



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

S.B. NO. 1066, S.D. 2, RELATING TO THE HAWAII EMPLOYER-UNION
HEALTH BENEFITS TRUST FUND.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, March 18, 2011 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Brian Aburano, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this bill in its current form.

This bill amends chapter 87A, Hawaii Revised Statutes (HRS), to: (1) allow the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") to procure carriers, administrators, consultants, actuaries and auditors exempt from chapter 103D, HRS; (2) permit the EUTF to employ or retain a private attorney; (3) change the number of trustees on the EUTF board, how they are appointed, their terms of office, and quorum and voting requirements; (4) provide for sub-boards to administer exclusive bargaining unit contributions and benefits; (5) require the EUTF to provide health and other benefit plans within certain contributions and appropriations; and (6) place the EUTF under the department of human resources development for administrative purposes.

PRIVATE ATTORNEY

The bill permits the EUTF to employ or retain a private attorney who is independent of the Attorney General, without the approval of the Attorney General. The private counsel would be

permitted to represent the EUTF, an agency of the State, in any litigation, render legal counsel and advice, and draft documents. See page 1, line 8, to page 4, line 2 (amending section 28-8.3, HRS), and page 10, lines 12-21 (amending section 87A-9, HRS).

First, under existing law, sections 28-8 and 28-8.3, HRS, the EUTF may and has used private counsel with the approval of the Attorney General and Governor. Such counsel may be approved where there is a direct conflict or additional expertise is needed.

Second, the EUTF is a state agency and part of the Executive Branch. It is critical that the legal advice given to the EUTF be consistent with the advice given to other state agencies and with the interests of the Executive Branch. Otherwise, the EUTF could be given inconsistent advice that is unnecessarily damaging to the EUTF, the State, or the Executive Branch, or much time and effort will be unnecessarily spent resolving avoidable differences between the EUTF and the Governor or other state agencies. It is only through the Department of the Attorney General that consistent advice can be given to the EUTF.

Third, the Department of the Attorney General provides a broad range of experience and expertise to the EUTF that would not be available through a small group of contract hires, in-house lawyers, or counsel with Employee Retirement Income Security Act ("ERISA") "employee benefits experience." See page 10, lines 16-19 (amending section 87A-9, HRS). While the Attorney General can hire private counsel for the EUTF to advise it on specific employee benefits matters (as noted above, the EUTF is exempt from ERISA), no such counsel is likely to have expertise on the variety of unique government laws that are

applicable to the EUTF, i.e., open records laws, open meetings act, privacy and confidentiality laws, budget laws, legislative process, etc.

Fourth, state agencies have generally only been allowed to procure their own counsel independent of the Attorney General where there is a conflict or a need for specialized expertise not available in the Department. See Stand. Comm. Rep. No. 1044-96, 1996 House Journal, p. 1441 (Ombudsman should be allowed to hire counsel in those matters where the Attorney General would be in conflict by representing the agency affected); Standing Committee Report No. 2825, 2000 Senate Journal, p. 1169 (Kahoolawe Island Reserve Commission allowed to utilize attorneys with specialized, highly technical, legal expertise beyond what the Attorney General may be able to provide to ensure that cleanup proceeds on schedule). Conflicts rarely arise in the Department's representation of the EUTF, and where they do arise, the Attorney General can authorize the EUTF to hire independent counsel. Since the EUTF is exempt from ERISA, there is no need for the EUTF to employ private counsel with expertise in ERISA law. It should be noted that the EUTF has always been advised by a benefits consulting firm that has broad experience and expertise in employee benefits matters, and that the EUTF's request for proposals have indicated that any such firm should have in-house or outside legal counsel with expertise in employee benefits.

