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TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Thursday, April 3, 2014
2 p.m.

TESTIMONY ON SENATE BILL NO. 2194, S.D. 1, PROPOSED H.D. 2 – RELATING TO HEALTH.

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on this legislation, and submits comments limited to sections of Part II of the bill that address the formation of the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company ("Captive").

While the Department believes that establishing a reciprocal captive insurance company under HRS §431:19 may be a creative way to address the growth of unfunded liabilities for public employee health benefits, it is concerned that the bill would establish a Captive without having first conducted a feasibility study. In addition, the Department suggests that the bill be amended to clarify that the new Captive would submit to the Commissioner's authority to regulate captive insurance companies.

The Department's concerns follow:

1. Feasibility study. All prospective captive owners are required to submit a feasibility study when filing their captive applications. The feasibility study includes, among other things, the general purpose and main objectives of the captive, how the captive will be capitalized, its net limits and retentions, basis for determining rates, projected premium growth, and its *pro forma* balance sheet. HRS § 431:19-102(d) requires an applicant to provide the Commissioner with evidence of liquidity and assets, management qualifications, and "the overall soundness of its plan of operation." The feasibility study is prepared as part of the process of evaluating options, selecting a captive domicile, and determining the respective benefits of a captive over other alternatives.

Since the Captive should not be treated differently from any other captive formed in Hawaii, the Captive should complete a feasibility study before applying for approval to carefully consider its purpose, organizational structure, business plan, plan of operation, and the way it intends to reach its risk financing objectives. The Department cannot approve a captive application from an under-capitalized captive; thus, it cannot back a statutory mandate that forms a Captive without confirming that it is sufficiently capitalized and would comply with the Insurance Code's regulatory requirements

2. Organizational Structure: Although the bill establishes the Captive as a reciprocal insurance company, its proposed structure does not satisfy the requirements of HRS § 431:19-106, which governs reciprocals.

A "reciprocal insurer" is "an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact common to all such persons to provide reciprocal insurance among themselves." HRS §431:3-108. HRS §431:4-406 specifies the duties of the attorney-in-fact ("AIF") to act on behalf of the reciprocal's subscribers' advisory committee ("SAC").

Under HRS §431:4-415, the SAC is an advisory committee that exercises subscribers' rights and is selected by the reciprocal's subscribers under rules adopted by the subscribers. Among other things, the SAC supervises the reciprocal's finances and operations.

If the Legislature intends to form the Captive as a reciprocal, the Department respectfully recommends that the bill be amended to reflect a captive's proper organizational structure. Specifically, the bill should (1) remove all references to a board of trustees and an Administrator, and (b) add the Captive's subscribers, SAC and AIF to its organizational structure.

3. Article 19 Compliance: Section 1-104 of the bill provides that, in a conflict between the bill and the Insurance Code, the Insurance Code controls. Nevertheless, sections throughout the bill reflect ambiguity in the law's application. For example Section 2-206 of the bill allows meetings to be scheduled, presumably by the Board of Trustees. This provision should be changed to reflect the requirement of HRS §431:19-102(b)(2) that the governing body of every Hawaii captive meets in Hawaii at least once a year.

The bill also omits a clear statement that it will not preempt the regulatory requirements of Article 19. Among other things, Article 19 governs minimum capital and surplus, investment, examination, financial reporting, and loss reserves, and regulatory safeguards designed over the years to protect the interests of captive insureds and potential claimants.

4. Exemption from Taxes and Fees: The Department is concerned that the bill proposes to exempt the Captive from the taxes and fees levied by the State on other insurers pursuant to HRS §431:1-101(d). As the Captive would have to satisfy the same annual filing and examination requirements as any other captive, and the Department's examiners would expend time to review and examine Captive documents, the Captive should pay its taxes and fees and forego any preferential treatment.

5. Application of Article 15 of Insurance Code: Although Insurance Code provisions governing Insurer Supervision, Rehabilitation, and Liquidation in Article 15 have limited application to captive insurance companies, the bill envisions that the Captive would be exempt from Article 15. Without Article 15 regulatory oversight, no clear statutory direction would guide the dissolution or rehabilitation of the Captive in the case of insolvency. The anticipated size of the Captive is large. If it was to become

insolvent, Article 15 protections would safeguard the best interests of insureds, claimants, and the public in an efficient and equitable manner.

We thank the Committee for the opportunity to submit testimony on this matter.

American Heart Association® | American Stroke Association®

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Testimony on SB 2194, "RELATING TO Health"

The American Heart Association strongly supports SB 2194, "Relating to Health."

Congenital heart defects (CHD) are the most common birth defect in the U.S. and the leading killer of infants with birth defects. About 8 children are affected by CHD per every 1,000 live births. Tragically, more than 1,500, or one in three, do not live to celebrate their first birthday.

Despite these grim statistics, there is still real reason for hope. Due to research, most children with CHD survive to adulthood, including many who formerly would have died.

Pulse Oximetry Screening

One of the best ways to detect CHD is through a simple, noninvasive, inexpensive test, called pulse oximetry, or pulse ox. The pulse ox test consists of sensors placed on a baby's hand and/or foot to check blood oxygen levels.

If the baby's levels are too low, additional tests may be conducted. New research suggests wider use of pulse ox screening would help identify more than 90 percent of heart defects, with costs of the testing estimated at or below $4 per baby.

In September 2011, U.S. Secretary of Health and Human Services Kathleen Sebelius suggested that critical congenital heart defects screening be added to the "Recommended Uniform Screening Panel" for newborns before they are released from a hospital or birthing facility. To achieve this goal efforts are underway across the country to enact pulse ox screening policies that will allow babies with heart defects to live longer and fuller lives. As a result of these efforts California, Indiana, New Jersey, New Hampshire, Tennessee, and West Virginia have already passed laws requiring newborns to have pulse ox screenings prior to being discharged from the hospital. In New Jersey, just hours after the state's law took effect, a newborn's life was saved.

