

Honolulu, Hawaii

Feb 12, 2007

RE: H.B. No. 859

H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fourth State Legislature  
Regular Session of 2007  
State of Hawaii

Sir:

Your Committee on Labor & Public Employment, to which was referred H.B. No. 859 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYEES,"

begs leave to report as follows:

The purpose of this bill is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining. Specifically, this measure:

- (1) Allows a public employer to negotiate over procedures and criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, terminations, discharges, or other disciplinary actions; and
- (2) Requires negotiations over the impact of transfers, assignments, and layoffs of public employees.

The Hawaii Government Employees Association and Hawaii State Teachers Association testified in support of this bill. The Department of Human Resources Development, Office of Collective Bargaining, Attorney General, Judiciary, Department of Education, Department of Human Resources of the City and County of Honolulu, Department of Human Resources of the County of Hawaii, Department of Personnel Services of the County of Maui, Honolulu Fire Department, Fire Department of the County of Hawaii, Honolulu Police Department, Maui Police Department, and Hawaii Police Department opposed this measure.



Your Committee finds that pursuant to Act 399, Session Laws of Hawaii 1988, the Legislature amended subsection 89-9(d), Hawaii Revised Statutes (HRS), to expand the scope of collective bargaining in the public sector. The amendment was intended to protect contract provisions that would otherwise be considered invalid due to a literal interpretation of what are considered to be management rights.

Under current collective bargaining agreements, provisions regarding standards, criteria, and procedures relating to employee hiring, promotions, transfer, assignment, retention, suspension, demotion, discharge, disciplinary actions, layoffs, and displacement for lack of work and other similar personnel actions are widely incorporated and used.

Your Committee finds that negotiations over procedures and criteria of promotions, transfers, assignments, demotions, layoffs, suspension, terminations, discharges, or other disciplinary actions, and negotiations over the impact of transfers, assignments, and layoffs, are consistent with the underlying purpose of chapter 89, Hawaii Revised Statutes. Exclusive representatives and public employees have negotiated over these subject matters since 1970. This measure attempts to clarify the rights of public employees to engage in collective bargaining under chapter 89, Hawaii Revised Statutes, in light of recent court decisions, Hoopai v. Civil Service Comm'n, 106 Hawai'i 205 (2004) and United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawai'i 359 (2005).

However, your Committee understands the concerns raised by public employers that this measure, as currently drafted, will hinder a public employer's ability to effectively manage public employees and provide the most efficient government operations the people of Hawaii deserve. Nevertheless, your Committee finds that this matter warrants further discussion.

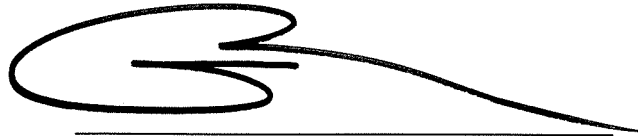
Accordingly, your Committee has amended this bill by:

- (1) Changing its effective date to July 1, 2059, to facilitate further discussion; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.



As affirmed by the record of votes of the members of your Committee on Labor & Public Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 859, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 859, H.D. 1, and be referred to the Committee on Finance.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor & Public  
Employment,



ALEX M. SONSON, Chair



State of Hawaii  
House of Representatives  
The Twenty-fourth Legislature

HSCR 311

**Record of Votes of the Committee on Labor & Public Employment**

<b>Bill/Resolution No.:</b> HB 859		<b>Date:</b> 2-6-07		
<b>Committee Referral:</b> LAB, FIN		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
<b>The recommendation is to:</b> <input type="checkbox"/> Pass, unamended <input type="checkbox"/> Hold		<input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Pass, with amendments, for recommittal for further consideration		
<b>LAB Members</b>	<b>Ayes</b>	<b>Ayes (WR)</b>	<b>Nays</b>	<b>Excused</b>
1. SONSON, Alex M. (C)	✓			
2. NAKASONE, Bob (VC)	✓			
3. EVANS, Cindy		✓		
4. HAR, Sharon E.	✓			
5. LEE, Marilyn B.	✓			
6. LUKE, Sylvia	✓			
7. McKELVEY, Angus L.K.	✓			
8. NISHIMOTO, Scott Y.	✓			
9. SOUKI, Joseph M.	✓			
10. TAKAMINE, Dwight Y.	✓			
11. TAKUMI, Roy M.	✓			
12. MEYER, Colleen Rose				✓
13. PINE, Kymerly Marcos				✓
<b>TOTAL</b>	<b>10</b>	<b>1</b>		<b>2</b>
<b>The recommendation is:</b> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
<b>Vice Chair's or designee's signature:</b>				
<b>Distribution:</b> Original (White) – Committee Duplicate (Yellow) – Clerk's Office				