



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1177, H.D. 1, RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, March 18, 2013 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Kyle K. Chang, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General opposes section 5 of this bill as it authorizes the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) to hire its own attorney who is independent of the Attorney General, without the approval or participation of the Attorney General. We also have concerns about section 1 of this bill concerning fiduciary duties.

First, the Attorney General has always served as the legal advisor to the EUTF since the inception of the EUTF in 2003, as well as its predecessor, the Public Employees' Health Fund. This long relationship has created within the Department of the Attorney General the historical, institutional, and specific area knowledge of the EUTF, its issues, and applicable laws. This institutional knowledge and experience with the EUTF is unique to the Department of the Attorney General, and we believe severing that partnership between the EUTF and the Department will be detrimental not only to the EUTF, but to the State of Hawaii. With its broad perspective, the Department of the Attorney General has been and can continue to provide the necessary legal services to protect the long term interests of the EUTF and the State.

The Attorney General recognizes that on occasion, representation of the EUTF requires the retention of outside counsel. Pursuant to section 28-8.3(a)(22), Hawaii Revised Statutes, the Attorney General, upon the Governor's waiver of this section, has authorized the solicitation and contracting for such legal services.

The Department of the Attorney General also provides these legal services at a much lower cost than private legal counsel. Funds for such private counsel would be provided by the public employers and participants of the EUTF.

Second, section 1 of the bill raises concerns. We believe section 1 is not necessary because to a great extent, it duplicates existing law, and may be harmful in that its provisions may cause confusion as to which law controls. Further, section 1 specifies the duties and liabilities of a fiduciary, but does not define who is a fiduciary.

hee2 - Kathleen

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 14, 2013 3:40 PM
To: JDLTestimony
Cc: michael.j.golojuch@hawaii.gov
Subject: *Submitted testimony for HB1177 on Mar 18, 2013 10:00AM*

HB1177

Submitted on: 3/14/2013

Testimony for JDL on Mar 18, 2013 10:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara A. Krieg	Department of Human Resources Development	Oppose	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL 1177 H.D.1**

March 18, 2013

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

House Bill 1177, House Draft 1, includes a defective effective date of July 1, 2030 and makes the following amendments to Chapter 87A, Hawaii Revised Statutes, which governs the Hawaii Employer-Union Trust Fund (EUTF):

- Allows the EUTF to procure carriers, third-party administrators, consultants, actuaries and auditors exempt from the procurement code;
- Adds two new sections on fiduciary duties and prohibited transactions and liability for breach of fiduciary duties;
- Allows the EUTF to employ or retain an attorney independent of the Attorney General;
- Increases the membership of the EUTF Board of Trustees from 10 to 12 and changes how trustees are appointed, their terms of office, quorum and voting requirements;
- Provides for sub-boards to administer exclusive bargaining unit contributions and benefits;
- Requires active employee benefit plans to be based on collective bargained contributions and retiree benefits to be based on legislative appropriations; and
- Transfers the EUTF from the Department of Budget and Finance (Department) 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 EUTF 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 a 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 a board member and the mayors from the County of Hawaii, Maui and Kauai to appoint another employer board member is not reflective of the EUTF's membership. Currently, State employees make up approximately 76% of the EUTF participants.

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 board's deadlocks and balance the needs of both employer and employee interests.

Second, 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 EUTF and other State statutes at a lower cost

than an outside legal firm. The cost of an outside attorney will have to be borne by the public employers and the plan's participants.

Third, requiring benefit plans to be based on collective bargained amounts rather than determining collectively bargained amounts based on plan designs established by the EUTF 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.

Fourth, given the fiscal complexities involved and the size of the EUTF's expenditures in relation to the total State budget, transferring the EUTF to the Department of Human Resources Development would not be in the best interest of the State.

We are not opposed to exempting the EUTF from Chapter 103D, Hawaii Revised Statutes. We defer to the Department of the Attorney General regarding provisions relating to fiduciary duties.

WRITTEN ONLY

TESTIMONY BY SANDRA YAHIRO
ACTING ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL NO. 1177, H.D.1

March 18, 2013, 10:00 a.m.

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

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees (Board) met on February 26, 2013 to review and discuss House Bill 1177. The Board opposes this bill.

The Board believes that the following changes proposed by the bill are unnecessary and/or unwarranted:

- Making EUTF exempt from chapter 103D
- Imposing additional fiduciary liabilities
- Changes the membership of the Board of Trustees, how trustees are appointed, their terms of office, quorum and voting requirements
- Provides sub-board to administer exclusive bargaining unit contributions and benefits
- Requires active employee benefit plans to be based on collectively bargained contributions and retiree benefits to be based on legislative appropriations
- Transfers EUTF to the Department of Human Resources Development.

Thank you for the opportunity to submit testimony.

NEIL ABERCROMBIE
GOVERNOR



AARON S. FUJIOKA
ADMINISTRATOR

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STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
SENATE COMMITTEE
ON
JUDICIARY AND LABOR

March 18, 2013

10:00 a.m.

HB 1177, HD1

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

Chair Hee, Vice-Chair Shimabukuro, and committee members, thank you for the opportunity to testify on HB 1177, HD 1.

The State Procurement Office (SPO) opposes the amendment in SECTION 1, adding new sections to chapter 87A, specifically page 1, lines 4 to 8 of the bill. This new section proposes to exempt the Hawaii Employer-Union Benefits Trust Fund (EUTF) from HRS chapter 103D, the Hawaii Public Procurement Code (Code).

Since the inception of the Code in 1994, state and county departments and agencies have procured and awarded contracts totaling billions of dollars. Whether an expenditure was for construction of capitol improvement projects (CIP), or for goods and services to provide needed services to the public, billions of dollars have been awarded pursuant to the Code.

Today, state and county departments and agencies continue to adhere to the Code requirements in conducting their procurements to award contracts. For example, the City & County of Honolulu's rail construction project has and continues to procure and award contracts expending millions of dollars in accordance with the Code. The State Business and IT/IRM Transformation Plan under the management of the Chief Information Officer (CIO), Office of Information Management and Technology (OIMT), has identified areas needing IT services and new systems. The OIMT is currently in various stages of procurements for numerous solicitations and contracts amounting to millions of dollars in contract awards. All of these solicitations and resulting contract awards were and are conducted in accordance with the Code.

Governmental bodies following the Code which provides oversight and accountability, have a responsibility to maintain the confidence of the vendor/contractor community and the public in the procurement system, by conducting procurement in an accountable, ethical and transparent manner, which are vital to good government.

The Code is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, in the procurement and contracting process. 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. The Code should not be viewed as an obstacle to EUTF's mission, but rather as the single source of public procurement policy to be applied equally and uniformly. To legislate that any one entity, the EUTF, should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application.

The SPO opposes the exemption for the Hawaii Employer-Union Benefits Trust Fund (EUTF) from HRS chapter 103D, the Hawaii Public Procurement Code (Code). We request that SECTION 1, page 1, lines 4 to 8 of the bill be deleted. Thank you.