DAVID Y. IGE
GOVERNOR

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
235 S. BERETANIA STREET, SUITE 1201
HONOLULU, HAWAII 96813-2437

February 29, 2016

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Tuesday, March 1, 2016

1:00 p.m., Conference Room 308

BY

JAMES K. NISHIMOTO
OFFICE OF COLLECTIVE BARGAINING, CHIEF NEGOTIATOR

House Bill No. 2015, H.D. 1
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

CHAIRPERSON LUKE, VICE CHAIR NISHIMOTO, AND MEMBERS OF THE HOUSE COMMITTEE ON FINANCE:

H.B. 2015 HD 1 proposes amendments to Chapter 87A, Hawai‘i Revised Statutes, which governs the Hawai‘i Employer-Union Health Benefits Trust Fund (EUTF). The Office of Collective Bargaining (OCB) has **concerns** regarding certain provisions of the bill.

While the proposed modifications to the composition of the EUTF Board and the creation of sub-boards offers the potential for enhancing the ability to tailor members' benefit programs along the lines of the various bargaining units, the same modifications would create greater complexities with regard to benefit program design and administration. Additionally, it would seem that such modifications may diminish the benefits derived from the economies of scale arising from larger group benefit packages and group rates.

The proposed changes may also have the potential to serve as a means of addressing the concerns of active employees included in a bargaining unit; however, there are other categories of employees, e.g., retirees, excluded employees, members of the legislature, etc., whose benefits and funding would need to be addressed if there are any changes in EUTF programs, services and administrative operations. Should the health benefits become negotiable under Chapter 89, the benefits for those employees excluded from collective bargaining must be taken into consideration.

Finally, section 8 of H.B. 2015 HD1 proposes transferring the EUTF from the Department of Budget and Finance (BUF) to OCB for administrative purposes. Given the fact that BUF has been doing an outstanding job providing support to the EUTF and the Employees' Retirement System, it is unclear as to the advantage gained by transferring responsibility for the EUTF to OCB. Furthermore, OCB lacks the financial background and expertise to effectively provide the necessary administrative support to EUTF.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

SARAH ALLEN
ADMINISTRATOR

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

March 1, 2016, 1:00 P.M.

HB2015 HD1

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Chair Luke, Vice-Chair Nishimoto, and members of the committee, thank you for the opportunity to submit testimony on HB 2015 HD1. The State Procurement Office (SPO) takes no position regarding the intent of the bill but opposes the exemption language on page 1, SECTION 1, lines 4 through 8 and suggests the following revision to the bill as set forth below.

> "§87A - Selection of benefit plan carriers, third-party administrators, consultants, actuaries, auditors, or administrators. Procurement of carriers, third-party administrators for any benefits plan, consultants, actuaries, auditors, or administrators shall be ~~exempt from~~ in accordance with chapter 103D."

The Hawaii Public Procurement Code (code) is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that specific requirements of one public entity should be exempt from compliance with HRS chapter 103D conveys a sense of disproportionate equality in the law's application. This exemption is particularly troubling since the sheer number of exempted requirements in this measure would result in nearly all requirements associated EUTF benefit plans being beyond the requirements of the procurement code.

Exemptions to the code mean that all procurements made with taxpayer monies for not only selection of benefit plan carriers but also any third-party administrators, consultant, actuaries, auditors and administrators of those plans, will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis or post-award contract management. As such, EUTF can choose whether to compete any of these procurements or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means EUTF will not be required to adhere to the code's procurement integrity laws for these transactions which could lead to an unequal opportunity to compete and an un-level playing field for contractors and consultants.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When procurement transactions of public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding certain procurement transactions from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and more costly for the state and vendors.

Thank you.

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DIRECTOR

GARY T. KUROKAWA
DEPUTY DIRECTOR

March 1, 2016

The Honorable Sylvia Luke, Chair
and Members of the Committee
on Finance
The House of Representatives
State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Members of the Committee:

Subject: House Bill 2015, H.D.1
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

The City and County of Honolulu, Department of Budget and Fiscal Services and Department of Human Resources **offers comments on House Bill 2015, H.D.1,** which seeks to amend various sections of the Employer-Union Trust Fund (EUTF) law.

