

STANDING COMMITTEE REPORT NO. 16-27

RE: C.B. No. 16-20/H&SA

SUBJECT: MATERNITY LEAVE

SEPTEMBER 25, 2009

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Second Regular Session, 2009

Dear Mr. Speaker:

Your Committee on Health and Social Affairs (H&SA), to which was referred C.B. No. 16-20, entitled:

“TO FURTHER AMEND TITLE 52 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED, BY AMDENDING SECTION 145 SUBSECTION 1 THEREOF, TO DELETE MATERNITY AS A REASON FOR LEAVE OF ABSENCE, AND BY ADDING A NEW SUBSECTION 3 TO ALLOW PAID MATERNITY LEAVE FOR PUBLIC EMPLOYEES OF THE NATIONAL GOVERNMENT AND FOR OTHER PURPOSES.”,

begs leave to report as follows:

Your Committee held public hearings on September 16, 2009 and September 22, 2009 for discussions on proposed C.B. NO. 16-20.

Present at the hearings were: Chairman Setiro Paul; Speaker Isaac V. Figir; Vice Speaker Fredrico O. Primo; Floor Leader Joe N. Suka; Senator Tony H. Otto; Senator Peter Sitan; Senator Dohsis Halbert; Senator Dion G. Neth; Senator Claude H. Phillip; Senator Joseph J. Urusemal (bill sponsor); Pohnpei State Senator Magdalena Walter; Pelsesar Petrus, Special Assistant to the President; Daniel Rescue, Jr, Department of Justice; Representatives from the Department of Health and Social Affairs, Representatives from the Department of Foreign Affairs; Representatives from Departments of Finance and SBOC; community leaders and many additional employees of the National Government appearing in their personal capacity to speak in support of the bill.

Intent and Purpose

Under the current law, maternity leave may be granted, at the discretion of a management official, to a public

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employee of the National Government. C.B. No. 16-20 amends the law to mandate that the National Government shall allow paid maternity leave for public employees for a period of six weeks per calendar year. Should C.B. No. 16-20 be enacted, maternity leave will no longer be discretionary, but must be allowed for public employees of the National Government.

Testimony Summary

The Committee recognizes and appreciates that there was an extraordinary amount of public interest and testimony offered at the hearings; as it would be impractical to repeat it all in this report, a summary is offered below.

Office of the President: Special Assistant to the President Pelsesar Petrus deferred to the Department of Health and Social Affairs; the Office of the President has not taken a formal position.

Department of Health and Social Affairs (DHSA): DHSA wholeheartedly supports the intent of the bill and the current language. The Department would also support a longer leave if that were possible, and believes three to six months would be best for the health of the mother and child. It is the Department's position that six months of exclusive breastfeeding is best for the health of the child, so a longer leave would help in support of breastfeeding. Breastfeeding has many health benefits to the child that will decrease health costs later on; therefore, providing maternity leave benefits can be seen as a preventative cost measure. The Department's position is that the country as a whole will benefit from the bill passing. The Department would also support including paternity leave in the bill, as it is good to support bonding between father and child as well, but maternity leave is essential because of the biological nature of pregnancy, childbirth, and breastfeeding. The Secretary of DHSA was unable to attend the hearings, but submitted written material in support of the legislation and providing information on the significant benefits of maternity leave for the health and welfare of mother and child.

Department of Justice (DOJ): The DOJ testified that, as the current law reads, there is a lot of discretion to managers as to whether to grant a leave of absence for maternity or not. DOJ is in favor of narrowing and clarify the language of the statute, as C.B. No. 16-20 does, to make the leave nondiscretionary. DOJ expressed concern that there may be

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an Equal Protection issue if paternity leave is not also offered.

Department of Foreign Affairs: The Convention on Elimination of Discrimination Against Women (CEDAW), to which FSM is a signatory, requires maternity leave. The FSM signed CEDAW with three reservations, and one of those reservations was regarding maternity leave. To remove this reservation would increase the standing of FSM in the eyes of the international community.

