ~~established and traditional tenets or teachings of a bona fide~~
3 ~~religion, body, or sect which has historically held~~
4 ~~conscientious objections to joining or financially supporting~~
5 ~~employee organizations shall not be required to join or~~
6 ~~financially support any employee organization as a condition of~~
7 ~~employment; except that an employee may be required in a~~
8 ~~contract between an employee's employer and employee~~
9 ~~organization in lieu of periodic dues and initiation fees, to~~
10 ~~pay sums equal to the dues and initiation fees to a~~
11 ~~nonreligious, nonlabor organization charitable fund exempt from~~
12 ~~taxation under section 501(c)(3) of the Internal Revenue Code,~~
13 ~~chosen by the employee from a list of at least three funds,~~
14 ~~designated in the contract or if the contract fails to designate~~
15 ~~any funds, then to any fund chosen by the employee. If an~~
16 ~~employee who holds conscientious objections pursuant to this~~
17 ~~section requests the employee organization to use the grievance-~~
18 ~~arbitration procedure on the employee's behalf, the employee~~
19 ~~organization is authorized to charge the employee for the~~
20 ~~reasonable cost of using the procedure."]~~



H.B. NO. 923

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on
4

INTRODUCED BY 
JAN 23 2017



H.B. NO. 923

Report Title:

Collective Bargaining; Public Employees

Description:

Establishes the public employees' collective bargaining fund. Requires the deposit of not less than the amount equal to an undisclosed percentage of the total compensation provided to all public employees during the previous fiscal year. Amends the rights of public employee elective representation and deductions for nonmembers. Repeals the religious exemption from support of employee organization.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