BOARD OF TRUSTEES

The bill replaces the ten trustees on the EUTF board with twelve trustees: (a) six trustees representing employee-beneficiaries, each nominated by a specific bargaining unit or units; (b) five trustees representing public employers, one appointed by the Governor to represent the State administration,

one nominated by the UH Board of Regents, one nominated by the Board of Education, one appointed by the mayor of the City and County of Honolulu, and one appointed by at least two mayors of the remaining counties; and (c) one trustee appointed by the Governor to represent retirees. See page 4, line 11, to page 7, line 11 (amending section 87A-5, HRS). All appointees serve at the pleasure of the appointing authorities. See page 6, lines 10-11, and page 7, lines 12-13. Four trustees representing employee-beneficiaries and four trustees representing public employers must be present to constitute a quorum, and a vote of four trustees on each side is necessary to carry any measure. See page 11, line 1, to page 12, line 5 (amending section 87A-11, HRS).

First, while there is no Hawaii case law on the subject, and case law from other jurisdictions is not uniform, there is an issue as to whether the power to appoint public officers can be constitutionally delegated to private organizations (in this case, to the exclusive bargaining representatives for bargaining units). Courts in several states have held that the power to appoint a public officer is a sovereign power of government, granted by the people to elected officers, and that delegating that power to a private organization accountable to no one but their own membership is unconstitutional. James v. Schorr, 65 A.2d 810 (Del. 1948); Rudman v. Rini, 356 N.E.2d 4 (Ill. 1976); Gamel v. Veterans Memorial Auditorium Commission, 272 N.W.2d 472 (Iowa 1978); Sedlak v. Dick, 887 P.2d 1119 (Kan. 1995); Opinion of the Justices, 150 N.E.2d 693 (Mass. 1958); and Hetherington v. McHale, 329 A.2d 250 (Pa. 1974); cf. Jones v. Chiles, 638 So. 2d 48 (Fla. 1994) (statute violated separation of powers by depriving governor of power to appoint executive officer). The bill provides for the exclusive bargaining representatives of

the various bargaining units to appoint the six trustees to represent employee-beneficiaries. This amounts to the delegation of the power of appointment to private organizations, i.e., the exclusive bargaining representatives.

Second, by providing for more employee-beneficiary trustees than public employer trustees, the bill strays from the equal representation on the EUTF board that was originally mandated by Act 88, Session Laws of Hawaii 2001. See Stand. Comm. Rep. No. 880, 2001 Senate Journal, p. 1275, and Stand. Comm. Rep. No. 1097, 2001 House Journal, p. 1548. In this respect, Act 88 was apparently based on provisions of the Labor-Management Relations Act (LMRA), specifically 29 U.S.C. section 186(c), which permits an employer (or employers) to make payments to a trust fund established for the sole and exclusive benefit of the employees of such employer (or employers) if such payments are held in trust and the employees and employer(s) are "equally represented in the administration of such fund."

Third, by increasing the quorum to four trustees on each side, the bill makes it more likely that the EUTF board will not be able to meet and take actions necessary for the efficient and continued operation of the EUTF health and other benefits plans. In the past, the EUTF has had problems getting a quorum of three trustees on each side to meet.

Fourth, the bill does nothing to solve a recurring problem of the EUTF board, which is the lack of an effective tie-breaking mechanism. As with the current law, the bill provides that both employee-beneficiary trustees and public employer trustees must agree on any matter that must be voted upon. While the LMRA is not directly applicable to the EUTF, it should be noted that under the LMRA, where there is equal employee and employer representation on a trust fund board and no neutral

person(s) empowered to break a deadlock, there must be an agreement that provides for an impartial umpire to decide the dispute. See 29 U.S.C. § 186. The current EUTF statutes and rules do not provide for neutral persons or an impartial umpire to resolve board deadlocks.

SUB-BOARDS

In one short paragraph, the bill provides that if an exclusive bargaining representative negotiates a specific contribution to apply only to that bargaining unit, the bargaining unit shall have a sub-board of trustees to administer that bargaining unit's contributions and benefits, including the determination of the type and level of benefits for that bargaining unit. See page 7, line 14, to page 8, line 2 (amending section 87A-5(b), HRS).

First, the bill's provision for the appointment of sub-boards to design benefits and administer particular bargaining unit contributions and benefits appears to resurrect the union health plans that were done away with under Act 88. Having a single health benefits system, rather than multiple union plans, was seen as a cost-saving feature of Act 88. See Conf. Comm. Rep. No. 124, 2001 House Journal, pp. 1097-1098; and Actuarial Audit and Operational Audit of the Public Employees Health Fund, Auditor's Report No. 99-21 (May 1999).

