

SB 642



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

Senate Committee on Ways and Means
The Honorable Donna Mercado Kim, Chair
The Honorable Shane S. Tsutsui, Vice Chair

Monday, March 2, 2009, 9:30 a.m.
State Capitol, Conference Room 211

by
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WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 642, S. D. 1, Relating to Public Employees.

Purpose: Requires that across-the-board wage increases or reductions and changes in health and retirement benefits for excluded employees in the excluded managerial compensation plan are at least equal to adjustments provided under collective bargaining to employees in the bargaining unit from which the employees in the managerial compensation plan are excluded.

Judiciary's Position:

The Judiciary cannot fully support this bill without clarification.

The Judiciary was previously most concerned with the proposed change in the definition of "adjustment." SD 1 restores the current definition. The Judiciary also appreciates that SD 1 recognizes that excluded employees may be in the same classification system as included employees. The Judiciary also appreciates the deletion of "and subordinates" as a comparator group for determining the adjustments for excluded employees, as excluded managers typically supervise employees in more than one bargaining unit and it can be argued that the current language permits "cherry picking" of adjustments; wherein one bargaining unit may have a more favorable adjustment for one item and another bargaining unit has a more favorable adjustment for another item. At the least, the current language causes some confusion. This does not speak to consistency and fairness. So, the amendment is appreciated.



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While the Judiciary appreciates the changes to SB 642 proposed by SD 1, we still have a concern about the intent of certain passages and respectfully suggest clarification.

With regard to excluded employees in the excluded managerial compensation plan (EMCP), is it intended that adjustments be limited to across-the-board wage increases and reductions and changes in health and retirement benefits? If so, the benefits currently enjoyed by EMCP employees may be diminished by this proposed legislation. Is it legislative intent, for example, to not grant the same holidays, leaves or per diem benefits, for example, to employees in the EMCP? If so, the Judiciary objects to the disparate treatment of such benefits common to all employees working in the best interest of the employer.

If it is not the intent of the legislature to create disparity in adjustments, then we suggest that the new paragraph (5) is redundant with the new paragraph (6), which speaks to those in the EMCP – “excluded employee within a homogeneous grouping, such as, cabinet members or **managerial employees** (emphasis added), to ensure fairness.” If the legislature remains committed to fairness, there should be no distinction between excluded and included members with regard to such matters as holidays, leaves, per diem.

Further, while excluded managerial employees may be placed in a separate compensation plan from included employees, they are placed in the same classification system as included employees. Is SD1 distinguishing between classification systems or compensation plans? In any event, there should be no disparate treatment relative to benefits.

In the interest of a harmonious workplace in which employees work productively side by side, irrespective of inclusion in a bargaining unit, the Judiciary cannot support divisive legislation such as this bill. The disparate treatment of employees based on inclusion or exclusion from collective bargaining is a disincentive to promotion to managerial positions. When we promote included position incumbents to managerial positions, we would subject them to a lesser “benefit package” than their included counterparts. This would be a disincentive for promotion and career growth.

The Judiciary is perplexed by certain proposed language. It is difficult to understand why excluded employees cannot be assured of an equitable benefit package. Does the bill intend to deny the observation of a holiday, for example, should an additional day of observance be negotiated for included employees? Are excluded managerial employees expected to work alone without their included staff on such days? Should an excluded manager travel with an included staff member, should the per diem rates differ?

Thank you for the opportunity to provide comments on this measure.