

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

ON THE FOLLOWING MEASURE:

H.B. NO. 2015, H.D. 1, RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BEFORE THE:

HOUSE COMMITTEES ON JUDICIARY AND LABOR, AND ON GOVERNMENT OPERATIONS

DATE: Tuesday, March 22, 2016

TIME: 1:17 p.m.

LOCATION: State Capitol, Room 414

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Patricia Ohara, Supervising Deputy Attorney General

Chairs Keith-Agaran and Kim and Members of the Committees:

The Department of the Attorney General opposes sections 2 and 5 of the bill.

This bill amends the management and administrative structure of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF).

The purposes of sections 2 and 5 of the bill are to allow the EUTF to hire its own attorneys without the approval or participation of the Attorney General or the Governor.

As a general matter, state agencies should be advised by deputy attorneys general. By locating the attorneys for state agencies within a single department, the Department of the Attorney General is able to provide consistent advice and a wide range of experience and expertise to those agencies. Private attorneys retained by the EUTF are unlikely to possess the necessary breadth of knowledge and experience that already exists in the Department of the Attorney General. Additionally, because state agencies are regulated by a variety of laws, such as the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act, that are not applicable in the private sector, the Department of the Attorney General has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies that may have conflicting interests. This distinctive feature is something that private attorneys are not able to do under the Hawai'i Rules of Professional Conduct, the rules governing lawyers. In State v. Klattenhoff, 71

Haw. 598, 801 P.2d 548 (1990), the Hawai‘i Supreme Court ruled that the Department of the Attorney General may assign deputies to represent agencies that have competing interests as long as it constructs appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients. The Department of the Attorney General has done this in past cases to ensure that all client agencies are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to the EUTF.

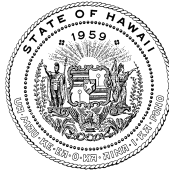
Notwithstanding the prohibition against employing or retaining an attorney, agencies may submit a request to the Attorney General requesting that section 28-8.3, Hawaii Revised Statutes, be waived. Under certain circumstances deemed by the Attorney General to be good and sufficient, an agency may retain or employ its own attorney, provided that the Governor also waives section 28-8.3(22), Hawaii Revised Statutes (HRS), which permits the hiring of an attorney “[b]y a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for the department; provided that the governor waives the provision of this section.”

Finally, we have concerns about section 8 of the bill, which removes the EUTF from being administratively attached to the department of budget and finance, and places the EUTF under the office of collective bargaining. The EUTF cannot be placed under the office of collective bargaining because the office of collective bargaining is placed within the office of the Governor. Section 6 of article V of the State Constitution and section 26-4, HRS, prohibit such placement by requiring all executive and administrative offices, and instrumentalities of state government and their respective functions, powers, and duties to be allocated among and within one of the “principal departments” established by section 26-4. The office of the Governor is not a principal department established by section 26-4, but a constitutional office established by section 1 of article V of the State Constitution.

For the foregoing reasons, we respectfully request that sections 2 and 5 of the bill be stricken.

Thank you for the opportunity to testify on this matter.

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
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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 SENATE COMMITTEES ON JUDICIARY AND LABOR
AND GOVERNMENT OPERATIONS
ON
HOUSE BILL NO. 2015, H.D. 1**

March 22, 2016
1:17 p.m.

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

House Bill No. 2015, H.D. 1, makes the following amendments to Chapter 87A, Hawaii Revised Statutes (HRS), which governs the Hawaii Employer-Union Health Benefits Trust Fund (EUTF):

- Exempts the EUTF from the procurement code in procuring benefit plan carriers, consultants, auditors and an administrator.
- Adds new requirements on fiduciary duties.
- Allows the EUTF to retain an attorney who is independent of the Department of the Attorney General (AG) as legal advisor.
- Increases the members of the EUTF Board of Trustees from 10 to 12 and changes the EUTF Board membership and terms.
- Allows the creation of sub-boards should a bargaining unit negotiate a specific contribution to apply only to that bargaining unit.
- Requires active employee benefit plans to be based on collectively bargained contributions and retiree benefit plans to be based on legislative appropriations.

- Transfers the EUTF from the Department of Budget and Finance to the Office of Collective Bargaining (OCB).

We are opposed to this bill. First, the department has serious concerns with the modifications to the composition of the EUTF Board. Specifying that the five other employer board members represent five different jurisdictions severely dilutes the Governor's ability to look out for the State's interest and results in each employer trustee representing a disproportionate share of the employer group. Allowing the Mayor of the City and County of Honolulu to appoint an employer board member and the mayors of the County of Hawaii, Kauai and Maui to appoint another employer board member is not reflective of the EUTF membership. Currently, State employees make up approximately 77% of the EUTF members (including the Department of Education (DOE) and the University of Hawaii (UH)). While many of the State employees work for DOE and UH, these costs are budgeted centrally. Placing the retiree beneficiary board member as part of the employer group for voting is inappropriate as the retiree beneficiary member represents retiree interests and, as such, should be part of the employee group (as is currently the case), which represents beneficiaries, for voting.