A recent survey of Hawaii birthing centers indicated that all but two neighbor island hospitals already apply pulse oximetry screening on all newborns. However, disparities exist on screenings at one neighbor island hospital based on which company provides the infant's health insurance, and at another larger neighbor island hospital the screenings are not performed on any newborns. In addition, a third neighbor island hospital that had previously claimed to perform the screening on all newborns, when asked recently by a news reporter admitted that it performs the screening "randomly" on babies. HB 1946 would help to insure that all Hawaii families are provided with the most recent standard of care-based health screenings for their newborns.

Please note that the AHA takes no position on the additional language being proposed in the HD2 version of this bill. Its position applies only to the language addressing pulse oximetry screening.

Serving Hawaii since 1948

For information on the AHA's educational or research programs, contact your nearest AHA office, or visit our web site at www.americanheart.org or e-mail us at hawaii@heart.org

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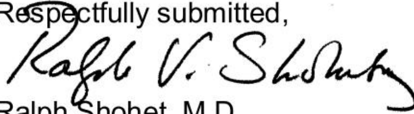
"Building healthier lives, free of cardiovascular diseases and stroke."

The AHA urges Hawaii legislators to give keiki born with congenital heart defects in our state the same chance of surviving and thriving. Support SB 2194, SD1, HD1.

Respectfully submitted,



Ralph Shohet, M.D.
Cardiologist, American Heart Association Hawaii Division Volunteer

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KAPI'OLANI
MEDICAL CENTER
FOR WOMEN & CHILDREN
An Affiliate of Hawai'i Pacific Health

808-983-6000
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Thursday, April 3, 2014 – 2:00 pm
Conference Room 308

The House Committee on Health

To: Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Johanson, Vice Chair

From: Martha Smith
Chief Executive Officer

Re: SB 2194 SD1, HD1, Proposed HD2 Relating to Health
Testimony In Strong Support as to Part I

My name is Martha Smith, and I am the Chief Executive Officer of Kapi`olani Medical Center for Women & Children (Kapi`olani). Kapi'olani Medical Center is the state's only maternity, newborn and pediatric specialty hospital. It is also a tertiary care, medical teaching and research facility. Specialty services for patients throughout Hawai'i and the Pacific Region include intensive care for infants and children, 24-hour emergency pediatric care, air transport, maternal-fetal medicine and high-risk perinatal care. The not-for-profit hospital offers several community programs and services, such as the Kapi'olani Child Protection Center and the Sex Abuse Treatment Center. Additionally, Kapi'olani's Women's Center is ranked among the top in the nation. Kapi'olani Medical Center is an affiliate of Hawai'i Pacific Health, the state's largest health care provider.

I am writing in strong support of Part I of the Proposed HD2 of SB 2194, SD1, HD1. This measure requires that birthing facilities perform a critical congenital heart defect screening using a pulse oximetry on every newborn in its care prior to discharge. The pulse oximetry is a non-invasive test that is an effective means of detecting critical, life-threatening congenital heart defects which may otherwise go undetected by current screening methods.

Kapi'olani Medical Center for Women & Children (Kapi'olani) has long followed the Academy of Pediatrics (AAP) guidelines which recognizes the importance of screening for congenital heart defects. We have established and apply pulse oximetry screening as the standard of care for all newborns to screen for congenital heart disease.

Thank you for the opportunity to provide this testimony.

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Testimony of Phyllis Dendle

Before:
House Committee on Finance
The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair

April 2, 2014
2:00 pm
Conference Room 308

SB 2194 SD1HD1 proposed HD2 RELATING TO HEALTH

Chair Luke, and committee members, thank you for this opportunity to provide testimony on SB 2194 SD1 HD1 proposed HD2 which, in part one, requires birthing facilities to perform congenital heart defect screening on newborns.

Kaiser Permanente Hawaii supports the intent of this measure but recommends it be amended.

Kaiser Permanente Hawaii has been doing pulse oximetry as recommended by the American Academy of Pediatrics for the past year. It is usually performed on newborns by our mother/baby RNs. Even so, I have some concerns about this proposed legislation:

Kaiser Permanente Hawaii is reluctant to put a specific kind of screening or treatment into law because medicine is always improving and after we put a test in place there may be a better test developed but we will still be required by law to do what is in the law whether it is useful or not. In addition it is important to allow medical providers latitude to determine what procedures are appropriate for their patient.

We appreciate the intent of this bill and clearly KPHI has no objection to performing this screening on all the newborns at our facility but we are concerned about the effect of this law as written.

We suggest that if there is a compelling state interest in having a law mandating this screening that it require birthing facilities to follow the guidelines of American Academy of

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Pediatrics on this particular test. However, as written it too specific regarding what to test. We suggest it should instead say:

"**§321- Newborn pulse oximetry screening.** (a) A birthing facility shall perform a test for critical congenital heart defects, as specified by the guidelines of the American Academy of Pediatrics, on every newborn in its care prior to discharge from the birthing facility.

In addition we cannot support the reporting requirement to the department of health. It is more appropriate for department of health to spot check for compliance rather than creating a new data base of protected health information without appropriate safe guards for the use of this information. We also believe this will create another compliance burden to hospitals which will increase health care costs with no clear added value. We urge the committee to remove section (c) page three lines 5-14 from this bill.

In regard to part II of this bill, we are unable to speak to the appropriateness of this proposal.

Thank you for your consideration.

