

HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
Minutes of the Board of Trustees  
Tuesday, March 12, 2002

TRUSTEES PRESENT: Mr. Sam Callejo, Chairperson  
Ms. Audrey Hidano, Vice-Chairperson  
Mr. Jim Williams, Secretary-Treasurer  
Ms. Joan Lewis  
Ms. Kathryn S. Matayoshi  
Mr. Neal Miyahira  
Mr. Will Miyake  
Mr. Clifford T. Uwaine (Arrived at 9:25 a.m.)  
Mr. Jimmy Yasuda (Arrived at 9:17 a.m.)  
Mr. Davis Yogi (Arrived at 1 p.m.)

ATTORNEY: Mr. Brian Aburano, Deputy Attorney General

HEUHBTF STAFF: Mr. Tracy Ban  
Ms. Lynette Fukunaga  
Ms. Shirley Kawamoto  
Ms. Wanda Kimura  
Mr. Gary Sanehira  
Ms. Karen Tom

OTHERS PRESENT: Ms. Jean Aoki, HSRTA  
Ms. Lynette Arakawa, HDS  
Mr. George Butterfield, HSTA-Retired  
Ms. Nani Crowell, HSTA  
Ms. Alana Deppe-Mariota, Kaiser  
Ms. Monica Engle, VSP  
Ms. Kathy Fay, HDS  
Ms. Grace Ing, HSTA-Retired  
Mr. Charles Khim  
Ms. Ruth Kim, HSTA-Retired  
Mr. Melvin Kutara, C&C, Dept. of Human Resources  
Mr. Maurice Morita, HSTA  
Ms. Sarah Moriyama, ORTA  
Mr. Michael Moss, HMSA  
Mr. Gordon Murakami, Royal State  
Ms. Karen Muronaka, HSTA-Retired  
Mr. Rod Tam, HMSA  
Mr. George Yamamoto, HGEA-Retirees

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A. CALL TO ORDER

The regular meeting of the Board of Trustees was called to order at 9:15 a.m. by Mr. Sam Callejo, Chairperson, in Conference Room 303/304, No. 1 Capitol District Building, 250 South Hotel Street, Honolulu, Hawaii, on Tuesday, March 12, 2002.

The Chair stated that Mr. Yogi had notified staff that he would be unable to attend the meeting.

B. APPROVAL OF MINUTES

**Minutes for February 12, 2002.** Mr. Williams reported that he had reviewed the tape-recorded discussion covered by Item E of the minutes and revised Item E as follows:

E. AGENDA ITEMS III.A.6 – 8 and III.A.9

Without objection, these items were combined for discussion as they are related.

Trustee Uwaine provided a packet of four documents:

- Legislative Briefing, Employer-Union Health Benefits Trust, February 5, 2002 (36 pages)
- Safeguarding Health Benefits, the Hawaii Employer-Union Health Benefits Trust Fund by State of Hawaii, Department of Budget and Finance, Neal Miyahira, Director (25 pages)
- Employer-Union Trust Plan Design, Active Participants (7 pages)
- The Hawaii Employer-Union Health Benefits Trust Fund, Safeguarding Hawaii's Health Benefits Fact Sheet (2 pages)

Mr. Uwaine stated that he understood that these documents were distributed to State legislators and Mr. Miyahira had given a briefing to representatives of the House; he was uncertain if a briefing had been given to representatives of the Senate.

Mr. Uwaine said he would like to ask Mr. Miyahira questions concerning the documents, any presentation or presentations made to the Legislature, and who on the staff, if any, assisted in the preparation of the documents and any such presentations. He noted that it appeared that information may have been presented that had not been brought to the Board. He also expressed his concern that the presentation may have created a perception by certain legislators that the presentation and documents came from the Trust. Mr. Uwaine asked Ms. Kimura if she was familiar with the documents, and she responded affirmatively that she was familiar with the documents as part of the project team. In response to Mr. Uwaine's question, Ms. Kimura indicated that any work she had done on the documents was prior to being assigned as staff to the Trust. She also answered "no" to Mr. Uwaine's question as to whether staff was present at a legislative briefing. Mr. Uwaine requested that an investigative committee be formed to determine staff's involvement in the preparation of any documents used in the alleged presentation. Mr. Uwaine and Ms. Hidano agreed to meet with staff and report their findings to the Board.

Trustee Yasuda arrived at 9:20 a.m.

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Mr. Yasuda stated his concern that any proposed benefit plans be thoroughly reviewed by the Trustees, with an opportunity for employee-beneficiaries to submit their input.

