
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:

PART I

1
2 SECTION 1. The legislature finds that the Hawaii employer-
3 union health benefits trust fund offers health benefits to the
4 children of state and county employees and retirees. Due to the
5 current construction of chapter 87A, Hawaii Revised Statutes,
6 when an employee or retiree passes away, the employee's or
7 retiree's surviving spouse's children that are born after the
8 employee's or retiree's death are eligible to participate in
9 benefits plans offered by the fund. However, the legislature
10 finds that a child born or legally adopted after an employee's
11 or retiree's death who is not the natural child of the deceased
12 employee or retiree should not be eligible to participate in
13 fund benefits plans because the child is not the child of the
14 state or county employee or retiree.

15 The legislature further finds that the definition of
16 "dependent-beneficiary" should be amended to be consistent with



1 the federal Patient Protection and Affordable Care Act of 2010,
2 which prohibits restricting health insurance coverage to only
3 unmarried dependents and denying health insurance coverage to
4 married dependents.

5 The purposes of this part are to:

- 6 (1) Amend the definition of "dependent-beneficiary"
7 contained in chapter 87A, Hawaii Revised Statutes, to
8 clarify eligibility of children for participation in
9 fund benefit plans;
- 10 (2) Bring the definition of "dependent-beneficiary" into
11 conformance with the federal Patient Protection and
12 Affordable Care Act of 2010; and
- 13 (3) Make housekeeping amendments to sections 87A-34 and
14 87A-36, Hawaii Revised Statutes.

15 SECTION 2. Section 87A-1, Hawaii Revised Statutes, is
16 amended by amending the definition of "dependent-beneficiary" to
17 read as follows:

18 "Dependent-beneficiary" means an employee-beneficiary's:

- 19 (1) Spouse;
- 20 (2) [~~Unmarried child~~] Child deemed eligible by the board,
21 including a legally adopted child, stepchild, foster



1 child, or recognized natural child who lives with the
 2 employee-beneficiary[+], but excluding a child born or
 3 legally adopted more than ten months after the death
 4 of an employee killed in the performance of duty, born
 5 or legally adopted more than ten months after the
 6 death of an active employee who was eligible to retire
 7 on the date of death, or born or legally adopted more
 8 than ten months after the date of death of a retired
 9 employee-beneficiary; and

10 (3) Unmarried child regardless of age who is incapable of
 11 self-support because of a mental or physical
 12 incapacity, which existed prior to the unmarried
 13 child's reaching the age of nineteen years."

14 SECTION 3. Section 87A-34, Hawaii Revised Statutes, is
 15 amended by amending subsection (a) to read as follows:

16 "(a) This section shall apply to state and county
 17 contributions to the fund for employees specified in paragraph
 18 [~~(1)(E)~~] (1)(D) of the definition of "employee" in section 87A-1
 19 who:

20 (1) Were hired on or before June 30, 1996; and



1 (2) Retired after June 30, 1984, with fewer than ten years
2 of credited service, excluding sick leave."

3 SECTION 4. Section 87A-36, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The State, through the department of budget and
6 finance, and the counties, through their respective departments
7 of finance, shall pay to the fund:

8 (1) For retired employees based on the self plan with ten
9 or more years but fewer than fifteen years of service,
10 a monthly contribution equal to one-half of the base
11 medicare or non-medicare monthly contribution set
12 forth under section 87A-33(b);

13 (2) For retired employees based on the self plan with at
14 least fifteen but fewer than twenty-five years of
15 service, a monthly contribution equal to seventy-five
16 per cent of the base medicare or non-medicare monthly
17 contribution set forth under section 87A-33(b);

18 (3) For retired employees based on the self plan with
19 twenty-five or more years of service, a monthly
20 contribution equal to one-hundred per cent of the base



1 medicare or non-medicare monthly contribution set
2 forth under section 87A-33(b); and
3 (4) One-half of the monthly contributions for the
4 employee-beneficiary or employee-beneficiary with
5 dependent-beneficiaries upon the death of the
6 employee, as defined in paragraph [~~(1)(B)~~] (1)(D) of
7 the definition of "employee" in section 87A-1.

8 If both husband and wife are employee-beneficiaries, the
9 total contribution by the State or county shall not exceed the
10 monthly contribution for two supplemental medicare self or non-
11 medicare self plans, as appropriate."

12 PART II

13 SECTION 5. The purpose of this part is to amend the
14 management and administrative structure of the Hawaii employer-
15 union health benefits trust fund.