Second, the bill lacks provisions that establish how the sub-boards would operate and what requirements would apply to them. For example, the bill does not make clear: how or what employer(s) will appoint trustees to a sub-board; what voting or quorum requirements apply to the sub-boards; whether the sub-boards would be government agencies subject to requirements such as the public meeting and government records laws; whether the

sub-boards would have to comply with the duties imposed on the EUTF board such as in section 87A-25, HRS, including the procurement of fiduciary liability insurance and fidelity bonds; whether the sub-boards can hire their own employees, benefits consultants, and other professional staff; how the costs and expenses of the sub-boards would be paid; whether the sub-boards would have control of their own funds and where such funds would be deposited and held; what the sub-boards can or are to do with excess or surplus funds; and what responsibility the EUTF board would have regarding the sub-boards, if any.

Third, there is currently a lawsuit pending against the State and counties alleging that State and county retirees have a constitutional and contractual right to the same benefits that are provided or offered to State and county active employees. See Dannenberg v. State of Hawaii, First Circuit Court, Civ. No. 06-1-1141. If the plaintiffs' claims in that lawsuit are upheld, this bill could lead to an untenable situation in which State and county retirees have to be offered the same benefits or benefits plans provided by the EUTF board and all the different sub-boards.

HEALTH AND OTHER BENEFITS PLANS

The bill provides that the EUTF board is to provide health and other benefits plans: (a) for collective bargaining units, based on the collectively bargained contributions; (b) for retirees, according to the appropriation by the legislature and the respective counties; and (c) for all other eligible beneficiaries, based on the contributions from both the employer and employees. See page 12, lines 6-19 (amending section 87A-15, HRS).

With respect to plans for collective bargaining units, this would require the collective bargaining parties to agree to

employer and employee contributions well before the EUTF board must design the health and other benefits plans, procure carriers to provide or third-party administrators to administer the plans, and conduct an open-enrollment and informational campaign so that employees can select their plans.

Historically, the collective bargaining parties have not agreed on contributions before the EUTF designs and procures its plans. They have only negotiated contributions after the EUTF plans have been designed and procured. If this bill were to pass, and the collective bargaining parties continue their past practice, the EUTF board will be left in a difficult position and EUTF employee-participants may suffer as a result.

With respect to plans for retirees, this will require the State Legislature and county governments to appropriate moneys well in advance of the EUTF design and procurement of retiree health and other benefits plans. Historically, such appropriations have followed, not prefaced, EUTF design and procurement of retiree plans. Again, if this bill were to pass and the State Legislature and county governments do not make appropriations in a timely manner, the EUTF board will be left in a difficult position and EUTF retiree-participants may suffer as a result.

As noted above, there is currently a lawsuit pending against the State and counties claiming that State and county retirees have a constitutional and contractual right to a certain level of health benefits. If plaintiffs succeed in their claim, this could make it difficult, if not impossible, to fully implement this part of the bill.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
SENATE BILL NO. 1066, S.D. 2

March 18, 2011

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Senate Bill No. 1066, 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.
- Allows the Hawaii Employer-Union Health Benefits Trust Fund to retain an attorney who is independent of the Department 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. 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 77% of the Hawaii Employer-Union Health Benefits Trust Fund members. 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.

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 will promote fairness and consistency among employees in the workplace.

Third, we strongly believe that the Department of 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 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.

Finally, 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 may not be in the best interest of the State or the Hawaii Employer-Union Health Benefits Trust Fund at this time. The Abercrombie Administration support provided to the Hawaii Employer-Union Health Benefits Trust Fund includes financial background and support that may be better situated in the current Budget and Finance structure.

We are not opposed to exempting the Hawaii Employer-Union Health Benefits Trust Fund from Chapter 103D, Hawaii Revised Statutes.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT

March 18, 2011

10:00 AM

SB 1066, SD 2

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

Chair Rhoads, Vice-Chair Yamashita and committee members, thank you for the opportunity to testify on SB 1066, SD 2. Our testimony is limited to SECTION 1, page 1, lines 4 to 7 of the bill.

