
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 two new sections to be appropriately
3 designated and to read as follows:

4 "§87A-A Fiduciary duties; prohibited transactions. (a) A
5 fiduciary of the trust shall comply, with respect to a plan,
6 with all fiduciary duties imposed on fiduciaries under title 29
7 United States Code sections 1001-1191, as amended, and related
8 regulations. For purposes of this section, a fiduciary shall
9 mean the trustees appointed under 87A-5.

10 (b) All fiduciaries of the trust shall discharge their
11 duties with respect to a plan solely in the interest of the
12 participants and beneficiaries and shall discharge their duties,
13 with respect to the plan, in compliance with all fiduciary
14 duties imposed on fiduciaries under title 29 United States Code
15 sections 1101-1191, as amended, and related regulations.

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



1 liable for a breach of fiduciary responsibility of another
2 fiduciary with respect to the same plan in the following
3 circumstances:

4 (1) If the fiduciary participates knowingly in, or
5 knowingly undertakes to conceal, an act or omission of
6 the other fiduciary, knowing that act or omission is a
7 breach;

8 (2) If, by the fiduciary's failure to comply with
9 subsection (a) or (b), the fiduciary has enabled the
10 other fiduciary to commit a breach; or

11 (3) If the fiduciary has knowledge of the breach by the
12 other fiduciary, unless the fiduciary makes reasonable
13 efforts under the circumstances to remedy the breach.

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

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

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



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

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

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

7 (e) A fiduciary shall not:

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

10 (2) In the fiduciary's individual capacity or in any other
11 capacity, act or represent a party in any transaction
12 involving the plan on behalf of a party whose
13 interests are adverse to the interests of the plan or

14 the interests of its participants or beneficiaries; or

15 (3) Receive any consideration for the fiduciary's own
16 personal account from any party dealing with the plan
17 in connection with a transaction involving the assets
18 of the plan.

19 **§87A-B Liability for breach of fiduciary duty.** (a) Any

20 person who is a fiduciary with respect to a plan and who

21 breaches any of the responsibilities, obligations, or duties

22 imposed on fiduciaries by this chapter shall be:



1 (1) Personally liable to make good to the plan any losses
2 to the plan, resulting from each breach, and to
3 restore to the plan any profits of the fiduciary made
4 through the use of assets of the plan by the
5 fiduciary; and

6 (2) Subject to any other equitable and remedial relief as
7 the court may deem appropriate, including removal of
8 the fiduciary.

9 (b) Any provision in any agreement or instrument that
10 purports to relieve a fiduciary of responsibility or liability
11 for any responsibility, obligation, or duty under this chapter
12 shall be void as against public policy. However, nothing in
13 this section shall preclude:

14 (1) A plan from purchasing insurance for its fiduciaries
15 or for itself to cover liability or losses occurring
16 by reason of the act or omission of a fiduciary in the
17 case of a breach of a fiduciary obligation by the
18 fiduciary, if the insurance permits recourse by the
19 insurer against the fiduciary in the case of a breach
20 of fiduciary obligation by the fiduciary;



- 1 (2) A fiduciary from purchasing insurance to cover
- 2 liability under this chapter from and for the
- 3 fiduciary's own account; or
- 4 (3) An employee organization from purchasing insurance to
- 5 cover potential liability of one or more persons who
- 6 serve in a fiduciary capacity with regard to an
- 7 employee welfare benefit plan."

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

10 "(a) No department of the State other than the attorney
 11 general may employ or retain any attorney, by contract or
 12 otherwise, for the purpose of representing the State or the
 13 department in any litigation, rendering legal counsel to the
 14 department, or drafting legal documents for the department;
 15 provided that the foregoing provision shall not apply to the
 16 employment or retention of attorneys:

17 (1) By the public utilities commission, the labor and
 18 industrial relations appeals board, and the Hawaii
 19 labor relations board;

20 (2) By any court or judicial or legislative office of the
 21 State; provided that if the attorney general is
 22 requested to provide representation to a court or



1 judicial office by the chief justice or the chief
2 justice's designee, or to a legislative office by the
3 speaker of the house of representatives and the
4 president of the senate jointly, and the attorney
5 general declines to provide such representation on the
6 grounds of conflict of interest, the attorney general
7 shall retain an attorney for the court, judicial, or
8 legislative office, subject to approval by the court,
9 judicial, or legislative office;

