



*The Judiciary, State of Hawaii*

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

House Committee on Labor and Public Employment

The Honorable Karl Rhoads, Chair

The Honorable Kyle Yamashita, Vice Chair

Friday, March 20, 2009, 9:30 a.m.  
State Capitol, Conference Room 309

by

Sharen M. Tokura

Human Resources Director

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 642, S. D. 2, 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 support this bill in its current form and suggests further amendment.

Senate Bill No. 642, S. D. 2 differentiates the treatment of two categories of excluded employees. Those in the same classification system as employees included in bargaining units are assured of compensation and benefit packages that are at least equal to those granted to their included counterparts. Those in the excluded managerial compensation plan (EMCP) will be assured of only the wage "increases and reductions." (While the bill also includes "changes in health and retirement benefits," these benefits are not subject to collective bargaining; only the contributions to fund those benefits are negotiable.) The "compensation package," applicable to included and other excluded employees, is limited to "wage increases and reductions" for EMCP employees. Any negotiated provision which may not involve an actual wage increase or reduction may be denied to excluded employees in the EMCP. Examples include, and are not limited to, overtime compensation, night differential, temporary hazard pay, meal allowance, etc.



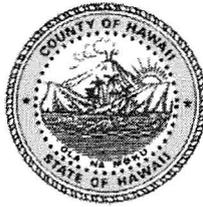
Senate Bill No. 642, S. D. 2, Relating to Public Employees  
House Committee on Labor and Public Employment  
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The Judiciary appreciates the deletion of the term “and subordinates” which is in the current statute and which may be interpreted as an assurance of more than what is intended. However, the addition of a new section distinguishing the treatment of those in the EMCP indicates disparate treatment for this group of employees.

It is recommended that the language of Section 89C-3(b)(2) be left intact with the sole change being the deletion of “and subordinates.” This suggested change should address the concerns expressed by the bargaining unit representative supporting this bill. We understand that this bill results from one bargaining unit’s specific concern with the application of the current statutory language. The bargaining unit representative has indicated that the intent is not to diminish the compensation or benefits of EMCP employees.

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

William P. Kenoi  
Mayor



Michael R. Ben, SPHR  
Director of Human Resources

Ronald K. Takahashi  
Deputy Director of Human Resources

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March 20, 2009

The Honorable Karl Rhoads, Chair  
And Members of the House Committee on Labor & Public Employment  
State Capitol  
Honolulu, Hawai'i 96813

Dear Chair Rhoads and Members of the Committee:

### **Re: SB 642 SD 2 Relating to Public Employees**

I am Michael R. Ben, the Director of Human Resources of the County of Hawai'i. I am testifying in order to propose changes to SB 642 SD 2.

### **Employers and Unions Do Not Negotiate Health and Retirement Benefits**

§89-9(d), HRS, specifically states that

**Excluded from the subjects of negotiations are matters of classification, reclassification, benefits of but not contributions to the Hawai'i employer-union health benefits trust fund or a voluntary employees' beneficiary association trust; recruitment; examination; initial pricing; and retirement benefits** except as provided in section 88-8(h).<sup>1</sup> (Emphasis added)

Thus, references to "changes in health or retirement benefits" are inappropriate as they imply that these may be subject to negotiations, since Chapter 89C, HRS refers back to matters contained in negotiated collective bargaining agreements.

In addition, I will note that appropriate authorities, under Chapter 89C, HRS, have no authority to change health or retirement benefits for any employee. Determinations of these benefits lie with the Employer-Union Health Benefits Trust

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<sup>1</sup> §88-8(h) provides in relevant part: "...retirement benefits for the optional retirement system of the University of Hawai'i shall be a subject of collective bargaining negotiations for bargaining units (7) and (8)."

*Hawai'i County is an Equal Opportunity Provider and Employer.*

The Honorable Karl Rhoads, Chair  
And Members of the House Committee on Labor & Public Employment  
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with respect to health benefits, and with the Employees' Retirement System and the Legislature, with respect to retirement benefits.

I believe that SB 642 is intended to refer to what is negotiated, that is, the amount the State and counties are to contribute the health benefit plans and group life insurance plan offered our public employees. SB 642 needs to be amended to reflect this, so as not to imply, through this legislation, that health and retirement benefits are negotiable.

**Technical Correction Needed**

A technical correction is need on page 3, line 19 for the term "classification systems." Hawai'i County, and I believe the State and other counties as well, have only one classification system. Within this system are various compensation plans such as our blue-collar compensation plan, the white-collar compensation plan, and our excluded managerial compensation plan. "Classification systems" should be changed to "compensation plans."