The Chair stated that Trustees will review the documents and discuss the documents and presentation with Mr. Miyahira at the February 19, 2002 meeting. Mr. Miyahira is out-of-state and returns to work on Friday, February 15. This item will be placed on the February 19, 2002 agenda.

MOTION was made by Mr. Uwaine and seconded by Mr. Miyake that an investigative committee, comprised of Trustees Uwaine and Hidano, be formed to determine the involvement of project staff in any presentations that were made to representatives of the Legislature on or about February 5, 2002. No objections were made and the motion was passed unanimously.

There was discussion on adjourning the meeting until a discussion of the legislative packet occurs with Mr. Miyahira at the February 19, 2002 meeting.

RECESS at 9:30 a.m.; reconvened at 9:40 a.m. Trustee Lewis arrived at 9:35 a.m.

Discussion continued on the subject of the legislative briefing. In response to questions by Mr. Uwaine regarding any presentation by Mr. Miyahira to the representatives of the Legislature and their involvement in the preparation of documents or presentation, Mr. Morrison and Ms. Kimura deferred until Mr. Miyahira could be present.

Certain Trustees suggested that the Board notify the Legislature that the documents and any presentations made by Mr. Miyahira were not prepared by or presented on behalf of the Board so that there is no misunderstanding. Some of the Trustees said that it was important that the Board be made aware of any planned presentations to the Legislature, and that the Trustees have an opportunity to attend any presentations made on their behalf. The Chair stated, and there were no objections, that any future formal presentations to the Legislature or to an outside interest should be authorized by the Board, and that the Trustees should have the opportunity to attend any such presentations. It was clarified that this was not meant to prevent Trustees from talking to legislators during chance encounters.

The Chair asked Ms. Kimura if she was aware that Mr. Miyahira had made a presentation to the Legislature and she responded affirmatively. The Chair asked Mr. Morrison if he had participated in a legislative briefing and Mr. Morrison stated that he would defer any response until Mr. Miyahira could be present.

There was further discussion on potential conflict of interest issues regarding the Trustees. Ms. Lewis requested that Deputy Attorney General Aburano address whether it is possible to separate the role of Director of Budget and Finance from that of trustee when addressing the business of the Trust.

It was stated that until an administrator is hired, the Trust staff should take their direction from the Board. Additionally, Mr. Williams indicated it was important to

determine whether the work product developed by the Budget and Finance project team belongs to the Board.

Mr. Uwaine and Mr. Yasuda left the meeting at 9:55 a.m.

MOTION to approve the minutes as amended was made by Ms. Matayoshi and seconded by Mr. Miyake. The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary trustees 4)

**Minutes for February 26, 2002.** Trustee Miyake proposed the following correction to page 8, lines 39 and 40: “Mr. Miyahira requested that Mr. Miyake provide the HGEA presentation made to HGEA members on the neighbor islands at the same informational briefing.”

Chair Callejo proposed a correction to page 2, line 34: “Mr. [Davis] Yogi.” and to page 10, line 3: “February 12, 2002 minutes. (8 pages)”

Mr. Williams commented that the minutes for the February 26<sup>th</sup> executive session have been prepared and are available for review and approval. He commented that the review and approval should be done during an executive session.

MOTION to approve the minutes as corrected was made by Ms. Matayoshi and seconded by Mr. Miyahira. The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary trustees 4)

**Minutes for February 28, 2002.** MOTION to approve the minutes as submitted was made by Ms. Matayoshi and seconded by Mr. Williams. The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary trustees 5)

Mr. Uwaine arrived at 9:25 a.m.

**Minutes for March 5, 2002.** MOTION to approve the minutes as submitted was made by Ms. Matayoshi and seconded by Mr. Williams. The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary trustees 5)

Mr. Williams commented that the minutes for February 19, 2002 had been given to staff but there was insufficient time to finalize the minutes for review and approval at this meeting; the minutes will be ready for review at the next board meeting.

C. ADMINISTRATIVE COMMITTEE REPORT

1. MOTION to add the item of the International Foundation of Employee Benefit Plans (IFEBP) membership application to the agenda was made by Ms. Matayoshi.

PUBLIC COMMENTS:

Ms. Ruth Kim, HSTA-Retired, commented that it would be to the board's benefit to join the IFEBP.

Ms. Nani Crowell, HSTA MBC, also recommended that the board join the IFEBP.

