

JAN 21 2011

S.B. NO. 1066

A BILL FOR AN ACT

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND.

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

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

4 "§87A-A Selection of benefit plan carriers. Procurement
5 of a carrier, third-party administrator for any benefits plan,
6 consultants, actuaries, auditors, or administrator shall be
7 exempt from chapter 103D.

8 §87A-B Fiduciary duties; prohibited transactions. (a) A
9 fiduciary of the fund shall comply, with respect to a plan, with
10 all fiduciary duties imposed on fiduciaries under Title 29,
11 United States Code Sections 1001 through 1191, as amended, and
12 related regulations.

13 (b) All fiduciaries of the fund shall discharge their
14 duties with respect to a plan solely in the interest of the
15 participants and beneficiaries:

16 (1) For the exclusive purpose of:



- 1 (A) Providing benefits to participants and their
2 beneficiaries; and
- 3 (B) Defraying reasonable expenses of administering
4 the plan;
- 5 (2) With the care, skill, prudence, and diligence, under
6 the existing circumstances, that a prudent person
7 acting in a similar capacity and familiar with those
8 matters would use in the conduct of an enterprise of a
9 similar character and with like aims;
- 10 (3) By diversifying the investments of the plan so as to
11 minimize the risk of large losses unless, under the
12 circumstances, it is clearly prudent not to do so; and
- 13 (4) In accordance with the documents and instruments
14 governing the plan insofar as the documents and
15 instruments are consistent with the provisions of this
16 chapter.
- 17 (c) In addition to any liability that a fiduciary may have
18 under this chapter, a fiduciary with respect to a plan shall be
19 liable for a breach of fiduciary responsibility of another
20 fiduciary with respect to the same plan in the following
21 circumstances:



1 (1) If the fiduciary participates knowingly in or
2 knowingly undertakes to conceal an act of omission of
3 the other fiduciary, knowing that act or omission is a
4 breach;

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

8 (3) If the fiduciary has knowledge of the breach by such
9 other fiduciary, unless the fiduciary makes reasonable
10 efforts under the circumstances to remedy the breach.

11 If the assets of the plan are held by two or more trustees,
12 each shall use reasonable care to prevent a co-trustee from
13 committing a breach, and each shall be responsible for jointly
14 managing and controlling the assets of the plan.

15 (d) A fiduciary shall not cause a plan to engage in a
16 transaction if the fiduciary knows or should know that the
17 transaction constitutes a direct or indirect:

18 (1) Sale or exchange, or leasing, of any property between
19 the plan and a party in interest;

20 (2) Lending of money or other extension of credit between
21 the plan and a party in interest;



1 (3) Furnishing of goods, services, or facilities between
2 the plan and a party in interest; or

3 (4) Transfer to, or use by or for the benefit of, a party
4 in interest of any assets of the plan.

5 (e) A fiduciary shall not:

6 (1) Deal with the assets of the plan in the fiduciary's
7 own interest or for the fiduciary's own account;

8 (2) In the fiduciary's individual capacity or in any other
9 capacity, act in any transaction involving the plan on
10 behalf of a party or represent a party whose interests
11 are adverse to the interests of the plan or the
12 interests of its participants or beneficiaries; or

13 (3) Receive any consideration for the fiduciary's own
14 personal account from any party dealing with the plan
15 in connection with a transaction involving the assets
16 of the plan.

17 **§87A-C Liability for breach of fiduciary duty.** (a) Any

18 person who is a fiduciary with respect to a plan and who
19 breaches any of the responsibilities, obligations, or duties
20 imposed on fiduciaries by this chapter shall be personally
21 liable to make good to the plan any losses to the plan resulting
22 from each breach and to restore to the plan any profits of the



1 fiduciary that have been made through the use of assets of the
2 plan by the fiduciary, and shall be subject to any other
3 equitable and remedial relief as the court may deem appropriate,
4 including removal of the fiduciary.

5 (b) Any provision in any agreement or instrument that
6 purports to relieve a fiduciary of responsibility or liability
7 for any responsibility, obligation, or duty under this chapter
8 shall be void as against public policy. However, nothing in
9 this section shall preclude:

10 (1) A plan from purchasing insurance for its fiduciaries
11 or for itself to cover liability or losses occurring
12 by reason of the act or omission of a fiduciary in the
13 case of a breach of a fiduciary obligation by the
14 fiduciary, if the insurance permits recourse by the
15 insurer against the fiduciary in the case of a breach
16 of fiduciary obligation by the fiduciary;

17 (2) A fiduciary from purchasing insurance to cover
18 liability under this chapter from and for the
19 fiduciary's own account; or

20 (3) An employee organization from purchasing insurance to
21 cover potential liability of one or more persons who



1 serve in a fiduciary capacity with regard to an
2 employee welfare benefit plan."

