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

9 §87A- Fiduciary duties; prohibited transactions. (a) A
10 fiduciary of the trust shall comply with all fiduciary duties
11 with respect to a plan imposed on fiduciaries under title 29
12 United States Code sections 1101 to 1114, as amended, and any
13 related 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 (1) If the fiduciary knowingly participates in or
2 knowingly undertakes to conceal an act or omission of
3 another fiduciary while knowing that the act or
4 omission is a breach;

5 (2) If by failing to comply with subsections (a) and (b),
6 the fiduciary has enabled another fiduciary to commit
7 a breach; or

8 (3) If the fiduciary has knowledge that another fiduciary
9 committed a breach, unless the fiduciary makes
10 reasonable efforts under the circumstances to remedy
11 the breach.

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

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

20 (1) Selling, exchanging, or leasing of any property
21 between the 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) Transferring to or using by or for the benefit of a
6 party 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 in any transaction involving the plan on
12 behalf of a party or representative of a party whose
13 interests are adverse to the interests of the plan or
14 the interests of the plan participants or
15 beneficiaries; or
- 16 (3) Receive any consideration for the fiduciary's own
17 personal account from any party dealing with the plan
18 in connection with a transaction involving the assets
19 of the plan.

20 **§87A- Liability for breach of fiduciary duty.** (a) Any
21 person who is a fiduciary with respect to a plan and who



1 breaches any of the responsibilities, obligations, or duties
2 imposed on fiduciaries under this chapter shall be:

3 (1) Personally liable to make good to the plan losses to
4 the plan resulting from each breach;

5 (2) Personally liable to restore to the plan any profits
6 of the fiduciary that were made through the use of
7 assets of the plan by the fiduciary; and

8 (3) Subject to any other equitable and remedial relief as
9 the court may deem appropriate, including the removal
10 of the fiduciary.

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

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



1 case of a breach of fiduciary obligation by the
2 fiduciary;

3 (2) A fiduciary from purchasing insurance to cover
4 liability under this chapter from and for the
5 fiduciary's own account; or

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

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

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

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



- 1 (2) By any court or judicial or legislative office of the
2 State; provided that if the attorney general is
3 requested to provide representation to a court or
4 judicial office by the chief justice or the chief
5 justice's designee, or to a legislative office by the
6 speaker of the house of representatives and the
7 president of the senate jointly, and the attorney
8 general declines to provide such representation on the
9 grounds of conflict of interest, the attorney general
10 shall retain an attorney for the court, judicial, or
11 legislative office, subject to approval by the court,
12 judicial, or legislative office;
- 13 (3) By the legislative reference bureau;
- 14 (4) By any compilation commission that may be constituted
15 from time to time;
- 16 (5) By the real estate commission for any action involving
17 the real estate recovery fund;
- 18 (6) By the contractors license board for any action
19 involving the contractors recovery fund;
- 20 (7) By the office of Hawaiian affairs;



- 1 (8) By the department of commerce and consumer affairs for
2 the enforcement of violations of chapters 480 and
3 485A;
- 4 (9) As grand jury counsel;
- 5 (10) By the Hawaiian home lands trust individual claims
6 review panel;
- 7 (11) By the Hawaii health systems corporation, or its
8 regional system boards, or any of their facilities;
- 9 (12) By the auditor;
- 10 (13) By the office of ombudsman;
- 11 (14) By the insurance division;
- 12 (15) By the University of Hawaii;
- 13 (16) By the Kahoolawe island reserve commission;
- 14 (17) By the division of consumer advocacy;
- 15 (18) By the office of elections;
- 16 (19) By the campaign spending commission;
- 17 (20) By the Hawaii tourism authority, as provided in
18 section 201B-2.5;
- 19 (21) By the division of financial institutions for any
20 action involving the mortgage loan recovery fund; [~~or~~]
- 21 (22) By the Hawaii employer-union health benefits trust
22 fund, as provided in section 87A-9; or



1 ~~[(22)]~~ (23) By a department, in the event the attorney
2 general, for reasons deemed by the attorney general to
3 be good and sufficient, declines to employ or retain
4 an attorney for a department; provided that the
5 governor waives the provision of this section."

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

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

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

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

20 ~~(B) One trustee shall be appointed from a list of two~~
21 ~~nominees selected by mutual agreement of the~~



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



1 provided that all trustees shall serve at the pleasure
2 of the appointing exclusive bargaining representative;
3 and

4 (2) Six trustees, consisting of five trustees to represent
5 public employers and one trustee to represent retiree
6 beneficiaries, to be selected as follows:

7 (A) One trustee to be appointed by the governor to
8 represent the executive branch;

9 (B) One trustee to be appointed by the governor from
10 a list of nominees submitted by the University of
11 Hawaii board of regents;

12 (C) One trustee to be appointed by the governor from
13 a list of nominees submitted by the board of
14 education;

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

17 (E) One trustee to be appointed by at least two
18 county mayors from the counties of Hawaii, Maui,
19 and Kauai; provided that the mayors of the two
20 remaining counties shall appoint an alternate
21 trustee to serve in the absence of the trustee



1 appointed pursuant to subparagraph (D) or
2 pursuant to this subparagraph; and
3 (F) One trustee appointed by the governor to
4 represent retiree beneficiaries;
5 provided that all trustees shall serve at the pleasure
6 of the appointing authority.

