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# A BILL FOR AN ACT

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS FUND.

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

1 SECTION 1. Section 87A-1, Hawaii Revised Statutes, is  
2 amended by amending the definition of "employee-beneficiary" to  
3 read as follows:

4 "Employee-beneficiary" means:

5 (1) An employee;

6 (2) The [~~beneficiary~~] spouse of an employee who is killed  
7 in the performance of the employee's duty[+], until  
8 the spouse remarries;

9 (3) [~~An employee who retired prior to 1961+~~] The child of  
10 an employee who is killed in the performance of the  
11 employee's duty, until the child marries or reaches  
12 the age of nineteen, whichever occurs first;

13 (4) The [~~beneficiary~~] spouse of a retired member of the  
14 employees' retirement system[+], a county pension  
15 system[+], or a police, firefighters, or bandsmen  
16 pension system of the State or a county, upon the  
17 death of the retired member[+] until the spouse  
18 remarries; or



1           (5) The ~~[surviving]~~ child of a ~~[deceased retired employee,~~  
2           ~~if the child is unmarried and under the age of~~  
3           ~~nineteen,]~~ retired member of the employees' retirement  
4           system, a county pension system, or a police,  
5           firefighters, or bandsmen pension system of the State  
6           or a county, upon the death of the retired member and  
7           until the child marries or reaches the age of  
8           nineteen, whichever occurs first;

9           ~~[(6) The surviving spouse of a deceased retired employee,~~  
10           ~~if the surviving spouse does not subsequently~~  
11           ~~remarry,]~~

12 provided that the employee, the employee's ~~[beneficiary, or the~~  
13 ~~beneficiary of the deceased retired employee]~~ spouse or child,  
14 or the retired member's spouse or child is deemed eligible by  
15 the board to participate in a health benefits plan or long-term  
16 care benefits plan under this chapter."

17           SECTION 2. Section 87A-1, Hawaii Revised Statutes, is  
18 amended by adding a new definition to be appropriately inserted  
19 and to read as follows:

20           "Fiduciary" means any person, with respect to the fund or a  
21 plan, to the extent that such person:



1       (1) Exercises any discretionary authority or discretionary  
2       control respecting management of the fund or a plan or  
3       exercises authority or control respecting management  
4       or disposition of the fund's;

5       (2) Renders investment advice for a fee or other  
6       compensation, direct or indirect, with respect to any  
7       moneys or other property of the fund or a plan, or has  
8       authority or responsibility to do so; or

9       (3) Has any discretionary authority or discretionary  
10       responsibility in the administration of the fund or a  
11       plan.

12       Without limiting the foregoing, "fiduciary" shall include each  
13       trustee of the fund.

14       SECTION 3. Section 87A-26, Hawaii Revised Statutes, is  
15       amended to read as follows:

16       "~~§87A-26~~ **Rules; policies, standards, and procedures.**

17       (a) The board may adopt rules for the purposes of this chapter.  
18       Rules shall be adopted without regard to chapter 91. Rule-  
19       making procedures shall be adopted by the board and shall  
20       minimally provide for:

21       (1) Consultation with employers and affected employee  
22       organizations with regard to proposed rules;



1 (2) Adoption of rules at open meetings that permit the  
2 attendance of any interested persons;

3 (3) Approval of rules by the governor; and

4 (4) Filing of rules with the lieutenant governor.

5 (b) The board may also issue policies, standards, and  
6 procedures consistent with its rules.

7 (c) The board may adopt rules, without regard to chapter  
8 91, governing dispute resolution procedures in the event of  
9 impasse in decision-making; provided that the rules shall be  
10 adopted with the concurrence of six trustees.

11 (d) Any repeal or revocation of a rule shall not diminish  
12 the rights of an employee, a dependent beneficiary, employee  
13 beneficiary, including but not limited to a spouse, child, or a  
14 domestic partner, unless the repeal or revocation affects all  
15 beneficiaries under this chapter. There shall be no  
16 discrimination based on age, sex, religion, marital status,  
17 sexual orientation or gender and other protected groups under  
18 the State and U.S. Constitution."