16 SECTION 6. Chapter 87A, Hawaii Revised Statutes, is
17 amended by adding three new sections to be appropriately
18 designated and to read as follows:

19 "§87A- Selection of benefit plan carriers, third-party
20 administrators, consultants, actuaries, auditors, or
21 administrators. Procurement of carriers, third-party



1 administrators for any benefits plan, consultants, actuaries,
2 auditors, or administrators shall be exempt from chapter 103D.

3 §87A- Fiduciary duties; prohibited transactions. (a) A
4 fiduciary of the trust shall comply, with respect to a plan,
5 with all fiduciary duties imposed on fiduciaries under title 29
6 United States Code sections 1001-1191, as amended, and related
7 regulations.

8 (b) All fiduciaries of the trust shall discharge their
9 duties with respect to a plan solely in the interest of the
10 participants and beneficiaries and:

11 (1) For the exclusive purpose of:

12 (A) Providing benefits to participants and their
13 beneficiaries; and

14 (B) Defraying reasonable expenses of administering
15 the plan;

16 (2) With the care, skill, prudence, and diligence under
17 the circumstances then prevailing that a prudent
18 person acting in a similar capacity and familiar with
19 those matters would use in the conduct of an
20 enterprise of a similar character and with like aims;



1 (3) By diversifying the investments of the plan so as to
2 minimize the risk of large losses unless, under the
3 circumstances, it is clearly prudent not to do so; and

4 (4) In accordance with the documents and instruments
5 governing the plan insofar as such documents and
6 instruments are consistent with this chapter.

7 (c) In addition to any liability that a fiduciary may have
8 under this chapter, a fiduciary with respect to a plan shall be
9 liable for a breach of fiduciary responsibility of another
10 fiduciary with respect to the same plan in the following
11 circumstances:

12 (1) If the fiduciary participates knowingly in, or
13 knowingly undertakes to conceal, an act of omission of
14 the other fiduciary, knowing that act or omission is a
15 breach;

16 (2) If, by the fiduciary's failure to comply with
17 subsection (a) or (b), the fiduciary has enabled such
18 other fiduciary to commit a breach; or

19 (3) If the fiduciary has knowledge of the breach by such
20 other fiduciary, unless the fiduciary makes reasonable
21 efforts under the circumstances to remedy the breach.



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

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

8 (1) Sale or exchange, or leasing, of any property between
9 the plan and a party in interest;

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

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

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

16 (e) A fiduciary shall not:

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

19 (2) In the fiduciary's individual capacity or in any other
20 capacity act in any transaction involving the plan on
21 behalf of a party, or represent a party, whose



1 interests are adverse to the interests of the plan or
 2 the interests of its participants or beneficiaries; or
 3 (3) Receive any consideration for the fiduciary's own
 4 personal account from any party dealing with the plan
 5 in connection with a transaction involving the assets
 6 of the plan.

7 §87A- Liability for breach of fiduciary duty. (a) Any
 8 person who is a fiduciary with respect to a plan and who
 9 breaches any of the responsibilities, obligations, or duties
 10 imposed on fiduciaries by this chapter shall be personally
 11 liable to make good to the plan any losses to the plan resulting
 12 from each breach and to restore to the plan any profits of the
 13 fiduciary that have been made through the use of assets of the
 14 plan by the fiduciary, and shall be subject to any other
 15 equitable and remedial relief as the court may deem appropriate,
 16 including removal of the fiduciary.

17 (b) Any provision in any agreement or instrument that
 18 purports to relieve a fiduciary of responsibility or liability
 19 for any responsibility, obligation, or duty under this chapter
 20 shall be void as against public policy. However, nothing in
 21 this section shall preclude:



- 1 (1) A plan from purchasing insurance for its fiduciaries
2 or for itself to cover liability or losses occurring
3 by reason of the act or omission of a fiduciary in the
4 case of a breach of a fiduciary obligation by the
5 fiduciary, if the insurance permits recourse by the
6 insurer against the fiduciary in the case of a breach
7 of fiduciary obligation by the fiduciary;
- 8 (2) A fiduciary from purchasing insurance to cover
9 liability under this chapter from and for the
10 fiduciary's own account; or
- 11 (3) An employee organization from purchasing insurance to
12 cover potential liability of one or more persons who
13 serve in a fiduciary capacity with regard to an
14 employee welfare benefit plan."

