



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

S.B. NO. 2434, RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 5, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Kyle K. Chang, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General opposes sections 2 and 5 of this bill.

The purposes of sections 2 and 5 of this bill are to allow the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) to hire its own attorneys without the approval or participation of the Attorney General, and to require such attorneys to have experience working with the federal Employee Retirement and Income Security Act (ERISA).

As a general matter, state agencies should be advised by deputy attorneys general. By locating the attorneys for state agencies within a single department, the Department of the Attorney General is able to provide consistent advice and a wide range of experience and expertise to those agencies. Private attorneys retained by EUTF are unlikely to acquire the necessary breadth of knowledge and experience that already exists in the Department of the Attorney General. Additionally, because state agencies are regulated by a variety of laws, such as the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act, that are not applicable in the private sector, the Department of the Attorney General has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense. Finally, deputy attorneys general, being separate and apart from the state agencies that they represent, are insulated from political issues that may arise within a state agency. This insulation permits the Department of the Attorney General to provide objective and high-quality legal counsel.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies that may have conflicting interests. This distinctive feature is something that private attorneys are not able to do under the Hawai‘i Rules of Professional Conduct, the rules governing lawyers. In State v. Klattenhoff, 71 Haw. 598, 801 P.2d 548 (1990), the Hawai‘i Supreme Court ruled that the Department of the Attorney General may assign deputies to represent agencies that have competing interests as long as it erects appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients. The Department of the Attorney General has done this in past cases to ensure that all client agencies are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to EUTF.

Notwithstanding the prohibition against employing or retaining an attorney, section 28-8.3(a)(22), Hawaii Revised Statutes, permits the hiring of an attorney “[b]y a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for the department; provided that the governor waives the provision of this section.”

Lastly, the health plans administered by EUTF are exempt from ERISA. As such, there is no need for an attorney assigned to advise EUTF to have extensive experience with and knowledge of ERISA.

For the foregoing reasons, we respectfully request that sections 2 and 5 of this bill be stricken.

We urge this Committee to pass this bill only if these amendments are made.

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON JUDICIARY AND LABOR
ON
SENATE BILL NO. 2434

February 5, 2016

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Senate Bill No. 2434 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 Department of Human Resources Development (DHRD).

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 DHRD 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.

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.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

PAULA A. YOUNGLING
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
JUDICIARY AND LABOR

FEBRUARY 5, 2016, 9:00 A.M.

SENATE BILL 2434

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the committee, thank you for the opportunity to submit testimony on SB 2434. The SPO opposes the exemption language on page 1, SECTION 1, lines 4 through 8 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 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.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 4, 2016

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Hearing on Friday, February 5, 2016
9:00 a.m., Conference Room 016

BY

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 2434
Relating to the Hawaii Employer-Union Health Benefits Trust Fund

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON GILBERT S.C. KEITH-AGARAN, VICE CHAIR MAILE S.L. SHIMABUKURO AND MEMBERS OF THE COMMITTEE:

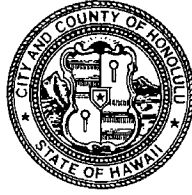
The Department of Human Resources Development (“DHRD”) has **concerns** regarding section 8 of this bill, which proposes transferring the EUTF from the Department of Budget and Finance to DHRD for administrative purposes. Given the fact that Department of Budget and Finance (BUF) has been doing an outstanding job providing support to the Employee Union Trust Fund and the Employees’ Retirement System, it is unclear as to the advantage gained by transferring responsibility for the EUTF to DHRD.

Furthermore, DHRD does not have the expertise and resources necessary to provide effective administrative oversight of the EUTF.

Thank you for the opportunity to testify.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

GARY T. KUROKAWA
DEPUTY DIRECTOR

February 5, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee
on Judiciary and Labor
The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

SUBJECT: Senate Bill 2434,
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 Senate Bill 2434**, which seeks to amend various sections of the Employer-Union Trust Fund (EUTF) law.

The City is supportive 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 recognize that section 7 of the bill may be intended to address the cost concerns by requiring the Board to provide health and other plans based on the

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee
on Judiciary and Labor
February 5, 2016
Page 2

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. However, we have concerns about how this section will be implemented and whether timing issues may arise. We also 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



Carolee C. Kubo
Director
Department of Human Resources



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Eighth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association

February 5, 2016

S.B. 2434 – 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 S.B. 2434, 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. S.B. 2434, in conjunction with S.B. 2435, 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.

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. S.B. 2434 contains the following reforms to the EUTF:

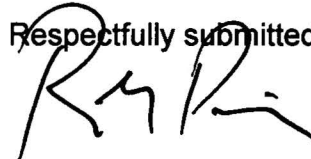
1. It changes the method of selecting benefit plan carriers, third party administrators, consultants and actuaries by exempting the process from Chapter 103-D, HRS. This will provide the necessary flexibility to respond to problems faster.
2. Board members must act as fiduciaries of the trust. As fiduciaries, 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 Department of Human Resources Development, not the Department of Budget and Finance.

We appreciate the opportunity to testify in support of S.B. 2434, as the measure will make much needed changes to the EUTF. We respectfully request the Committee also give favorable consideration to passing S.B. 2435, which makes the appropriate changes to Ch. 89 to allow for the negotiation of health benefits.

Respectfully submitted,



Randy Perreira
Executive Director



UNIVERSITY OF HAWAII
PROFESSIONAL ASSEMBLY

The Senate Committee on Judiciary and Labor
Friday, February 5, 2016
9:30 a.m.
Room 016

RE: SB2434, Relating to The Hawaii Employer-Union Health Benefits Trust Fund

Attention: Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro and Members of the Committee

The University of Hawaii Professional Assembly (UHPA) urges the committee to **support SB2434**, 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. 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 SB2434**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kristeen Hanselman'.

Kristeen Hanselman
Executive Director