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DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
KA 'OIHANA HO'OMŌHALA LIMAHANA
235 S. BERETANIA STREET
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Statement of
BRENNA H. HASHIMOTO
Director, Department of Human Resources Development

Before the
SENATE COMMITTEE ON LABOR AND TECHNOLOGY
Monday, March 16, 2026
3:00PM
State Capitol, Conference Room 225

In consideration of
HB1661, HD1, Relating to Cafeteria Plans

Chair Elefante, Vice Chair Lamasao, and the members of the committee:

The Department of Human Resources Development (HRD) offers the following comments for HB1661, HD1.

The purpose of HB1661, HD1, is to specify that the maximum contribution and carryover amounts for a public service flexible spending account plan shall be set in accordance with the annual limits prescribed by the Internal Revenue Service (IRS) for cafeteria plans, effective from 7/1/3000.

Under section 125 of the Internal Revenue Code (Code), employers are permitted to set the maximum limits they would allow under their flexible spending accounts plan provided they do not exceed the maximum contribution and carryover limits set by the IRS. For the medical expense account, the IRS requires the plan to make the employee's entire election amount available for use from the first day of the plan year. If the employee submits a claim for the entire elected amount and then subsequently terminates employment before the end of the plan year, the employer cannot recoup the funds that were distributed in excess of the amount contributed from the terminated employee. The plan's forfeiture account, consisting of interest earned and forfeited participant balances, is used to cover the excess amount. For this reason, the State has been mindful and conservative in applying the maximum contribution limits and carryover amounts.

Currently the forfeiture account balance is \$1.6 million. For the 2025 – 2026 Plan Year there are a total of 5,650 participants of which 1,951 participants are electing the

maximum contribution amount of \$2,750 in the medical flexible spending account, which includes a carryover amount of \$550. The current maximum contribution amount for the dependent care flexible spending account is \$5,000.

The 2026 IRS maximum limit for the medical flexible spending account is \$3,400 and the carryover amount is \$680. For the dependent care flexible spending account, the maximum limit is \$7,500. The following outlines some of the statistics regarding forfeitures for the last 3 Plan Years.

	Plan Year		
	2022 – 2023	2023 – 2024	2024 – 2025
Forfeiture for Plan Year	\$168,811	\$122,627	\$196,570
Negative Forfeiture for Overspent Accounts	(\$98,618)	(\$144,050)	(\$65,494)
Number of Participants with Overspent Accounts	254	279	174

The forfeiture account is also used to subsidize the monthly fee to participate in the Plan. It is estimated that the plan will contribute approximately \$217,116 for the 2025 – 2026 plan year to offset the cost of administering the plan. In 2021, HRD made amendments to the Flexible Spending Accounts Administrative Rules to increase the maximum contribution amount and carryover limits for the 2022 – 2023 plan year to the maximum allowed by the IRS for the 2022 calendar year. Since the forfeiture account had a sizeable (sustainable) balance at that time which could be used to subsidize the administrative fees for future years and cover the amounts for the overspent accounts, a decision was made to increase the maximum limits. If the forfeiture account should be depleted, the State will be held liable to cover the excess amounts distributed or will have to terminate the program altogether. As such, HRD prefers that it continues to be allowed to set the maximum contribution limits and carryover amount.

The measure as currently drafted has an effective date of July 1, 3000, to encourage further discussion. If this measure is to pass and the effective date be changed, we urge the Senate to amend the effective date to no earlier than July 1, 2027. This is to ensure an orderly and practicable implementation of this bill, including time to amend or repeal the administrative rules governing the Plan’s contribution amounts for the open enrollment period for the 2027 – 2028 plan year (July 1, 2027 – June 30, 2028).

HRD appreciates the intent to set the maximum contribution limits and carryover amount for the flexible spending accounts to the annual limits prescribed by the IRS; however, we have concerns regarding the long-term sustainability of the program should the forfeiture account be depleted. Therefore, we prefer that HRD be permitted to continue to periodically adjust the maximum limits through amendments to Title 14, Subtitle 5, Chapter 52, of the Hawaii Administrative Rules, based on the overall health of the forfeiture account and usage trends.

Thank you for the opportunity to provide testimony. We are available to answer any questions or provide further information as needed.