The State Procurement Office opposes the amendment in SECTION 1 which proposes to exempt the Hawaii Employer-Union Benefits Trust Fund from HRS chapter 103D, the Hawaii Public Procurement Code (Code).

Public procurement's primary objective is to give everyone equal opportunity to compete for Government contracts; to prevent favoritism, collusion or fraud in awarding of contracts. Meeting this objective requires a single set of statutes and rules that define and mandate the use of selection processes that are competitive, efficient, fair, transparent, open and impartial. Statutorily exempting specific agencies from the Code, is not in the best interest of government, the business community, and the general public. The Code should not be viewed as an obstacle to a purchasing agency's mission, but rather as the single source of public procurement policy to be applied equally and uniformly.

If the Legislature intends to exempt specific programs or funds from the Code, the exemption should include assurances that the agency's exempt process includes fair and open competition, disclosure, transparency, due process for aggrieved parties, a defined selection and awards process, and the various elements contained in the Code to ensure public confidence that the exempt procurement process is fair.

We request that SECTION 1 of the bill be deleted. Thank you.

NEIL ABERCROMBIE
GOVERNOR



SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

BARBARA A. KRIEG
DEPUTY DIRECTOR

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

March 16, 2011

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on, March 18, 2011
10:00 a.m., Conference Room 309

BY

SUNSHINE P. W. TOPPING
INTERIM DIRECTOR

Senate Bill No. 1066, Senate Draft 2
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON KARL RHOADS AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. 1066, S.D 2 is to amend Chapter 87A, Hawaii Revised Statutes, to:

- Authorize the Board of Trustees to procure benefit plan carriers, without regard to the public procurement process;
- Amends the appointment and quorum requirements of the Board of Trustees of the Employer-Union Health Benefits Trust Fund (EUTF);
- Allow the EUTF to retain an attorney who is independent of the Attorney General as legal advisor;
- Requires health and other benefit plans to be provided for collective bargaining units, retirees, and other eligible beneficiaries; and
- Transfer the EUTF from the Department of Budget and Finance to the Department of Human Resources Development for administrative purposes.

The Department of Human Resources Development (DHRD) **strongly opposes** section 8 of this bill that would transfer the EUTF to DHRD for administrative purposes.

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 the Department of Budget & Finance (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 may even prove to be more costly or which may add to EUTF's current difficulties. Therefore, it would not be in the best interest of the State or the EUTF's membership to transfer EUTF to DHRD. With regard to the other provisions of the bill, we defer to B&F and the Attorney General's Office.

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

DEPARTMENT OF BUDGET & FISCAL SERVICES
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

March 18, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members of the Committee:

Subject: Senate Bill 1066 Senate Draft 2,
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 1066, Senate Draft 2**, 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 a City representative and a representative for the neighbor island counties. 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.

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 is how employer cost concerns will be addressed. We note that language contained in the current law requiring 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 the concept of affordability is preserved.

We recognize that Section 7 of the bill may be intended to address the cost concerns by requiring the Board to 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

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
March 18, 2011
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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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

Testimony by
Hawaii Government Employees Association
March 18, 2011

S.B. 1066, S.D. 2 – 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. 1066, S.D. 2, 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. As written, S.B. 1066, S.D.2 in conjunction with S.B. 1078, S.D. 2 - which would permit the negotiation of health care benefits in addition to contributions, contains several significant reforms that will eliminate many of the problems that currently make the EUTF ineffective and expensive.

