



DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

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DEREK M. MIZUNO

ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

TESTIMONY BY DEREK MIZUNO
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. 2839 S.D.2 H.D.1

March 30, 2016, 2:00 p.m.

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The EUTF Board of Trustees strongly supports Part I of this bill which represents the original Administration bill. The EUTF Board does not have a position on Part II of this bill. This testimony speaks to just Part I of this bill. Currently when an employee passes away while actively employed and eligible to retire at the time of his/her death, or when the employee was killed in the performance of duty, the EUTF covers the surviving spouse and the surviving spouse's dependent children. Similarly, when a retiree passes away, EUTF covers the surviving spouse and the surviving spouse's children. In most cases, surviving spouses pay \$-0- for their coverages as their premiums are paid entirely by the State or counties. If the surviving spouse remarries, however, they are no longer eligible for coverage.

EUTF has identified a few situations in which retiree surviving spouses added dependents to their plans more than 10 months after the death of the retiree, without

EUTF's Mission: We care for the health and well being of our beneficiaries by striving to provide quality benefit plans that are affordable, reliable, and meet their changing needs. We provide service that is excellent, courteous, compassionate, and informative.

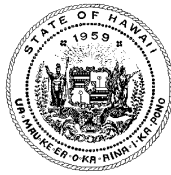
getting married or entering into a partnership. The estimated cost to the employer is \$225,000 based on coverage of the dependents up to age 19 (if the dependent was a full-time student coverage would be up to age 24 adding another \$60,000).

Currently, the premium for self coverage of a non-Medicare retiree enrolled in the EUTF PPO medical, drug, dental and vision plans is approximately \$710 per month, whereas the premium for two-party coverage is approximately \$1,383 per month. That's a difference of \$673 per month or \$8,076 per year that the State or counties are paying which we believe the Legislature never contemplated or intended to cover. This additional cost is borne principally by the State and counties as the vast majority of retirees still receive 100% of their premiums paid by the State and counties. This additional expense also adds to the overall liability of the State to meet its other post-employment benefit (OPEB) liability.

The other change this bill will accomplish is to remove the requirement that a "child" must be unmarried since the Affordable Care Act requires coverage of children up to age 26 regardless of whether or not they are married for our active employee plans.

Thank you for the opportunity to testify.

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

March 29, 2016

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Wednesday, March 30, 2016
2:00 p.m., Conference Room 308

By

JAMES K. NISHIMOTO
CHIEF NEGOTIATOR

**Senate Bill No. 2839, S.D. 2, H.D. 1
Relating to the Hawaii Employer-Union Health Benefits Trust Fund**

TO CHAIRPERSON LUKE, VICE-CHAIR NISHIMOTO AND MEMBERS OF THE
COMMITTEE:

S.B. 2839, S.D. 2, H.D. 1 proposes amendments to Chapter 87A, Hawaii Revised Statutes, which governs the Hawaii Employer-Union Health Benefits Trust Fund (EUTF). The Office of Collective Bargaining (OCB) has concerns regarding certain provisions in Part II 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.

Further, with respect to the provision:

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

Chapter 89-9, Scope of Negotiations, the scope of negotiations is limited to “...the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund to the extent allowed in subsection...” whereas the above proposed language may conflict with Chapter 89-9 as the proposed language provides that “The **benefits for the bargaining unit, including the type and level,** shall be determined by the sub-board of trustees or established pursuant to the **collective bargaining agreement.**” (Emphasis Added)

While 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, 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. As such, should the health benefits become negotiable under Chapter 89, the benefits for those employees excluded from collective bargaining must be taken into consideration.

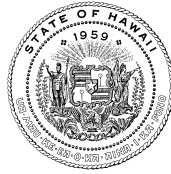
Further from a lay perspective it seems that there may be a potential conflict as it relates to trustees' fiduciary responsibilities. Because “... (b) All fiduciaries of

the trust shall discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and: (1) For the exclusive purpose of: (A) Providing benefits to participants and their beneficiaries;.... “ would trustees face a potential fiduciary conflict should the member and plan interests of the sub-plan be different from those of the EUTF plan as a whole?

Finally, section 13 of S.B. 2839 S.D. 2, H.D. 1 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 on this measure.

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

RODERICK K. BECKER
DEPUTY DIRECTOR

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

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE

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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
SENATE BILL NO. 2839, S.D. 2, H.D. 1

March 30, 2016
2:00 p.m.

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

Senate Bill No. 2839, S.D. 2, 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):

- Amends the definition of "dependent beneficiary."
- 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 (B&F) to the Office of Collective Bargaining (OCB).

B&F supports Part I of this bill as it helps with reducing future health benefit liabilities but is opposed to Part II. 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.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

PAULA A. YOUNGLING
ASSISTANT ADMINISTRATOR

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

March 30, 2016, 2:00 P.M.