The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary Trustees 5)

The Administrative Committee recommended that the Trust Fund join the IFEBP as an organization with 11 – 14 members for \$600 to allow all trustees and staff to access information and services from the IFEBP.

MOTION to adopt the recommendation of the Administrative Committee that the Trust Fund join the IFEBP was made by Ms. Matayoshi on behalf of the Committee.

DISCUSSION:

Mr. Williams suggested that trustees and staff who are currently IFEBP members could inform the staff so that another Trust Fund employee could be listed as a member.

The motion was passed unanimously. (Employer trustees 4/Employee-Beneficiary Trustees 5)

2. Retention of consultants.  
At the end of its last meeting, the Administrative Committee received information on the procurement of a benefit consultant based upon the current Health Fund's consultant procurement. This subject will be discussed at the next meeting on Thursday, March 14, 2002.
3. Proposed Amendments to Chapter 87A, HRS.  
The Administrative Committee prepared a letter to the Legislature with an attached bill of the proposed amendments. Ms. Matayoshi reviewed the following proposed amendments:
  - sec. 87A-1 corrects the definition of part-time, temporary, and seasonal or casual employees
  - sec. 87A-7 permits the Board to elect other officers
  - sec. 87A-11(c) clarifies that the Board's voting requirement prevails over voting requirements set by other statutes
  - sec. 87A-11(d) changes the voting requirement to enter dispute resolution to be the same as the Board's existing voting requirement
  - sec. 87A-11 adds a new paragraph (e) to permit trustee groups to caucus prior to voting on an agenda item
  - sec. 87A-24 (4) clarifies that the Board's use of a third party administrator need not comply with any of the requirements of section 2, Act 90, SLH 2001.
  - sec. 87A-24 adds a new paragraph (10) to authorize the Board to form and use standing, special, or sub-committees

MOTION to adopt the recommendation of the Administrative Committee was made by Ms. Matayoshi on behalf of the Committee.

DISCUSSION:

Mr. Miyake asked if the proposed amendment to section 87A-24 would permit more than one third-party administrator (referred to page 4, line 20). The Committee accepted a change to delete the article, "a" preceding "private third-party administrator" and add an "s" to "administrator" to allow for multiple administrators.

Mr. Uwayne commented that if the proposals are for clarification, it would be better not to submit proposals at this point during the session because such action may "open the door" to other changes to Chapter 87A, HRS. He commented that the Board should operate with interpretations of the statute as it has done in the past. Additionally, he expressed that the proposals should not be attached to another vehicle bill because to do so would detract from the intent of legislative law that bills are introduced in a timely matter, that there is an opportunity for public input, and there is the opportunity for cross-over. Mr. Aburano commented that some proposed amendments are not clarifying changes, e.g., the provision to allow for caucus without regard to the sunshine law and the change of voting for entering into dispute resolution. Mr. Yasuda commented that the basic question to consider is if the proposals are critical for the Board at this time, otherwise, the proposals could be submitted at a later time as needed. Ms. Hidano commented that the proposals had been discussed previously by the Board and the Committee was tasked to develop a proposal for the Legislature so that the Board could work more efficiently.

MOTION to postpone this Agenda item until after Item VI.C of this meeting's agenda was made by Mr. Williams and seconded by Mr. Miyake. There was no discussion. The motion was unanimously passed. (Employer trustees 4/Employee-Beneficiary trustees 5)

Ms. Matayoshi reported that the Administrative Committee will discuss the bills submitted to the Legislature during the Committee's next meeting. The staff will prepare a list of the bills that had crossed over and any comments on the bills from the trustees should be submitted to the Committee by the March 14th Committee meeting.

4. Hiring of an administrator.

The Administrative Committee developed a general recruitment process that would be followed. The Committee agreed that the administrator is a CEO type position. Mr. Williams provided sample job descriptions for similar CEO positions which the staff will integrate into the previously proposed job description. At the next meeting, the Committee will review the position description, a list of recruitment advertising, and information on local and national search firms. The Committee believes this position will be difficult to fill. Chair asked that the Committee develop a tentative schedule for the recruitment.

Mr. Miyake asked about the plan to recruit locally and on the Mainland. Ms. Matayoshi commented that the Committee wanted to do concurrent recruitments so as not delay the hiring of an administrator. The trustees discussed whether there would be problems if Mainland candidates were not hired and discussed the residence requirements under the public employment law. Mr. Miyake wanted to ensure that the Board does not run into any problems in the hiring of an administrator so he thought that a sequential recruitment process may be better. Ms. Lewis asked whether the Board should indicate that it would prefer a local candidate. The Committee reported that it had discussed that issue and would handle the issue by considering an applicant's understanding of the local environment, health plans, the Health Fund, etc., and weighting such factors in the interview. The Committee will screen the applicants against the criteria, interview the candidates, make a recommendation to the Board, and have the Board meet and interview the final top candidates.

