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

9 §87A-B 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 1001-1191c, 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:

17 (1) For the exclusive purpose of:



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

3 (B) Defraying reasonable expenses of administering
4 the plan; and

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

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

13 (4) In accordance with the documents and instruments
14 governing the plan insofar as those documents and
15 instruments are consistent with this chapter.

16 (c) In addition to any liability that a fiduciary may have
17 under this chapter, a fiduciary with respect to a plan shall be
18 liable for a breach of fiduciary responsibility of another
19 fiduciary with respect to the same plan in the following
20 circumstances:

21 (1) If the fiduciary participates knowingly in, or
22 knowingly undertakes to conceal, an act or omission of



1 another fiduciary, knowing that act or omission is a
2 breach;

3 (2) If, by the fiduciary's failure to comply with
4 subsection (a) or (b), the fiduciary has enabled
5 another fiduciary to commit a breach; or

6 (3) If the fiduciary has knowledge of the breach by
7 another fiduciary, unless the fiduciary makes
8 reasonable efforts under the circumstances to remedy
9 the breach.

10 If the assets of the plan are held by two or more trustees,
11 each trustee shall use reasonable care to prevent a co-trustee
12 from committing a breach, and each trustee shall be responsible
13 for jointly managing and controlling the assets of the plan.

14 (d) A fiduciary shall not cause a plan to engage in a
15 transaction, if the fiduciary knows or should know that the
16 transaction constitutes a direct or indirect:

17 (1) Sale or exchange, or lease, of any property between
18 the plan and a party in interest;

19 (2) Lending of money or other extension of credit between
20 the plan and a party in interest;

21 (3) Furnishing of goods, services, or facilities between
22 the plan and a party in interest; or



1 (4) Transfer to, or use by or for the benefit of, a party
2 in interest, of any assets of the plan.

3 (e) A fiduciary shall not:

4 (1) Deal with the assets of the plan in the fiduciary's
5 own interest or for the fiduciary's own account;

6 (2) In the fiduciary's individual capacity or in any other
7 capacity, act in any transaction involving the plan on
8 behalf of a party (or represent a party) whose

9 interests are adverse to the interests of the plan or
10 the interests of its participants or beneficiaries; or

11 (3) Receive any consideration for the fiduciary's own
12 personal account from any party dealing with the plan
13 in connection with a transaction involving the assets
14 of the plan.

15 §87A-C Liability for breach of fiduciary duty. (a) Any

16 person who is a fiduciary with respect to a plan and who
17 breaches any of the responsibilities, obligations, or duties
18 imposed on fiduciaries by this chapter shall be personally
19 liable to reimburse any losses to the plan resulting from each
20 breach, and to restore to the plan any profits of the fiduciary
21 that have been made through the use of assets of the plan by the
22 fiduciary, and shall be subject to any other equitable and



1 remedial relief as the court may deem appropriate, including
2 removal of the fiduciary.

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

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

15 (2) A fiduciary from purchasing insurance to cover
16 liability under this chapter from and for the
17 fiduciary's own account; or

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



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

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

10 (1) By the public utilities commission, the labor and
11 industrial relations appeals board, and the Hawaii
12 labor relations board;

13 (2) By any court or judicial or legislative office of the
14 State; provided that if the attorney general is
15 requested to provide representation to a court or
16 judicial office by the chief justice or the chief
17 justice's designee, or to a legislative office by the
18 speaker of the house of representatives and the
19 president of the senate jointly, and the attorney
20 general declines to provide such representation on the
21 grounds of conflict of interest, the attorney general
22 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
5 from time to time;
- 6 (5) By the real estate commission for any action involving
7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
9 involving the contractors recovery fund;
- 10 (7) By the trustees for any action involving the travel
11 agency recovery fund;
- 12 (8) By the office of Hawaiian affairs;
- 13 (9) By the department of commerce and consumer affairs for
14 the enforcement of violations of chapters 480 and
15 485A;
- 16 (10) As grand jury counsel;
- 17 (11) By the Hawaiian home lands trust individual claims
18 review panel;
- 19 (12) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;
- 21 (13) By the auditor;
- 22 (14) By the office of ombudsman;