SB2839 SD2 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 SB 2839 SD2 HD1. The State Procurement Office (SPO) takes no position regarding the intent of the bill but opposes the exemption language starting on page 3, SECTION 6, 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.”

Currently, there are several methods within the Procurement Code that will enable the EUTF to procure third-party administrators, consultants, actuaries, auditors, or administrators and still ensure the State receives the expertise they desire. The Professional Services method allows the State to look at top qualifications first before cost is negotiated with a very short time of seven (7) days publication requirement. The Competitive Sealed Proposal method allows for criteria to be used where a best-value trade-off can be achieved.

In addition to these two existing methods, there is a Bill currently moving in Session, HB2053, titled Special Procurement. This bill will allow for other than full competition on goods and services where necessary and for the best interests of the government. This will allow for the flexibility that certain procurements need, but still keep the action within Statute.

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.



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
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 30, 2016

S.B. 2839, S.D. 2, 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 Part II of S.B. 2839 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. Part II of S.B. 2839, in conjunction with language contained in 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. Part II of S.B. 2839 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

S.B. 2839, S.D. 2, H.D. 1
Committee on Finance
March 30, 2016

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 Part II of S.B. 2839 as the measure will make much needed changes to the EUTF. We respectfully request the Committee also give favorable consideration to passing language contained in H.B. 2012, which makes the appropriate changes to Ch. 89 to allow for the negotiation of health benefits.

Respectfully submitted,



for Randy Perreira
Executive Director



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO
1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929
TELEPHONE (808) 949-1566 FAX: (808) 952-6003
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HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016
March 30, 2016

Committee on Finance

Testimony by
Hawaii Fire Fighters Association

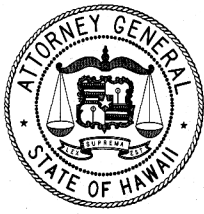
S.B. No. 2839, H.D. 1 Relating to the Hawaii Employer-Union Health Benefits Trust Fund

My name is Robert H. Lee and I am the President of the Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO. The HFFA represents approximately 2,100 active-duty professional fire fighters throughout the State. HFFA supports S.B. No. 2839, H.D. 1, Relating to the Hawaii Employer-Union Health Benefits Trust Fund, as this measure starts the dialogue in address the concerns of both the exclusive representatives and employer groups.

S.B. No. 2939, H.D. 1 includes changes to Chapter 87A which we believe will improve the delivery and benefit options to public employees. It provides the EUTF Board of Trustees the authority to determine the type and level of benefits by bargaining units pursuant to the collective bargaining agreement.

HFFA has struggled with ensuring that medical premiums provided through the collective bargaining agreement remains affordable while being unable to participate in the design plan to meet the needs of the membership. This measure provides greater flexibility for both the employer and exclusive representatives during negotiations and arbitrations.

Thank you for the opportunity to testify.



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

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 2839, S.D. 2, H.D. 1, RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 30, 2016 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Russell A. Suzuki, First Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General opposes part II of this bill, which amends the management and administrative structure of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF).

The bill was amended by the House Committee on Labor and Public Employment. The House Committee Report stated that the bill merely amended the definition of "dependent-beneficiary" and "makes housekeeping amendments to sections 87A-34 and 87A-36, Hawaii Revised Statutes." We believe, however, that the amendments are substantial. By inserting the contents of H.B. No. 2015, H.D. 1, into the bill, the bill makes sweeping changes to the composition, management, and operations of the EUTF.

Part II begins with section 6, which imposes on the EUTF trustees, a standard of fiduciary duty taken from the federal Employee Retirement and Income Security Act (ERISA). As a general matter, public employee benefit plans, such as the health plans administered by EUTF, are exempt from ERISA, and the trustees who serve on the EUTF board of trustees are not bound by ERISA. The fiduciary liabilities imposed by section 6 of this bill are unduly burdensome as these liabilities mirror those imposed by ERISA, but the trustees of the EUTF board of trustees are not subject to ERISA. The imposition of such heightened level of fiduciary responsibilities where no such responsibilities currently exist will likely discourage individuals from serving on the EUTF board of trustees in the future as well as encourage resignations by members of the current EUTF of trustees.

For example, the imposition of **personal liability** upon the trustees of the EUTF board of trustees is especially concerning. Section 6 requires that a trustee who breaches a fiduciary responsibility, obligation, or duty, to be personally liable and who must make good to the plan any losses and to restore any profit resulting from the breach. Section 6 also allows EUTF to purchase insurance for its trustees for liability in case of breach, but presently, section 87A-25(4), Hawaii Revised Statutes (HRS), already requires all members of the EUTF board of trustees to maintain fiduciary liability insurance. In any event, such insurance is unlikely to protect the EUTF or the trustee when the breach is found to have occurred outside the trustee's scope of duty. Increasing the fiduciary liability of the trustees is not mitigated by obtaining more insurance, and may only cause an increase in the premiums for such insurance. Furthermore, under current law, the EUTF board members are immune from liability unless they act with "a malicious or improper purpose[.]" Section 26-35.5(b), HRS. This bill apparently intends to strip the EUTF board members of these protections. This is ill-advised as a legal matter.