**PUBLIC COMMENT:**

C. Khim thanked the Administrative Committee Chair for permitting a very open and collaborative process. He commented that a supreme court decision (Goldberg vs. Kelly) addressed a constitutional right to travel between states. He suggested that the Board ask the Deputy Attorney General to research the parameters of the residency requirements under the current state law. He agreed with Mr. Uwayne's position that the Board's legislative proposal should not be attached to a vehicle bill during this legislative session.

Chair commented that the bills have just crossed over from the House to the Senate and there will be committee and public hearings on these bills.

**D. RULES COMMITTEE REPORT**

The Rules Committee has not yet met. It is scheduled to meet on March 12<sup>th</sup> at 1:30 p.m. or following the Board meeting.

**E. PROCUREMENT OF FIDUCIARY LIABILITY INSURANCE AND FIDELITY BOND (Agenda Item V.A.1 - 2)**

The Chair commented that discussion of these items were related to New Business, VI.A, Executive Session, on the agenda. There being no objection, discussion of Agenda Item VI.A. was taken out of order.

**MOTION** for the Board to enter into an executive session to: (1) consult with the board's attorney on questions and issues relating to the board's powers, duties, privileges, immunities, and liabilities regarding the solicitation, negotiation and acquisition of insurance and insurance broker services; and (2) review and approve executive session minutes was made by Ms. Matayoshi and seconded by Mr. Miyahira.

Mr. Williams commented that the items might be separated for voting on the executive session because an executive session is necessary to review and approve the minutes while discussion with the board's attorney may not be necessary. Mr. Aburano suggested that the trustees could

discuss whether to cover both items or a single item in an executive session and then amend the motion appropriately.

The trustees discussed the rationale for entering into an executive session. Mr. Aburano commented that he had anticipated a discussion about the basic legal requirements and issues that may apply in the selection of a broker. He stated that he would normally provide this type of advice in an attorney-client communication so that his advice would be protected should there be a lawsuit relating to the Board's selection. The executive session would only be for the purpose of considering such legal advice and not for the Board to make the selection decision. The trustees discussed whether the deputy attorney general's legal advice should be held during the open meeting. Mr. Uwaine commented that he feels that the insurance matter should be discussed in an open forum and encouraged other trustees to vote negatively for an executive session. Based on Mr. Uwaine's comments, the Chair summarized that the Board would need to make a decision as to whether to separate the items for an executive session.

Mr. Miyake asked for clarification on whether a summary of the issues discussed during the executive session would be available to the public. Mr. Aburano stated that there would not be a summary of the issues discussed during the executive session as that would defeat the purpose of having an executive session.

**PUBLIC COMMENT:**

C. Khim commented that the attorney-client privilege applies to what a client tells his/her attorney and not to what an attorney tells his/her client. Based on this, Mr. Khim stated that the discussion should be open to the public.

Mr. Yasuda asked whether it was necessary to hold an executive session during this meeting to approve the minutes of the last executive session. Mr. Uwaine commented that the Board was to make a decision on the procurement of insurance at this meeting.

RECESS: 10:30 a.m. to 10:50 a.m.

The Chair announced that members of the public requested that an executive session be held at the end of the meeting so that they would not need to return for the rest of the meeting's agenda.

The Trustees voted on whether to enter into an executive session to review and approve the minutes of the February 26, 2002 executive session. The motion passed unanimously.  
(Employer trustees 4/Employee-Beneficiary trustees 5)

The trustees voted on whether to enter into an executive session to consult with the board's attorney on questions and issues relating to the board's powers, duties, privileges, immunities, and liabilities regarding the solicitation, negotiation and acquisition of insurance and insurance

broker services. The motion was not passed. (Employer trustees 4/Employee-Beneficiary trustees 0; 4 Yes: Mr. Callejo, Ms. Hidano, Ms. Matayoshi, Mr. Miyahira/  
5 No: Ms. Lewis, Mr. Miyake, Mr. Uwaine, Mr. Williams, and Mr. Yasuda/0 Abstentions).

F. ALTERNATE LOCATIONS FOR BOARD MEETINGS (Agenda Item VI.B.)

The Chair proposed that the New Business items be completed before returning to Agenda item V.A.1-2 and there were no objections.