- 1 (15) By the insurance division;
- 2 (16) By the University of Hawaii;
- 3 (17) By the Kahoolawe island reserve commission;
- 4 (18) By the division of consumer advocacy;
- 5 (19) By the office of elections;
- 6 (20) By the campaign spending commission;
- 7 (21) By the Hawaii tourism authority, as provided in
- 8 section 201B-2.5; [~~or~~]
- 9 (22) By the Hawaii employer-union health benefits trust
- 10 fund, as provided in section 87A-9; or
- 11 [~~(22)~~] (23) By a department, in the event the attorney
- 12 general, for reasons deemed by the attorney general
- 13 good and sufficient, declines to employ or retain an
- 14 attorney for a department; provided that the governor
- 15 thereupon waives the provision of this section."

16 SECTION 3. Section 87A-5, Hawaii Revised Statutes, is

17 amended to read as follows:

18 "**§87A-5 Composition of board.** (a) The board of trustees

19 of the employer-union health benefits trust fund shall consist

20 of [~~ten~~] twelve trustees appointed by the governor in accordance

21 with the following procedure:



1 (1) [~~Five~~] Six trustees [~~, one of whom shall represent~~
2 retirees,] to represent employee-beneficiaries and to
3 be selected as follows:

4 [~~(A) Three trustees shall be appointed from a list of~~
5 ~~two nominees per trustee selected by each of the~~
6 ~~three exclusive representative organizations that~~
7 ~~have the largest number of employee-~~
8 ~~beneficiaries;~~

9 ~~(B) One trustee shall be appointed from a list of two~~
10 ~~nominees selected by mutual agreement of the~~
11 ~~remaining exclusive employee representative~~
12 ~~organizations; and~~

13 ~~(C) One trustee representing retirees shall be~~
14 ~~appointed from a list of two nominees selected by~~
15 ~~mutual agreement of all eligible exclusive~~
16 ~~representatives; and~~

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

18 (A) One trustee to be appointed by the governor from
19 a nominee submitted by bargaining units 2, 3, 4,
20 6, 8, 9, and 13;

21 (B) One trustee to be appointed by the governor from
22 a nominee submitted by bargaining unit 5;



- 1 (C) One trustee to be appointed by the governor from
2 a nominee submitted by bargaining unit 7;
- 3 (D) One trustee to be appointed by the governor from
4 a nominee submitted by bargaining units 1 and 10;
- 5 (E) One trustee to be appointed by the governor from
6 a nominee submitted by bargaining unit 11; and
- 7 (F) One trustee to be appointed by the governor from
8 a nominee submitted by bargaining unit 12; and
- 9 (2) Six trustees, five to represent public employers and
10 one to represent retiree beneficiaries, as follows:
- 11 (A) One trustee shall be appointed by the governor to
12 represent the State of Hawaii administration;
- 13 (B) One trustee shall be appointed by the governor
14 from a nominee submitted by the University of
15 Hawaii board of regents;
- 16 (C) One trustee shall be appointed by the governor
17 from a nominee submitted by the board of
18 education;
- 19 (D) Two trustees shall be appointed by the governor
20 from a list of four nominees submitted by the
21 mayors of the counties of Hawaii, Kauai, and
22 Maui, and the city and county of Honolulu, which



1 list shall consist of one nominee selected by
2 each of those counties; provided that the two
3 nominees not appointed by the governor shall
4 serve as alternate trustees to sit in the absence
5 of the trustees appointed by the governor; and
6 (E) One trustee shall be appointed by the governor to
7 represent retiree beneficiaries;
8 provided that all trustees shall serve at the pleasure of the
9 appointing authority.

