

JAN 22 2016

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- Selection of benefit plan carriers, third-party
5 administrators, consultants, actuaries, auditors, or
6 administrators. Procurement of carriers, third-party
7 administrators for any benefits plan, consultants, actuaries,
8 auditors, or administrators shall be exempt from chapter 103D.

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

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



(1) For the exclusive purpose of:

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

(B) Defraying reasonable expenses of administering the plan;

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

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

(4) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with this chapter.

(c) In addition to any liability that a fiduciary may have under this chapter, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following 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
11 interests are adverse to the interests of the plan or
12 the 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- 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



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

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

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

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



1 (3) An employee organization from purchasing insurance to
2 cover potential liability of one or more persons who
3 serve in a fiduciary capacity with regard to an
4 employee welfare benefit plan."

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

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

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

17 (2) By any court or judicial or legislative office of the
18 State; provided that if the attorney general is
19 requested to provide representation to a court or
20 judicial office by the chief justice or the chief
21 justice's designee, or to a legislative office by the



1 speaker of the house of representatives and the
2 president of the senate jointly, and the attorney
3 general declines to provide such representation on the
4 grounds of conflict of interest, the attorney general
5 shall retain an attorney for the court, judicial, or
6 legislative office, subject to approval by the court,
7 judicial, or legislative office;

8 (3) By the legislative reference bureau;

9 (4) By any compilation commission that may be constituted
10 from time to time;

11 (5) By the real estate commission for any action involving
12 the real estate recovery fund;

13 (6) By the contractors license board for any action
14 involving the contractors recovery fund;

15 (7) By the office of Hawaiian affairs;

16 (8) By the department of commerce and consumer affairs for
17 the enforcement of violations of chapters 480 and
18 485A;

19 (9) As grand jury counsel;

20 (10) By the Hawaii health systems corporation, or its
21 regional system boards, or any of their facilities;



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



1 ~~mutual agreement of all eligible exclusive~~
2 ~~representatives; and~~

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

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

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

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

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

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

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

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



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

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

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

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

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

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

19 (F) One trustee shall be appointed by the governor to
20 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 sub-
12 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."



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

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

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

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



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

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

11 ~~If by the end of a trustee's term the trustee is not~~
12 ~~reappointed or the trustee's successor is not appointed, the~~
13 ~~trustee shall serve until the trustee's successor is appointed.]~~

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



1 make the appointment upon petition by two or more employer
2 trustees."

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

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

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

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

19 (b) Trustees representing the public employers shall
20 collectively have one vote. Trustees representing the employee-
21 beneficiaries shall collectively have one vote:



1 For any vote of the trustees representing the public
2 employers to be valid, [~~three~~] four of these trustees must
3 concur to cast such a vote. In the absence of such concurrence,
4 the trustees representing the public employers shall be deemed
5 to have abstained from voting.

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

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

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

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

20 "[+]§87A-15[+] Administration of the fund. The board
21 shall administer and carry out the purpose of the fund. Health



1 and other benefit plans shall be provided [~~at a cost affordable~~
2 ~~to both the public employers and the public employees.~~] as
3 follows:

- 4 (1) For collective bargaining units based on the
5 collectively bargained contribution from the employer
6 and employees;
- 7 (2) For retirees within the appropriation adopted by the
8 legislature and the respective counties; and
- 9 (3) For all other eligible beneficiaries based on the
10 contribution from the employer and employees."

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

13 "**§87A-30 Hawaii employer-union health benefits trust fund;**
14 **establishment.** There is established outside the state treasury,
15 a trust fund to be known as the "Hawaii Employer-Union Health
16 Benefits Trust Fund". The fund shall consist of contributions,
17 interest, income, dividends, refunds, rate credits, and other
18 returns. It is hereby declared that any and all sums
19 contributed or paid from any source to the fund created by this
20 part, and all assets of the fund including any and all interest
21 and earnings on the same, are and shall be held in trust by the



1 board for the exclusive use and benefit of the employee-
2 beneficiaries and dependent-beneficiaries and shall not be
3 subject to appropriation for any other purpose whatsoever. The
4 fund shall be under the control of the board of trustees and
5 placed under the department of [~~budget and finance~~] human
6 resources development for administrative purposes."

7 SECTION 9. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 10. This Act shall take effect on July 1, 2016.

10
INTRODUCED BY:

~~DR. FATH AGA~~ DR. FATH AGA

Michelle Sidani
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S.B. NO. 2434

Report Title:

Hawaii Employer-union Health Benefits Trust Fund; Board of Trustees; Fiduciaries; Department of Human Resources Development

Description:

Exempts certain procurements of the EUTF from the procurement code. Specifies the fiduciary duties of EUTF trustees. Amends the composition, appointing authorities, vacancy-filling procedure, and quorum requirements of the EUTF board of trustees. Authorizes the establishment of sub-boards of the EUTF board for the negotiation of contributions that apply only to particular bargaining units. Authorizes the EUTF board to appoint attorneys independent of the attorney general. Amends the administration of EUTF moneys and transfers control of EUTF to the department of human resources development.

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