15 SECTION 7. Section 28-8.3, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) No department of the State other than the attorney
18 general may employ or retain any attorney, by contract or
19 otherwise, for the purpose of representing the State or the
20 department in any litigation, rendering legal counsel to the
21 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted
20 from time to time;



- 1 (5) By the real estate commission for any action involving
- 2 the real estate recovery fund;
- 3 (6) By the contractors license board for any action
- 4 involving the contractors recovery fund;
- 5 (7) By the office of Hawaiian affairs;
- 6 (8) By the department of commerce and consumer affairs for
- 7 the enforcement of violations of chapters 480 and
- 8 485A;
- 9 (9) As grand jury counsel;
- 10 (10) By the Hawaii health systems corporation, or its
- 11 regional system boards, or any of their facilities;
- 12 (11) By the auditor;
- 13 (12) By the office of ombudsman;
- 14 (13) By the insurance division;
- 15 (14) By the University of Hawaii;
- 16 (15) By the Kahoolawe island reserve commission;
- 17 (16) By the division of consumer advocacy;
- 18 (17) By the office of elections;
- 19 (18) By the campaign spending commission;
- 20 (19) By the Hawaii tourism authority, as provided in
- 21 section 201B-2.5;



- 1 (20) By the division of financial institutions for any
2 action involving the mortgage loan recovery fund;
- 3 (21) By the office of information practices; [~~or~~]
- 4 (22) By the Hawaii employer-union health benefits trust
5 fund, as provided in section 87A-9; or
- 6 [~~(22)~~] (23) By a department, if the attorney general, for
7 reasons deemed by the attorney general to be good and
8 sufficient, declines to employ or retain an attorney
9 for a department; provided that the governor waives
10 the provision of this section."

11 SECTION 8. Section 87A-5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§87A-5 Composition of board. (a) The board of trustees
14 of the employer-union health benefits trust fund shall consist
15 of [~~ten~~] trustees appointed [~~by the governor~~] in accordance with
16 the following procedure:

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

20 [~~(A)~~] ~~Three trustees shall be appointed from a list of~~
21 ~~two nominees per trustee selected by each of the~~



1 ~~three exclusive representative organizations that~~
2 ~~have the largest number of employee~~
3 ~~beneficiaries;~~

4 ~~(B) One trustee shall be appointed from a list of two~~
5 ~~nominees selected by mutual agreement of the~~
6 ~~remaining exclusive employee representative~~
7 ~~organizations; and~~

8 ~~(C) One trustee representing retirees shall be~~
9 ~~appointed from a list of two nominees selected by~~
10 ~~mutual agreement of all eligible exclusive~~
11 ~~representatives; and~~

12 ~~(2) Five trustees to represent public employers.]~~

13 (A) One trustee to be appointed by the exclusive
14 bargaining representative for bargaining units 2,
15 3, 4, 6, 8, 9 and 13;

16 (B) One trustee to be appointed by the exclusive
17 bargaining representative for bargaining unit 5;

18 (C) One trustee to be appointed by the exclusive
19 bargaining representative for bargaining unit 7;



- 1 (D) One trustee to be appointed by the exclusive
- 2 bargaining representative for bargaining units 1
- 3 and 10;
- 4 (E) One trustee to be appointed by the exclusive
- 5 bargaining representative for bargaining unit 11;
- 6 and
- 7 (F) One trustee to be appointed by the exclusive
- 8 bargaining representative for bargaining unit 12;
- 9 provided that all trustees shall serve at the pleasure
- 10 of the appointing exclusive bargaining representative;
- 11 and
- 12 (2) Six trustees, five to represent public employers and
- 13 one to represent retiree beneficiaries, as follows:
- 14 (A) One trustee shall be appointed by the governor to
- 15 represent the State of Hawaii administration;
- 16 (B) One trustee shall be appointed by the governor
- 17 from a nominee submitted by the University of
- 18 Hawaii board of regents;
- 19 (C) One trustee shall be appointed by the governor
- 20 from a nominee submitted by the board of
- 21 education;

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

3 (E) One trustee shall be appointed by at least two
4 county mayors from the county of Hawaii, Maui, or
5 Kauai; and

6 (F) One trustee shall be appointed by the governor to
7 represent retiree beneficiaries;
8 provided that all trustees shall serve at the pleasure
9 of the appointing authority.

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

20 (c) Section 26-34 shall not apply to board member
21 selection and terms. Notwithstanding any other provision of



1 this section, no exclusive representative of a bargaining unit
2 that sponsors or participates in a voluntary employee
3 beneficiary association shall be eligible to select nominees or
4 to be represented by a trustee on the board.

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

7 SECTION 9. Section 87A-6, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§87A-6 Term of a trustee; vacancy. [~~The term of office~~
10 ~~of each trustee shall be four years; provided that a trustee may~~
11 ~~be reappointed for one additional consecutive four year term.~~

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



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

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

21 The term of office of each trustee shall be at the pleasure of



1 the nominating or appointing authority. In the event the
 2 appointing authority fails to appoint an employer trustee to
 3 fill a vacant position, the chief justice of the supreme court
 4 shall make the appointment upon petition by two or more
 5 employee-beneficiary trustees. In the event the appointing
 6 authority fails to appoint an employee-beneficiary trustee to
 7 fill a vacant position, the chief justice of the supreme court
 8 shall make the appointment upon petition by two or more employer
 9 trustees."

