

1 HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
2 Minutes of the Board of Trustees  
3 Thursday, January 31, 2002  
4  
5

6 TRUSTEES PRESENT: Ms. Audrey Hidano, Vice-Chairperson  
7 Mr. Jim Williams, Secretary-Treasurer  
8 Ms. Kathryn S. Matayoshi  
9 Mr. Neal Miyahira  
10 Mr. Will Miyake  
11 Mr. Chip Uwaine  
12 Mr. Davis Yogi  
13 Ms. Joan Lewis (Arrived 9:30 a.m.)  
14 Mr. Jimmy Yasuda (Arrived 9:25 a.m.)  
15

16 TRUSTEES ABSENT: Mr. Sam Callejo, Chairperson  
17

18 ATTORNEY: Mr. Brian Aburano, Deputy Attorney General  
19

20 BUDGET & FINANCE Ms. Wanda Kimura  
21 PROJECT TEAM Mr. Tracy Ban  
22 Ms. Lynette Fukunaga  
23 Ms. Karen Tom  
24 Mr. Gary Sanehira  
25 Ms. Shirley Kawamoto  
26

27 OTHERS PRESENT: Mr. Rod Tam, HMSA  
28 Mr. Norbert Mendes, HDS  
29 Ms. Monica Engle, VSP  
30 Ms. Karen Momono, Royal State  
31 Mr. Melvin Higa, MBAH  
32 Mr. Melvin Kutara, C&C of Honolulu, Dept. of Human Resources  
33 Ms. Gertrude Nitta, HGEA-Retiree  
34 Ms. Nani Crowell, HSTA  
35 Mr. Maurice Morita, HSTA  
36 Mr. George Butterfield, HSTA-Retiree  
37 Ms. Jean Aoki, HSRTA  
38 Ms. Sarah Moriyama, ORTA/HSTA-Retiree  
39 Mr. Charles Khim  
40

41 A. CALL TO ORDER

42 The regular meeting of the Board of Trustees was called to order at 9:15 a.m. by  
43 Ms. Audrey Hidano, Vice-Chairperson, in Conference Room 303/304, No. 1 Capitol  
44 District Building, 250 South Hotel Street, Honolulu, Hawaii, on Thursday, January 31,  
45 2002.  
46

1 Ms. Hidano thanked Mr. Miyake for the morning's refreshments and Mr. Higa (member of  
2 the public) for being the courier of the refreshments.

3  
4 B. APPROVAL OF MINUTES

5 Minutes of the January 24, 2002 meeting will be ready for approval at the February 5,  
6 2002 meeting.

7  
8 C. AGENDA ITEMS III. A. 1 - 2 and B. 1 - 2 were completed during the January 29, 2002  
9 meeting.

10  
11 D. FOLLOW-UP REPORT ON AGENDA ITEM III.C.1.

12 Mr. Tracy Ban, Budget and Finance Project Team, completed the applications for fiduciary  
13 liability insurance, fidelity bond, and errors and omissions insurance provided by  
14 Ms. Stephanie Tsubata, Marsh USA. Completion of the errors and omissions insurance  
15 application is pending clarification of a few items with Marsh USA and information from  
16 each trustee for item 12. The trustees were asked to provide the information for item 12  
17 and return it to Mr. Ban by the end of the meeting.

18  
19 Completed applications provide information needed by insurance brokers to determine  
20 coverages and price quotations. At least two insurance brokers will be contacted to provide  
21 presentations to the board on their recommended coverages and provide informal quotes.

22  
23 Board members reviewed the applications and made various comments and suggestions  
24 regarding the coverage requested and other and other aspects and implications of the  
25 applications.

26  
27 PUBLIC COMMENTS:

28 A member of the public commented that Mr. Ban is not qualified to answer questions about  
29 the completion of the form. In response, Mr. Aburano commented that Mr. Ban was  
30 merely providing a review of the questions covered in the applications.

31  
32 C. Khim, member of the public and attorney, commented that it may be more efficient to  
33 discuss the completion of applications directly with the insurance broker.

34  
35 M. Higa, member of the public, commented that it is unclear if the board has the authority  
36 to procure insurance independently of the State Risk Management Office. He further  
37 commented that should the board purchase insurance independently the board should  
38 ascertain if there would be any waiver of coverages provided by the State Risk  
39 Management Office. In response, Mr. Aburano reported that his communications with the  
40 State Risk Management Office indicated that the board could formally request authority to  
41 directly purchase insurance and it is possible that the State Risk Management Office would  
42 grant such authority.