Date: April 2, 2014

To: Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Johanson, Vice Chair

From: Lin Joseph
Director of Program Services
March of Dimes Hawaii Chapter

Re: In support of
SB2194 proposed HD2
Hearing: Thursday, April 3, 2014 – 2:00 pm
Conference Room 308, State Capitol

March of Dimes Foundation

Hawaii Chapter
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Inter-island 1-800-272-5240
Fax (808) 973-2160

marchofdimes.com/hawaii

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, Members of the Committees:

I am writing to express support for Part I of SB2194 Proposed HD2: *Relating to Critical Congenital Heart Defects Newborn Screening.*

The March of Dimes is the leader in advocacy for newborn screening of all infants in the United States. Our mission is to *improve the health of babies by preventing birth defects, premature birth, and infant mortality*. As part of that mission, we support screening for conditions and disorders for which there is a documented medical benefit to the affected infant from early detection and treatment; there is a reliable screening test for the disorder; and early detection can be made from newborn blood spots or other specific means. In 2009, March of Dimes presented the state of Hawaii with the March of Dimes National Award for Excellence in Newborn Screening for being a leader in screening newborn infants for all 29 disorders recommended at that time by the American College of Medical Genetics.

In 2011, the Secretary of the U.S. Department of Health and Human Services added critical congenital heart disease (CCHD) to the Recommended Uniform Screening Panel. CCHD is a subgroup of congenital heart defects which are problems with the heart's structure and/or function that are present at birth. "Critical" indicates that the heart defect causes severe, life threatening symptoms that require intervention, such as medical treatment or surgery, within the first hours, days or months of life. Unlike screening for metabolic disorders which utilizes a few drops of blood from a newborn's heel, CCHD, cannot be detected through blood spots and are sometimes difficult to detect by physical exam and observation. Currently, CCHD can be detected through pulse oximetry to measure the percent of oxygen saturation of hemoglobin in the arterial blood using a sensor attached to the infant's finger or foot. This screening provides that, should a newborn screen positive for CCHD, diagnostic tests can be administered before the infant symptoms are evident and allow for early interventions to improve outcomes.

SB2194 Proposed HD2 – Part I will establish newborn screening to detect CCHD to ensure that newborns in Hawaii are screened for congenital heart conditions that, if undetected, can be severe and life-threatening. Mahalo for the opportunity to testify in support of SB2194.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Finance

S.B. 2194 S.D. 1, H.D. 1, Proposed H.D. 2 RELATING TO HEALTH

Testimony of Linda Rosen, M.D., M.P.H.
Director of Health

April 3, 2014

1 **Department's Position:** The Department of Health (DOH) supports PART I of S.B. 2194 S.D.1,
2 H.D.1, Proposed HD2. No Position on PART II and PART III.
3 **Fiscal Implications:**
4 • PART I, Sections 2 and 3 – None, DOH's existing resources are sufficient to collect critical
5 congenital heart defect (CCHD) screening and follow-up data from birthing facilities and
6 disseminate information for quality improvement purposes; an appropriation to the department is
7 not necessary.
8 • PART I, Section 4 – DOH defers to the Hawaii Health Systems Corporation (HHSC) regarding
9 resources to provide and report on CCHD screening.
10 • PARTS II and III – DOH defers to the Department of Budget and Finance.
11 **Purpose and Justification:** Regarding PART I, Sections 1 – 5 only, this bill mandates newborn
12 screening for CCHD in birthing facilities. It also requests a state general fund appropriation for the
13 DOH to expend for the purposes of this bill.
14 CCHD is one of the disorders on the federally Recommended Uniform Screening Panel (RUSP).
15 Due to serious nature of the disorders that can be detected, CCHD screening requires screening the baby
16 in the hospital before discharge and doing all additional screening and diagnostic tests before the baby

1 goes home. If needed, the baby is transferred to a facility that can do the tests. A baby with a CCHD
2 cannot be allowed to go home without monitoring, treatment and intervention or the baby risks dying
3 suddenly when the heart stops working. Currently only two birthing facilities in Hawaii are not doing
4 universal newborn CCHD screening.

5 The Department of Health declines comment on PART II, Sections 5 through 19 and PART III,
6 Section 20, deferring to the Department of Budget and Finance and other executive agencies.

7 Thank you for the opportunity to testify.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2194, S.D. 1, H.D. 1, PROPOSED H.D. 2

April 3, 2014

RELATING TO HEALTH

Senate Bill No. 2194, S.D. 1, H.D. 1, Proposed H.D. 2, does the following:

- Part I requires birthing facilities to perform a pulse oximetry test or other medically accepted screening on newborns to screen for critical congenital heart defects. The measure also makes the following two general fund appropriations: 1) an unspecified amount to the Department of Health (DOH) for a program for critical congenital heart defect screening of newborns using pulse oximetry or other medically accepted test that measures the blood oxygen saturation as approved by the guidelines of the American Academy of Pediatrics; and 2) an unspecified amount to the Hawaii Health Systems Corporation (HHSC) to conduct at its facilities critical congenital heart defect screening of newborns using pulse oximetry or other medically accepted test that measures the blood oxygen saturation as approved by the guidelines of the American Academy of Pediatrics.
- Part II establishes the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Captive Insurance Company (the Fund) to manage the administration and financing of the current and potential future other post employee benefits obligations of the State and county governments.

Part II resurrects most of the provisions of Senate Bill No. 946, S.D. 1, H.D. 1, C.D. 1, which failed to pass last session.

Part I - Newborn Pulse Oximetry Screening

The Department of Budget and Finance (B&F) understands the benefits or value of implementing pulse oximetry screening for newborns but would defer to the DOH and HHSC on the establishment and operating cost estimates of newborn pulse oximetry screening programs.

The Department has particular concerns with Part II - Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company Fund, Rate Stabilization Reserves, and Other Post-Employment Benefits (OPEB) Reserve Fund

Part II of the bill establishes the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company Fund (the Fund) within the B&F for administrative purposes. The Fund is to consist of contributions, interest, income, dividends, refunds, rate credits, legislative initiatives and other returns, and is held in trust for the exclusive use and benefit of employee-beneficiaries and dependent-beneficiaries.