Second, we believe the creation of the EUTF Board sub-boards will create administrative complexities and inefficiencies and result in substantially higher rates for employees who are not members of sub-groups with favorable demographics. We believe a uniform benefit package will promote fairness and consistency among employees in the workplace.

Third, we strongly believe that the AG is better suited to ensure that long-term State interests are protected rather than an outside attorney. The staff of the AG can bring a broad background of familiarity with the EUTF and other State statutes at a

lower cost than an outside legal firm. Cost of an outside attorney will have to be borne by the public employers and plan participants.

Fourth, requiring benefit plans to be based on collectively bargained amounts rather than determining collectively bargained amounts based on plan designs established by the EUTF is problematic. Such an approach could result in material fluctuations in plan benefits from year to year and could make it difficult to design benefit plans that meet the needs of beneficiaries. This change may also cause administrative difficulties such as completing plan design and negotiating with vendors in sufficient time for open enrollment periods, especially given the history of completing negotiations very late in plan delivery cycle. Similarly, for retirees, requiring that the plans be based on approved appropriations may also cause difficulties in completing plan design and bidding/negotiating with vendors in sufficient time for open enrollment periods.

Fifth, given the fiscal complexities involved and the size of the EUTF expenditures in relation to the total State budget, transferring the EUTF to OCB may not be in the best interest of the State or the EUTF at this time. The administrative support provided to the EUTF includes a financial background that may be better situated in the current Budget and Finance structure. It should be noted that OCB currently has no administrative support staff.

Finally, the new provisions on fiduciary duties specify that the trustees shall discharge their responsibilities solely in the interest of participants and beneficiaries, but the trustees also have a responsibility to manage costs to the public at large.

We are not opposed to exempting the EUTF from Chapter 103D, HRS.

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
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March 21, 2016

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR AND
SENATE COMMITTEE ON GOVERNMENT OPERATIONS
For Hearing on Tuesday, March 22, 2016
1:17 p.m., Conference Room 414

By

JAMES K. NISHIMOTO
OFFICE OF COLLECTIVE BARGAINING, CHIEF NEGOTIATOR

**House Bill No. 2015, H.D. 1
Relating to the Hawaii Employer-Union Health Benefits Trust Fund**

CHAIRPERSONS KEITH-AGARAN AND KIM, VICE-CHAIRPERSONS
SHIMABUKURO AND IHARA AND MEMBERS OF THE COMMITTEES:

H.B. 2015, H.D. 1 proposes amendments to Chapter 87A, Hawaii Revised Statutes, which governs the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). The Office of Collective Bargaining (OCB) has concerns regarding certain provisions of the bill.

While the proposed modifications to the composition of the EUTF Board and the creation of sub-boards offers the potential for enhancing the ability to tailor members' benefit programs along the lines of the various bargaining units, the same modifications would create greater complexities with regard to benefit program design and administration. Additionally, it would seem that such modifications may diminish the benefits derived from the economies of scale arising from larger group benefit

packages and group rates.

The proposed changes may also have the potential to serve as a means of addressing the concerns of active employees included in a bargaining unit; however, there are other categories of employees; e.g., retirees, excluded employees, members of the legislature, etc. whose benefits and funding would need to be addressed if there are any changes in EUTF programs, services and administrative operations. Should the health benefits become negotiable under Chapter 89, the benefits for those employees excluded from collective bargaining must be taken into consideration.

Finally, section 8 of H.B. 2015, H.D. 1 proposes transferring the EUTF from the Department of Budget and Finance (BUF) to OCB for administrative purposes. Given the fact that BUF has been doing an outstanding job providing support to the EUTF and the Employees' Retirement System, it is unclear as to the advantage gained by transferring responsibility for the EUTF to OCB. Furthermore, OCB lacks the financial background and expertise to effectively provide the necessary administrative support to EUTF.

Thank you for the opportunity to testify on this measure.



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
The Senate
Committee on Judiciary and Labor
Committee on Government Operations

Testimony by
Hawaii Government Employees Association

March 22, 2016

H.B. 2015, H.D. 1 – RELATING TO THE HAWAII
EMPLOYER UNION HEALTH BENEFITS TRUST FUND

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2015, H.D. 1 which makes fundamental changes to the structure and operating principles of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), with a proposed technical amendment to amend Section 3 of the bill by adding the newly created Bargaining Unit 14 to Ch. 87A-5(a)(1)(A). There is widespread agreement that the EUTF is not operating as originally intended and has become a serious concern for both employees and employers.

The current system needs fundamental change. H.B. 2015, H.D. 1, in conjunction with H.B. 2012, which would permit the negotiation of health care contributions and benefits, contains several significant reforms that will eliminate many of the problems that currently make the EUTF ineffective and costly for both the employee and the employer. Both bills offer constructive vehicles to advance discussion of this important matter.

