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

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

WHEREAS, under Act 171, SLH 1970, the Legislature declared: "[i]t 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."; and

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

WHEREAS, in passing Act 171, SLH 1970, the Legislature recognized that in order to secure the foregoing beneficial results, along with ease and consistency of administration, employees' bargaining units should be entitled to select a

HCR HMS 2020-1299
1
single and exclusive bargaining representative by majority vote for the purpose of negotiating a single collective bargaining agreement that is applicable to all employees in the bargaining unit; and

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

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

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

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

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

(1) As before, each employee may choose to be, or decline to be, a member of a bargaining organization;
(2) A non-member may refuse to pay any fees to the bargaining organization;

(3) Exclusive bargaining representatives need not provide personal representation services to non-member employees who do not pay the reasonable cost thereof; and

(4) Exclusive bargaining representatives may allow non-members to voluntarily pay dues equivalents in the pre-Janus v. AFSCME manner, securing to themselves rights to personal representation consistent with bargaining organization rules; and

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

OFFERED BY: [Signature]

FEB 26 2020