The bill also establishes the Hawaii Employer-Union Health Benefits Trust Captive Insurance Company Rate Stabilization Reserves Account (the Account) to be placed within the B&F for administrative purposes. The Account's balance will be used as a reserve when there is insufficient money in the Fund to cover the costs of providing health and other benefits plans established by the Board of Trustees for retired employees and their beneficiaries. The Account shall consist of required employer contributions,

monies transferred from the Fund and Legislative appropriations, and meet the requirements of the Government Accounting Standards Board (GASB) regarding employment benefits trusts.

The bill further establishes a Hawaii Employer-Union Health Benefits Trust Captive Insurance Company OPEB Reserve Fund to be placed within the B&F for administrative purposes. The OPEB Reserve Fund shall be used as a reserve against or to pay the Fund's future costs of providing OPEB to retirees and their beneficiaries when there are insufficient moneys to cover the current claims in the fund. The Board of Trustees shall determine the required contributions owed by each employer for Fiscal Years 2015-2016 and 2016-2017, and the OPEB Reserve Fund shall maintain a balance of $1.0 billion by the end of Fiscal Year 2016-2017.

The provisions under Part II of this bill, relating to definitions and types of plans and benefits, appear to generally follow existing provisions under Chapter 87A, HRS.

B&F is open to exploring various avenues to improve the cost effectiveness of delivering public employee and retiree health benefits and to address the State's unfunded OPEB liabilities. However, serious questions remain as to how Part II of this bill will accomplish reducing the State's unfunded liability under the requirements of GASB 43 and 45. Addressing the unfunded liability of the EUTF is necessary from two different perspectives. First, the liability needs to be addressed from a funding perspective where real dollars are necessary to actually pay for the actual costs as they are owed to pay for benefits each year. While a property capitalized captive insurance fund could, arguably, meet that requirement, it is not certain that that objective could be satisfied based on the funding level proposed in

this bill. Secondly, the liability needs to be addressed from a financial accounting and actuarial basis on the parts of each of the governmental employers. The establishment of a captive insurance program will NOT meet this objective. The intended value of this bill is to seek to escape paying for the total cost of the liability by only funding a portion of the true cost of a long-term liability in a captive insurance fund. That approach will NOT result in reducing the accruing liability balance on any of the governmental employers' balance sheets or financial statements in the EUTF in accordance with GASB 43 or 45.

From an operational perspective, it is unclear if the captive insurance company will reduce current benefits costs. Being the largest employer group in the State, the EUTF has significant bargaining power in negotiating with Hawaii's health insurance carriers. All of the EUTF plans are group experience rated and very favorable interest and return of excess reserves provisions are in place in the EUTF contracts. There is always room for improvement, but it isn't readily apparent how a captive insurance company with all the additional insurance regulatory requirements could be more cost effective. Additional information and data will need to be collected in order to appropriately analyze the State's employee risk pool. The business question of whether to establish a captive insurance program versus the current common and traditional model of paying for third-party insurance is a business decision where organizations must weigh how much risk they are willing to assume, the likelihood of increased costs or savings, and quality of insurance. While this bill does not ensure that financial objectives can be achieved, we minimally recognize that it does advance the discussion of the future viability of the EUTF.

Again, Part II of this bill is unclear as to how a captive insurance company would directly impact the State's unfunded OPEB liability. The total State and county unfunded OPEB liability (as of July 1, 2012) is $16.3 billion, of which the State's liability is $13.6 billion. This liability would appear to remain because establishment of the captive insurance company does not affect how the liability is calculated under GASB and generally accepted actuarial procedures.

In regards to the bills requirement that public employer contributions towards the OPEB Reserve Fund is proposed to amount to $1.0 billion, it should be noted that the State will bear the lion's share of the funding responsibility. As of February 15, 2014, the State has 71,117 active and retiree plan subscribers out of the EUTF's total plan subscribers of 94,181, or a little over 75.5% of the total. Hence, the State's share of the $1.0 billion based on a proportional share would be approximately $755 million ($1.0 billion times 75.5%) by the end of FY 17. Again, the State would want to ensure that such a contribution could be attributed towards reducing its long-term OPEB liabilities and that such reduction would be reflected on its financial statements and audits in accordance with GASB requirements.

It should be pointed out that one of the premises of this bill, as stated in the introduction (page 7, lines 3 - 8), is that, ". . . a captive insurance company will address the necessary premium contributions for public employee health benefits because there would be a commitment from the board of directors, composed of members from the public employers and employees, to fund the employees' health benefits going forward." This is not accurate because the creation of a captive insurance company in and of itself does not assure any funding for health benefits going forward. Funding of active and retiree health benefits, as well as other types

of appropriations, are the sole purview of the Legislature and the respective county councils.

Finally, B&F has serious concerns with the bill's change to the current governance structure of the EUTF by adding an eleventh board member who represents the counties and mandating that this county representative must be present to constitute a quorum for any action taken by the board. This change to the board structure and requirement for a quorum give the appointed county representative the swing vote in all board matters. This would give the counties disproportionate representation and is not rational as to the governance responsibility of the EUTF board. Consider that the aggregate contribution of county beneficiaries in the EUTF of active and retiree subscribers amount to less than 25% of the total EUTF subscribers (and costs and OPEB liabilities). Giving any singular board member such grand authority is not proportionately rational. A better approach would be to examine the current governance structure of the board in the current statute.

The department has always been open to continued discussions on ways to reduce the overall cost trends of providing health insurance coverage for its 71,000+ active and retired employees. However, as this bill relates to the EUTF and a strategy to deal with its unfunded liability, I would recommend that the Legislature continue to demonstrate commitment to Act 268 (2013) as the strategy to truly address EUTF unfunded liability. At this point, there is no prudent way for the State to escape the responsibility of paying off its liability without committing a significant amount of funds. On that point we will continue to work with the Legislature on this issue to find whatever concept could help improve the current condition.

NEIL ABERCROMBIE
GOVERNOR

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TESTIMONY BY SANDRA YAHIRO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2194, SD1, PROPOSED HD2

April 3, 2014 at 2:00 p.m.