Benefits are an integral part of employee compensation and should be negotiated between unions and employers, as is the practice in the private sector. Other reform efforts can be achieved through negotiations and must include effective mechanisms for controlling costs, encouraging preventive care, implementing wellness programs, requiring information on provider performance and enhancing efficiency. H.B. 2015, H.D. 1 contains the following reforms to the EUTF:

1. It changes the method of selecting benefit plan carriers, third party administrators, consultants and actuaries by exempting the process from Chapter 103-D, HRS. This will provide the necessary flexibility to respond to problems faster.
2. Board members must act as fiduciaries of the trust. As fiduciaries, board members are required to make decisions based solely on the interest of the participants and beneficiaries. Board members who willfully violate their

3. fiduciary responsibilities may be liable for any loss suffered by the plan, increasing the accountability of the trustees.
4. The composition of the board and the method of selecting them are also changed. Six trustees representing employee-beneficiaries will be appointed by the various exclusive representatives instead of the Governor. The six trustees representing the employer will be better distributed among the different jurisdictions, with one trustee appointed by the Governor representing retirees. All trustees serve at the pleasure of their appointing authority.
5. It allows individual unions and employers to establish a sub-trust and sub-board of trustees to administer that bargaining unit's contributions and benefits if they negotiate a specific contribution to apply only to that unit.
6. The board can appoint or retain legal counsel who is independent of the Attorney General.
7. Health Plans shall be provided based on the collectively bargained contributions from both the employers and employees, not "at a cost affordable to both the public employers and employees."
8. For administrative purposes, the fund controlled by the board is placed under the Office of Collective Bargaining, not the Department of Budget and Finance.

We appreciate the opportunity to testify in support of H.B. 2015, H.D. 1 as the measure will make much needed changes to the EUTF. We respectfully request the Committee also give favorable consideration to passing H.B. 2012, which makes the appropriate changes to Ch. 89 to allow for the negotiation of health benefits.

Respectfully submitted,


for Randy Perreira
Executive Director



HAWAII FIRE FIGHTERS ASSOCIATION

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THE SENATE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016
March 22, 2016

Committee on Judiciary and Labor
and
Committee on Government Operations

Testimony by
Hawaii Fire Fighters Association

H.B. No. 2015, H.D. 1 Relating to the Hawaii Employer-Union Health Benefits Trust Fund

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. 2015, H.D. 1, Relating to the Hawaii Employer-Union Health Benefits Trust Fund, as this measure starts the dialogue in address the concerns of both the exclusive representatives and employer groups.

H.B. No. 2015, H.D. 1, includes changes to Chapter 87A which we believe will improve the delivery and benefit options to public employees. It provides the EUTF Board of Trustees the authority to determine the type and level of benefits by bargaining units pursuant to the collective bargaining agreement.

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 measure provides greater flexibility for both the employer and exclusive representatives during negotiations and arbitrations.

Thank you for the opportunity to testify.



The Senate Committee on Judiciary & Labor
and
The Senate Committee on Government Operations
Tuesday, March 22, 2016
1: 17 p.m., Room 414

RE: HB 2015, HD1, Relating to the Hawaii Employer-Union Health Benefits Trust Fund

Attention: Chairs Gilbert Keith-Agaran and Donna Mercado Kim, Vice Chairs Maile Shimabukuro and Les Ihara, Jr. and Members of the Committees

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support HB 2015, HD1**, that makes fundamental changes to the structure of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). We can all agree that the EUTF is not functioning as it was originally intended, which concerns both employees and employers.

Benefits are an integral component of employee compensation, and this measure would assist in making improvements to the EUTF by allowing:

1. Exemptions to Chapter 103-D Hawaii Revised Statutes Procurement Code providing flexibility in selecting benefit plan carriers, consultants and actuaries
2. Changes to the composition of the EUTF Board to better represent the beneficiaries
3. The Board to retain legal counsel other than the AG's office
4. Individual unions and employers to develop a sub-trust and sub-board of trustees to administer that bargaining unit's contribution benefits if they negotiate a specific contribution to apply only to that unit
5. Health plans provided based on collectively bargained contributions from both the employer and employees

Testimony provided in opposition to this measure in prior committee hearings argue that this bill would diminish the benefits derived from economies of scale arising from larger group packages and group rates. This assertion is inaccurate. The larger the group,

**University of Hawaii
Professional Assembly**



the larger the risk pool, which translates to more credible rates for that risk pool. However, a more credible risk pool does not necessarily equate to more favorable rates. Rates are calculated by the utilization of a risk pool, the benefit offerings, and health care trend (expected future health care costs). A smaller population with more control over its benefits can better control costs and have lower rates.

UHPA urges the committee to **support HB 2015, HD1.**

Respectfully submitted,

A handwritten signature in black ink that reads "Kristeen Hanselman".

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly