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# 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 a major impact on public employee



1 collective bargaining in Hawaii. In *Friedrichs v. California*  
2 *Teachers Ass'n, et al.*, 2013 WL 892547 (D. Cal. C.D. 2013),  
3 *aff'd* 204 WL 10076847 (Mem.) (9th Cir. 2014), *aff'd* 136 S.Ct.  
4 1083 (Mem.), 194 L.Ed. 2d 255 (2016) the petitioners had asked  
5 the United States Supreme Court to overrule *Abood v. Detroit Bd.*  
6 *of Educ.*, 431 U.S. 209, 97 S. Ct. 1782, 52 L.Ed.2d 261 (1977)  
7 (allowing public sector agency fees). An equally-divided United  
8 States Supreme Court upheld the status quo established in the  
9 *Abood* case. Many commentators considered that, but for the  
10 sudden death of supreme court justice Antonin Scalia, *Friedrichs*  
11 would have overruled *Abood*.

12 In June 2017, the petitioner in *Janus v. American Fed'n of*  
13 *State, County, and Mun. Employees, Council 31*, 851 F.3d 746 (7th  
14 Cir. 2017), *cert. granted*, 138 S.Ct. (Mem), 198 L.Ed. 2d 780  
15 (2017) again asked the United States Supreme Court to overrule  
16 *Abood*. The court has accepted the case, and a decision is  
17 expected by the end of June 2018. Most commentators again  
18 expect that *Abood* will be overruled, and traditional agency fees  
19 will be banned.

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 the legislature's consistent efforts to bar "free  
3 riders", and ensure labor management peace. Furthermore, not  
4 only would such a ruling undercut the collective bargaining  
5 representative's ability to collect resources from its  
6 bargaining unit, it would greatly diminish public employees'  
7 ability to negotiate with management and cause government to  
8 lose the advantages envisioned under the collective bargaining  
9 in public employment law.

10 The purpose of this Act is to ensure that public employees  
11 are able to effectively bargain collectively with their public  
12 employers by establishing a mechanism, consistent with the  
13 United States Constitution, that will provide exclusive  
14 bargaining representatives with the resources necessary to  
15 adequately represent public employees and will remove economic  
16 incentives to "free ride" so that Hawaii law will not be biased  
17 for or against employee membership in the bargaining unit's  
18 exclusive representative.

19 SECTION 2. Section 89-1, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



"(b) The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.

These policies are best effectuated by:

(1) Recognizing the right of public employees to organize for the purpose of collective bargaining;

(2) Requiring public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, maintaining the merit principle pursuant to section 76-1; ~~[and]~~

(3) Enabling exclusive representatives to maintain financial viability and organizational capacity, and the ability to effectively represent public employees;  
and

~~[(3)]~~ (4) Creating a labor relations board to administer the provisions of chapters 89 and 377."

SECTION 3. Section 89-2, Hawaii Revised Statutes, is amended by amending the definition of "exclusive representative" to read as follows:



1 "Exclusive representative" means the employee organization  
2 certified by the board under section 89-8 as the collective  
3 bargaining agent to represent all employees in an appropriate  
4 bargaining unit [~~without discrimination and without regard to~~  
5 ~~employee organization membership~~]."

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

8 "§89-3 Rights of employees. Employees shall have the  
9 right of self-organization and the right to form, join, or  
10 assist any employee organization for the purpose of bargaining  
11 collectively through representatives of their own choosing on  
12 questions of wages, hours, and other terms and conditions of  
13 employment, and to engage in lawful, concerted activities for  
14 the purpose of collective bargaining or other mutual aid or  
15 protection, free from interference, restraint, or coercion. An  
16 employee shall have the right to refrain from any or all of such  
17 activities[, ~~except for having a payroll deduction equivalent to~~  
18 ~~regular dues remitted to an exclusive representative as provided~~  
19 ~~in section 89-4~~]."

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



1       "§89-4 Payroll deductions. (a) Upon receiving from an  
2 exclusive representative a written statement specifying the  
3 amount of regular dues required of its members in the  
4 appropriate bargaining unit, the employer shall deduct this  
5 amount from the payroll of every member employee in the  
6 appropriate bargaining unit, and remit the amount to the  
7 exclusive representative. Additionally, the employer shall  
8 deduct an amount equivalent to the regular dues from the payroll  
9 of every consenting nonmember employee in the appropriate  
10 bargaining unit, and shall remit the amount to the exclusive  
11 representative; provided that the deduction from the payroll of  
12 every nonmember employee shall be made only for an exclusive  
13 representative which provides for a procedure for determining  
14 the amount of a refund to any employee who demands the return of  
15 any part of the deduction which represents the employee's pro  
16 rata share of expenditures made by the exclusive representative  
17 for activities of a political and ideological nature unrelated  
18 to terms and conditions of employment. If a nonmember employee  
19 objects to the amount to be refunded, the nonmember employee may  
20 petition the board for review thereof within fifteen days after  
21 notice of the refund has been received. If an employee



1 organization is no longer the exclusive representative of the  
2 appropriate bargaining unit, the deduction from the payroll of  
3 members and nonmembers shall terminate.

4 (b) The employer shall, upon written authorization by an  
5 employee, executed at any time [~~after the employee's joining an~~  
6 ~~employee organization~~], deduct from the payroll of the employee  
7 the amount of membership dues, initiation fees, representation  
8 or service fees, group insurance premiums, [~~and~~] or other  
9 association benefits, and shall remit the amount to the employee  
10 organization designated by the employee.

11 (c) The employer shall continue all payroll assignments  
12 authorized by an employee prior to July 1, 1970, and all  
13 assignments authorized under subsection (b) until notification  
14 is submitted by an employee to discontinue the employee's  
15 assignments.

16 (d) The exclusive representative may establish:

17 (1) Dues, rates, or charges to support its activities and  
18 other programs it chooses to provide to its members;

19 (2) Rates or charges for services or other programs it  
20 chooses to provide to nonmembers regularly paying



1           pro-rata costs of representation through dues  
2           equivalents; and

3           (3) Rates or charges for services or other programs it  
4           chooses to provide to nonmembers who do not pay  
5           pro-rata costs of representation.

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

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

14           "(a) The employee organization which has been certified by  
15           the board as representing the majority of employees in an  
16           appropriate bargaining unit shall be the exclusive  
17           representative of all employees in the unit. As exclusive  
18           representative, it shall have the right to act for and negotiate  
19           agreements covering all employees in the unit and shall be  
20           responsible for representing the interests of all such employees  
21           without discrimination and without regard to employee





1 organization membership[-], except that in the grievance-  
2 arbitration procedure, it need not represent employees who do  
3 not pay reasonable costs of representation. Any other provision  
4 herein to the contrary notwithstanding, whenever two or more  
5 employee organizations which have been duly certified by the  
6 board as the exclusive representatives of employees in  
7 bargaining units merge, combine, or amalgamate or enter into an  
8 agreement for common administration or operation of their  
9 affairs, all rights and duties of such employee organizations as  
10 exclusive representatives of employees in such units shall inure  
11 to and shall be discharged by the organization resulting from  
12 such merger, combination, amalgamation, or agreement, either  
13 alone or with such employee organizations. Election by the  
14 employees in the unit involved, and certification by the board  
15 of such resulting employee organization shall not be required."

16 SECTION 7. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.  
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**Report Title:**

Public Employment; Collective Bargaining; Dues

**Description:**

Amends collective bargaining law to ensure that exclusive bargaining representatives retain the resources necessary to adequately represent public employees and remove economic incentive to free ride. (Proposed SD1)

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

