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**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
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February 6, 2013

**TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
AND  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

For Hearing on Wednesday, February 6, 2013  
4:00 p.m., Conference Room 325

BY

BARBARA A. KRIEG  
DIRECTOR

**House Bill No. 1459  
Relating to Insurance**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSONS MARK M. NAKASHIMA AND ANGUS L.K. MCKELVEY AND  
MEMBERS OF THE COMMITTEES:

The Department of Human Resources Development has **comments** on the proposed transfer. To protect the rights and benefits of the employees to be transferred, the language for the transfer of employees and officers from one agency to another in Section 12 should read:

“All rights, powers, functions, and duties of the Hawaii employer-union health benefits trust fund are transferred to the Hawaii employer-union health benefits trust fund captive insurance company.

All employees who occupy civil service positions and whose functions are transferred to the Hawaii employer-union health benefits trust fund captive insurance company by this Act shall retain their civil service status, whether permanent or temporary. Employees shall be transferred without loss of salary, seniority (except as prescribed by applicable collective bargaining agreement), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position as a consequence of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, vacation or sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act, provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided further that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of the Hawaii employer-union health benefits trust fund captive insurance company may prescribe the duties and qualifications of such employees and

fix their salaries without regard to chapter 76, Hawaii Revised Statutes.”

Thank you for the opportunity to offer comments on this measure.



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

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KEALI'I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON LABOR & PUBLIC EMPLOYMENT AND  
CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Wednesday, February 6, 2013  
4 p.m.

**TESTIMONY ON HOUSE BILL NO. 1459 – RELATING TO INSURANCE.**

TO THE HONORABLE MARK M. NAKASHIMA AND ANGUS L.K. MCKELVEY, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
("Department"). The Department takes no position on this bill and submits comments  
limited to aspects of the bill dealing with insurance regulation.

The purpose of this bill is to more effectively manage the administration and  
financing of the current and potential future employee health benefit obligations of the  
State and county governments by creating the Hawaii Employer-Union Health Benefits  
Trust Fund Captive Insurance Company ("Captive") as a reciprocal captive insurance  
company under article 19, chapter 431, Hawaii Revised Statutes ("HRS")("Article 19").

While the Department finds that this is a creative way to address the growth of  
unfunded liabilities for public employee health benefits, we have concerns that the  
organizational structure of the Captive is not in compliance with the Hawaii Insurance  
Code as found in chapter 431, HRS (the "Insurance Code"). In addition, the Division

requests that the bill be amended to clarify that it would not circumvent the Division's regulatory authority with regard to captive insurance companies.

The following highlights some of our concerns:

1. Captive's Organizational Structure: The structure envisioned for the Captive as a reciprocal insurance company ("reciprocal") is not in compliance with the Insurance Code. Since the Captive would be formed as a reciprocal, HRS § 431:19-106 requires the Captive to be subject to certain HRS provisions governing reciprocals in the Insurance Code.

HRS §431:3-108 defines "reciprocal insurer" as "an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact common to all such persons to provide reciprocal insurance among themselves." HRS §431:4-406 sets forth the duties of the attorney-in-fact ("AIF") to act on behalf of the reciprocal's subscribers' advisory committee ("SAC").

Under HRS §431:4-415, the SAC is an advisory committee that exercises the subscribers' rights and is selected by the reciprocal's subscribers under rules adopted by the subscribers. Among other things, the SAC is responsible for supervising the reciprocal's finances and operations.

If it is the intent of the Legislature to form the Captive as a reciprocal, the bill should be amended to reflect the proper organizational structure of a reciprocal. Specifically, all references to a Board of Trustees and an Administrator should be removed. Instead, the bill should provide for an organizational structure consisting of the Captive's subscribers, SAC, and AIF.

2. Article 19 Compliance: Section 1-104 of the bill states that if there is a conflict between the bill and the Insurance Code, the Insurance Code is controlling. Notwithstanding this broad statement, there are sections throughout the bill that create ambiguity in the application of the law. For example, in section 2-206 of the bill states that meetings may be scheduled, presumably by the Board of Trustees. This provision creates an ambiguity because HRS §431:19-102(b)(2) requires the governing body of every Hawaii captive to meet at least once a year in Hawaii.

We are concerned that there is no clear statement that none of the regulatory requirements of Article 19 will be preempted by this bill. Some of Article 19's requirements include minimum capital and surplus, investment, examination, financial reporting, and loss reserving requirements. These regulatory safeguards were designed over the years to protect the interests of captive insureds and potential claimants.