RELATING TO HEALTH

Chair Luke, Vice Chairs Nishimoto and Johanson and Members of the Committee:

SB2194, SD1, HD2, proposes requiring birthing facilities to perform a pulse oximetry screening or other medically accepted tests that measure the percentage of blood oxygen saturation on newborns. Additionally, the bill proposes to establish the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company, to establish the Hawaii employer-union health benefits trust fund captive insurance company fund, and to establish the Hawaii employer-union health benefits trust fund captive insurance company rate stabilization reserves. The goal of the captive insurance company is to slow the growth of unfunded liabilities for public employee health benefits, stabilize the liabilities, reduce the unfunded liabilities, and restore the confidence of the investing public.

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees (Board) takes no position on the requirement to perform pulse oximetry screening.

However, the Board ***opposes*** establishing the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company (Captive).

While the bill states the Captive will provide an effective means of financing and managing employers' current and potential future liabilities, it is unclear how this bill will accomplish this any better than the current EUTF structure. EUTF operates in a similar fashion to a captive insurance company with the ability to self insure (currently, the prescription drug program is self insured), fully insure (one of the medical plans and life insurance plan), reinsure and fully insure with participation (most of the other plans) its health benefits. For example, the bill states the captive insurance company will reduce operating costs by, among other things, eliminating insurer profit margins; however, it should be noted that currently the contracts with most of EUTF's fully insured carriers have very low carrier profit-margins built into the contracts and have a one-way risk sharing arrangement whereby when claims plus retention are greater than premiums the carrier absorbs the deficit and when claims plus retention are lower than premiums the carrier refunds EUTF the surplus. This is the best of both worlds – no risk of high premiums when claims utilization is high (as with self insured plans) and refunds when claims are low. Additionally, while the bill states the Captive will increase the probability of price stability, EUTF's current carrier contracts have pre-set maximum rates for a 3-year period, which allows the State to know exactly what its maximum liability is for a three-year period.

Furthermore, the Board is unsure how establishing the Hawaii employer-union health benefits trust fund captive insurance company fund and the rate stabilization reserve will address and satisfy the $15+ billion unfunded liability. The bill assumes that the other post employment benefits reserve fund of $1 billion will be "dedicated exclusively to provide other post employment benefits to retirees and their beneficiaries when there are insufficient moneys to cover the current claims in the fund." It should be noted that the employers' contributions for the retirees health benefits for the fiscal year ending June 30, 2013 amounted to approximately $380.7 million. However, in the Aon Hewitt Postemployment Benefits Other Than Pensions Actuarial Valuation Study dated July 1, 2011, the actuary projected that employers' contributions will increase to over $1 billion in 2026. The $1 billion reserve fund will do little to address the growth in the required employers' contribution over time, a comprehensive plan to fund the unfunded liability is necessary. We believe that Act 268, SLH 2013 has already provided the mechanism to fund the unfunded liability over a 30 year period beginning with the 2017-2018 fiscal year.

Rather than pass a bill that is full of uncertainties, it may be prudent to conduct a comprehensive feasibility study by experts in employee benefits and captive insurance to determine whether establishing a captive insurance company will slow the growth of unfunded liabilities and stabilize and reduce the unfunded liabilities.

Thank you for the opportunity to submit testimony on this matter.

finance1

LATE

From:	mailinglist@capitol.hawaii.gov
Sent:	Wednesday, April 02, 2014 9:34 PM
To:	FINTestimony
Cc:	wojo.cari@gmail.com
Subject:	Submitted testimony for SB2194 on Apr 3, 2014 14:00PM

SB2194
Submitted on: 4/2/2014
Testimony for FIN on Apr 3, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Cari Ann Csigi	Individual	Comments Only	No

Comments: Our son, Shayden, was born with a Congenital Heart Defect in July 2011. We were sent from Oahu to San Diego, then San Diego to Palo Alto so that we could get care for him. Shayden had numerous procedures, tests and surgeries during his 4 months of life. One week after he was born, and Echo cardiogram was done on Shayden. We were told by our Neonatalogist and Cardiologist that he had a heart defect, and we would need to fly to the mainland within 1-3 days so that he could receive more care. We met a lot of families who were in the same position as us. The difference between us and them was that, they took their babies home and found out by having to take their babies to the E.R. Some of these families also had to deal with the passing of their child. We strongly support this bill and believe that it could help a lot of families. Early detection is the key!! Our children are the future!!

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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American Academy of Pediatrics

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Hawaii Chapter

LATE

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Thursday, April 3, 2014 – 2:00pm
Conference Room 308

The House Committee on Health

To: Representative Sylvia Luke, Chair
Representative Scott Nishimoto, Vice Chair
Representative Aaron Johanson, Vice Chair

Re: SB 2194 SD1, HD1, Proposed HD2 Relating to Health
Testimony in Support

I am writing in strong support of Part I of the Proposed HD2 of SB 2194, SD1, HD1. This measure requires that birthing facilities perform a critical congenital heart defect screening using a pulse oximetry on every newborn in its care prior to discharge. The pulse oximetry is a non-invasive test that is an effective means of detecting critical, life-threatening congenital heart defects which may otherwise go undetected by current screening methods.

Kapi'olani Medical Center for Women & Children (Kapi'olani) has long followed the American Academy of Pediatrics (AAP) guidelines which recognizes the importance of screening for congenital heart defects and has established pulse oximetry screening as a standard of care for all newborns to screen for CCHD.

We respectfully suggest that the Department of Health require birthing facilities to perform a critical congenital heart defect screening using pulse oximetry on newborns OR to follow and adopt the guidelines of the AAP within one year of adoption by the AAP. This would allow birthing facilities to remain compliant with statutes as best practices for CCHD screening may evolve. It would also ensure the best CCHD screening for Hawaii's keiki.