Trustee Uwaine reported that he had made preliminary inquiries with a few schools and libraries. However, he needed an indication from the Board as to future meeting dates or days of the week and meeting times for the months of April through June in order to assess availability of these locations.

The trustees discussed meeting at alternate sites and times. Ms. Lewis had concerns about the staff and the payment of overtime. Mr. Uwaine indicated that the staff, under FLSA, would be eligible for overtime. Mr. Williams personally prefers not to have regular board meetings at night or on weekends unless the meeting was for a specific purpose. Mr. Uwaine indicated he was considering having meetings in 4-5 locations covering the windward, leeward, central, and east Honolulu districts of Oahu to allow for public access. His intent is to have board meetings accessible to persons who would not ordinarily attend. Ms. Lewis indicated that she would be available for meetings during the days on Tuesday until end of the school year.

PUBLIC COMMENTS:

M. Engle, VSP, commented that the majority of Board members and the audience work within the Honolulu downtown area. The current meeting location is close to public parking and is convenient to offices which eliminates lengthy commute times for those attending the board meetings. She requested that meetings continue in the same location and during business hours.

G. Butterfield, retiree, commented that the concept is worthwhile but may not be practical. Current attendees are retirees because they are available during the day unlike active employees who are working during the Board's meeting time. Moving the meeting location may not encourage active employees to attend and attendance of retirees may not increase. He indicated that commuting to alternate locations is an issue. As a BUS rider, his commute would be more difficult and an alternate site would require more people to travel. He prefers that meetings remain in the current location.

K. Muronaka commented that she commutes from the windward side to attend the board meetings and would prefer that meetings remain in the downtown area. The location is convenient and next to the legislature for those who also attend legislative sessions.

R. Kim asked if the staff had been consulted as to the use of compensatory time off if held meetings in evenings. The Chair answered negatively.

C. Khim commented that he supports the concept of alternate locations and times for meetings. He suggested that the Board could occasionally meet at an alternate time and location such as an evening meeting in a location where most participants reside.

FURTHER DISCUSSION:

Mr. Uwaine commented that the Board should consider evening meetings so that the trustees could work a full day at their regular jobs. Ms. Matayoshi indicated that it would be difficult for her to attend evening meetings on a regular basis. The Chair summarized that during the school year the meetings would continue during the day on Tuesday. Meetings could be held at alternate locations and times as needed for specific agenda items as appropriate. Mr. Yasuda suggested a trial of one or two evening meetings and Mr. Uwaine suggested an evening meeting in July at an alternate location. Mr. Williams commented that employee-beneficiaries would be most interested in benefit plan discussions and suggested that the Benefits Committee may wish to try alternate locations and times. Mr. Miyahira also commented that the subject of benefits would be an appropriate subject for alternate meeting locations and times. Mr. Uwaine will tentatively schedule one meeting in July and August at an alternate time and location. Ms. Lewis offered the HSTA which is located at Red Hill as a site for an evening meeting. Mr. Uwaine will contact Ms. Lewis for more information.

Mr. Miyake suggested that the Board begin to consider meeting less frequently such as every other week and that committee meetings could be held during the alternate weeks. The current meeting schedule has been difficult. The Chair indicated that he will meet with the three committee chairs to discuss their committee meeting schedule and agenda in order to develop a tentative schedule for Board meetings.

G. DISCUSSIONS WITH PUBLIC EMPLOYEES HEALTH FUND (Agenda Item VI.C.)  
Chair reported that he had a telephone conversation with the Health Fund Board Chair, Mr. Greg Sato, to start the dialogue between the two agencies. The Chair advised Mr. Sato that a letter was to be sent to him with questions from the HEUHBTF for the Health Fund Board to consider. Mr. Sato will meet with the administrator and the Health Fund Board on March 14, 2002. Mr. Sato will advise the Chair of the members of a Health Fund's sub-committee to work with the HEUHBTF by March 20, 2002. The Chair asked that the Administrative Committee be lead in working with the Health Fund committee on transition issues. The Chair indicated that the Health Fund Board had been awaiting contact by the HEUHBTF.

H. COMMUNICATIONS AND INPUT FROM THE PUBLIC:  
G. Butterfield urged the Board to use its web site and include more information such as meeting agenda, minutes, and other pending issues. He commented that the web site is a viable means in providing information to interested members of the public. In response, staff indicated that they were awaiting direction from the Board to proceed and had been considering how the site could be expanded.