The City is supportive of the provisions of this bill that change the composition of the EUTF Board to include a City representative and a representative for the neighbor island counties. The county governments and our employees are affected by the decisions of the Board and we have at various times sought to be part of the process so we are pleased with the inclusion of county representation in this measure.

Other provisions of this bill are less clear to the City and, accordingly, we seek a better understanding of these matters as they may have significant cost impacts. One of these issues is how employer cost concerns will be addressed. We note that language contained in the current law requiring the Board to provide benefits that are affordable to both the employees and employers is being deleted under the bill. As health care costs are a significant concern to both employers and employees, we want to ensure the concept of affordability is preserved.

We also have concerns about how Section 7 of the bill will be implemented and whether timing issues may arise. This section requires the Board to provide health and other plans based on the collectively bargained employer and employee contributions (for employees included in bargaining units) and on the appropriations adopted by the Legislature and the counties for the retirees. In addition, we have concerns about possible fragmentation of the group for which plans are purchased. To the extent that fragmentation occurs, we are concerned that it may result in increased administrative and plan costs due to the expansion in the number of plans being administered and the loss of economies of scale.

Thank you for the opportunity to testify.

Sincerely,

Nelson H. Koyanagi, Jr.
Director
Department of Budget and Fiscal Services

for Carolee C. Kubo
Director
Department of Human Resources

The House Committee on Finance
Tuesday, March 1, 2016
1:00 p.m., Room 308

RE: HB 2015, HD1, Relating to the Hawaii Employer-Union Health Benefits Trust Fund

Attention: Chair Sylvia Luke, Vice Chair Scott Nishimoto and Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support HB 2015**, **HD1**, that provides pertinent exemptions needed in Chapter 103-D Hawaii Revised Statutes Procurement Code, restructures the composition of the EUTF Board, retaining legal counsel other than the AG's office and health plans based on collective bargaining contributions from both employers and employees.

UHPA supports these changes as a step in the right direction. These changes include: greater flexibility in response time to problems, a more representative Board serving its membership, an independent legal counsel, and appropriate contributions.

UHPA urges the committee to **support HB 2015, HD1**.

Respectfully submitted,

Kristeen Hanselman

Kristeen Hanselman
Executive Director

University of Hawaii
Professional Assembly

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EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2015, H.D. 1

March 1, 2016
1:00 p.m.

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

House Bill No. 2015, H.D. 1, makes the following amendments to Chapter 87A, Hawaii Revised Statutes (HRS), which governs the Hawaii Employer-Union Health Benefits Trust Fund (EUTF):

- Exempts the EUTF from the procurement code in procuring benefit plan carriers, consultants, auditors and an administrator.
- Adds new requirements on fiduciary duties.
- Allows the EUTF to retain an attorney who is independent of the Department of the Attorney General (AG) as legal advisor.
- Increases the members of the EUTF Board of Trustees from 10 to 12 and changes the EUTF Board membership and terms.
- Allows the creation of sub-boards should a bargaining unit negotiate a specific contribution to apply only to that bargaining unit.
- Requires active employee benefit plans to be based on collectively bargained contributions and retiree benefit plans to be based on legislative appropriations.

- Transfers the EUTF from the Department of Budget and Finance to the Office of Collective Bargaining (OCB).

We are opposed to this bill. First, the department has serious concerns with the modifications to the composition of the EUTF Board. 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. Allowing the Mayor of the City and County of Honolulu to appoint an employer board member and the mayors of the County of Hawaii, Kauai and Maui to appoint another employer board member is not reflective of the EUTF membership. Currently, State employees make up approximately 77% of the EUTF members (including the Department of Education (DOE) and the University of Hawaii (UH)). While many of the State employees work for DOE and UH, these costs are budgeted centrally. 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 part of the employee group (as is currently the case), which represents beneficiaries, for voting.