3. Exemption from Taxes and Fees: We are concerned that the bill proposes to exempt the Captive from all taxes and fees levied by the State on other insurers in section 1-101(d). As the Captive would still be subject to annual filing and examination requirements as is the case for any other captive, the Department's examiners would be required to expend time to review and examine Captive documents. As such, the Captive should not be treated any differently from any other captive domiciled in Hawaii.

4. Application of Article 15 of Insurance Code: Currently, Insurance Code provisions dealing with Insurer Supervision, Rehabilitation, and Liquidation in article 15 ("Article 15") have limited application to captive insurance companies. We are concerned that the Captive, as envisioned in this bill, would be exempt from Article 15. Without the regulatory authority available under Article 15, there would be no clear statutory direction to dissolve or rehabilitate the Captive in the case of insolvency. Considering the anticipated size of the Captive, if the Captive were to become insolvent, it would be in the best interests of the insureds, claimants, and the public that Article 15 apply to this bill to protect the interests of affected parties in an efficient and equitable manner.

We thank the Committee for the opportunity to submit testimony on this matter.



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**TESTIMONY  
OF  
AARON S. FUJIOKA  
ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE  
HOUSE COMMITTEES  
ON  
LABOR & PUBLIC EMPLOYMENT  
AND  
CONSUMER PROTECTION & COMMERCE**

February 6, 2013

4:00 p.m.

HB 1459

**RELATING TO INSURANCE.**

Chair Nakashima, Chair McKelvey, Vice-Chair Hashem, Vice-Chair Kawakami, and members of the committees, thank you for the opportunity to submit testimony on HB 1459. The State Procurement Office's (SPO) comments are limited to SECTION 2 proposing to add a new chapter which includes an exemption from HRS chapter 103D, Hawaii Public Procurement Code (Code), for the board and the administrator of the captive insurance company.

The SPO opposes the amendment in SECTION 2 proposing to exempt the board and the administrator of the Captive Insurance Company from the Code requirements. The Code is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application.

We request that SECTION 2, page 13, lines 13 to 15 of the bill be deleted. Thank you.



## HOUSE OF REPRESENTATIVES

STATE OF HAWAII  
STATE CAPITOL  
415 SOUTH BERETANIA STREET  
HONOLULU, HAWAII 96813

Representative Mark M. Nakashima,  
Chair, Labor and Public Employment.  
Representative Mark J. Hashem,  
Vice Chair, Labor and Public Employment.

Representative Angus L.K. McKelvey,  
Chair, Consumer Protection and Commerce.  
Representative Derek S. K. Kawakami,  
Vice Chair, Consumer Protection and Commerce.

Aloha Chairs, Vice Chairs, and Committee Members,

Unfortunately, I will be unable to attend the joint hearing on Wednesday, February 6, 2013, on H.B.1459. However, I would like to provide the attached proposed H.D.1 for your consideration.

H.B.1459 addresses the unfunded liabilities for public employee health benefits. The proposed H.D.1 consists of the following amendments:

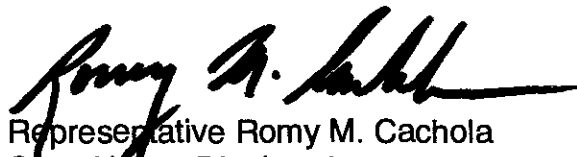
1. **Page 1.** Changes the unfunded liabilities from \$15 billion to between \$15-17 billion;
2. **Page 3, line 11.** Clarifies that the commitment to fund the premiums will be from the board of directors comprised of members from the public employers and employees to cover the benefits going forward;
3. **Pg 13, line 12.** Includes technical amendments to remove references to sections that have been repealed;
4. **Pg 62, line 2.** Changes \$500,000,000 to \$1.5 billion;
5. The measure is further amended to include two reserve accounts instead of one.



- i. The first reserve account is the existing reserve account. It will still serve as the account to prefund the future OPEB and unfunded liabilities for public employee health benefits.
- ii. The second account is a new account that holds the minimum capital and surplus as required by 431:19-104, Hawaii Revised Statutes. The account is backed by the full faith and credit of the "employers" as defined in the bill.

Additionally, I would like to provide language in the Committee Report for your consideration. I would like to include language in the committee report concerning the feasibility study recommended by the Insurance Commissioner. It should be noted that the feasibility study can still be accomplished before the measure takes effect because the effective date of this measure isn't until July 1, 2014.

Thank you for your consideration,



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