**DEPARTMENT OF HUMAN RESOURCES
KA 'OIHANA HO'OMOHALA LIMAHANA
CITY AND COUNTY OF HONOLULU**

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March 16, 2026

The Honorable Brandon J.C. Elefante, Chair
The Honorable Rachele Lamosao, Vice Chair
and Members of the Senate Committee on Labor and Technology
The Senate
State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

SUBJECT: House Bill No. 1661, H.D.1
Relating to Cafeteria Plans

The City and County of Honolulu ("City") respectfully submits **comments** regarding House Bill 1661, H.D.1, which would remove the City's authority to determine the maximum salary reduction contribution and maximum carryover amount for our flexible spending account (FSA) plan and instead require those limits to be set in accordance with the maximum amounts allowed by the Internal Revenue Service ("IRS"). Eliminating the employer's or plan administrator's ability to set these limits could jeopardize the fiscal stability and feasibility of this employee benefit.

Each year, the City carefully analyzes program data to determine the appropriate limits that will ensure the long-term viability of the City's FSA program. Mandating an increase to these limits without an analysis on plan impact will expose the City to increased financial risks for the health flexible spending account in several ways:

1. The City must make an employee's full annual election amount available on the first day of the benefit plan year. Increasing the City's current contribution limit to the maximum amount allowed by the IRS will require the City to maintain a much larger cash reserve to cover these potential payouts that occur at the start of the plan year.
2. If an employee utilizes their full election amount at the beginning of the plan year and subsequently separates from the City before their expenses can be recouped, the City would be unable to recoup this deficit from the separated employee. Higher contribution limits could increase this potential loss and if that loss is not covered by the reserves, it could result in an unbudgeted expense for the City.

The Honorable Brandon J.C. Elefante, Chair
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and Members of the Senate Committee on Labor and Technology
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3. Increasing the carryover amount will reduce the amount of money forfeited by participants at the end of the plan year, which is typically used to cover our deficit with the remainder, if any, added to the cash reserves.

In order to avoid these potential risks and to continue the offering of a financially solid cafeteria plan benefit to its eligible employees, the City believes that the authority to set salary reduction and carryover limits should remain with the employer who assumes the financial risk of program viability.

Thank you for giving us the opportunity to submit testimony on this measure.

Sincerely,



Nola N. Miyasaki
Director



UNITED PUBLIC WORKERS

AFSCME Local 646, AFL-CIO

THE SENATE
KA 'AHA KENEKOA

THE THIRTY-THIRD LEGISLATURE
REGULAR SESSION OF 2026

COMMITTEE ON LABOR AND TECHNOLOGY

Senator Brandon J.C. Elefante, Chair
Senator Rachele Lamosao, Vice Chair

Monday, March 16, 2026, 3:00 PM
Conference Room 225 & Videoconference

Re: Testimony on HB1661, HD1 – RELATING TO CAFETERIA PLANS

Chair Elefante, Vice Chair Lamosao, and Members of the Committee:

The United Public Workers, AFSCME Local 646, AFL-CIO (“UPW”) is the exclusive bargaining representative for approximately 14,000 public employees, which includes blue collar, non-supervisory employees in Bargaining Unit 1 and institutional, health, and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties.

UPW **strongly supports** HB1661, HD1, which specifies that the maximum contribution and carryover amounts for a public service flexible spending account plan shall be set in accordance with the annual limits prescribed by the Internal Revenue Service (“IRS”) for cafeteria plans.

Cafeteria plans, or flexible spending accounts (“FSA”), provide our members with the means to pay for eligible healthcare and dependent care expenses through pre-tax contributions to these types of accounts. Given the rising cost of living in Hawaii, many of our members are faced with putting off unexpected healthcare decisions due to the unbudgeted cost. Additionally, dependent care (e.g., childcare, preschool, after-school) is a significant financial concern for Hawaii’s working families, especially single parents, who need to work to support their households. FSAs are a great way to offset out-of-pocket health and dependent care expenses that also result in tax savings and greater spendable income.

The IRS increased the maximum amount employees may contribute to healthcare FSA to \$3,400.00 for 2026. Employees may also carry over a maximum of \$680.00 in unused funds into 2027.

In comparison, the Island Flex plan (“Island Flex”), which is the FSA program for State employees, has lower contribution maximums than allowed by the IRS. More specifically, the Island Flex healthcare maximum contribution, which is set in administrative rules, is \$2,750.00 with an allowable carry over of \$550.00. This bill would require that any cafeteria plan offered to public employees conform to the maximum contribution amounts that are set by the IRS annually. For those public employees that utilize this benefit, we believe the proposed adjustment will further help to offset the ever-rising cost of health and dependent care moving forward.

Mahalo for the opportunity to testify in support of this measure.