3 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) No department of the State other than the attorney
6 general may employ or retain any attorney, by contract or
7 otherwise, for the purpose of representing the State or the
8 department in any litigation, rendering legal counsel to the
9 department, or drafting legal documents for the department;
10 provided that the foregoing provision shall not apply to the
11 employment or retention of attorneys:

12 (1) By the public utilities commission, the labor and
13 industrial relations appeals board, and the Hawaii
14 labor relations board;

15 (2) By any court or judicial or legislative office of the
16 State; provided that if the attorney general is
17 requested to provide representation to a court or
18 judicial office by the chief justice or the chief
19 justice's designee, or to a legislative office by the
20 speaker of the house of representatives and the
21 president of the senate jointly, and the attorney
22 general declines to provide such representation on the



- 1 grounds of conflict of interest, the attorney general
2 shall retain an attorney for the court, judicial, or
3 legislative office, subject to approval by the court,
4 judicial, or legislative office;
- 5 (3) By the legislative reference bureau;
- 6 (4) By any compilation commission that may be constituted
7 from time to time;
- 8 (5) By the real estate commission for any action involving
9 the real estate recovery fund;
- 10 (6) By the contractors license board for any action
11 involving the contractors recovery fund;
- 12 (7) By the trustees for any action involving the travel
13 agency recovery fund;
- 14 (8) By the office of Hawaiian affairs;
- 15 (9) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480 and
17 485A;
- 18 (10) As grand jury counsel;
- 19 (11) By the Hawaiian home lands trust individual claims
20 review panel;
- 21 (12) By the Hawaii health systems corporation, or its
22 regional system boards, or any of their facilities;



- 1 (13) By the auditor;
- 2 (14) By the office of ombudsman;
- 3 (15) By the insurance division;
- 4 (16) By the University of Hawaii;
- 5 (17) By the Kahoolawe island reserve commission;
- 6 (18) By the division of consumer advocacy;
- 7 (19) By the office of elections;
- 8 (20) By the campaign spending commission;
- 9 (21) By the Hawaii tourism authority, as provided in
- 10 section 201B-2.5;
- 11 (22) By the Hawaii employer-union health benefits trust
- 12 fund, as provided in section 87A-9;
- 13 ~~[(22)]~~ (23) By the division of financial institutions for
- 14 any action involving the mortgage loan recovery fund;
- 15 or
- 16 ~~[(23)]~~ (24) By a department, in the event the attorney
- 17 general, for reasons deemed by the attorney general to
- 18 be good and sufficient, declines to employ or retain
- 19 an attorney for a department; provided that the
- 20 governor thereupon waives the provision of this
- 21 section."

1 SECTION 3. Section 87A-5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 §87A-5 **Composition of board.** (a) The board of trustees
4 of the employer-union health benefits trust fund shall consist
5 of ~~[ten]~~ trustees appointed ~~[by the governor]~~ in accordance with
6 the following procedure:

7 (1) ~~[Five]~~ Six trustees ~~[, one of whom shall represent~~
8 ~~retirees, to]~~ shall represent employee-beneficiaries
9 and ~~[to]~~ be selected as follows:

10 ~~[(A) Three trustees shall be appointed from a list of~~
11 ~~two nominees per trustee selected by each of the~~
12 ~~three exclusive representative organizations that~~
13 ~~have the largest number of employee-~~
14 ~~beneficiaries;~~

15 ~~[(B) One trustee shall be appointed from a list of two~~
16 ~~nominees selected by mutual agreement of the~~
17 ~~remaining exclusive employee representative~~
18 ~~organizations; and~~

19 ~~[(C) One trustee representing retirees shall be~~
20 ~~appointed from a list of two nominees selected by~~
21 ~~mutual agreement of all eligible exclusive~~
22 ~~representatives; and~~



1 ~~(2) Five trustees to represent public employers.]~~

2 (A) One trustee to be appointed by the exclusive
3 bargaining representative for bargaining units
4 (2), (3), (4), (6), (8), (9), and (13);

5 (B) One trustee to be appointed by the exclusive
6 bargaining representative for bargaining unit
7 (5);

8 (C) One trustee to be appointed by the exclusive
9 bargaining representative for bargaining unit
10 (7);

11 (D) One trustee to be appointed by the exclusive
12 bargaining representative for bargaining units
13 (1) and (10);

14 (E) One trustee to be appointed by the exclusive
15 bargaining representative for bargaining unit
16 (11); and

17 (F) One trustee to be appointed by the exclusive
18 bargaining representative for bargaining unit
19 (12);

20 provided that all trustees shall serve at the pleasure
21 of the appointing exclusive bargaining representative;
22 and



1 (2) Six trustees, five to represent public employers and
2 one to represent retiree beneficiaries, shall be
3 selected as follows:

4 (A) One trustee shall be appointed by the governor to
5 represent the State of Hawaii administration;

6 (B) One trustee shall be appointed by the governor
7 from a nominee submitted by the university of
8 Hawaii board of regents;

9 (C) One trustee shall be appointed by the governor
10 from a nominee submitted by the board of
11 education;

12 (D) One trustee shall be appointed by the mayor of
13 the city and county of Honolulu;

14 (E) One trustee shall be appointed by at least two
15 mayors from the counties of Hawaii, Maui, or
16 Kauai; provided that the mayors of the two
17 remaining counties shall appoint an alternate as
18 a trustee to sit in the absence of a county or
19 city and county regular trustee; and

20 (F) One trustee shall be appointed by the governor to
21 represent retiree-beneficiaries;



1 provided that all trustees shall serve at the pleasure
2 of the appointing authority.

3 (b) If an exclusive bargaining representative negotiates a
4 specific contribution to apply to only that bargaining unit,
5 that unit shall have a sub-board of trustees to administer that
6 exclusive bargaining unit's contributions and benefits. The
7 benefits for the bargaining unit, including the type and level,
8 shall be determined by the sub-board of trustees or established
9 pursuant to the collective bargaining agreement. There shall be
10 two trustees appointed by the employer and two trustees
11 appointed by the exclusive bargaining representative to the
12 sub-board.

13 (c) Section 26-34 shall not apply to board member
14 selection and terms. Notwithstanding any other provision of
15 this section, no exclusive representative of a bargaining unit
16 that sponsors or participates in a voluntary employee
17 beneficiary association shall be eligible to select nominees or
18 to be represented by a trustee on the board.

19 (d) As used in this section, the term "exclusive
20 representative" shall have the same meaning as in section 89-2."

21 SECTION 4. Section 87A-6, Hawaii Revised Statutes, is
22 amended to read as follows:



1 ~~"§87A-6 Term of a trustee; vacancy. [The term of office~~
2 ~~of each trustee shall be four years; provided that a trustee may~~
3 ~~be reappointed for one additional consecutive four year term.~~

4 ~~A vacancy on the board shall be filled in the same manner~~
5 ~~as the trustee who vacated that position was nominated or~~
6 ~~appointed; provided that the criteria used for nominating or~~
7 ~~appointing the successor shall be the same criteria used for~~
8 ~~nominating or appointing the person's predecessor; provided~~
9 ~~further that vacancies on the board for each trustee position~~
10 ~~representing retirees and employee beneficiaries appointed under~~
11 ~~section 87A-5(1)(A) and (B) shall be filled by appointment of~~
12 ~~the governor as follows:~~

13 ~~(1) If a vacancy occurs in one of the trustee positions~~
14 ~~described in section 87A-5(1)(A), then the vacancy~~
15 ~~shall be appointed from a list of two nominees~~
16 ~~submitted by the exclusive employee representative~~
17 ~~from among the three largest exclusive employee~~
18 ~~representatives that does not have a trustee among the~~
19 ~~three trustee positions;~~

20 ~~(2) If a vacancy occurs in a trustee position described in~~
21 ~~section 87A-5(1)(B), then the vacancy shall be~~
22 ~~appointed from a list of two nominees submitted by~~

1 ~~mutual agreement of the exclusive employee~~
2 ~~representatives described in section 87A-5(1)(B); and~~
3 ~~(3) If a vacancy occurs in the retiree position described~~
4 ~~in section 87A-5(1)(C), then the vacancy shall be~~
5 ~~appointed from a list of two nominees submitted by~~
6 ~~mutual agreement of all eligible exclusive employee~~
7 ~~representatives.~~

8 ~~If by the end of a trustee's term the trustee is not~~
9 ~~reappointed or the trustee's successor is not appointed, the~~
10 ~~trustee shall serve until the trustee's successor is appointed.]~~

11 The term of office of each trustee shall be at the pleasure of
12 the nominating or appointing authority. In the event the
13 appointing authority fails to appoint an employer trustee to
14 fill a vacant position, the chief justice of the supreme court
15 shall make the appointment upon petition by two or more employee
16 beneficiary trustees. In the event the appointing authority
17 fails to appoint an employee beneficiary trustee to fill a
18 vacant position, the chief justice of the Hawaii supreme court
19 shall make the appointment upon petition by two or more employer
20 trustees."