Second, we believe the creation of the EUTF Board sub-boards will create administrative complexities and inefficiencies and result in substantially higher rates for employees who are not members of sub-groups with favorable demographics. We believe a uniform benefit package will promote fairness and consistency among employees in the workplace.

Third, we strongly believe that the AG is better suited to ensure that long-term State interests are protected rather than an outside attorney. The staff of the AG can bring a broad background of familiarity with the EUTF and other State statutes at a lower cost than an outside legal firm. Cost of an outside attorney will have to be borne by the public employers and plan participants.

Fourth, requiring benefit plans to be based on collectively 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 could 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.

Fifth, given the fiscal complexities involved and the size of the EUTF expenditures in relation to the total State budget, transferring the EUTF to OCB may not be in the best interest of the State or the EUTF at this time. The administrative support provided to the EUTF includes a financial background that may be better situated in the current Budget and Finance structure. It should be noted that OCB currently has no administrative support staff.

Finally, the new provisions on fiduciary duties specify that the trustees shall discharge their responsibilities solely in the interest of participants and beneficiaries, but the trustees also have a responsibility to manage costs to the public at large.

We are not opposed to exempting the EUTF from Chapter 103D, HRS.

HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

LATE

The Twenty-Eighth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association
March 1, 2016

H.B. 2015, H.D. 1 – RELATING TO THE HAWAII EMPLOYER UNION HEALTH BENEFITS TRUST FUND

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2015, H.D. 1 which makes fundamental changes to the structure and operating principles of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF), with a proposed technical amendment to amend Section 3 of the bill by adding the newly created Bargaining Unit 14 to Ch. 87A-5(a)(1)(A). There is widespread agreement that the EUTF is not operating as originally intended and has become a serious concern for both employees and employers.

The current system needs fundamental change. H.B. 2015, H.D. 1, in conjunction with H.B. 2012, which would permit the negotiation of health care contributions and benefits, contains several significant reforms that will eliminate many of the problems that currently make the EUTF ineffective and costly for both the employee and the employer. Both bills offer constructive vehicles to advance discussion of this important matter.

Benefits are an integral part of employee compensation and should be negotiated between unions and employers, as is the practice in the private sector. Other reform efforts can be achieved through negotiations and must include effective mechanisms for controlling costs, encouraging preventive care, implementing wellness programs, requiring information on provider performance and enhancing efficiency. H.B. 2015, H.D. 1 contains the following reforms to the EUTF:

1. It changes the method of selecting benefit plan carriers, third party administrators, consultants and actuaries by exempting the process from Chapter 103-D, HRS. This will provide the necessary flexibility to respond to problems faster.

2. Board members must act as fiduciaries of the trust. As fiduciaries, board members are required to make decisions based solely on the interest of the participants and beneficiaries. Board members who willfully violate

their fiduciary responsibilities may be liable for any loss suffered by the plan, increasing the accountability of the trustees.

3. The composition of the board and the method of selecting them are also changed. Six trustees representing employee-beneficiaries will be appointed by the various exclusive representatives instead of the Governor. The six trustees representing the employer will be better distributed among the different jurisdictions, with one trustee appointed by the Governor representing retirees. All trustees serve at the pleasure of their appointing authority.

4. It allows individual unions and employers to establish a sub-trust and sub-board of trustees to administer that bargaining unit's contributions and benefits if they negotiate a specific contribution to apply only to that unit.

5. The board can appoint or retain legal counsel who is independent of the Attorney General.

6. Health Plans shall be provided based on the collectively bargained contributions from both the employers and employees, not "at a cost affordable to both the public employers and employees."

7. For administrative purposes, the fund controlled by the board is placed under the Office of Collective Bargaining, not the Department of Budget and Finance.

We appreciate the opportunity to testify in support of H.B. 2015, H.D. 1 as the measure will make much needed changes to the EUTF. We respectfully request the Committee also give favorable consideration to passing H.B. 2012, which makes the appropriate changes to Ch. 89 to allow for the negotiation of health benefits.

Respectfully submitted,

Randy Perreira
Executive Director