This bill upsets the delicate balance that uniquely characterizes the EUTF board and its operations. The EUTF was created to give equal voices to public employers and public employees. Section 87A-11(b), HRS, states that EUTF board trustees representing public employers and EUTF board trustees representing public employees each have one vote. EUTF business could only be transacted upon an agreement between public employers and public employees. Sections 6, 8, 9, 11, and 12 of this bill would eliminate this parity by (1) requiring the appointment of five trustees to represent public employers and seven trustees to represent public employees and retirees, thereby advantaging public employees and disadvantaging public employers; (2) giving disproportionate representation to some parts of the State over others, such as the Board of Education; (3) eliminating the responsibility owed to public employers to maintain the affordability of health benefits, as currently required by section 87A-15, HRS; (4) replacing the carefully balanced quorum requirements between the employers and the unions with a minimum of eight; (5) removing the present term limits of two four-year terms and instead of allowing indefinite appointments; and (6) apparently allowing individual bargaining units to negotiate benefits independent of those administered by EUTF. This last change, in particular, would undermine the EUTF's ability to negotiate for the lowest premium rates because it would allow the bargaining units to remove themselves from the EUTF pool of beneficiaries. Page 16,

lines 10-19. The statute that created the EUTF was specifically designed to *eliminate* this “split” system of purchasing insurance. See Comm. Rep. No. 124, in 2001 House Journal at 1097-98, and Auditor’s Report No. 99-20, *available at* <http://files.hawaii.gov/auditor/Reports/1999/99-20.pdf> (last visited March 29, 2016). In the past, splitting the pool of State employees and beneficiaries who are covered by the State’s health insurance plans caused the public cost of providing insurance to skyrocket. Id.

This same portion of the bill (apparently attempting to allow individual unions to negotiate benefits on their own) is problematic for other reasons as well. Page 16, lines 10-19. It is inconsistent with the board members’ obligation to act for the benefit of the entire membership (not just the members of one union). Furthermore, under current law, the public employers and the unions may negotiate about the contributions to, but not the benefits offered by, the EUTF. Section 89-9(a) and (d), HRS. This bill attempts to make the benefits also subject to negotiation indirectly, without amending the statute that governs the scope of negotiations. Page 16, line 13. In our view, this bill cannot accomplish this objective with an indirect amendment, because chapter 89, HRS, “take[s] precedence over all conflicting statutes concerning this subject matter[.]” Section 89-19, HRS. Thus, changing the subjects of negotiation may only be accomplished by amending the relevant statutes in chapter 89. We question whether this bill could serve as a proper vehicle for such an amendment.

Section 9 of this bill would allow the Chief Justice of the Hawai‘i Supreme Court to appoint trustees to the EUTF board of trustees. This is problematic as it would deprive both the public employers and the unions of the opportunity to influence who is chosen to represent them on this important board. It is also preferable, as a general matter, to avoid requiring the Chief Justice to act in such a capacity for an executive branch agency.

We have constitutional concerns about section 13 of this bill, which removes the EUTF from being administratively attached to the Department of Budget and Finance, and places the EUTF under the office of collective bargaining. The EUTF cannot be placed under the office of collective bargaining because the office of collective bargaining is placed within the office of the Governor. Section 87A-1, HRS. Section 6 of article V of the Hawai‘i Constitution prohibits such placement by requiring all executive and administrative offices, and instrumentalities of state government and their respective functions, powers, and duties to be allocated among and

within one of the “principal departments[.]” The office of the Governor is not a principal department, but a constitutional office established by section 1 of article V of the State Constitution.

In addition to these overarching concerns, the bill would allow the 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 ERISA. (Sections 7 and 10.)

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 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.

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, agencies may submit a request to the Attorney General requesting that section 28-8.3, HRS, be waived. Under certain circumstances deemed by the Attorney General to be good and sufficient, an agency may retain or employ its own attorney, provided that the Governor also waives section 28-8.3(22),

HRS, which 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.”

Additionally, as discussed above, the EUTF is 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.

Lastly, deputy attorneys general, being separate and apart from the state agencies 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 quality legal advice and counsel. This unique feature of the Attorney General is especially relevant and critical in providing legal counsel to agencies like the EUTF, whose board members may, by definition, have diametrically opposed viewpoints.

The EUTF carries a significant responsibility in providing health benefits plans for public employees. Doing so is one of the State’s largest expenses, and it has large impact on the public fisc. Due to the statutory complexity of this area of law and the financial consequences for the State and the public for how health insurance is purchased, any change to these statutes must be made carefully.

For all of the reasons detailed above, we respectfully request that part II of this bill be stricken in its entirety or that the bill be held.