H.B. NO. 3184

A BILL FOR AN ACT

RELATING TO INTEREST ARBITRATION.

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

SECTION 1. Section 89-11, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

" (f) An arbitration panel in reaching its decision shall give weight to the following factors and shall include in its written report or decision an explanation of how the factors were taken into account:

(1) The lawful authority of the employer, including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be;

(2) Stipulations of the parties;

(3) The interests and welfare of the public;

(4) The financial ability of the employer to meet these costs[~~;~~] <u>and the additional potential costs as presented by the employer as if the arbitration cost item parameters were to be applied to all other bargaining units;</u> provided that the employer's ability

to fund cost items shall be based on constitutional, statutory, and ordinance provisions governing appropriations and budgeting, and shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues;

(5) The present and future general economic condition of the counties and the State;

(6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services [~~, and of other state and county employees~~] in Hawaii [~~;~~]. Wage comparison to employees outside of the State of Hawaii is prohibited;

(7) The average consumer prices for goods or services, commonly known as the cost of living;

(8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the

continuity and stability of employment, and all other benefits received; and

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings[~~; and~~

~~(10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public service or in private employment~~].

(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii employer-

union health benefits trust fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii employer-union health benefits trust fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State

and counties to the Hawaii employer-union health benefits trust fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies. The employer may also report to the respective legislative bodies any perceived failures by the arbitration panel to properly apply any of the factors in subsection (f). The respective legislative bodies may reject the cost items submitted to them and may do so for any reason, including, but not limited to, a determination that the arbitration panel failed to properly apply the factors in subsection (f). If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining."

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

SECTION 3. This Act shall take effect upon its approval.

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2 INTRODUCED BY: Calvin K.Y. Say

3 BY REQUEST

JAN 22 2008

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Report Title:
INTEREST ARBITRATION

Description:
Modifies the factors that an arbitration panel must consider when reaching collective bargaining wage decisions including considering the impact of pay increases on other bargaining units, compliance with budget provisions, and ensuring that wage comparisons are kept within Hawaii's labor market.

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JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor,
Office of Collective Bargaining

TITLE: A BILL FOR AN ACT RELATING TO INTEREST ARBITRATION.

PURPOSE: To modify the factors that the arbitration panel must consider in interest arbitration decisions to include: (1) the impact of pay increase to other bargaining units in determining the amount of pay increase; (2) compliance with constitutional and statutory appropriation and budgeting provisions; and (3) the comparison of wages, hours, and conditions of employment to that of other persons performing similar services in Hawaii.

MEANS: Amend section 89-11(f) and (g), Hawaii Revised Statutes.

JUSTIFICATION: A major concern of public employers is that the statutory factors for consideration by the arbitration panel do not reflect the "fiscal reality" faced by the Executive Branch in collective bargaining. The factors assume that one arbitrated decision has no impact on arbitrations and negotiations with other units. Historically, the leading arbitration decision has become the benchmark for subsequent arbitrations and negotiations with the other units. Arbitrators have not considered the impact of pay increases on other bargaining units in determining the amount of pay raises. The reality is that the economic awards to one bargaining unit influence subsequent negotiations involving other bargaining units. Therefore, the public employers' ability to pay should be measured not only in terms of whether the public employers have the ability to pay the particular bargaining unit in dispute, but whether the public employers have the

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ability to pay all the other bargaining units.

In addition, the factors do not consider the constitutional and statutory requirements related to appropriations and budgeting. The Executive Branch is bound by a balanced six-year financial plan and must use the official revenue forecasts of the Council on Revenues. In the past, arbitrators have not considered the Council's forecasts or the out-year impact in their decisions.

Finally, there is some confusion and ambiguity as to what should be compared under factor (6) in section 89-11(f). The State's position is that the arbitration panel should be required to compare the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services in Hawaii. No wage comparison should be made to people working outside of Hawaii. The rationale for this is because Hawaii's labor market is highly localized and relatively immobile. Accordingly, the comparison should be limited to other persons performing similar services in Hawaii.

Impact on the public: This measure clarifies some of the factors that the arbitration panel is required to consider, and will help improve collective bargaining and the arbitration process. This measure will also help better match arbitrated decision with available resources.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM DESIGNATION: Not applicable.

OTHER AFFECTED AGENCIES: Department of Budget and Finance, and all public sector employers involved in interest arbitration, including the City and County of Honolulu, the Counties of Hawaii, Kauai, and Maui, the Hawaii Health Systems Corporation, and the Judiciary.

EFFECTIVE DATE: Upon approval.