1 C. Khim, member of the public and attorney, commented that the motion the board passed  
2 was for the trust to proceed to purchase insurance independently and Act 88 provides the  
3 board that authority. He also suggested that the board consider AON as an insurance  
4 broker.

5  
6 FURTHER DISCUSSION:

7 Ms. Hidano requested that the working copies of the insurance applications be marked as  
8 DRAFT and dated.

9  
10 Mr. Uwayne and Ms. Matayoshi were asked to also look at insurance coverages so that the  
11 periods of coverage coincide with any changes in officers.

12  
13 E. FOLLOW-UP REPORT ON AGENDA ITEM III. C.2.

14 Mr. Aburano is still waiting for a response on his questions concerning the State's crime  
15 policy from Stephanie Tsubata who is contacting the insurance carrier for clarification.

16  
17 F. RECESSED at 9:55 a.m.; reconvened at 10:05 a.m.

18  
19 G. AGENDA ITEM III.C.3. was completed at the January 29, 2002 meeting.

20  
21 H. RECRUITMENT AND APPOINTMENT OF ADMINISTRATOR AND OTHER FUND  
22 STAFF (Agenda III.C.4)

23 This item is to be considered by the Administrative Committee for recommendation.

24  
25 DISCUSSION: None.

26  
27 PUBLIC COMMENTS:

28 C. Khim, member of the public and attorney, provided his interpretation of sections 20 and  
29 24(4) in Act 88, SLH 2001, on staffing. The two sections read in combination appear to  
30 envision hiring a third party administrator for benefit plans and an administrator and staff  
31 for the administration of the trust.

32  
33 M. Higa, Mutual Benefit Association of Hawaii, provided written comments for Agenda  
34 items III.C.4, 5, 8, 10, and 11, which were distributed to the trustees.

35  
36 FURTHER DISCUSSION:

37 Mr. Yasuda suggested having a discussion at the next meeting on the staffing the trust  
38 requires which includes an administrator and consultants so that the board can consider the  
39 budgetary impact.

40  
41 Mr. Yogi offered to provide a presentation on how the State's Deferred Compensation  
42 Board and third party administrator interact.

43

1 Mr. Aburano commented that the legislative history of Act 88 appears to provide the Board  
2 a lot of discretion in the administration of the fund. The use of a third party administrator  
3 for the administration of both the trust and benefit plans may meet the intent of the  
4 legislature if that is a cost-effective method of proceeding.  
5

6 PUBLIC COMMENTS:

7 M. Higa, Mutual Benefit Association of Hawaii, commented that the authority of hiring a  
8 third party administrator may fall under the authority of the Chief Negotiator if it  
9 constitutes privatization under Act 90. In response, Mr. Yogi commented that managed  
10 competition is under the purview of the Chief Negotiator and privatization is limited to the  
11 chief executive or individual authorized to make the procurement. Mr. Aburano will  
12 review Act 90, SLH 2000, and report to the board.  
13

14 I. RETENTION OF AUDITORS, ACTUARIES, INVESTMENT FIRMS AND  
15 MANAGERS, BENEFIT PLAN CONSULTANTS, OR OTHER PROFESSIONAL  
16 ADVISORS (Agenda Item III.C.5.)

17 Staff was asked to present available information on staffing to the board at the next  
18 meeting. It was suggested that the board also discuss whether to obtain one or more  
19 consultants at that time.  
20

21 PUBLIC COMMENTS:

22 C. Khim, member of the public and attorney, commented that he is aware of the use of  
23 dual consultants by several plans especially when there is concern by the employee trustees  
24 that the consultant is allied with the employer trustees.  
25

26 J. ADOPTION OF RULEMAKING PROCEDURES (Agenda Item III.C.6)

27 This item is to be reviewed by the Rules Committee for recommendation.  
28

29 PUBLIC COMMENTS:

30 C. Khim, member of the public and attorney, commented that Section 26 of Act 88,  
31 provides requirements which must be included in the procedures and must be done prior to  
32 rulemaking.  
33