21 SECTION 5. Section 87A-9, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "~~[+]§87A-9[+]~~ **Legal adviser.** The ~~[attorney general shall]~~
2 board may appoint or retain by contract an attorney who is
3 independent of the attorney general to serve as legal adviser to
4 the board and ~~shall~~ provide legal representation for the
5 Hawaii employer-union health benefits trust fund. The legal
6 adviser shall have Employee Retirement and Income Security Act
7 employee benefits experience, either from the private or public
8 sector."

9 SECTION 6. Section 87A-11, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~[+]§87A-11[+]~~ **Quorum; board actions; voting.** (a) ~~[Six]~~
12 Eight trustees, ~~[three]~~ four of whom represent the public
13 employer and ~~[three]~~ four of whom represent employee-
14 beneficiaries, shall constitute a quorum for the transaction of
15 business.

16 (b) Trustees representing the public employers shall
17 collectively have one vote. Trustees representing the employee-
18 beneficiaries shall collectively have one vote.

19 For any vote of the trustees representing the public
20 employers to be valid, ~~[three]~~ four of these trustees must
21 concur to cast such a vote. In the absence of such concurrence,



1 the trustees representing the public employers shall be deemed
2 to have abstained from voting.

3 For any vote of the trustees representing the employee-
4 beneficiaries to be valid, [~~three~~] four of these trustees must
5 concur to cast such a vote. In the absence of such concurrence,
6 the trustees representing the employee-beneficiaries shall be
7 deemed to have abstained from voting.

8 An abstention shall not be counted as either a vote in
9 favor or against a matter before the board.

10 (c) Any action taken by the board shall be by the
11 concurrence of at least two votes. In the event of a tie vote
12 on any motion, the motion shall fail. Upon the concurrence of
13 [~~six~~] eight trustees, the board shall participate in dispute
14 resolution."

15 SECTION 7. Section 87A-15, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§87A-15[+] **Administration of the fund.** The board
18 shall administer and carry out the purpose of the fund. Health
19 and other benefit plans shall be provided [~~at a cost affordable~~
20 ~~to both the public employers and the public employees.~~] as
21 follows:



- 1 (1) For collective bargaining units, based on the
2 collectively bargained contributions from both the
3 employers and the employees;
- 4 (2) For retirees, according to an appropriation by the
5 legislature and the respective counties; and
- 6 (3) For all other eligible beneficiaries, based on the
7 contribution from both the employer and employees."

8 SECTION 8. Section 87A-30, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§87A-30 Hawaii employer-union health benefits trust fund;**
11 **establishment.** There is established outside the state treasury,
12 a trust fund to be known as the "Hawaii Employer-Union Health
13 Benefits Trust Fund". The fund shall consist of contributions,
14 interest, income, dividends, refunds, rate credits, and other
15 returns. It is hereby declared that any and all sums
16 contributed or paid from any source to the fund created by this
17 part, and all assets of the fund including any and all interest
18 and earnings on the same, are and shall be held in trust by the
19 board for the exclusive use and benefit of the employee-
20 beneficiaries and dependent-beneficiaries and shall not be
21 subject to appropriation for any other purpose whatsoever. The
22 fund shall be under the control of the board of trustees and



1 placed under the department of [~~budget and finance~~] human
2 resources development for administrative purposes."

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on July 1, 2011.

6 INTRODUCED BY: 



Report Title:

Employer-union Health Benefits Trust Fund; Appointment; Fiduciary Duties; Independent Attorney Quorum; Department of Human Resources

Description:

Adds fiduciary duties to the public employees health fund board of trustees. Amends the appointment and quorum requirements of the public employees health fund board of trustees. Permits the public employees health fund board of trustees to retain an attorney independent of the attorney general's office to represent the Hawaii employer-union health benefits trust fund. Requires health and other benefit plans to be provided for collective bargaining units, retirees and other eligible beneficiaries. Transfers the public employees health fund board of trustees to the control of the department of Human Resources.

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