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

17 (c) Section 26-34 shall not apply to board member
18 selection and terms. [~~Notwithstanding any other provision of~~
19 this section, no exclusive representative of a bargaining unit
20 that sponsors or participates in a voluntary employee
21 beneficiary association shall be eligible to select nominees or
22 to be represented by a trustee on the board.]

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

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

5 "**§87A-6 Term of a trustee; vacancy.** [~~The term of office~~
6 ~~of each trustee shall be four years; provided that a trustee may~~
7 ~~be reappointed for one additional consecutive four year term.~~

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

17 ~~(1) If a vacancy occurs in one of the trustee positions~~
18 ~~described in section 87A 5(1)(A), then the vacancy~~
19 ~~shall be appointed from a list of two nominees~~
20 ~~submitted by the exclusive employee representative~~
21 ~~from among the three largest exclusive employee~~



1 ~~representatives that does not have a trustee among the~~
2 ~~three trustee positions;~~
3 ~~(2) If a vacancy occurs in a trustee position described in~~
4 ~~section 87A 5(1)(B), then the vacancy shall be~~
5 ~~appointed from a list of two nominees submitted by~~
6 ~~mutual agreement of the exclusive employee~~
7 ~~representatives described in section 87A 5(1)(B); and~~
8 ~~(3) If a vacancy occurs in the retiree position described~~
9 ~~in section 87A 5(1)(C), then the vacancy shall be~~
10 ~~appointed from a list of two nominees submitted by~~
11 ~~mutual agreement of all eligible exclusive employee~~
12 ~~representatives.]~~

13 If by the end of a trustee's term the trustee is not
14 reappointed or the trustee's successor is not appointed, the
15 trustee shall serve until the trustee's successor is appointed.
16 The term of office of each trustee shall be at the pleasure of
17 the nominating or appointing authority. If the appointing
18 authority fails to appoint an employer trustee to fill a vacant
19 position, the chief justice of the supreme court shall make the
20 appointment upon petition by two or more of the six employee-
21 beneficiary trustees. If the appointing authority fails to
22 appoint an employee-beneficiary trustee to fill a vacant

1 position, the chief justice of the supreme court shall make the
2 appointment upon petition by two or more of the five public
3 employer trustees."

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

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

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

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

21 (b) Trustees representing the public employers and retiree
22 beneficiaries shall collectively have one vote. Trustees



1 representing the employee-beneficiaries shall collectively have
2 one vote.

3 For any vote of the trustees representing the public
4 employers and retiree beneficiaries to be valid, [~~three~~] four of
5 these trustees must concur to cast such a vote. In the absence
6 of such concurrence, the trustees representing the public
7 employers and retiree beneficiaries shall be deemed to have
8 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 concurrence,
12 the trustees representing the employee-beneficiaries shall be
13 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 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. All rights, powers, functions, and duties of
9 the department of budget and finance with respect to the Hawaii
10 employer-union health benefits trust fund are transferred to the
11 department of human resources development.

12 All officers and employees whose functions are transferred
13 by this Act shall be transferred with their functions and shall
14 continue to perform their regular duties upon their transfer,
15 subject to the state personnel laws and this Act.

16 No officer or employee of the State having tenure shall
17 suffer any loss of salary, seniority, prior service credit,
18 vacation, sick leave, or other employee benefit or privilege as
19 a consequence of this Act, and such officer or employee may be
20 transferred or appointed to a civil service position without the
21 necessity of examination; provided that the officer or employee
22 possesses the minimum qualifications for the position to which



1 transferred or appointed; and provided that subsequent changes
2 in status may be made pursuant to applicable civil service and
3 compensation laws.

4 An officer or employee of the State who does not have
5 tenure and who may be transferred or appointed to a civil
6 service position as a consequence of this Act shall become a
7 civil service employee without the loss of salary, seniority,
8 prior service credit, vacation, sick leave, or other employee
9 benefits or privileges and without the necessity of examination;
10 provided that such officer or employee possesses the minimum
11 qualifications for the position to which transferred or
12 appointed.

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

21 SECTION 10. All appropriations, records, equipment,
22 machines, files, supplies, contracts, books, papers, documents,



-1 maps; and other personal property heretofore made, used,
2 acquired, or held by the department of budget and finance with
3 respect to the Hawaii employer-union health benefits trust fund
4 relating to the functions transferred to the department of human
5 resources development shall be transferred with the functions to
6 which they relate.

7 SECTION 11. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 12. This Act shall take effect on July 1, 2030.



Report Title:

Hawaii Employer-Union Health Benefits Trust Fund

Description:

Restructures the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). Transfers jurisdiction over the EUTF from the Department of Budget and Finance to the Department of Human Resources Development. Effective July 1, 2030. (HB1177 HD1)

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