34 K. LEGAL ADVISOR (Agenda Item III.C.7.)

35 The trustees discussed the possible use of private counsel in addition to the Attorney  
36 General. The board wanted to have more information as to when and under what  
37 circumstances would separate counsel be appropriate, the established process in obtaining  
38 private counsel, and what happens when there is a conflict of interest for the attorney  
39 general.  
40

41 Mr. Aburano briefly reviewed the Hawaii Supreme Court decision of Chun vs. the  
42 Employees' Retirement System. He said the decision stated that the attorney general acts  
43 as the sole legal representative of state officers and instrumentalities. However, when a

1 conflict of interest develops between the attorney general and a state officer or agency, the  
2 Chun decision indicates that the attorney general may have to cease representing the state  
3 officer or agency, and the state officer or agency may have to obtain separate counsel. Mr.  
4 Aburano noted that the Chun case involved a matter in litigation as opposed to a non-  
5 litigation matter.  
6

7 A question was raised as to whether the trustees could be held personally liable if they  
8 relied on the advice of counsel. Mr. Aburano commented that under H.R.S. §26-35.5, the  
9 trustees are immune from actions brought under state law unless they act with an improper  
10 or malicious purpose. Similarly, under H.R.S. §26-35.5, trustees are indemnified against  
11 federal lawsuits unless they act with an improper or malicious purpose. It would be  
12 unlikely that the trustees would be found liable if they acted in accordance with the attorney  
13 general's advice. As noted previously, one exception could be if the trustees do not  
14 provide the attorney general with all the relevant facts. Then the attorney general's advice  
15 may be flawed due to lack of knowledge of all the relevant facts. Mr. Aburano said he did  
16 not know what would happen if the trustees failed to act in accordance with the attorney  
17 general's advice but rather relied on the advice of private counsel. He said that if the  
18 private counsel's advice was ultimately determined to be incorrect, the trustees may have to  
19 explain to the court why they acted against the advice of the attorney general who is their  
20 designated legal counsel.  
21

22 Ms. Matayoshi indicated that when boards within DCCA are in conflict, the attorney  
23 general separates all files, work, etc., and the deputies attorney general still continue to  
24 represent each board; there has been no problems with that arrangement. She indicated  
25 that the department of the attorney general is the chief procurement office for legal  
26 services.  
27

28 Mr. Aburano indicated that §28-8.3, HRS, lists those agencies that are permitted to have  
29 counsel other than from the department of the attorney general. He noted that the trust is  
30 not one of the agencies listed. He also indicated that when an issue of potential conflict of  
31 interest arises in litigation, a committee at the attorney general's office determines if the  
32 litigant (generally, a state employee) should have separate or private counsel. The attorney  
33 general's office maintains a list of private attorneys that could be used in such cases.  
34

35 Mr. Aburano also noted that the attorney general's office may obtain private counsel when  
36 there is a matter that requires specialized expertise not available within the department of  
37 the attorney general, e.g., issuing municipal bonds. This is on a case-by-case basis,  
38 generally involves very complex matters, and the necessity for private counsel is  
39 determined by the attorney general.  
40

41 Mr. Aburano was asked to report on the process for acquiring independent counsel not only  
42 in situations where there is an issue of the board's liability but also in situations where  
43 separate legal advice is necessary, e.g., in a specialized area of law.

1  
2 In response to a trustee's question on the extent to which a trustee can rely on the attorney  
3 general's advice, Mr. Aburano commented that the attorney will provide advice to the  
4 trustees on what is a reasonable and lawful decision. When the decision made by the board  
5 follows such advice, the board would probably be protected under the State's indemnity  
6 and immunity law.

7  
8 Mr. Aburano will research and report to the board on the process to request specialized  
9 private counsel and who pays for such counsel.

10  
11 Board requested that Mr. Aburano provide information on his background, i.e., the other  
12 boards that he may service, so that the board could determine if Mr. Aburano would have a  
13 conflict in areas where he has knowledge of related actions of other boards that are his  
14 clients. Mr. Aburano will check if that information can be provided, and he will follow-up  
15 on the letter from the attorney general on his appointment.

16  
17 There was also concern if there are conflicts of interests among the trustees where  
18 Employer trustees may have a conflict because the trustees are cabinet members of the  
19 current administration and similarly, Employee-beneficiary trustees may have a conflict of  
20 interests that are unknown to other trustees.

