



GOV. MSG. NO. 793

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 24, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith SB1642 SD1 HD1, without my approval, and with the statement of objections relating to the measure.

SB1642 SD1 HD1

A BILL FOR AN ACT RELATING TO LABOR.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 24, 2007

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1642

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1642, entitled "A Bill for an Act Relating to Labor."

The reported purpose of Senate Bill No. 1642 is to establish clear distinctions between mandatory, excluded, and permissive subjects of collective bargaining by (1) allowing negotiations over the procedures and criteria on promotions, transfers, assignments, demotions, discharges, or other disciplinary actions and (2) subjecting violations of negotiated and agreed upon procedures and criteria to the grievance procedure contained in a collective bargaining agreement.

Rather than providing clarity, this bill would blur the delineation provided by existing law between matters that are subject to collective bargaining and matters that have been excluded from collective bargaining; including certain "management rights" such as determining criteria on promotions, transfers, assignments, demotions, layoffs, suspensions, termination, discharge or other disciplinary actions.

This bill is objectionable because it constitutes an unacceptable infringement upon management rights currently protected under section 89-9(d), Hawaii Revised Statutes. It attempts to overturn the case of United Public Workers, AFSCME, Local 646, AFL-CIO v. Hanneman, 106 Hawaii 359 (2005), the Supreme Court of Hawaii case that held that the City and County

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of Honolulu's decision to transfer refuse workers from the Pearl City baseyard to the Honolulu baseyard was not subject to collective bargaining. The Hanneman case reaffirmed management rights as set forth in section 89-9(d).

This bill erodes management rights and, by allowing negotiations on the criteria management uses to act on matters such as layoffs, transfers, and assignments, it involves labor in the fundamental decision-making process of management. In permitting negotiations over assignments, this bill would adversely impact the employer's ability to make assignments of specific employees and groups of employees and hinder the delivery of services to the public.

This bill does not achieve its reported purpose, and only obfuscates the clear distinctions that currently exist between management rights and items that may be negotiable under collective bargaining. The provision added to section 89-9(d) by the bill stating that section 89-9(d) shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007, could be interpreted to mean that the areas specifically excluded from collective bargaining pursuant to section 89-9(d) and the Hanneman case may be subject to negotiations by the parties to a collective bargaining agreement.

For the foregoing reasons, I am returning Senate Bill No. 1642 without my approval.

Respectfully,



LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO LABOR.

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

1 SECTION 1. Section 89-9, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (d) to read:

4 "(d) Excluded from the subjects of negotiations are
5 matters of classification, reclassification, benefits of but not
6 contributions to the Hawaii employer-union health benefits trust
7 fund or a voluntary employees' beneficiary association trust;
8 recruitment; examination; initial pricing; and retirement
9 benefits except as provided in section 88-8(h). The employer
10 and the exclusive representative shall not agree to any proposal
11 that would be inconsistent with the merit principle or the
12 principle of equal pay for equal work pursuant to section 76-1
13 or that would interfere with the rights and obligations of a
14 public employer to:

15 (1) Direct employees;

16 (2) Determine qualifications, standards for work, and the
17 nature and contents of examinations;





1 (3) Hire, promote, transfer, assign, and retain employees
2 in positions;

3 (4) Suspend, demote, discharge, or take other disciplinary
4 action against employees for proper cause;

5 (5) Relieve an employee from duties because of lack of
6 work or other legitimate reason;

7 (6) Maintain efficiency and productivity, including
8 maximizing the use of advanced technology, in
9 government operations;

10 (7) Determine methods, means, and personnel by which the
11 employer's operations are to be conducted; and

12 (8) Take such actions as may be necessary to carry out the
13 missions of the employer in cases of emergencies.

14 ~~[The employer and the exclusive representative may~~
15 ~~negotiate procedures governing the promotion and transfer of~~
16 ~~employees to positions within a bargaining unit; the suspension,~~
17 ~~demotion, discharge, or other disciplinary actions taken against~~
18 ~~employees within the bargaining unit; and the layoff of~~
19 ~~employees within the bargaining unit. Violations of the~~
20 ~~procedures so negotiated may be subject to the grievance~~
21 ~~procedure in the collective bargaining agreement.] This~~

22 subsection shall not be used to invalidate provisions of



1 collective bargaining agreements in effect on and after June 30,
2 2007, and shall not preclude negotiations over the procedures
3 and criteria on promotions, transfers, assignments, demotions,
4 layoffs, suspensions, terminations, discharges, or other
5 disciplinary actions as a permissive subject of bargaining
6 during collective bargaining negotiations or negotiations over a
7 memorandum of agreement, memorandum of understanding, or other
8 supplemental agreement.

9 Violations of the procedures and criteria so negotiated may
10 be subject to the grievance procedure in the collective
11 bargaining agreement."

12 2. By amending subsection (f) to read:

13 "(f) The repricing of classes within an appropriate
14 bargaining unit may be negotiated as follows:

15 (1) At the request of the exclusive representative and at
16 times allowed under the collective bargaining
17 agreement, the employer shall negotiate the repricing
18 of classes within the bargaining unit. The negotiated
19 repricing actions that constitute cost items shall be
20 subject to the requirements in section 89-10[-]; and

21 (2) If repricing has not been negotiated under paragraph
22 (1), the employer of each jurisdiction shall ensure



1 establishment of procedures to periodically review, at
2 least once in five years, unless otherwise agreed to
3 by the parties, the repricing of classes within the
4 bargaining unit. The repricing of classes based on
5 the results of the periodic review shall be at the
6 discretion of the employer. Any appropriations
7 required to implement the repricing actions that are
8 made at the employer's discretion shall not be
9 construed as cost items."

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

12 SECTION 3. This Act shall take effect on July 1, 2007;
13 provided that the amendments made to section 89-9(d), Hawaii
14 Revised Statutes, by this Act shall not be repealed when that
15 section is re-enacted on July 1, 2008, by section 8 of Act 245,
16 Session Laws of Hawaii, 2005.