10 (b) If an exclusive bargaining representative negotiates a
11 specific contribution to apply to only that bargaining unit,
12 that unit shall have a sub-board of trustees to administer that
13 exclusive bargaining unit's contributions and benefits. The
14 benefits for the bargaining unit, including the type and level,
15 shall be determined by the sub-board of trustees or established
16 pursuant to the collective bargaining agreement. There shall be
17 two trustees appointed by the employer, and two trustees
18 appointed by the exclusive bargaining representative to the sub-
19 board.

20 (c) Section 26-34 shall not apply to board member
21 selection and terms. Notwithstanding any other provision of
22 this section, no exclusive representative of a bargaining unit



1 that sponsors or participates in a voluntary employee
2 beneficiary association shall be eligible to select nominees or
3 to be represented by a trustee on the board.

4 (d) As used in this section, the term "exclusive
5 representative" shall have the same meaning as in section 89-2."

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

8 "**§87A-6 Term of a trustee; vacancy.** [~~The term of office~~
9 ~~of each trustee shall be four years; provided that a trustee may~~
10 ~~be reappointed for one additional consecutive four-year term.~~

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

20 ~~(1) If a vacancy occurs in one of the trustee positions~~
21 ~~described in section 87A-5(1) (A), then the vacancy~~
22 ~~shall be appointed from a list of two nominees~~



1 ~~submitted by the exclusive employee representative~~
2 ~~from among the three largest exclusive employee~~
3 ~~representatives that does not have a trustee among the~~
4 ~~three trustee positions;~~

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

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

15 ~~If by the end of a trustee's term the trustee is not~~
16 ~~reappointed or the trustee's successor is not appointed, the~~
17 ~~trustee shall serve until the trustee's successor is appointed.]~~

18 The term of office of each trustee shall be at the pleasure of
19 the appointing authority. If the appointing authority fails to
20 appoint an employer trustee to fill a vacant position, the chief
21 justice of the supreme court of Hawaii shall make the
22 appointment upon petition by two or more employee beneficiary



1 trustees. If the appointing authority fails to appoint an
2 employee beneficiary trustee to fill a vacant position, the
3 chief justice of the supreme court of Hawaii shall make the
4 appointment upon petition by two or more employer trustees."

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

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

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

17 "~~{}~~**\$87A-11**~~{}~~ **Quorum; board actions; voting.** (a) ~~[Six]~~
18 Eight trustees, ~~[three]~~ four of whom represent the public
19 employer and ~~[three]~~ four of whom represent employee-
20 beneficiaries, shall constitute a quorum for the transaction of
21 business.



1 (b) Trustees representing the public employers shall
2 collectively have one vote. Trustees representing the employee-
3 beneficiaries shall collectively have one vote.

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

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

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

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

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



1 "~~§87A-15~~ **Administration of the fund.** The board
2 shall administer and carry out the purpose of the fund. Health
3 and other benefit plans shall be provided ~~[at a cost affordable~~
4 ~~to both the public employers and the public employees.]~~ as
5 follows:

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

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

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



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

8 SECTION 9. The director of human resources development
9 shall submit biennial reports to the legislature not later than
10 twenty days prior to the convening of the Regular Sessions of
11 2013 and 2015 on the cost effectiveness of the amendments made
12 under this Act.

13 SECTION 10. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 11. This Act shall take effect on July 1, 2050,
16 and shall be repealed on July 1, 2015; provided that sections
17 28-8.3, 87A-5, 87A-6, 87A-9, 87A-11, 87A-15, and 87A-30, Hawaii
18 Revised Statutes, shall be reenacted in the form in which they
19 read on the day before the effective date of this Act.



Report Title:

Hawaii Employer-Union Health Benefits Trust Fund; Trustee

Description:

Adds three new sections on selection of benefit plan carriers, fiduciary duties, and liability for breach of fiduciary duty; exempts the Hawaii employer-union health benefits trust fund from the requirement to use the attorney general; increases the members of the board of trustees from ten to twelve and changes membership and terms; authorizes the board to retain an attorney who is independent of the attorney general as legal advisor; transfers the fund from the department of budget and finance to the department of human resources development. Requires biennial reports to the legislature. Sunsets on July 1, 2015.

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