While we strongly support the original package of structural changes to the EUTF, we also recognize and acknowledge the Attorney General raises many legitimate questions and concerns. It is our desire that the EUTF Trustees' primary fiduciary responsibilities are to the plan participants, similar to language found in the federal Employee Retirement Income Security Act (ERISA). A critical component of reforming the EUTF must address and amend the Trustees' duties and we are willing to replace the fiduciary responsibility language in S.B. 1066, S.D. 2 with language from ERISA, found at 29 USC § 1104, Fiduciary duties, which reads: "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –

- (A) for the exclusive purpose of:
 - (i) providing benefits to participants and their beneficiaries; and
 - (ii) defraying reasonable expenses of administering the plan;
- (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such



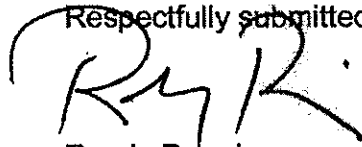
matters would use in the conduct of an enterprise of like character and with like aims;

- (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter."

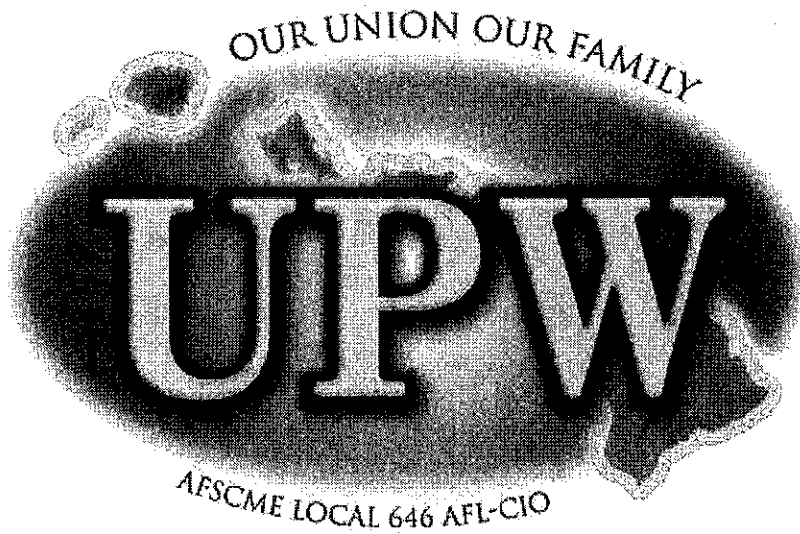
The ERISA language provided above ensures that the trustees are obligated to consider more than just the Employer's interests, and clearly delineates the primary fiduciary responsibility of the EUTF trustees to the plan participants.

This language marks the start to addressing much needed change and reform to the EUTF Board and system as a whole. We appreciate the opportunity to testify in strong support of S.B. 1066, S.D. 2, with the suggested addition of the ERISA language.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy Perreira', written over the typed name below.

Randy Perreira
Executive Director



**Twenty-Sixth Legislature, State of Hawaii
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
Hearing Date: March 18, 2011**

Testimony By United Public Workers

Re: SB 1066, SD2 (SSCR726) – RELATING TO THE EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO. The UPW is the exclusive bargaining representative for public employees in bargaining Unit 1 blue collar non-supervisory and Unit 10 institutional, health and correctional facilities.

The United Public Workers support the intent and purpose of S.B. 1066, SD2, which makes changes to the composition and operating procedures of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). This bill allows for health benefits and other benefit plans, together with contributions to be negotiable. The bill contains reforms that will effectively and economically address many of the problems that currently exist. The UPW believes that this bill is a step in the right direction for public employees and the employer moving forward.

Thank you for the opportunity to testify in support of S.B. 1066, SD2.

House
Committee on Labor and Public Employment
Representative Karl Rhoads, Chair

Friday, March 18, 2011; 10:00 a.m.
Capitol Conf. Room 309
Testimony - SB 1066, SD 2

Chairman Rhoads and members of the Committee on Labor and Public Employment.

My name is Jim Williams and I am testifying in qualified support of Senate Bill 1066 SD 2. The use of the term “qualified” is due to this bill containing several changes to the EUTF, some of which I fully support and other parts which I believe could be improved with amendments. Overall, I believe this bill is worthy of further consideration by this Legislature and should be moved forward by this committee.

I am testifying as an individual, representing no organization, business or other special interest. My background gives me a unique perspective on the EUTF and on this bill. This includes, over the years, service as a board member and chairman of the EUTF’s predecessor (Public Employees Health Fund), one of the original EUTF Trustees, administrator of the EUTF for five years, union (HSTA) president and executive director dealing with the PEHF, EUTF and VEBA, PEHF and EUTF active employee participant and (currently) EUTF retiree participant.