Sincerely,

R. Michael Hamilton, MD, MS, FAAP

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: HEALTH, Pulse oximetry for newborns; Captive insurance company for EUTF

BILL NUMBER: SB 2194, Proposed HD-2

INTRODUCED BY: House Committee on Finance

LATE

BRIEF SUMMARY: Part I adds a new section to HRS chapter 321 to require pulse oximetry screening for newborn babies. Part II adds a new chapter to the HRS insurance code essentially replacing the Hawaii employer-union health benefits trust fund (EUTF) with a captive reciprocal insurance company.

EFFECTIVE DATE: July 1, 2014

STAFF COMMENTS: Part I of the bill is not related to taxation or public finance.

Part II of the bill apparently is taken from HB 1459, HD 2, which crossed over to the senate but died there. The stated purpose of this measure is to authorize the state to form the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company, also known as the Health Unfunded Liability Action (HULA) Plan, to more effectively manage the administration and financing of the current and potential future employee health benefit obligations of the state and county governments. The captive insurance company appears to be structured as a reciprocal insurer. For a general description of what a reciprocal insurer is, please see *Director of Taxation v. Medical Underwriters of California,* 166 P.3d 353 (Hawaii 2007). The general idea would be that instead of having the EUTF procure health benefits from licensed carriers, a captive could provide the benefits itself through direct contracts, and obtain any necessary insurance through direct access to the reinsurance market. In other words, the HULA Plan would be designed to save costs by cutting out the middlemen (namely, insurance carriers and agents). We note that a similar measure introduced last year, SB 946, CD-1, failed to pass on the senate floor and died there.

Adoption of the HULA Plan seems to be a creative approach to tackling the issue of unfunded health liabilities in general. The issue must be dealt with, as mentioned in the attached column entitled "But Shouldn't We Do Something about the Two Gorillas in the Bar?"

According to previous testimony on HB 1459 by the Commissioner of Insurance, there has been no feasibility study on creating such a captive. Such a study is normally required before any application to license a captive insurance company can be approved. At this point, we don't know whether the HULA Plan will create more problems than it would solve or save enough costs to justify its creation. A study would be an important first step toward convincing other legislators and the public that the idea has merit and can save taxpayer dollars.

Digested 4/3/14

TAX FOUNDATION
OF HAWAII

Weekly Commentary

For The Week of March 30, 2014

BUT SHOULDN'T WE DO SOMETHING ABOUT THE TWO GORILLAS IN THE BAR?

By Tom Yamachika, Interim President

Often I am asked to summarize what's going on with the tax bills in the current legislative session. I usually say that it's obviously an election year, because a very large number of the tax bills moving are attempts to give money back, usually in the form of credits or incentives, as opposed to "revenue enhancers," which is what politicians often call attempts to grab even more of your hard-earned dollars. There are, in addition, quite a few bills designed to give relief to the poor or the elderly through our tax system, mostly through tax credits of one kind or another.

And why not? The Governor is trumpeting that under his watch there has been an economic turnaround. "Upon taking office," says a booklet called Abercrombie Administration Accomplishments 2010-2013, "the Administration faced a budget deficit of $220 million at the end of 2010. In response, it established responsible fiscal management practices while creating a sustainable financial plan for Hawaii's future. As a result, the State of Hawaii ended fiscal year 2013 with a positive general fund balance of approximately $844 million."

That sounds a little like a guy getting up in the middle of a bar and saying, "Hey! I have money in my pocket and I'm feeling good. Let the good times roll!" and then buying everyone in the bar a round of drinks. But is tossing all that cash around a responsible thing to do, especially if he is up to his eyeballs in debt?

The budget deficit, and the positive general fund balance, are measures of how much money the state had in its pocket on given dates. We need to remember that these measures need to be considered along with other things, especially what the state owes, in assessing its long-term sustainability.

So here is where the gorillas come in. The state long ago agreed to pay post-employment benefits to its workers. ERS, or Employees' Retirement System, represents the retirement benefits. EUTF, the Employer-Union Health Benefits Trust Fund, represents the medical benefits. At June 30, 2013, ERS had an "unfunded actuarial accrued liability" of about $8.4 billion. For EUTF, the number was about $18.2 billion. Those numbers represent the present value of what we taxpayers owe for these future benefits. In comparison, the total annual state general fund budget is $5.5 billion.

Compare this with the City of Detroit, Michigan. Detroit has a population of about 4 million counting its suburbs, and it had a long-term debt of $18.5 billion when it filed for, and late last year was ruled eligible for, bankruptcy! Hawaii is smaller, and its debts are bigger. So let's make no mistake: the gorillas were able to bring down governments bigger than ours. Maybe we'd better pay attention to them.

I don't know about you, but if I find out that I have more money in my pocket than I expected, I take some of it and pay down my mortgage a little. So shouldn't we use a bit of the money the state has in its pocket and set it aside to deal with these issues? It's not that we don't sympathize with the poor - we agree that Hawaii is taxing people deeper into poverty and that needs to be fixed. It's not that we are ridiculing the idea of stimulating business - certainly, if we can grow the engine that's feeding us, there will be more to throw around. There are many other worthy causes, too.

Okay, maybe we can't resist the temptation to jump up in the middle of the bar and throw money around...but at least when we're doing so, let's toss a few bananas toward those two big fellows in the back of the room.

If you found this material useful, please consider making a donation to the Tax Foundation of Hawaii.

