

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2849, S.D. 2

March 29, 2010

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Senate Bill No. 2849, S.D. 2, makes the following amendments to Chapter 87A, Hawaii Revised Statutes, which governs the Hawaii Employer-Union Health Benefits Trust Fund:

- Exempts the Hawaii Employer-Union Health Benefits Trust Fund from the procurement code in procuring benefit plan carriers, consultants, auditors and an administrator.
- Adds two new sections on fiduciary duties and prohibited transactions, and liability for breach of fiduciary duties.
- Allows the Hawaii Employer-Union Health Benefits Trust Fund to retain an attorney who is independent of the Attorney General as legal advisor.
- Increases the members of the Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees from 10 to 12, and changes the Hawaii Employer-Union Health Benefits Trust Fund 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 Hawaii Employer-Union Health Benefits Trust Fund from the Department of Budget and Finance to the Department of Human Resources Development.

We are opposed to this bill. First, the department has serious concerns with the modifications to the composition of the Hawaii Employer-Union Health Benefits Trust Fund Board. 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. 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. While we are not specifically opposed to adding county representation to the board, 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 Hawaii Employer-Union Health Benefits Trust Fund membership. Currently, State employees make up approximately 72% of the Hawaii Employer-Union Health Benefits Trust Fund participants; this percentage would be significantly higher when teachers rejoin the Hawaii Employer-Union Health Benefits Trust Fund in Fiscal Year 2011 (the Hawaii State Teachers Association's Voluntary Employees Beneficiary Association Trust sunsets on June 30, 2010).

Given the Governor's overall responsibilities for managing State government and State finances, the Governor should appoint the majority of employer board members without regard to specific employer jurisdictions. However, if board members are to be added, we strongly suggest a neutral member. A neutral eleventh member would facilitate working

through the Hawaii Employer-Union Health Benefits Trust Fund Board deadlocks and balance the needs of both employer and employee interests.

Second, we believe the creation of the Hawaii Employer-Union Health Benefits Trust Fund 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 is fairest and results in a more harmonious workplace.

Third, we strongly believe that the Attorney General is better suited to ensure that long-term State interests are protected rather than an outside attorney. The staff of the Department of the Attorney General can bring a broad background of familiarity with the Hawaii Employer-Union Health Benefits Trust Fund 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 Hawaii Employer-Union Health Benefits Trust Fund is problematic. Such an approach could result in material fluctuations in plan benefits from year to year and may 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 Hawaii Employer-Union Health Benefits Trust Fund expenditures in relation to the total State budget, transferring the Hawaii Employer-Union Health Benefits Trust Fund to the Department of Human Resources Development would not be in the best interest of the State.

We are not opposed to exempting the Hawaii Employer-Union Health Benefits Trust Fund from Chapter 103D, Hawaii Revised Statutes. We defer to the Department of the Attorney General regarding provisions relating to fiduciary duties.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 25, 2010

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Monday, March 29, 2010
5:00 p.m., Conference Room 308

BY
MARIE C. LADERTA, DIRECTOR

(WRITTEN TESTIMONY ONLY)

Senate Bill No. 2849, Senate Draft 2
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

TO CHAIRPERSON MARCUS OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of SB 2849, SD 2, is to amend chapter 87A, Hawaii Revised Statutes to:

- Exempt the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) from the procurement code in procuring benefit plan carriers, consultants, auditors and administrators;
- Impose duties, restrictions, and liabilities on fiduciaries of the trust;
- Allow the EUTF to retain an attorney who is independent of the Attorney General as legal advisor;
- Change the number of trustees on the EUTF, how they are appointed, their terms of office, and quorum and voting requirements;
- Provide for sub-boards to administer exclusive bargaining unit contributions and benefits;
- Require the EUTF to provide health and other benefit plans within certain contributions and appropriations;
- Transfer the EUTF from the Department of Budget and Finance to the Department of Human Resources Development for administrative purposes; and
- Require biennial reports to the legislature on the cost effectiveness of the amendments made under this Bill.

The Department of Human Resources Development (DHRD) **strongly opposes** sections 8 and 9 of this bill that would transfer the EUTF to DHRD for administrative purposes and require DHRD to submit biennial reports to the legislature.

The breadth of EUTF's responsibilities is different and far greater than DHRD's in that DHRD mainly administers programs for State Executive Branch agencies, whereas, EUTF administers health benefits for ALL State agencies (i.e., Executive Branch, including DOE & UH; HHSC; OHA; Judicial Branch; Legislative Branch) and ALL the Counties. As such, given the enormity and fiscal complexities of the EUTF, DHRD does not have the resources necessary to provide effective administrative oversight of the EUTF, especially since our staffing level is now even more severely diminished due to the layoffs and furloughs.

We would also like to point out that the EUTF also administers health benefits for State and County retirees, whereas, DHRD administers programs for active State employees. As such, EUTF should remain housed together with the ERS which is under B&F.

