



## **TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2012, RELATING TO COLLECTIVE BARGAINING.**

**BEFORE THE:**

**HOUSE COMMITTEES ON LABOR AND PUBLIC EMPLOYMENT AND ON PUBLIC  
SAFETY**

**DATE:** Friday, February 12, 2016

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
James E. Halvorson, Deputy Attorney General, or  
Maria C. Cook, Deputy Attorney General

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Chairs Nakashima and Takayama and Members of the Committees:

The Department of the Attorney General has concerns regarding this bill and opposes the bill in its present form.

First, this bill is inconsistent with the purpose of chapter 87A, Hawaii Revised Statutes, which gives the Employer-Union Health Benefits Trust Fund (EUTF) board broad authority and discretion to design health benefits for active and retired employees and their dependents.

Second, this bill is inconsistent with the purpose of the EUTF – to have a single health benefits delivery system. Act 88, Session Laws of Hawaii 2001, Sen. Stand. Com. Rep. No. 880 (2001). As has been stated in the State’s Auditor’s Report 99-20 (May 1999), the presence of multiple union plans had increased costs for both the members and the employers. Hence, the EUTF was created to provide a single health benefits delivery system. Having a single unified system minimizes fragmentation. It allows the employer to spread the risk among many people and provides more bargaining power when negotiating with providers.

Third, in addition to this bill allowing 14 collective bargaining units to independently negotiate health benefits such as plan designs, structures, and the selection of providers, there is a pending appeal where it is argued that retirees have a constitutional and contractual right to have the same health benefits as those offered to active employees. If this claim succeeds on appeal, by creating multiple active health plans, the State may create a situation where it must offer multiple health plans to retirees.

Finally, for bargaining units subject to interest arbitration, if the parties fail to reach an agreement on health benefits and contributions, these issues would be submitted to arbitration. Health benefits issues are complex, and amounts of contributions comprise a substantial portion of the State's general fund. Leaving such matters to an arbitration panel without expertise in this area creates uncertain financial exposure to the State.

We respectfully ask the Committee to hold this bill in its current form.

DAVID Y. IGE  
GOVERNOR



WESLEY K. MACHIDA  
DIRECTOR

RODERICK K. BECKER  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII  
DEPARTMENT OF BUDGET AND FINANCE**

P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**TESTIMONY BY WESLEY K. MACHIDA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT  
ON  
HOUSE BILL NO. 2012**

February 12, 2016  
10:00 a.m.

**RELATING TO COLLECTIVE BARGAINING**

House Bill No. 2012 amends Chapter 89, HRS, to allow the negotiation of Hawaii Employer-Union Health Benefits Trust Fund (EUTF) benefits and to repeal the prohibition of using arbitration to resolve impasses or disputes relating to EUTF contributions/benefits, allowing arbitration panels to decide on EUTF matters.

The Department of Budget and Finance strongly opposes this bill for the following reasons.

First, allowing each bargaining unit to negotiate its own benefits could essentially create 14 different pools of employees, reducing the economies of scale in negotiations with carriers and increasing administrative complexity for EUTF. Each negotiating team would need to be advised or trained in health benefit matters, including compliance with federal requirements.

Second, allowing arbitration panels to decide matters relating to EUTF is fraught with uncertainty. Arbitration panels are tasked to consider the employer's ability to pay and overall economic conditions. Panels often fail to grasp the complexities of the State budget and under the provisions of this measure, they would also need to become

experts in health benefit plan design. While difficult fiscal conditions can make it challenging to reach resolutions in collective bargaining negotiations, altering the current process by allowing binding arbitration would take this critical decision out of the hands of elected leaders and put it in the hands of unelected and unaccountable arbitrators. While the Legislature would still have the authority to reject an arbitration award, it appears all cost items would be rejected, not just EUTF contributions. The end result of this bill could result in giving the Legislature a choice of fully conceding control of this significant portion of the budget to arbitration panels or risk unending collective bargaining negotiations.

Finally, the bill does not provide a resolution mechanism if the strike units (1, 5, and 7) cannot come to an agreement on EUTF matters in negotiations.

DAVID Y. IGE  
GOVERNOR



KATHRYN S. MATAYOSHI  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/12/2016  
**Time:** 10:00 AM  
**Location:** 309  
**Committee:** House Labor & Public  
Employment

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 2012 RELATING TO COLLECTIVE BARGAINING.