Tom Yamachika is the Interim President of the Tax Foundation of Hawaii. Mr. Yamachika's commentary is printed each week in the *Maui News*, *West Hawaii Today*, *Garden Isle News*, *Civil Beat*, *Hawaii Free Press*, and the *HawaiiReporter.com*

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Finance

S.B. 2194 S.D. 1, H.D. 1, Proposed H.D. 2 RELATING TO HEALTH

Testimony of Linda Rosen, M.D., M.P.H.
Director of Health

April 3, 2014

1 **Department's Position:** The Department of Health (DOH) supports PART I of S.B. 2194 S.D.1,
2 H.D.1, Proposed HD2. No Position on PART II and PART III.
3 **Fiscal Implications:**
4 • PART I, Sections 2 and 3 – None, DOH's existing resources are sufficient to collect critical
5 congenital heart defect (CCHD) screening and follow-up data from birthing facilities and
6 disseminate information for quality improvement purposes; an appropriation to the department is
7 not necessary.
8 • PART I, Section 4 – DOH defers to the Hawaii Health Systems Corporation (HHSC) regarding
9 resources to provide and report on CCHD screening.
10 • PARTS II and III – DOH defers to the Department of Budget and Finance.
11 **Purpose and Justification:** Regarding PART I, Sections 1 – 5 only, this bill mandates newborn
12 screening for CCHD in birthing facilities. It also requests a state general fund appropriation for the
13 DOH to expend for the purposes of this bill.
14 CCHD is one of the disorders on the federally Recommended Uniform Screening Panel (RUSP).
15 Due to serious nature of the disorders that can be detected, CCHD screening requires screening the baby
16 in the hospital before discharge and doing all additional screening and diagnostic tests before the baby

1 goes home. If needed, the baby is transferred to a facility that can do the tests. A baby with a CCHD
2 cannot be allowed to go home without monitoring, treatment and intervention or the baby risks dying
3 suddenly when the heart stops working. Currently only two birthing facilities in Hawaii are not doing
4 universal newborn CCHD screening.

5 The Department of Health declines comment on PART II, Sections 5 through 19 and PART III,
6 Section 20, deferring to the Department of Budget and Finance and other executive agencies.

7 Thank you for the opportunity to testify.

LATE TESTIMONY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2194, S.D. 1, H.D. 1, PROPOSED H.D. 2

April 3, 2014

RELATING TO HEALTH

Senate Bill No. 2194, S.D. 1, H.D. 1, Proposed H.D. 2, does the following:

- Part I requires birthing facilities to perform a pulse oximetry test or other medically accepted screening on newborns to screen for critical congenital heart defects. The measure also makes the following two general fund appropriations: 1) an unspecified amount to the Department of Health (DOH) for a program for critical congenital heart defect screening of newborns using pulse oximetry or other medically accepted test that measures the blood oxygen saturation as approved by the guidelines of the American Academy of Pediatrics; and 2) an unspecified amount to the Hawaii Health Systems Corporation (HHSC) to conduct at its facilities critical congenital heart defect screening of newborns using pulse oximetry or other medically accepted test that measures the blood oxygen saturation as approved by the guidelines of the American Academy of Pediatrics.
- Part II establishes the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Captive Insurance Company (the Fund) to manage the administration and financing of the current and potential future other post employee benefits obligations of the State and county governments.

Part II resurrects most of the provisions of Senate Bill No. 946, S.D. 1, H.D. 1, C.D. 1, which failed to pass last session.

Part I - Newborn Pulse Oximetry Screening

The Department of Budget and Finance (B&F) understands the benefits or value of implementing pulse oximetry screening for newborns but would defer to the DOH and HHSC on the establishment and operating cost estimates of newborn pulse oximetry screening programs.

The Department has particular concerns with Part II - Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company Fund, Rate Stabilization Reserves, and Other Post-Employment Benefits (OPEB) Reserve Fund

Part II of the bill establishes the Hawaii Employer-Union Health Benefits Trust Fund Captive Insurance Company Fund (the Fund) within the B&F for administrative purposes. The Fund is to consist of contributions, interest, income, dividends, refunds, rate credits, legislative initiatives and other returns, and is held in trust for the exclusive use and benefit of employee-beneficiaries and dependent-beneficiaries.

The bill also establishes the Hawaii Employer-Union Health Benefits Trust Captive Insurance Company Rate Stabilization Reserves Account (the Account) to be placed within the B&F for administrative purposes. The Account's balance will be used as a reserve when there is insufficient money in the Fund to cover the costs of providing health and other benefits plans established by the Board of Trustees for retired employees and their beneficiaries. The Account shall consist of required employer contributions,

monies transferred from the Fund and Legislative appropriations, and meet the requirements of the Government Accounting Standards Board (GASB) regarding employment benefits trusts.

The bill further establishes a Hawaii Employer-Union Health Benefits Trust Captive Insurance Company OPEB Reserve Fund to be placed within the B&F for administrative purposes. The OPEB Reserve Fund shall be used as a reserve against or to pay the Fund's future costs of providing OPEB to retirees and their beneficiaries when there are insufficient moneys to cover the current claims in the fund. The Board of Trustees shall determine the required contributions owed by each employer for Fiscal Years 2015-2016 and 2016-2017, and the OPEB Reserve Fund shall maintain a balance of $1.0 billion by the end of Fiscal Year 2016-2017.

The provisions under Part II of this bill, relating to definitions and types of plans and benefits, appear to generally follow existing provisions under Chapter 87A, HRS.

B&F is open to exploring various avenues to improve the cost effectiveness of delivering public employee and retiree health benefits and to address the State's unfunded OPEB liabilities. However, serious questions remain as to how Part II of this bill will accomplish reducing the State's unfunded liability under the requirements of GASB 43 and 45. Addressing the unfunded liability of the EUTF is necessary from two different perspectives. First, the liability needs to be addressed from a funding perspective where real dollars are necessary to actually pay for the actual costs as they are owed to pay for benefits each year. While a properly capitalized captive insurance fund could, arguably, meet that requirement, it is not certain that that objective could be satisfied based on the funding level proposed in

this bill. Secondly, the liability needs to be addressed from a financial accounting and actuarial basis on the parts of each of the governmental employers. The establishment of a captive insurance program will NOT meet this objective. The intended value of this bill is to seek to escape paying for the total cost of the liability by only funding a portion of the true cost of a long-term liability in a captive insurance fund. That approach will NOT result in reducing the accruing liability balance on any of the governmental employers' balance sheets or financial statements in the EUTF in accordance with GASB 43 or 45.