10 (3) By the legislative reference bureau;

11 (4) By any compilation commission that may be constituted
12 from time to time;

13 (5) By the real estate commission for any action involving
14 the real estate recovery fund;

15 (6) By the contractors license board for any action
16 involving the contractors recovery fund;

17 (7) By the office of Hawaiian affairs;

18 (8) By the department of commerce and consumer affairs for
19 the enforcement of violations of chapters 480 and
20 485A;

21 (9) As grand jury counsel;



- 1 (10) By the Hawaiian home lands trust individual claims
2 review panel;
- 3 (11) By the Hawaii health systems corporation, or its
4 regional system boards, or any of their facilities;
- 5 (12) By the auditor;
- 6 (13) By the office of ombudsman;
- 7 (14) By the insurance division;
- 8 (15) By the University of Hawaii;
- 9 (16) By the Kahoolawe island reserve commission;
- 10 (17) By the division of consumer advocacy;
- 11 (18) By the office of elections;
- 12 (19) By the campaign spending commission;
- 13 (20) By the Hawaii tourism authority, as provided in
14 section 201B-2.5;
- 15 (21) By the division of financial institutions for any
16 action involving the mortgage loan recovery fund; [~~or~~]
- 17 (22) By the Hawaii employer-union health benefits trust
18 fund, as provided in section 87A-9; or
- 19 [~~+22+~~] (23) By a department, in the event the attorney
20 general, for reasons deemed by the attorney general to
21 be good and sufficient, declines to employ or retain



1 an attorney for a department; provided that the
2 governor waives the provision of this section."

3 SECTION 3. Section 87A-5, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§87A-5 Composition of board.** (a) The board of trustees
6 of the employer-union health benefits trust fund shall consist
7 of [~~ten~~] fourteen trustees appointed [~~by the governor~~] in
8 accordance with the following procedure:

9 (1) [~~Five~~] Seven trustees [~~, one of whom shall represent~~
10 ~~retirees,~~] to represent employee-beneficiaries and to
11 be selected as follows:

12 [~~(A) Three trustees shall be appointed from a list of~~
13 ~~two nominees per trustee selected by each of the~~
14 ~~three exclusive representative organizations that~~
15 ~~have the largest number of employee-~~
16 ~~beneficiaries;~~

17 [~~(B) One trustee shall be appointed from a list of two~~
18 ~~nominees selected by mutual agreement of the~~
19 ~~remaining exclusive employee representative~~
20 ~~organizations; and~~

21 [~~(C) One trustee representing retirees shall be~~
22 ~~appointed from a list of two nominees selected by~~



- 1 ~~mutual agreement of all eligible exclusive~~
2 ~~representatives, and~~
- 3 ~~(2) Five trustees to represent public employers.]~~
- 4 (A) One trustee to be appointed by the governor from
5 a list of three nominees submitted by the
6 exclusive bargaining representative for
7 bargaining units 2, 3, 4, 6, 8, 9, and 13;
- 8 (B) One trustee to be appointed by the governor from
9 a list of three nominees submitted by the
10 exclusive bargaining representative for
11 bargaining unit 5;
- 12 (C) One trustee to be appointed by the governor from
13 a list of three nominees submitted by the
14 exclusive bargaining representative for
15 bargaining unit 7;
- 16 (D) One trustee to be appointed by the governor from
17 a list of three nominees submitted by the
18 exclusive bargaining representative for
19 bargaining units 1 and 10;
- 20 (E) One trustee to be appointed by the governor from
21 a list of three nominees submitted by the



1 exclusive bargaining representative for
2 bargaining unit 11;

3 (F) One trustee to be appointed by the governor from
4 a list of three nominees submitted by the
5 exclusive bargaining representative for
6 bargaining unit 12; and

7 (G) One trustee to be appointed by the governor from
8 a list of three nominees submitted by mutual
9 agreement of all eligible exclusive employee
10 representatives to represent retiree
11 beneficiaries.

12 All trustees shall serve at the pleasure of the
13 appointing authority.

14 (2) Seven trustees to represent public employers as
15 follows:

16 (A) Three trustees to be appointed by the governor to
17 represent the State of Hawaii administration;

18 (B) One trustee to be appointed by the governor from
19 nominees submitted by the University of Hawaii
20 board of regents;

21 (C) One trustee to be appointed by the governor from
22 nominees submitted by the board of education;



1 (D) One trustee to be appointed by the mayor of the
2 city and county of Honolulu; and

3 (E) One trustee to be appointed by at least two
4 county mayors from the county of Hawaii, Maui, or
5 Kauai. The mayor of the remaining county shall
6 appoint an alternate trustee to sit in the
7 absence of a county or city and county regular
8 trustee.