19 SECTION 4. Chapter 87A, Hawaii Revised Statutes, is  
20 amended by adding two new section to be appropriately designated  
21 and to read as follows:



1       "§87A- Awarding of contracts. (a) Notwithstanding any  
2 other law to the contrary, any contract awarded under this  
3 chapter shall be awarded to the lowest responsible and  
4 responsive bidder or offeror, as defined in section 103D-104,  
5 whose bid or proposal meets the requirements and criteria set  
6 forth in the invitation for bids or a request for proposals.  
7 The contracts awarded under this chapter include but not limited  
8 to the following:  
9       (1) health plans including a preferred provider option  
10       (ppo), health maintenance organization (hmo), high  
11       deductible health (hdhp), prescription drug plan,  
12       supplemental medical, dental service, and vision;  
13       (2) group life insurance benefits or group life insurance  
14       plans;  
15       (3) long-term care benefits plan;  
16       (4) plans for part-time, temporary, and seasonal or casual  
17       employees including medical, hospital, or surgical  
18       benefits; and  
19       (5) professional services.  
20       (b) All responses submitted in a bid or proposal shall be  
21 verified by an independent auditor."



1 SECTION 5. Part III of Chapter 87A, Hawaii Revised  
2 Statutes, is amended by adding six new sections to be  
3 appropriately designated and to read as follows:

4 "§87A- Fiduciary duties; prohibited transactions. (a)

5 All fiduciaries of the fund shall discharge their duties with  
6 respect to the fund or a plan solely in the interest of the  
7 participants and beneficiaries and:

8 (1) For the exclusive purpose of:

9 (A) Providing benefits to participants and their  
10 beneficiaries; and

11 (B) Defraying reasonable expenses of administering  
12 the plan;

13 (2) With the care, skill, prudence, and diligence under  
14 the circumstances then prevailing that a prudent  
15 person acting in a similar capacity and familiar with  
16 those matters would use in the conduct of an  
17 enterprise of a similar character and with like aims;

18 (3) By diversifying the investments of the fund so as to  
19 minimize the risk of large losses, unless, under the  
20 circumstances, it is clearly prudent not to do so; and

21 (4) In accordance with the documents and instruments  
22 governing the fund or a plan insofar as such documents



1 and instruments are consistent with the provisions of  
2 this chapter.

3 (b) In addition to any liability that a fiduciary may have  
4 under this chapter, a fiduciary with respect to a fund or a plan  
5 shall be liable for a breach of fiduciary responsibility of  
6 another fiduciary with respect to the fund or the same plan in  
7 the following circumstances:

8 (1) If the fiduciary participates knowingly in, or  
9 knowingly undertakes to conceal, an act or omission of  
10 the other fiduciary, knowing that act or omission is a  
11 breach;

12 (2) If, by the fiduciary's failure to comply with  
13 subsection (a) or (b), the fiduciary has enabled such  
14 other fiduciary to commit breach; or

15 (3) If the fiduciary has knowledge of the breach by such  
16 other fiduciary, unless the fiduciary makes reasonable  
17 efforts under the circumstances to remedy the breach.

18 (c) A fiduciary shall not:

19 (1) Deal with the assets of the fund in the fiduciary's  
20 own interest or for the fiduciary's own account;

21 (2) In the fiduciary's individual capacity or in any other  
22 capacity act in any transaction involving the fund or



1 a plan on behalf of a party (or represent a party)  
2 whose interests are adverse to the interests of the  
3 plan or the interests of its participants or  
4 beneficiaries; or

5 (3) Receive any consideration for the fiduciary's own  
6 personal account from any party dealing with the fund  
7 or a plan in connection with a transaction involving  
8 the assets of the fund."

9 **"§87A- Liability for breach of fiduciary duty. (a) Any**  
10 **person who is a fiduciary with respect to the fund or a plan and**  
11 **who breaches any of the responsibilities, obligations, or duties**  
12 **imposed on fiduciaries by this chapter shall be personally**  
13 **liable to make good to the fund any losses to the fund resulting**  
14 **from each breach, and to restore to the fund any profits of the**  
15 **fiduciary that have been made through the use of assets of the**  
16 **fund by the fiduciary, and shall be subject to any other**  
17 **equitable and remedial relief as the court may deem appropriate,**  
18 **including removal of the fiduciary.**

19 (b) Any provision in any agreement or instrument that  
20 purports to relieve a fiduciary of responsibility or liability  
21 for any responsibility, obligation, or duty under this chapter



1 shall be void as against public policy. However, nothing in  
2 this section shall preclude:

3 (1) The board from purchasing insurance for its fundees to  
4 cover liability or losses occurring by reason of the  
5 act or omission of a fundee in the case of a breach of  
6 a fiduciary obligation by the fundee, if the insurance  
7 permits recourse by the insurer against the fundee in  
8 the case of a breach of fiduciary obligation by the  
9 fundee; or

10 (2) A fiduciary from purchasing insurance to cover  
11 liability under this chapter from and for the  
12 fiduciary's own account."