Department of Finance (DOFA): DOFA reports that employees who are new mothers currently using sick and annual leave to take time off after childbirth, and that the accrued leave is usually not adequate and is burdensome on the employees. DOFA was asked to provide an estimate of how much this legislation would cost the FSM annually if it passed. DOFA provided a spreadsheet that showed the National Government currently has 105 female employees between ages 20-40 (what they assume to be the most likely child bearing ages); the total annual salary of the 105 employees is \$1.15 million. DOFA states they could not provide any further estimate of what the legislation would cost, as it is impossible to know how many women would have children in any given year.

Public Testimony: A number of employees of the National Government testified regarding C.B. No. 16-20. All testimony was positive in support of the legislation; testimony often included comments on length of maternity leave, and that three to six months would be better for health of mother and child. Testimony emphasized how much more necessary maternity leave is than paternity leave, given the biological nature of childbirth and breastfeeding. Representatives from the FSM Women's Action Network (FSMWAN) offered testimony in support of C.B. No. 16-20; FSMWAM would also like the leave to be longer, three to six months would be preferable to make breastfeeding more doable. FSMWAN would like to see employers providing a place for breastfeeding in the workplace. FSMWAM would also like clarification on when leave could begin. For example, a woman could have problems with the pregnancy before birth, and need to start maternity leave early. Representatives from the Island Food Community testified to the importance of breastfeeding for mental and physical development of the child, and as a preventative health measure

Committee Discussion

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Your Committee recognizes the great public support for C.B. No. 16-20, and comes to the following conclusions on the issues presented.

Length of time: Your Committee understands that six weeks is a minimum acceptable time off for maternity leave, and recognizes that many developed countries offer longer leaves at the birth of a child. However, six weeks is a good starting point and appears doable at this time; once the yearly costs and affordability of the program is known, perhaps the bill could be amended down the road to extend the leave to a longer period of time.

Funding and Staffing Issues: Your Committee is in support of the legislation though the funding needed is unknown at this time. It seems likely that the costs will not be extreme, as obviously not all female employees will have children in the same year. It is probable that temporary staff will not always been available to fill positions, but the Committee is hopeful that managers will be able reallocate workloads as needed to comply with the maternity leave. The bill does not say that the six weeks need to be taken consecutively, but that was the presumed intent of the drafter, and is necessary in order for managers to be able to plan for the maternity leave. The bill as amended in by the Committee inserts the word "consecutively" in regards to the six weeks of leave.

Calendar Year and Timing: In regards to a question raised by State Senator Walter, regarding the language of "six weeks per calendar year," bill sponsor Senator Urusemal explained that this language was used in order to prevent more than six weeks maternity leave per calendar year should an employee give birth twice in the same calendar year. The intent is to limit maternity leave to once per twelve month period. Your Committee offers clarifying language in the C.D.1 to better reflect the intent regarding the twelve month period. In response to questions about when leave could begin, your Committee would like the leave to begin at the discretion of the employee. For instance, if the employee is facing difficulties towards the end of the pregnancy, the employee could choose to start leave two weeks prior to giving birth, and then return to work four weeks after giving birth, for a total of six weeks of leave.

Paternity Leave and Equal Protection: Based on the advice of the Office of Legislative Counsel, your Committee does not believe that declining to offer paternity leave at this

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time causes an Equal Protection concern. Your Committee has discussed possibly amending the bill at a later date to include paternity leave, again your Committee would prefer to discover the yearly costs of the program as is before expanding it.

Committee Amendment

Your Committee proposed the following to C.B. No. 16-20 as follows:

1. Page 2, line 3 after "six" insert "consecutively".
2. Page 2, line 3, delete "calendar year", and insert "twelve month period" in lieu thereof.

Committee Recommendation

Your Committee on Health and Social Affairs is in accord with the intent and purpose of C.B. No. 16-20 as amended and recommends its passage on First Reading, and that it be placed on the calendar for Second and Final reading in the form attached hereto as C.B. No. 16-20, C.D.1.

Respectfully submitted,

/s/
Setiro Paul, chairman

/s/
Fredrico O. Primo, vice chairman

Isaac V. Figir, member

/s/
Joe N. Suka, member

/s/
Tony H. Otto, member

/s/
Dion G. Neth, member

/s/
Claude H. Phillip, member