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The Thirty-Third Legislature, State of Hawaii
The Senate
Committee on Labor and Technology

Testimony by
Hawaii Government Employees Association

March 16, 2026

H.B. 1661, H.D. 1 — RELATING TO CAFETERIA PLANS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1661, H.D. 1, which specifies that the maximum contribution and carryover amounts for a public service flexible spending account plan shall be set in accordance with the annual limits prescribed by the Internal Revenue Service for cafeteria plans.

The State allows for eligible employees to direct before-tax money from their paychecks into a Medical Flexible Spending Account (FSA) plan and the Dependent Care FSA plan. The medical FSA allows employees to pay for many health care expenses with tax free money which includes, but not limited to, co-payments, deductibles, glasses and contacts, and fees to doctors and hospitals. The current maximum amount an employee may contribute to the Medical FSA is \$2750 each plan year – the amount is set within the Department of Human Resources and Development (DHRD) administrative rules. The IRS has generally increased its amount based on inflation for each plan year, and for 2026 the maximum contribution amount is \$3,400. To note, the maximum contribution amount for plan year 2025 was \$3,300 and \$2750 for plan year 2020.

Currently there is a \$650 difference, and a six-year lag, in the maximum contribution between the amounts prescribed by the IRS and what DHRD has set within administrative rules for the medical FSA. By tying the current maximum contribution and carryover limits for an FSA plan to what the IRS prescribes each plan year would eliminate the states need to change its dollar amount via the administrative rules process and more importantly, it would give employees the immediate opportunity to elect more of their income to cover eligible expenses. At a time when our state is struggling to recruit and retain employees, this is just one of many ways we can remain competitive relative to the private and federal sector.

Thank you for the opportunity to provide testimony in strong support of H.B. 1661, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Set Maximum Contribution and Carryover Amounts for Public Sector Cafeteria Plans Same as Federal

BILL NUMBER: HB 1661 HD 1

INTRODUCED BY: LAB

LATE

EXECUTIVE SUMMARY: Specifies that the maximum contribution and carryover amounts for a public service flexible spending account plan shall be set in accordance with the annual limits prescribed by the Internal Revenue Service for cafeteria plans.

SYNOPSIS: Amends section 78-30, HRS, to provide that the maximum salary reduction contribution and maximum carryover amount for any flexible spending account plan established pursuant to this section shall be set annually in accordance with the maximum amounts prescribed by the Internal Revenue Service for that calendar year.

EFFECTIVE DATE: July 1, 3000.

STAFF COMMENTS: There is a legal issue of whether the amendment proposed by this bill is constitutional. There is no issue when the legislature adopts a third party standard that is already in existence, but there is an issue when it adopts future changes because that would be allowing a body other than the Legislature to exercise legislative power.

In *City of Oklahoma City v. State ex rel. Oklahoma Department of Labor*, 918 P.2d 26 (Okla. 1995), Oklahoma enacted a Little Davis-Bacon Act which adopted the current and future determinations of the U.S. Department of Labor in setting prevailing wage rates. The City asked the state labor department to redetermine the prevailing wage for the last quarter of 1994, and the department replied that it had no authority to investigate errors or inaccuracies in the federal determinations. The City sued in Oklahoma trial court, which enjoined enforcement of the Act. The Oklahoma Supreme Court affirmed, stating, "The Act fails to establish a standard or formula by which a wage scale may be formulated; but rather delegates to the Secretary of Labor of the United States the right to fix the minimum wage scale to be paid in a particular area of this State. The State retains no control over the Secretary of Labor of the United States. Therefore, the Act violates [provisions of] our State Constitution." *Id.* (quoting *Crowly v. Thronbrough*, 226 Ark. 768, 294 S.W.2d 62 (1956)).

It is unclear whether Hawaii courts would reach the same result. However, we note that in the area of conforming state income tax to the federal Internal Revenue Code, this issue is avoided because the Department of Taxation annually submits a bill to the Legislature, and the Legislature can decide which provisions to incorporate into the Hawaii income tax law, which provisions will not

be incorporated, and which provisions will be incorporated in limited fashion. Section 235-2.5(c), HRS.

To address this issue, we suggest the following revised language:

"(a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986, as amended~~[-]~~; provided that the maximum salary reduction contribution and maximum carryover amount for any flexible spending account plan established pursuant to this section shall be set annually in accordance with the maximum amounts allowed under section 125 of the Internal Revenue Code as operative in Hawaii under chapter 235. The cafeteria plan shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits."

Digested: 2/24/2026