**Purpose of Bill:** Specifies that the benefits of the Hawaii employer-union health benefits trust fund are subject to negotiation. Clarifies that a decision of an arbitration panel shall be final.

**Department's Position:**

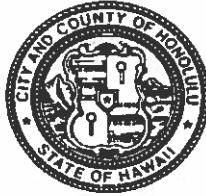
The Department of Education (Department) has concerns about HB 2012, which would make Hawaii Employer-Union Health Benefits Trust Fund (EUTF) benefits a subject of bargaining and repeal the current process whereby health benefits are determined by the EUTF. Bargaining unit 05 (teachers) is a strike unit, and therefore if impasse is declared, the issues are not determined through binding interest arbitration. Bargaining unit 06 (educational officers), however, does have final and binding interest arbitration. HB 2012 does not provide a resolution for unit 05, or other strike units, should the parties not be able to reach a negotiated agreement concerning health benefits. The Department is concerned about divisiveness among the educator community to the extent health benefits for educational officers could be determined by an arbitrator but the teachers would be without a comparable statutory remedy.

In addition, similar to previous testimony submitted by University of Hawaii, the Department's negotiating team has never engaged in negotiations over health benefits and lacks the technical background, training and knowledge that would be required to properly negotiate this complicated subject. The Department also notes the federal Affordable Care Act has imposed new and numerous health benefits requirements, some of which are evolving and subject to change. There are significant penalties for non-compliance with the federal requirements and there may be the need to revise plans under time constraints that cannot be accommodated by collective bargaining. The EUTF, as the subject matter expert, is the appropriate agency to determine the health benefits that cover a significant portion of the State's population. These critical services should not be the subject of negotiations by non-experts.

For the reasons stated, the Department requests the bill be held.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**  
650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

February 12, 2016

**LATE**

The Honorable Mark M. Nakashima, Chair  
and Members of the Committee  
on Labor & Public Employment  
The House of Representatives  
State Capitol, Room 309  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Nakashima and Members of the Committee:

SUBJECT: House Bill No. 2012  
Relating to Collective Bargaining

The Department of Human Resources, City & County of Honolulu, would like to share our **comments** on H.B. 2012. H.B. 2012 would dilute the statutory authority and obligations already vested with the Employer-Union Health Benefits Trust Fund ("EUTF"). Moreover, if passed, the measure would likely have an unforeseen negative financial impact to both the public employer and employees due to fragmentation as health care and administrative costs will likely increase if health care providers are required to craft separate health care plans for the various bargaining units.

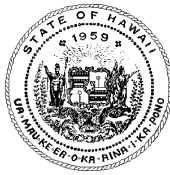
We thank you for giving us the opportunity to testify on this matter.

Sincerely,

  
Carolee C. Kubo  
Director

cc: Mayor's Office

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
CHIEF NEGOTIATOR

**STATE OF HAWAII  
OFFICE OF COLLECTIVE BARGAINING  
EXECUTIVE OFFICE OF THE GOVERNOR**  
235 S. BERETANIA STREET, SUITE 1201  
HONOLULU, HAWAII 96813-2437

February 11, 2016

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
For Hearing on Friday, February 12, 2016  
10:00 a.m., Conference Room 309

By

JAMES K. NISHIMOTO  
CHIEF NEGOTIATOR, OFFICE OF COLLECTIVE BARGAINING

**House Bill No. 2012  
Relating to Collective Bargaining**

CHAIRPERSON NAKASHIMA, VICE-CHAIR KEOHOKALOLE AND MEMBERS OF  
THE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT:

H.B. No. 2012 would amend Chapter 89, HRS to specify that the benefits of the Hawaii employer-union health benefits trust fund are subject to negotiation. Further, this bill provides that disputes must be submitted to an arbitration panel for a final and binding decision.

The Office of Collective Bargaining (OCB) **has concerns** regarding this bill as follows:

- Currently, contributions toward health benefits premiums, but not benefits, are subject to negotiation, with the benefits determined by the Employer Union Trust Fund (EUTF) whose trustees are representatives of the exclusive representatives and employer. Changes to the existing



administration and infrastructure may be required.