From an operational perspective, it is unclear if the captive insurance company will reduce current benefits costs. Being the largest employer group in the State, the EUTF has significant bargaining power in negotiating with Hawaii's health insurance carriers. All of the EUTF plans are group experience rated and very favorable interest and return of excess reserves provisions are in place in the EUTF contracts. There is always room for improvement, but it isn't readily apparent how a captive insurance company with all the additional insurance regulatory requirements could be more cost effective. Additional information and data will need to be collected in order to appropriately analyze the State's employee risk pool. The business question of whether to establish a captive insurance program versus the current common and traditional model of paying for third-party insurance is a business decision where organizations must weigh how much risk they are willing to assume, the likelihood of increased costs or savings, and quality of insurance. While this bill does not ensure that financial objectives can be achieved, we minimally recognize that it does advance the discussion of the future viability of the EUTF.

Again, Part II of this bill is unclear as to how a captive insurance company would directly impact the State's unfunded OPEB liability. The total State and county unfunded OPEB liability (as of July 1, 2012) is $16.3 billion, of which the State's liability is $13.6 billion. This liability would appear to remain because establishment of the captive insurance company does not affect how the liability is calculated under GASB and generally accepted actuarial procedures.

In regards to the bills requirement that public employer contributions towards the OPEB Reserve Fund is proposed to amount to $1.0 billion, it should be noted that the State will bear the lion's share of the funding responsibility. As of February 15, 2014, the State has 71,117 active and retiree plan subscribers out of the EUTF's total plan subscribers of 94,181, or a little over 75.5% of the total. Hence, the State's share of the $1.0 billion based on a proportional share would be approximately $755 million ($1.0 billion times 75.5%) by the end of FY 17. Again, the State would want to ensure that such a contribution could be attributed towards reducing its long-term OPEB liabilities and that such reduction would be reflected on its financial statements and audits in accordance with GASB requirements.

It should be pointed out that one of the premises of this bill, as stated in the introduction (page 7, lines 3 - 8), is that, ". . . a captive insurance company will address the necessary premium contributions for public employee health benefits because there would be a commitment from the board of directors, composed of members from the public employers and employees, to fund the employees' health benefits going forward." This is not accurate because the creation of a captive insurance company in and of itself does not assure any funding for health benefits going forward. Funding of active and retiree health benefits, as well as other types

of appropriations, are the sole purview of the Legislature and the respective county councils.

Finally, B&F has serious concerns with the bill's change to the current governance structure of the EUTF by adding an eleventh board member who represents the counties and mandating that this county representative must be present to constitute a quorum for any action taken by the board. This change to the board structure and requirement for a quorum give the appointed county representative the swing vote in all board matters. This would give the counties disproportionate representation and is not rational as to the governance responsibility of the EUTF board. Consider that the aggregate contribution of county beneficiaries in the EUTF of active and retiree subscribers amount to less than 25% of the total EUTF subscribers (and costs and OPEB liabilities). Giving any singular board member such grand authority is not proportionately rational. A better approach would be to examine the current governance structure of the board in the current statute.

The department has always been open to continued discussions on ways to reduce the overall cost trends of providing health insurance coverage for its 71,000+ active and retired employees. However, as this bill relates to the EUTF and a strategy to deal with its unfunded liability, I would recommend that the Legislature continue to demonstrate commitment to Act 268 (2013) as the strategy to truly address EUTF unfunded liability. At this point, there is no prudent way for the State to escape the responsibility of paying off its liability without committing a significant amount of funds. On that point we will continue to work with the Legislature on this issue to find whatever concept could help improve the current condition.

ROMY M. CACHOLA
Representative, House District 30

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HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL, ROOM 435
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813

April 3, 2014

Dear Colleagues:

The purpose of the Employer-Union Health Benefits Trust Fund (EUTF) is to fund the healthcare needs of State and County employees, retirees and their dependents (members). However, the ever increasing cost of health care and the resulting growth in health care premiums, coupled with decades of a 'pay as you go' approach has left the EUTF with an unfunded liability of about $18.2 billion.

Shore of raising taxes, laying off employees or reducing employee benefits; funding over $500 million a year for the next 30 years is nearly impossible due to competing needs to fund collective bargaining agreements, and new and existing programs. Establishing a State Captive Insurance Company within the EUTF is an innovative, more affordable, and less painful option to paying over $500 million annually.

Please see the attached document for more details.

Sincerely,

Romy M. Cachola

increase by $1 billion a year if something is not done immediately. How do we address

2) Reducing benefits to EUTF beneficiaries is an equally undesirable alternative

3) Establishing an EUTF Captive Insurance Company will address future liabilities

- Single payer, fully funded, self-insured health benefits for government employees, retirees, and dependents
- Fund a reserve to be capped at $1 billion
- No further funding required from State and Counties after $1 billion cap is reached
- Contract a reinsurance policy to protect from catastrophic incidents

Employer & employee/retiree premium contributions (over $800 million/yr.)

Operating Fund

Rate Stabilization Reserve Fund

- Funds added when excess contributions are collected
- Funds used when there is insufficient money to cover health benefits costs

State and County contributions

- Currently approximately $300 million in County funds
- State to fund $100 million and $117 million in the next 2 fiscal years
- Contributions cease when $1 Billion cap is met

OPEB Reserve Fund ($1 billion max.)

Other than in the case of a catastrophic incident, funds shall remain untouched in this reserve.

Advantages of Self-Insurance

- Coverage and limits to meet your needs
- Improved cash flow
- Investment income to fund losses and expenses
- Funding and underwriting flexibility
- Smaller deductibles for operating units
- Greater transparency and accountability over funding, operations and governance
- Reduced operating costs
- Enhanced coverage and capacity

Uses of future savings of over $500 million/yr.

- Funding the Employee Retirement System reserves
- Funding anticipated cost increases in collective bargaining
- Funding other needed programs
- Improving public school and UH System facilities
- Reducing high-interest debt
- Etc.