This bill makes a number of additions and changes to HRS 87A. These revisions are listed below with my comments:

- 1) Amends the appointment and quorum requirements of the public employees health fund board of trustees. In my opinion, this part of the bill needs to be revised in order to really improve the decision-making process of the EUTF board. My reading of the bill is that the retiree representative is “counted” as an employer representative. I am confident that a retiree representative will most often align with the union trustees. If this means a larger board, then so be it. In addition, the committee may want to consider having the retiree representative elected from among and by the retiree participants. Also, this bill specifies representation for different employers. Without commenting on the entire lineup, I definitely believe the counties should have at least one representative on the board. Under the current setup, it is a virtual certainty that no Governor will appoint a county representative.

My biggest concern about these provisions is that the bill does not change the two vote (one employer vote and one union vote) methodology. During my last year as administrator and during most of 2010, the board was hopelessly deadlocked and therefore largely dysfunctional on major issues most of the time. A one trustee one vote system, with majority rule, would be greatly preferable to the current two vote method. **I urge the committee to amend this bill to change the voting method.**

- 2) Permits the EUTF board of trustees to retain an attorney independent of the attorney general's office to represent the Hawaii employer-union health benefits trust fund. I support this provision. The deputy attorney general assigned to the EUTF during my first four years as administrator was very dedicated, responsive and competent. However, that deputy was reassigned and there was a lengthy delay in getting a replacement. Also, over my entire 30+ years of experience with the PEHF and EUTF there were times when the boards would have preferred and benefited from outside counsel.
- 3) Requires health and other benefit plans to be provided for collective bargaining units, retirees and other eligible beneficiaries. It appears that this provision is intended to allow for flexibility and diversity in approaches for different bargaining units. My only caution would be that, in my opinion, contributions, but NOT benefit plans, should be negotiated.
- 4) Transfers the EUTF as an attached agency to DHRD. If the truth were told, I do not believe there would be a single agency that would want to be assigned to Budget and Finance. Every department is under B & F's thumb due to its dominance in the Governor's budgeting process and expenditure controls. For an attached agency, this dominance is doubled over to administrative and personnel matters. As EUTF administrator, I had the experience of middle level B & F analysts, questioning and sometimes over-riding decisions approved unanimously by our Board of Trustees. Anecdotal reports from other agencies informed me that other departments interfered in the operations of their attached agencies much less than B & F does. And this has been the case regardless of who was Governor (it started long before the last administration).
- 5) The original bill added fiduciary duties to the public employees health fund board of trustees. These provisions would require all Trustees at all times to act solely in the best interests of the beneficiaries. This is a much needed addition to the law, and I urge this committee to restore these provisions. It should be noted that these provisions would apply to ALL trustees, including the union Trustees. The original bill also removed the phrase "at a cost affordable to both the public employers and the public employees" from 87A-15. That change was warranted because consideration of costs to employees are part of the aforementioned fiduciary responsibilities; while employer costs are more appropriately addressed through collective bargaining under chapter 89, and not through chapter 87A. Restoration of these provisions would improve this bill.

Thank you for this opportunity to testify with qualified support of SB 1066 SD.2. I hope this committee will consider the amendments suggested herein.

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Honolulu

yamashita2 ----Tannya

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2011 5:04 PM
To: LABtestimony
Cc: swartzg001@hawaii.rr.com
Subject: Testimony for SB1066 on 3/18/2011 10:00:00 AM

Testimony for LAB 3/18/2011 10:00:00 AM SB1066

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: gregory swartz
Organization: Individual
Address:
Phone:
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Submitted on: 3/13/2011

Comments:

I believe retirees should have representation equivalent to their relative membership in the fund compared to active employees. Given the current proposed adverse actions taken by the Governor against retirees, I don't think the Governor should be the appointee for retiree representatives. I'm not sure that the unions give proper representation to their own retirees. Some other mechanism needs to be created to protect the actual current beneficiaries.