- The cost benefits that are derived from negotiating with the Hawaii Medical Services Association and Kaiser Permanente Foundation on behalf of public employees as a group for current health benefit programs may be diminished if individual bargaining units are allowed to negotiate separately.
- The complexity of having to administer multiple plans based on variations between bargaining units would require a redesign of the administrative and operations infrastructure.
- Besides allowing active employees to negotiate health benefit plans, consideration will need to be given how retiree health benefit plans and benefits will be determined and funded.
- Allowing the negotiation of health benefit plans and associated benefit costs may allow for bargaining units to negotiate on a total compensation basis, thereby allowing a bargaining unit to apportion negotiated compensation between base compensation and health benefit cost for its bargaining unit members.
- Three (3) bargaining units (i.e., units 1, 5, and 7) do NOT have an impasse procedure ending in a final and binding arbitration.

Thank you for the opportunity to testify on this important measure.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
House Committee on Labor and Public Employment  
Friday, February 12, 2016 at 10:00 a.m.

By  
Jan Gouveia  
Vice President for Administration  
University of Hawai'i

### **HB 2012 – RELATING TO COLLECTIVE BARGAINING**

Chair Nakashima, Vice Chair Keohokalole, and Members of the House Committee on Labor and Public Employment:

We hereby provide the following testimony regarding House Bill 2012 – Relating to Collective Bargaining which proposes to amend Chapter 89, HRS, to specify that the benefits of the Hawai'i Employer-Union Health Benefits Trust (EUTF) become a mandatory subject of bargaining, and that disputes must be submitted to an arbitration panel for a final and binding decision.

The University of Hawai'i (UH) has concerns over the impact of these changes to Chapter 89, HRS, if such legislation is adopted and enacted.

The UH's workforce consists of employees in Bargaining Units 1, 2, 3, 4, 7, 8, 9 and 10. For Bargaining Units 7 and 8, the University of Hawai'i is legislatively established as the employer pursuant to HRS, §89-6(d)(4), since we are the only employer who employs Faculty and Administrative, Professional, and Technical employees. For purposes of negotiating successor agreements to Bargaining Units 7 and 8, the University of Hawai'i takes lead on negotiations with assistance, support, and guidance from the State Office of Collective Bargaining, through its Chief Negotiator.

Considering UH's unique distinction compared to other state units, the UH does not have the technical expertise, knowledge, and experience to engage in negotiations over health benefits since we have never been required to bargain over health benefits in the past. We believe we would need to either acquire and/or obtain outside professionals who possess the technical knowledge and understanding on the negotiation over health benefits and its related costs. Currently, we are not structured or prepared for such a change in practice.

As noted above, we administer and manage eight (8) of the established fourteen (14) bargaining units under Chapter 89, HRS. If health benefits become subject to negotiations, the state could face situations in which bargaining units may have different benefit plans or the possibility of having the same benefit plan but different contribution rates for each bargaining unit based on the decision of an arbitration panel for those units subject to arbitration for impasse resolution. Moreover, for Bargaining Unit 7 impasse resolution through a final and binding arbitration decision is not legislatively mandated since they still have retained their right to strike.

Thank you for the opportunity to testify on this matter.



The House Committee on Labor & Public Employment  
and  
The House Committee on Public Safety  
Friday, February 12, 2016  
10:00 a.m., Room 309

**RE: HB 2012, Relating to Collective Bargaining**

Attention: Chairs Mark Nakashima and Gregg Takayama,  
Vice Chairs Jarrett Keohokalole and Kyle Yamashita and  
Members of the Committee's

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support HB 2012**, that provides unions the ability to negotiate contributions to the Employer Union Health Benefits Trust Fund (EUTF) and the benefits provided through the health plans.

This Bill reinforces the union's belief that benefits are an integral part of employee compensation and should be negotiated between unions and employers. Negotiating both premiums and benefits provides unions the ability to identify benefit features that meet the needs of their members without the loss of key coverage.

The ability to negotiate will provide greater incentives which can assist in controlling costs over the long-term.

UHPA urges the committee to **support HB 2012**.

