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## HOUSE RESOLUTION

RECOGNIZING THE FIFTIETH ANNIVERSARY OF THE ENACTMENT OF CHAPTER 89, HAWAII REVISED STATUTES, AND URGING THE HAWAII LABOR RELATIONS BOARD TO CONSTRUE CHAPTER 89, HAWAII REVISED STATUTES, IN ACCORDANCE WITH TRADITION.

1           WHEREAS, fifty years ago, the Legislature passed and  
2 Governor John A. Burns signed into law Act 171, Session Laws of  
3 Hawaii (SLH) 1970, which was codified as chapter 89, Hawaii  
4 Revised Statutes (HRS), Collective Bargaining in Public  
5 Employment Law; and  
6

7           WHEREAS, chapter 89, HRS, recognized and implemented the  
8 right of public employees to organize for the purpose of  
9 collective bargaining pursuant to article XIII, section 2, of  
10 the Hawaii State Constitution; and  
11

12           WHEREAS, under Act 171, SLH 1970, the Legislature declared:  
13 "[i]t is the public policy of the State to promote harmonious  
14 and cooperative relations between government and its employees  
15 and to protect the public by assuring effective and orderly  
16 operations of government."; and  
17

18           WHEREAS, the philosophy of chapter 89, HRS, is that  
19 granting employees the right to share in the decision making  
20 process affecting their wages and working conditions leads to a  
21 better exchange of ideas and information on operations, and  
22 making government more effective. In addition, creating a  
23 rational method for dealing with work disputes helps to maintain  
24 a favorable political and social environment; and  
25

26           WHEREAS, in passing Act 171, SLH 1970, the Legislature  
27 recognized that in order to secure the foregoing beneficial  
28 results, along with ease and consistency of administration,  
29 employees' bargaining units should be entitled to select a  
30 single and exclusive bargaining representative by majority vote  
31 for the purpose of negotiating a single collective bargaining



1 agreement that is applicable to all employees in the bargaining  
2 unit; and

3  
4 WHEREAS, the Legislature recognized that because employees'  
5 collective bargaining efforts are self-funded, any employee who  
6 uses collective resources must contribute to the collective  
7 effort, lest the system be rendered unworkable by free riders  
8 imposing their costs on co-workers; and

9  
10 WHEREAS, the Legislature established the agency fee system  
11 by which members would pay dues, and non-members would pay via  
12 agency fee, the pro-rata costs of contract negotiation and  
13 administration; and

14  
15 WHEREAS, in *Janus v. AFSCME*, 138 S.Ct. 1338, (2018), the  
16 United States Supreme Court reversed four decades of precedent  
17 and held that employees cannot be compelled by law to pay agency  
18 fees; however, the Supreme Court also noted that to avoid free-  
19 ridership while imposing only a minor burden on First Amendment  
20 rights, exclusive bargaining representatives need not supply  
21 individual representation services to employees who decline to  
22 pay the reasonable cost thereof; now, therefore,

23  
24 BE IT RESOLVED by the House of Representatives of the  
25 Thirtieth Legislature of the State of Hawaii, Regular Session of  
26 2020, that on the occasion of the Fiftieth Anniversary of the  
27 enactment of chapter 89, HRS, this body commends and reasserts  
28 the goals and philosophy of chapter 89, HRS, as amended,  
29 including the avoidance of free riders, and notes that *Janus v.*  
30 *AFSCME* does not require co-employees or their bargaining  
31 representatives to fund personal representation of non-paying  
32 employees; and

33  
34 BE IT FURTHER RESOLVED that the Hawaii Labor Relations  
35 Board is urged to interpret chapter 89, HRS, after *Janus v.*  
36 *AFSCME*, such that:

37  
38 (1) As before, each employee may choose to be, or decline  
39 to be, a member of a bargaining organization;

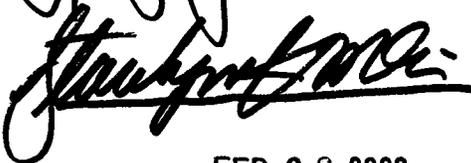


- 1 (2) A non-member may refuse to pay any fees to the
- 2 bargaining organization;
- 3
- 4 (3) Exclusive bargaining representatives need not provide
- 5 personal representation services to non-member
- 6 employees who do not pay the reasonable cost thereof;
- 7 and
- 8
- 9 (4) Exclusive bargaining representatives may allow non-
- 10 members to voluntarily pay dues equivalents in the
- 11 pre-*Janus v. AFSCME* manner, securing to themselves
- 12 rights to personal representation consistent with
- 13 bargaining organization rules; and
- 14

15 BE IT FURTHER RESOLVED that certified copies of this  
 16 Resolution be transmitted to the Attorney General, Executive  
 17 Director of the Hawaii Labor Relations Board, and each certified  
 18 exclusive bargaining representative operating under chapter 89,  
 19 HRS.

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OFFERED BY:

  
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FEB 26 2020