Furthermore, transferring the EUTF to DHRD will not result in any cost savings that would warrant taking such action. In fact, the transfer could cause unforeseen problems which might add to EUTF's current difficulties. Therefore, it would not be in the State's best interest to transfer EUTF to DHRD. We defer to B&F and the Attorney General on the other provisions of the bill.

Thank you for the opportunity to provide testimony on this measure.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR



NOEL T. ONG
DIRECTOR

March 29, 2010

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: Senate Bill No. 2849, SD2
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

The City and County of Honolulu, Department of Human Resources **supports portions of Senate Bill 2849, SD2**, which seeks to amend various sections of the Employer-Union Trust Fund (EUTF) law.

The City strongly supports the provisions of this bill that change the composition of the EUTF Board to include two county representatives and two alternates. The county governments and our employees are affected by the decisions of the Board and we have long sought to be part of the process so we are pleased with the inclusion of county representation in this measure. In addition, the Hawaii Council of Mayors has made county representation on the EUTF board one of its legislative priorities for this year.

Other provisions of this bill are less clear to the City and, accordingly, we seek a better understanding of these matters. One of these issues of concern is the basis for the switch of the retiree trustee from an employee trustee to an employer trustee. In addition, we would like more information on how employer cost concerns will be addressed. We note that language contained in the current law that requires the Board to provide benefits that are affordable to both the employees and employers is being deleted under the bill. As health care costs are a significant concern to both employers and employees, we want to ensure that the concept of affordability is preserved.

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance

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We recognize that Section 7 of the bill may be intended to address the cost concerns by requiring the Board provide health and other plans based on the collectively bargained employer and employee contributions (for employees included in bargaining units) and on the appropriations adopted by the Legislature and the counties for the retirees. However, we have concerns about how this section will be implemented and whether timing issues may arise. We also have concerns about possible fragmentation of the group for which plans are purchased.

The City recognizes that recent events have highlighted difficulties resulting from the current EUTF law. We want to emphasize that we want to be part of the solution and would be happy to further discuss our concerns.

Thank you for the opportunity to testify.

Yours truly,



Noel T. Ono
Director



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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives

Committee on Finance

Testimony by
Hawaii Government Employees Association
March 29, 2010

S.B. 2849, S.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 S.B. 2849, S.D. 1, which makes fundamental changes to the structure and operating principles of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). There is widespread agreement that the EUTF is not operating as originally intended and has become a serious problem for state and county employees and employers.

The current system is broken and needs fundamental change. S.B. 2849, S.D. 1 with additional amendments that would permit the negotiation of health care benefits in addition to contributions, contains several significant reforms that will eliminate many of the problems that make the EUTF ineffective and expensive.

We believe that benefits are an integral part of employee compensation and should be negotiated between unions and employers. Other reform efforts that can be achieved through negotiation must include effective mechanisms for controlling costs, encouraging preventive care, implementing wellness programs, requiring information on provider performance and enhancing efficiency. S.B. 2849, S.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 103D, HRS. This will provide the necessary flexibility to respond to problems faster.
2. Board members must act as a fiduciary of the trust. As fiduciaries, board members are required to make decisions based solely on the interest of the participants and beneficiaries. Any board member who violates his or her

fiduciary responsibilities will be personally liable for any losses to the plan that occurs as a result of the breach of fiduciary responsibilities.

3. The composition of the board and the method of selecting them are also changed. Six trustees representing employee-beneficiaries who will be appointed by the Governor from a nominee provided by an exclusive representative. Each exclusive representative would represent their bargaining unit members.
4. The six trustees representing the employer are appointed by the Governor, Board of Education, the Mayor of the City and County of Honolulu, one trustee representing the neighbor islands shall be appointed by at least two county mayors, and one trustee appointed by the Governor representing retirees. All trustees serve at the pleasure of their appointing authority.
5. It allows individual unions 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." For retirees, the cost would be determined by the appropriation adopted by the legislature and the various counties.
8. For administrative purposes the fund controlled by the board is placed under the Department of Human Resources Development, not the Department of Budget and Finance.

There are several important amendments that are necessary to actually implement the bill as currently drafted.

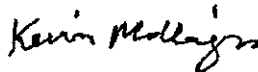
1. Section 3 of the bill which establishes the composition of the board and allows for sub-trusts, should also allow two or more sub-trusts to work jointly to accomplish the purpose of the sub-trusts.
2. Section 4 of the bill which amends Section 87A-6 (Term of a trustee; vacancy) should be amended by deleting the entire paragraph referencing how a vacancy is filled. It should be replaced with the following language:

"A vacancy on the board shall be filled in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for nominating or appointing the successor shall be the same criteria used for nominating or appointing the person's predecessor."