Respectfully submitted,

Kristeen Hanselman  
Executive Director

University of Hawaii  
Professional Assembly



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

**The Twenty-Eighth Legislature, State of Hawaii  
House of Representatives  
Committee on Labor and Public Employment**

**Testimony by  
Hawaii Government Employees Association**

**February 12, 2016**

**H.B. 2012 – RELATING TO  
COLLECTIVE BARGAINING**

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2012, which will permit unions to negotiate not only the contributions to the Employer Union Health Benefits Trust Fund (EUTF), but also the benefits provided through the health plans.

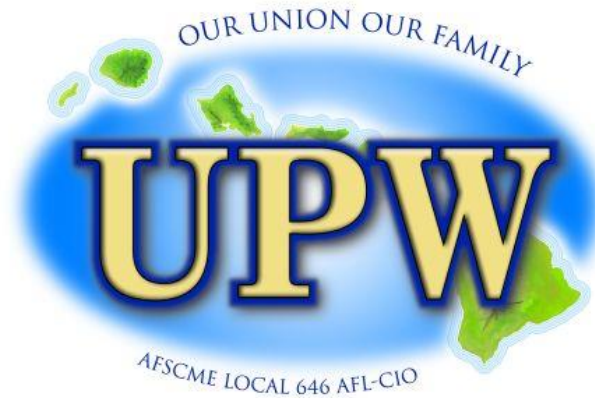
This bill is part of a larger effort to reform the EUTF by changing the composition of the board and imposing stricter requirements on board members to fulfill their fiduciary responsibilities. We believe that benefits are an integral part of employee compensation and should be negotiated between unions and employers. Other reform efforts through negotiation must include effective mechanisms for controlling costs, requiring information on provider performance and enhancing efficiency.

As presently organized, the EUTF is not providing affordable health care to public employees, especially for employees who need family coverage and who are in a lower pay range. By negotiating both premiums and benefits, unions can identify benefit features that can be reduced or restructured without eliminating key coverage areas. Another objective of negotiating benefits is to promote preventive care while discouraging care that is not needed. Through negotiations, there will be greater incentives to implement wellness programs, which can help control plan costs over the long-term.

Thank you for the opportunity to testify in support of H.B. 2012.

Respectfully submitted,

  
for Randy Perreira  
Executive Director



**LATE**

THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Eighth Legislature  
Regular Session of 2016

COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT (LAB)/  
COMMITTEE ON PUBLIC SAFETY (PBS)

The Honorable Mark M. Nakashima, Chair (LAB)  
The Honorable Gregg Takaya, Chair (PBS)  
The Honorable Jarrett K. Keohokalole, Vice Chair (LAB)  
The Honorable Kyle Yamashita, Vice Chair (PBS)

DATE OF HEARING: Friday, February 12, 2016  
TIME OF HEARING: 10:00 a.m.  
PLACE OF HEARING: State Capitol  
415 South Beretania Street  
Conference Room 309

**TESTIMONY ON HOUSE BILL 2012 RELATING TO COLLECTIVE BARGAINING**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers (UPW),  
AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, and AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 public employees, which include blue collar non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

HB2012 specifies that the benefits of the Hawaii employer-union health benefits trust fund are subject to negotiation. The bill also clarifies that a decision of an arbitration panel shall be final. The UPW supports this bill.

Thank you for the opportunity to submit this testimony.





## HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO  
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929  
TELEPHONE (808) 949-1566 FAX: (808) 952-6003  
WEBSITE: [www.hawaii firefighters.org](http://www.hawaii firefighters.org)

**LATE**

HOUSE OF REPRESENTATIVES  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2016  
February 12, 2016

Committee on Labor and Public Employment

Testimony by  
Hawaii Fire Fighters Association

H.B. No. 2012                      Relating to Collective Bargaining

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO. The HFFA represents approximately 2,100 active-duty professional fire fighters throughout the State. HFFA supports H.B. No. 2012, Relating to Collective Bargaining.

H.B. No. 2012 provides for EUTF benefits and contributions to be resolved through the arbitration and negotiation process. HFFA has struggled with ensuring that medical premiums provided through the collective bargaining agreement remains affordable while being unable to participate in the design plan to meet the needs of the membership. This proposal allows both health benefits and contributions to be inclusive in the terms and condition of employment of the final agreement which allows both the employer and the exclusive representative the flexibility during negotiations and arbitrations.

Thank you for the opportunity to testify.