9 All trustees shall serve at the pleasure of the
10 appointing authority.

11 (b) Section 26-34 shall not apply to board member
12 selection and terms. Notwithstanding any other provision of
13 this section, no exclusive representative of a bargaining unit
14 that sponsors or participates in a voluntary employee
15 beneficiary association shall be eligible to select nominees or
16 to be represented by a trustee on the board.

17 (c) As used in this section, the term "exclusive
18 representative" shall have the same meaning as in section 89-2."

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



1 "**§87A-6 Term of a trustee; vacancy.** The term of office of
2 each trustee shall be four years; provided that a trustee may be
3 reappointed for one additional consecutive four-year term.

4 A vacancy on the board shall be filled in the same manner
5 as the trustee who vacated that position was nominated or
6 appointed; provided that the criteria used for nominating or
7 appointing the successor shall be the same criteria used for
8 nominating or appointing the person's predecessor; provided
9 further that vacancies on the board for each trustee position
10 representing retirees and employee-beneficiaries appointed under
11 section 87A-5(1)(A) [~~and (B)~~] through (G) shall be filled by
12 appointment of the governor as follows:

13 ~~(1) If a vacancy occurs in one of the trustee positions~~
14 ~~described in section 87A-5(1)(A) then the vacancy~~
15 ~~shall be appointed from a list of two nominees~~
16 ~~submitted by the exclusive employee representative~~
17 ~~from among the three largest exclusive employee~~
18 ~~representatives that does not have a trustee among the~~
19 ~~three trustee positions;~~
20 ~~(2) If a vacancy occurs in a trustee position described in~~
21 ~~section 87A-5(1)(B), then the vacancy shall be~~
22 ~~appointed from a list of two nominees submitted by~~



1 ~~mutual agreement of the exclusive employee~~
 2 ~~representatives described in section 87A-5(1)(B); and~~
 3 ~~(3) If a vacancy occurs in the retiree position described~~
 4 ~~in section 87A-5(1)(C), then the vacancy shall be~~
 5 ~~appointed from a list of two nominees submitted by~~
 6 ~~mutual agreement of all eligible exclusive employee~~
 7 ~~representatives.]~~

8 (1) If a vacancy occurs in one of the trustee positions
 9 described in section 87A-5(1)(A) through (F), then the
 10 vacancy shall be appointed by the governor from a list
 11 of three nominees submitted by the exclusive employee
 12 representative for the bargaining units or unit which
 13 the trustee represented; and

14 (2) If a vacancy occurs in the trustee position described
 15 in section 87A-5(1)(G), then the vacancy shall be
 16 appointed by the governor from a list of three
 17 nominees submitted by mutual agreement of all eligible
 18 exclusive employee representatives.

19 If by the end of a trustee's term the trustee is not
 20 reappointed or the trustee's successor is not appointed, the
 21 trustee shall serve until the trustee's successor is appointed."



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

3 " ~~[+]§87A-9[+]~~ **Legal adviser.** The ~~[attorney general shall]~~
4 board may appoint or retain by contract an attorney who is
5 independent of the attorney general to serve as legal adviser to
6 the board and shall provide legal representation for the Hawaii
7 employer-union health benefits trust fund. The legal adviser
8 shall have Employee Retirement and Income Security Act employee
9 benefits experience, either from the private or public sector."

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

12 " ~~[+]§87A-11[+]~~ **Quorum; board actions; voting.** (a) ~~[Six]~~
13 Eight trustees, ~~[three]~~ four of whom represent the public
14 employer and ~~[three]~~ four of whom represent employee-
15 beneficiaries, shall constitute a quorum for the transaction of
16 business.

17 (b) Trustees representing the public employers shall
18 collectively have one vote. Trustees representing the employee-
19 beneficiaries shall collectively have one vote.

20 For any vote of the trustees representing the public
21 employers to be valid, ~~[three]~~ four of these trustees must
22 concur to cast such a vote. In the absence of such concurrence,



1 the trustees representing the public employers shall be deemed
2 to have abstained from voting.