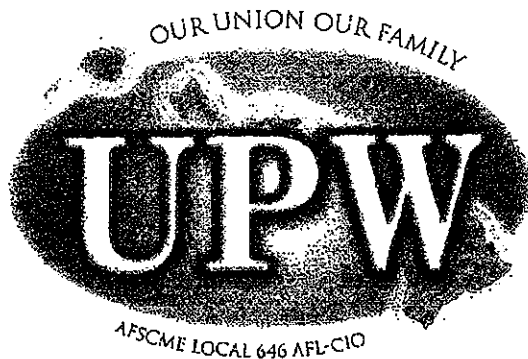
3. Section 89-9 (a), HRS must be amended to allow for the negotiation of health care benefits and contributions.
4. Sections 89-9 (d) and (e), HRS must be amended to allow for the negotiation of health care benefits and disputes regarding employer health insurance contributions and benefits to be settled through the arbitration process.
5. Section 89-11 (g), HRS must be amended to clarify that the decision of the arbitration panel shall be final and binding upon the parties, including provisions with respect to the benefits of and amounts of contributions by the state and counties to the health benefits trust fund.
6. The EUTF, not DHRD, should report to the Legislature on the cost effectiveness of the amendments made under this Act.
7. The act should take effect upon approval and not include a sunset date.

We appreciate the opportunity to testify in support of S.B. 2849, S.D. 2 as the measure will make these necessary changes to the EUTF.

Respectfully submitted,



 Nora A. Nomura
Deputy Executive Director



House of Representatives
 The Twenty-Fifth Legislature
 Regular Session of 2010

Committee on Finance
 Rep. Marcus Oshiro, Chair
 Rep. Marilyn Lee, Vice Chair

DATE: Monday, March 29, 2010
 TIME: 5:00 p.m.
 PLACE: Conference Room 320

TESTIMONY OF THE UNITED PUBLIC WORKERS, AFSCME, LOCAL 646,
AFL-CIO ON S.B. 2849, SD2, RELATING TO THE HAWAII
EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

My name is Dayton M. Nakanelua, state director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW represents approximately 8,800 blue collar non-supervisory employees in bargaining unit 1 and 2,900 institutional, health and correctional workers in bargaining unit 10 under chapter 89. JPW's members are also beneficiaries of the Employer-Union Health Benefits Trust Fund (EUTF).

We are in favor of this measure which holds accountable the trustees of the EUTF both to their fiduciary duty and to their appointing representatives and gives those trustees access to attorneys specialized in a highly technical, legal expertise field.

The continued well-being and security of the thousands of employees and their dependents who are directly affected by this plan is paramount as the trust fund and the benefits it provides have become an important factor affecting the stability of employment and the successful development of industrial relations. As Congress noted in passing the Employee Retirement Income Security Act,

minimum standards are needed for the soundness and stability of the plan with respect to both the adequacy of the funds to pay the promised benefits and the accountability of those administering the funds (29 U.S.C. § 1001).

Sections 1, 3, 4, and 6 of the measure creates the right balance between the trustees accountability to their appointing exclusive bargaining representative or employer and the fiduciary duty owed by the trustees to beneficiaries of the EUTF. The proposed composition of the EUTF board is consistent with labor management benefit trust funds in the private sector with representatives from both labor and management, appointed by their respective interests. The sections of the bill on fiduciary duties recognize that the trustee is a fiduciary whose duty to trust beneficiaries must overcome any loyalty to the interest of the representative that appointed him or her. Yet the composition of the EUTF board as amended by the bill allows the exclusive bargaining representatives and the employer representatives to appoint trustees to the board who serve at the pleasure of the appointing representative and will bring the interest of their respective representatives to the board.

Sections 2 and 5 of the measure allow the trustees to retain legal counsel other than the attorney general. This will provide for greater stability in the legal workforce representing the trustees and greater protection for the beneficiaries of the EUTF. The field of labor-management trust funds grows more complex, carries more liability concerns, and exposes the beneficiaries to greater risks warranting the specialized legal resource. Allowing the trustees to retain legal counsel other than the attorney general assures the autonomy of the trust fund given the balance sought in the composition of the trust fund.

Section 7 of the measure clarifies that the cost to the employee and employer is a contribution amount negotiated by the exclusive representative and the employer pursuant to Chapter 89, Hawaii Revised Statutes.

Finally, Section 8 of the bill attaches the EUTF to the State department of human resources development for administrative purposes. The department already conducts significant administrative duties related to employee

benefits. Therefore, the department of human resources development is an ideal environment in which the EUTF may maintain its independence while still ensuring administrative accountability.

We believe this measure clarifies the composition and duties of the EUTF board that is consistent with the purpose of the enabling act and protects the interests of the beneficiaries. The bill assures that the trustees are able to meet their duties that arise in a complex, legal field. We urge your favorable action on S.B. 2849, SD2.

House Committee on Finance
Chair-Rep. Marcus R. Oshiro
Vice-Chair, Marilyn B. Lee

Dear Chair Oshiro, Vice-Chair Lee, and members of the
Committee,

My name is Beverly Matsuo and I am testifying in SUPPORT or
in my case—Qualified SUPPORT with these concerns about SB
2849 SD2....

You do not allow for a representative on the board from the
retired teachers' association (HSTA-R). My concern is that
we (HSTA-R) be able to nominate a retiree from the HSTA-R
and have representation on the board.

I hope you will take this into consideration.

Thank you.