



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2701, S.D. 1, RELATING TO EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, March 16, 2012 **TIME:** 10:30 a.m.
LOCATION: State Capitol, Room 309
TESTIFIER(S): David M. Louie, Attorney General, or
Kyle K. Chang, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this measure.

This bill would amend section 87A-1, Hawaii Revised Statutes (HRS), to add a new definition of "credited service" and to clarify the definitions of "employee" and "part-time, temporary, and seasonal or casual employee." Section 87A-1, HRS, currently reads in pertinent part, "Part-time, temporary, and seasonal or casual employee' means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position."

The Hawaii Public Employees Health Fund ("PEHF") was the predecessor to the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"). The laws governing the PEHF originally excluded from the definition of "employee" a person "hired on a part-time, limited-term, or provisional basis" (Act 146, 1961 Haw. Sess. Laws 191-92). In 1978, that portion of the definition was amended to exclude a person "employed for less than three months and whose employment is less than one-half of a full-time equivalent [FTE] position" (Act 194, 1978 Haw. Sess. Laws 400). The report of the Senate Committee on Ways and Means indicates that the intent of the amendment was to "grant health fund benefits to all persons employed for at least three months and whose jobs are equivalent to or exceed one-half of full-time equivalent (FTE) positions" (Stand. Comm. Rep. No. 709-78, 1978 Hawaii Senate Journal at 1084).

To achieve the Legislature's intent to grant health fund benefits to all persons who are employed for at least three months and to all persons whose jobs exceed one-half of an FTE, the statute should have more clearly excluded under the definition of "employee" a person who is employed for

less than three months or a person whose job is less than one-half of an FTE. This is how the statute has been interpreted by the EUTF, and the proposed amendment would merely clarify that.

Additionally, in 1984, the laws governing the PEHF were amended to specifically address contributions for employees who retire after June 30, 1984, with "at least five years but fewer than ten years of credited service, excluding sick leave" (Act 252, 1984 Haw. Sess. Laws 543). The purpose of the amendment was to "limit the health benefits contributions by public employers for employee-beneficiaries who retire with at least five but less than ten years of credited service to one-half of the statutorily specified amount" in order to address the "rising cost of public employer contributions" (Conf. Comm. Rep. No. 84-84, Hawaii Senate Journal at 965). However, the term "credited service" was not defined. Since then, the law has been changed several times, and chapter 87A, HRS, currently includes several references to "credited service" (e.g., sections governing state and county contributions, sections 87A-33, 87A-34, 87A-35, and 87A-36), yet that term remains undefined.

The proposed amendment defines "credited service" using wording similar to that used to define "service" in chapter 88, HRS, governing pension and retirement systems (section 88-21, HRS).

Finally, since the PEHF was created in 1961, the definition of "employee" has included reference to a "per diem employee," yet that term has never been defined. Chapter 88, HRS, which governs pension and retirement systems, defines "per diem worker" as a "person employed and compensated on an hourly or daily basis" (section 88-21, HRS). In 1969, however, the Legislature amended the laws governing the retirement system, including elimination of provisions governing "service while per diem employee" and "per diem employee attaining monthly status" (Act 110, 1969 Haw. Sess. Laws 94.) The Senate Committee on Public Employment explained that these sections were "obsolete, having been enacted to provide special treatment for per diem employees during specific periods of time. Per diem positions were abolished by law January 1, 1960" and that all per diem service rendered at any time in the past is treated as "prior service." (Stand. Comm. Rep. No. 127, 1969 Hawaii Senate Journal at 916). Accordingly, rather than attempt to amend chapter 87A, HRS, to include a definition for "per diem employee" the proposed amendment merely deletes reference to that term as it is obsolete.

Accordingly, we respectfully request that the Committee pass this bill.