10 SECTION 10. Section 87A-9, Hawaii Revised Statutes, is
 11 amended to read as follows:

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

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



1 " ~~[f]~~ §87A-11 ~~[f]~~ Quorum; board actions; voting. ~~[(a) Six~~
2 ~~trustees, three of whom represent the public employer and three~~
3 ~~of whom represent employee beneficiaries,] Eight trustees shall~~
4 constitute a quorum for the transaction of business.

5 ~~[(b) Trustees representing the public employers shall~~
6 ~~collectively have one vote. Trustees representing the employee-~~
7 ~~beneficiaries shall collectively have one vote.~~

8 ~~For any vote of the trustees representing the public~~
9 ~~employers to be valid, three of these trustees must concur to~~
10 ~~cast such a vote. In the absence of such concurrence, the~~
11 ~~trustees representing the public employers shall be deemed to~~
12 ~~have abstained from voting.~~

13 ~~For any vote of the trustees representing the employee-~~
14 ~~beneficiaries to be valid, three of these trustees must concur~~
15 ~~to cast such a vote. In the absence of such concurrence, the~~
16 ~~trustees representing the employee beneficiaries shall be deemed~~
17 ~~to have abstained from voting.~~

18 ~~An abstention shall not be counted as either a vote in~~
19 ~~favor or against a matter before the board.~~

20 ~~(c) Any action taken by the board shall be by the~~
21 ~~concurrence of at least two votes. In the event of a tie vote~~



1 ~~on any motion, the motion shall fail. Upon the concurrence of~~
2 ~~six trustees, the board shall participate in dispute~~
3 ~~resolution.] "~~

4 SECTION 12. Section 87A-15, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~+~~§87A-15[~~+~~] Administration of the fund. The board
7 shall administer and carry out the purpose of the fund. Health
8 and other benefit plans shall be provided [~~at a cost affordable~~
9 ~~to both the public employers and the public employees.] as~~
10 follows:

- 11 (1) For collective bargaining units based on the
- 12 collectively bargained contribution from the employer
- 13 and employees;
- 14 (2) For retirees within the appropriation adopted by the
- 15 legislature and the respective counties; and
- 16 (3) For all other eligible beneficiaries based on the
- 17 contribution from the employer and employees."

18 SECTION 13. Section 87A-30, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§87A-30 Hawaii employer-union health benefits trust fund;
21 establishment. There is established outside the state treasury,



1 a trust fund to be known as the "Hawaii Employer-Union Health
2 Benefits Trust Fund". The fund shall consist of contributions,
3 interest, income, dividends, refunds, rate credits, and other
4 returns. It is hereby declared that any and all sums
5 contributed or paid from any source to the fund created by this
6 part, and all assets of the fund including any and all interest
7 and earnings on the same, are and shall be held in trust by the
8 board for the exclusive use and benefit of the employee-
9 beneficiaries and dependent-beneficiaries and shall not be
10 subject to appropriation for any other purpose whatsoever. The
11 fund shall be under the control of the board of trustees and
12 placed under the [~~department of budget and finance~~] office of
13 collective bargaining for administrative purposes."

14 PART III

15 SECTION 14. This Act does not affect the rights that
16 accrued before the effective date of this Act.

17 SECTION 15. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 16. This Act shall take effect on July 1, 2016;
20 provided that part II of this measure:

21 (1) Shall take effect on July 1, 2091; and



1 (2) Shall be repealed on June 30, 2017, and sections 28-
2 8.3, 87A-5, 87A-6, 87A-9, 87A-11, 87A-15, and 87A-30,
3 Hawaii Revised Statutes, shall be reenacted in the
4 form in which they read on the day prior to the
5 effective date set forth in paragraph (1).



Report Title:

Hawaii Employer-Union Health Benefits Trust Fund (EUTF);
Dependent-beneficiary

Description:

Amends the definition of "dependent-beneficiary" as used in chapter 87A, HRS. Exempts procurement of certain EUTF services from the Procurement Code. Specifies the fiduciary duties of EUTF Board of Trustees. Amends the composition, appointing authorities, vacancy-filling procedure, and quorum requirements of the EUTF Board. Authorizes the establishment of sub-boards of the EUTF Board for the negotiation of contributions that apply only to particular bargaining units. Authorizes the EUTF Board to appoint attorneys independent of the Attorney General. Amends the administration of EUTF moneys and transfers control of EUTF to the EUTF Board and placed under the Office of Collective Bargaining for administrative purposes. (SB2839 HD1)

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