I have taken the liberty of drafting a proposed SB No. 642 SD 3 for your perusal, and have submitted it along with my testimony.

Thank you.

Sincerely,



Michael R. Ben, SPHR  
Director of Human Resources

Enclosure

**Report Title:**

Public Employees; Adjustments

**Description:**

Requires that across-the-board wage increases or reductions and changes changes in the amount the State and counties are to contribute under sections 87A-32 through 87A-37, toward the payment of the costs for a health benefits plan, as defined in section 87A-1, and group life insurance benefits are no less than what is provided by collective bargaining agreements applicable to the bargaining unit from which an excluded managerial employees is excluded. (SD3)

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

**S.B. NO.** 642  
S.D. 3

## A BILL FOR AN ACT

RELATING TO PUBLIC EMPLOYEES.

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

SECTION 1. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

**"§89C-2 Adjustments authorized; limitations, restrictions.** Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

- (1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, or prescribed by a salary commission,

shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body or salary commission;

- (2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority, shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;
- (3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;
- (4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;
- (5) For excluded employees in the excluded managerial compensation plan, adjustments shall be at least equal to the across-the-board wage increases and to changes in the amount the State and counties

are to contribute under sections 87A-32 through 87A-37, toward the payment of the costs for a health benefits plan, as defined in section 87A-1, and group life insurance benefits. In applying this paragraph, comparison shall be made to the collective bargaining agreement applicable to the bargaining unit from which excluded managerial employees are excluded.

[+5] (6) For excluded employees other than those under ~~[paragraph]~~ paragraphs (4) and (5), adjustments ~~[shall]~~, to the extent practicable, shall uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and

[+6] (7) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to

any other matter that the legislature may specifically prohibit or limit by law."

SECTION 2. Section 89C-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In formulating recommendations to the appropriate authority, the respective director shall:

- (1) Establish procedures that allow excluded civil service employees and employee organizations representing them to provide input on adjustments that are relevant and important to them for the director's approval;
- (2) Ensure that adjustments for excluded civil service employees under the same compensation plan as employees within collective bargaining units result in compensation and benefit packages that are at least equal to the compensation and benefit packages provided under collective bargaining agreements for counterparts [~~and subordinates~~] within the employer's jurisdiction; [~~and~~]
- (3) Ensure that adjustments for excluded employees in the excluded managerial compensation plan result in compensation and benefit packages that are at

least equal to the across-the-board wage increases and to changes in the amount the State and counties are to contribute under sections 87A-32 through 87A-37, toward the payment of the costs for a health benefits plan, as defined in section 87A-1, and group life insurance benefits. In applying this paragraph, comparison shall be made to the collective bargaining agreement applicable to the bargaining unit from which excluded managerial employees are excluded, and

[+3] (4) Ensure that proposed adjustments are consistent with chapter 76 [~~and equivalent or not less than adjustments provided within the employer's jurisdiction~~]."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2050.



# HAWAII FIRE FIGHTERS ASSOCIATION

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The Twenty-Fifth Legislature  
House of Representatives  
Committee on Labor and Public Employment  
March 20, 2009

Testimony by  
Hawaii Fire Fighters Association

**S.B. No. 642, S.D. 2**

**Relating to the Public Employees**

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO and an active duty fire captain with the Honolulu Fire Department. On behalf of the 1,800 active duty and 1000 retired professional fire fighters throughout the State, the Hawaii Fire Fighters Association supports S.B. No. 642, S.D. 2.

We believe the current statute is unclear as to what is considered "wages, hours, benefits, or other term and condition of employment" in the definition of this Chapter. As the proponent of this bill, the intent is to provide a clearer definition of what is mandated by law.

In a recent appeal before the Civil Service Commission of the City and County of Honolulu, a group of excluded managers argued that they are entitled to all provisions of the collective bargaining agreement negotiated by the exclusive representative of their counterpart bargaining unit. Although the CSC denied their appeal, the decision does not address the broad interpretation of the law and as such, may result in future challenges.

If excluded managers are entitled to every provision of the CBA as their base wage and benefit packages, in effect the union becomes the negotiating body for the excluded managers. Such interpretation would require the Governor and Mayors to factor in costs associated with excluded managers' wage and benefit adjustments during the unions negotiation process for its rank and file members. **The law should require minimal union involvement with regard to adjustments mandated for excluded managers.** Adjustments other than across-the-board wages, health benefit contributions and step movements should be controlled by the process reserved for excluded managers as currently identified by law.

We are cognizant of the concerns of excluded non-managerial employees and as such, we are offering this amendment to clarify the bill even further to assuage their concerns.

Thank you for the opportunity to testify in support of S.B. No. 642, S.D. 2.