21  
22 PUBLIC COMMENTS:

23 M. Higa, Mutual Benefit Association of Hawaii, stated that Mr. Molloway, Ethics  
24 Commission, indicated there are three areas of conflicts of interest that the attorney general  
25 enforces. He also related his experience as a former trustee of a board attached to the  
26 Department of Budget and Finance where the board met with the attorney general to  
27 request a deputy attorney general who was not assigned to the Department of Budget and  
28 Finance to minimize any conflict of interest.

29  
30 C. Khim, member of the public and attorney, commented that each trustee is liable for his  
31 or her actions and this is the reason for purchasing liability insurance. He recommended  
32 that the board determine its standard of liability; the better standard would be the higher  
33 liability standard. He commented that he believes that Act 88 permits the hiring of other  
34 advisors which includes private counsel.

35  
36 L. REIMBURSEMENT OF EUTF-RELATED EXPENDITURES TO THE DEPARTMENT  
37 OF BUDGET AND FINANCE (Agenda Item III.C.9)

38 This item was discussed during the January 29, 2002 meeting.

39  
40 M. AGENDA ITEMS III.C. 8, 10, 11, 12

41 MOTION made by Mr. Uwaine and seconded by Mr. Yogi to defer agenda items III.C.8,  
42 10, 11, and 12 to the February 5, 2002 meeting.

43 The motion was passed without objection.

1  
2 N. RECESSED at 11:25 a.m.; reconvened at 11:35 a.m.  
3

4 O. ELECTION OF OFFICERS (Agenda Item IV.A.)

5 MOTION was made by Mr. Uwaine and seconded by Mr. Yogi to address Agenda  
6 Item IV.A. out of order. The motion was passed without objection.  
7

8 MOTION was made by Mr. Uwaine to nominate Mr. Sam Callejo for Chair, Ms. Audrey  
9 Hidano for Vice-Chair, and Mr. James Williams for Secretary-Treasurer for the period of  
10 March 1, 2002 through June 30, 2002.  
11

12 PUBLIC COMMENTS:

13 C. Khim, member of the public and attorney, indicated that the proper procedure is to have  
14 a motion to close nominations and if there are no other nominations, then the nominees are  
15 elected by acclamation.  
16

17 MOTION was made by Ms. Matayoshi and seconded by Mr. Miyake to close nominations  
18 and elect the officers nominated by Mr. Uwaine. The motion was unanimously passed  
19 (Employer trustees/3 YES; Employee-beneficiary trustees/5 YES)  
20

21 P. COMMUNICATIONS FROM THE PUBLIC (Agenda Item V.)

22 M. Higa, Mutual Benefit Association of Hawaii, will be pleased to respond to any  
23 questions or clarifications on his submitted written comments.  
24

25 R. FUTURE AGENDA ITEMS AND NEXT MEETING DATE (Agenda Item VI)

26 Agenda items III.C.4, 5, 8, 10, 11, and 12 will be carried over to the February 5, 2002  
27 meeting. Mr. Yogi wished to add a discussion on rules to the February 7, 2002 agenda  
28 and administration issues on the February 12, 2002 agenda.  
29

30 The next meeting is scheduled for February 5, 2002 from 9 a.m. – 12 Noon.  
31

32 S. ADJOURNMENT

33 A motion to adjourn the meeting was made by Ms. Matayoshi and seconded by  
34 Mr. Miyahira. The motion as unanimously passed. (Employer trustees/3 YES; Employee-  
35 beneficiary trustees/5 YES).  
36

37 The meeting was adjourned at 11:40 a.m.  
38

39 Respectfully submitted,  
40

41 /s/ James Williams

42 James Williams, Secretary-Treasurer  
43

44 APPROVED ON February 12, 2002.

- 1
- 2 Documents distributed:
- 3 1. Committee Assignment Chart. (1 page)
- 4 2. February Calendar with excused absences. (1 page)
- 5 3. Written comments dated January 31, 2002 from Mr. Mel Higa, Mutual Benefit Association
- 6 of Hawaii. (2 pages)
- 7 4. Draft of Fidelity Bond Application. (6 pages)
- 8 5. Draft of Fiduciary Liability Insurance Application. (5 pages)
- 9 6. Draft of Errors and Omissions Insurance Application. (8 pages)