13 **"§87A- Violation of the chapter; enforcement. (a) A**  
14 civil action may be brought by a participant, beneficiary, or  
15 fiduciary:

16 (1) For relief, if the board or the fund fails to provide  
17 any information required under this chapter, or fails  
18 to comply with any request for information that the  
19 board or the fund is required to furnish to the  
20 participant, beneficiary or legislature;

21 (2) To recover benefits due the participant or beneficiary  
22 under the terms of the fund, or to enforce the



1 participant's or beneficiary's rights under the terms  
2 of the fund, or to clarify the participant's or  
3 beneficiary's rights to future benefits under the  
4 terms of the fund;

5 (3) For appropriate relief against any breach of fiduciary  
6 duty under section 87A- ; or

7 (4) To enjoin any act or practice that violates any  
8 provision of this chapter or the terms of the fund, or  
9 to obtain any other appropriate equitable relief, or  
10 to redress such violations, or to enforce any  
11 provisions of this chapter or the terms of the fund.

12 (b) A civil action may be brought by the legislative  
13 auditor:

14 (1) For relief, if the fund fails to provide any  
15 information required by this chapter, or if the fund  
16 fails to comply with any request for information that  
17 the fund is required to furnish any state or county  
18 department or the legislature;

19 (2) To enjoin any act or practice that violates any  
20 provision of this chapter;

21 (3) To redress the violations;

22 (4) To enforce any provision of this chapter; or



1        (c) The legislative auditor shall have the power, in order  
2 to determine whether any person has violated or is about to  
3 violate any provision of this chapter:

4        (1) To conduct an investigation and in connection  
5 therewith to require submission of reports, books, and  
6 records, and the filing of data in support of any  
7 information required to be filed under this chapter;  
8 and

9        (2) To enter any place, inspect any books and records, and  
10 question any persons as the legislative auditor may  
11 deem necessary to enable the legislative auditor to  
12 determine the facts relative to an investigation.

13        For purposes of any investigation provided for in this  
14 chapter, the legislative auditor may utilize the investigation  
15 procedures set forth in chapter 23.

16        (d) The rights and remedies provided in this section are  
17 in addition to any rights or remedies that the participants,  
18 beneficiaries, fiduciaries, legislative auditor, or other state  
19 or federal agencies may have over the fund or any plans provided  
20 by or through the fund, and fiduciaries of the plans."

21        **"§87A- Filing and furnishing of information requirements.**

22        (a) Within one hundred twenty days prior to the convening of



1 the legislature, the board shall provide an annual report for  
2 each plan covered by this chapter to the legislature. The  
3 annual reports shall be government records open to public  
4 inspection.

5 (b) The board shall provide summary plan descriptions to  
6 each participant and beneficiary of the fund within ninety days  
7 of a participant becoming enrolled in a plan or within ninety  
8 days of a beneficiary first receiving benefits under a plan. If  
9 a material modification or amendment is made to a plan, the  
10 board shall provide a summary description of such modification  
11 or amendment to each participant or beneficiary within two  
12 hundred ten days after the plan year in which the modification  
13 or amendment is made.

14 (c) Upon request of any participant or beneficiary, the  
15 board shall provide such person with the latest updated summary  
16 plan description, the latest annual report."

17 "§87A- Separate category or voluntary employees'  
18 beneficiary association trusts. Any employee organization, as  
19 defined under section 89-2, authorized by the board to establish  
20 a health benefits plan separate from health benefits plans for  
21 all other employees or as a voluntary employees' beneficiary  
22 association trust pursuant to chapter 87D shall be responsible



1 for its own reserve fund and any losses incurred by said  
2 employee organization shall be borne by the organization and its  
3 own reserve fund. Under no circumstances, shall the fund's  
4 reserve fund pay for any losses incurred by said employee  
5 organization."

6  
7 SECTION 6. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 7. This Act shall take effect upon its approval.



**REPORT Title:**

EUTF employee beneficiaries.

**Description:**

Eliminates confusion or misinterpretations regarding which "beneficiaries" of an employee killed in the performance of duty or of a deceased retiree are eligible to become EUTF employee-beneficiaries, provides for non-discrimination to its beneficiaries, awarding of contracts to the lowest responsible and responsive bidder or offeror; protection to the EUTF beneficiaries from breaches of fiduciary duties and (HB1290 HD1 SD1)

