GOV. MSG. NO. 1092

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 11, 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:

Re: House Bill No. 1746 SD2

On July 10, 2007, House Bill No. 1746, entitled "A Bill for an Act Relating to Voluntary Employees' Beneficiary Association Trusts" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purposes of this bill are to extend the repeal date of Act 245, Session Laws of Hawaii 2005 ("Act 245"), from July 1, 2008 to July 1, 2009; to prohibit the establishment of new voluntary employees' beneficiary association trusts ("VEBA trusts") under Act 245; and to require an employee organization that established a VEBA trust under Act 245 to submit a report to the Legislature after two full plan years of VEBA trust operations.

This bill is objectionable because, if VEBA trusts improve benefits, they likely do so for a select group of employees at the expense of others. As noted in my statement of concerns regarding the original passage of Act 245, VEBA trusts result in increased costs for employee groups that consist of older, less healthy members. This is because VEBA trusts increase adverse selection in two ways. First, bargaining units that have employees with better than average claims or loss experience can form a VEBA trust and exit the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"). This increases the average claims and loss experience for the remaining EUTF membership and tends to lead to increased rates for that remaining membership. Second, Act 245 provides for VEBA trusts to cover all future retirees but not current retirees. This causes the EUTF to be left with an increasingly older group of existing retirees, resulting in higher rates for the EUTF plans.

The provision of health benefits through a single health benefits delivery system, the EUTF, is the most effective way to control health benefits costs and meet the needs of all State and county employees, retirees, and their dependents. The EUTF was formed, in part, to: (1) eliminate the negative effect on health benefit plan rates due to adverse selection caused by employee organization sponsored health plans; (2) eliminate the duplication of administrative costs caused by having multiple health plans for State and county employees; and (3) establish one large health plan that would have the leverage to negotiate better rates and benefits with insurance carriers and others offering health benefits plans.

As also noted in my statement of concerns regarding the original passage of Act 245, I remain concerned about the effectiveness of the safeguards in that Act against fraud or mismanagement by VEBA trustees. VEBA trusts established under Act 245 are not covered by the strict standards of the federal Employee Retirement Income and Security Act of 1974 ("ERISA"). Unlike ERISA, there is no single State agency responsible for administering and regulating VEBA trusts. No State agency has been authorized to make rules for administering and regulating VEBA trusts and no funding has been provided for such administration and regulation.

Despite these objections and concerns, I will permit the pilot program for VEBA trusts to operate through June 30, 2009, rather than June 30, 2008, as originally proposed under Act 245. The State Auditor should conduct the study required under Senate Concurrent Resolution No. 178 and submit a report to the Legislature for consideration at the 2008 legislative regular session. Based on the data in that study and report, the Legislature should make a decision on whether to terminate the VEBA trust established under Act 245 on June 30, 2008 or allow the trust to continue for one additional year. I believe under no circumstances should the VEBA pilot program be extended beyond June 30, 2009.

For the foregoing reasons, I allowed House Bill No. 1746 to become law as Act 294, effective July 10, 2007, without my signature.

Sincerely,

LINDA LINGLE

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 294

H.B. NO. 1746 S.D. 2

A BILL FOR AN ACT

RELATING TO VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS.

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

SECTION 1. Act 245, Session Laws of Hawaii 2005, is amended by amending section 1 to read as follows:

"SECTION 1. The purpose of this Act is to allow for the temporary establishment of an employee organization sponsored trust that would provide health benefits for state and county employees of a particular bargaining unit, as well as future retirees of that bargaining unit and existing retirees who wish to participate in such a trust. The trust would be established as a voluntary employees' beneficiary association (VEBA) trust pursuant to section 501(c)(9) of the Internal Revenue Code of 1986, as amended. The trust would be funded by employer contributions negotiated pursuant to a collective bargaining agreement and employee contributions to be determined by the trust's board of trustees for active employees. The Act imposes on the trust all of the standards and requirements of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Even if the trust is deemed to be a governmental plan exempt from ERISA, the legislative intent is that the trust must comply with the standards and requirements of ERISA as a matter of state law and that such shall be enforced by the attorney general as well as participants, beneficiaries, and fiduciaries of the plan or plans established by the trust.

This Act also provides for retiree coverage for any employee who retires from the State or the counties who was a member of an employee organization that establishes a VEBA trust pursuant to a collective bargaining agreement effective on or after July 1, 2005. Existing retirees who are members of an employee organization and who were previously covered by a collective bargaining agreement will be provided a one-time opportunity to join the VEBA trust once established. Retiree coverage for existing retirees provided by an employee organization's VEBA trust would be funded by employer contributions made directly to the VEBA trust by the employer.

The requirement of establishing a VEBA trust in order to be exempt from participation in the Hawaii employer-union health benefits trust fund is intended to be a cost containment measure in response to the ever-increasing costs of health care throughout the [~~state.~~] State. However, because of the lack of data available on the impact of a VEBA trust on the Hawaii employer-union health benefits trust fund, this Act would allow the establishment of a VEBA trust pilot program for a period of three years. During this period, a thorough analysis of the costs and benefits of a VEBA trust can be evaluated against the Hawaii employer-union health benefits trust fund to determine what actual savings could be realized by the State through this mechanism."

SECTION 2. Act 245, Session Laws of Hawaii 2005, is amended by amending section 8 to read as follows:

"SECTION 8. This Act shall take effect upon its approval, for the purpose of establishing a voluntary [~~employees~~] employees' beneficiary association trust pilot program in March, 2006 and shall be repealed on July 1, [~~2008.~~] 2009; provided that sections 89-2, 89-3, 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the effective date of this Act."

SECTION 3. Act 245, Session Laws of Hawaii 2005, is amended by adding a new section to read as follows:

"SECTION 7A. Any employee organization that establishes a voluntary employees' beneficiary association trust in March, 2006 and pursuant to this Act shall submit a report to the legislature on the status of the trust no later than one hundred

<u>fifty days after two full plan years of the trust's implementation, and annually thereafter. A plan year is defined as the twelve-month period from July 1 through June 30.</u>"

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.