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

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

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

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

17 "[+]§87A-15[+] **Administration of the fund.** The board
18 shall administer and carry out the purpose of the fund. Health
19 and other benefit plans shall be provided [~~at a cost affordable~~
20 ~~to both the public employers and the public employees.~~] as
21 follows:



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

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

10 **"§87A-30 Hawaii employer-union health benefits trust fund;**
 11 **establishment.** There is established outside the state treasury,
 12 a trust fund to be known as the "Hawaii Employer-Union Health
 13 Benefits Trust Fund". The fund shall consist of contributions,
 14 interest, income, dividends, refunds, rate credits, and other
 15 returns. It is hereby declared that any and all sums
 16 contributed or paid from any source to the fund created by this
 17 part, and all assets of the fund including any and all interest
 18 and earnings on the same, are and shall be held in trust by the
 19 board for the exclusive use and benefit of the employee-
 20 beneficiaries and dependent-beneficiaries and shall not be
 21 subject to appropriation for any other purpose whatsoever. The
 22 fund shall be under the control of the board of trustees and

1 placed under the department of [~~budget and finance~~] human
2 resources development for administrative purposes."

3 SECTION 9. All rights, powers, functions, and duties of
4 the department of budget and finance with regard to the Hawaii
5 employer-union health benefits trust fund, are transferred to
6 the department of human resources development.

7 All officers and employees whose functions are transferred
8 by this Act shall be transferred with their functions and shall
9 continue to perform their regular duties upon their transfer,
10 subject to the state personnel laws and this Act.

11 No officer or employee of the State having tenure shall
12 suffer any loss of salary, seniority, prior service credit,
13 vacation, sick leave, or other employee benefit or privilege as
14 a consequence of this Act, and such officer or employee may be
15 transferred or appointed to a civil service position without the
16 necessity of examination; provided that the officer or employee
17 possesses the minimum qualifications for the position to which
18 transferred or appointed; and provided that subsequent changes
19 in status may be made pursuant to applicable civil service and
20 compensation laws.

21 An officer or employee of the State who does not have
22 tenure and who may be transferred or appointed to a civil



1 service position as a consequence of this Act shall become a
2 civil service employee without the loss of salary, seniority,
3 prior service credit, vacation, sick leave, or other employee
4 benefits or privileges and without the necessity of examination;
5 provided that such officer or employee possesses the minimum
6 qualifications for the position to which transferred or
7 appointed.

8 If an office or position held by an officer or employee
9 having tenure is abolished, the officer or employee shall not
10 thereby be separated from public employment, but shall remain in
11 the employment of the State with the same pay and classification
12 and shall be transferred to some other office or position for
13 which the officer or employee is eligible under the personnel
14 laws of the State as determined by the head of the department or
15 the governor.

16 SECTION 10. All appropriations, records, equipment,
17 machines, files, supplies, contracts, books, papers, documents,
18 maps, and other personal property heretofore made, used,
19 acquired, or held by the department of budget and finance
20 relating to the functions transferred to the department of human
21 resources development shall be transferred with the functions to
22 which they relate.



1 SECTION 11. All rules, policies, procedures, guidelines,
2 and other material adopted or developed by the agencies,
3 divisions or offices transferred or placed for administrative
4 purposes under this Act, shall remain in full force and effect
5 until amended or repealed by the department of human resources
6 development pursuant to chapter 91, Hawaii Revised Statutes.

7 SECTION 12. All deeds, leases, contracts, loans,
8 agreements, permits, or other documents executed or entered into
9 by or on behalf of the agencies, divisions, or offices
10 transferred or placed for administrative purposes with the
11 department of human resources development by this Act, shall
12 remain in full force and effect.

13 SECTION 13. This Act does not affect rights and duties
14 that matured, penalties that were incurred, and proceedings that
15 were begun before its effective date.

16 SECTION 14. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 15. This Act shall take effect upon its approval.



Report Title:

Hawaii Employer-Union Health Benefits Trust Fund; Administration

Description:

Clarifies fiduciary responsibilities and liabilities with respect to EUTF. Allows EUTF to hire attorneys. Alters composition of EUTF board and appointments to vacancies. Alters requirements for quorum. Specifies contribution sources for benefit plans provided to beneficiaries. Places EUTF within DHRD rather than BUF for administrative purposes. (HB1168 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