G. Yamamoto, HGEA, wanted clarification on whether the Trust Fund's administrative costs would also be charged to the retirees' premium allocation. Mr. Miyahira indicated that was the intent. Mr. Yasuda commented that he did not see anything in the statute concerning this issue. Mr. Yamamoto indicated that if the statute is silent then it would be a Board decision.

I. FUTURE AGENDA ITEMS AND NEXT MEETING DATE

The next meeting is scheduled for March 19, 2002 at 9 a.m. The Benefits Committee has scheduled its meeting following the Board Meeting at 1:30 p.m. on March 19<sup>th</sup> and will have presentations by the current health insurance carriers. All trustees are invited to attend.

March 26<sup>th</sup> is a holiday and the Board will not be meeting. Trustees who would like to add items to the March 19<sup>th</sup> agenda must notify staff by March 13<sup>th</sup>.

There was consensus by the trustees that Board meetings will be tentatively held on Tuesdays for the month of April pending the Chair's discussion with the Committee chairs.

J. PROPOSED AMENDMENTS TO CHAPTER 87A (Agenda Item V.9)

Mr. Williams suggested that this issue be postponed until the Board's next meeting so that Mr. Williams could discuss it with the Chair and allay the concerns of trustees. Mr. Miyake recommended that it may be better to defer this item until the next legislative session and re-open discussions in November 2002. Ms. Matayoshi commented that the Committee had spent a substantial amount of time developing the proposals and would appreciate if that the Board would notify the Committee of any agenda items the Board does not wish to pursue at this time so that the Committee can focus on items that can proceed.

MOTION to postpone action on the Administrative Committee's recommended legislative proposals until the 2003 legislative session was made by Mr. Miyake and seconded by Mr. Uwaine.

The Chair commented that legislators in the audience at a previous Board meeting had indicated that they were open to considering amendments to Chapter 87A, HRS, needed for clarification and to assist in implementation and that was the spirit in which the Administrative Committee worked.

Ms. Lewis commented that any bill submitted, during this session or during a future session, will allow other amendments to be made to Chapter 87A, HRS. Based on the discussion, Ms. Lewis wanted clarification of the reasons that make the proposals unnecessary at this time. Mr. Uwaine commented that the proposals are important but the issue was the procedural means in which the board would introduce its proposals, i.e., "piggy backing" on another existing bill. He would prefer that the board's proposals be introduced and stand on its own merits at the legislature. She commented that if the board is willing to and could operate with interpretations of the current statute then the proposed amendments may be unnecessary and

moot. Mr. Yasuda commented that waiting could be beneficial because when a bill is introduced in the future, there may be more evidence to validate the proposed amendments.

**PUBLIC COMMENT:**

R. Tam, HMSA, commented that the amendment to the definition affects the scope of the coverage by increasing benefits because without the change there are no part-time employees. Mr. Uwaine responded that interested individuals or organizations should address their concerns with the appropriate legislative leadership.

The motion was passed. (Employer trustees 3/Employee-Beneficiary trustees 5; 1 Opposed: Mr. Miyahira).

The Chair asked Mr. Tam if he understood Mr. Uwaine's comments. Mr. Tam commented that a carrier would cover the employees for benefits but he had concerns as a taxpayer because he did not believe that it was intended to cover part-time employees. Mr. Williams agreed and commented that the definition must be corrected. Ms. Matayoshi suggested that the Board ask the legislature for clarification. Mr. Miyahira suggested that an amendment be initiated as it is important to define the covered group of employees when asking for carrier proposals. The trustees discussed the differences between the current Health Fund definition and the Chapter 87A, HRS, definition. Mr. Williams commented that the intent was to make the definition the same as the Health Fund definition but the language as written does not do that. Chapter 87A, HRS, includes an "and" instead of an "or" thus, to be considered part-time, the employee must fulfill both criteria, i.e., a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position. Without the change, the definition includes part-time employees.

**PUBLIC COMMENT:**

C. Khim commented that he did not believe that the definition of employee limits the persons covered and excludes part-time, temporary, seasonal or casual employees. Thus, the definition provides sufficient leeway to define a full-time employee. He felt that the Board could promulgate rules to handle this situation.

**FURTHER DISCUSSION:**

Mr. Williams indicated that the law does not define a full-time employee only employees. The Chapter 87A, HRS, definition of a part-time employee was written so that no one falls under the definition and thus, are included for coverage. Mr. Aburano commented that the Chapter 87A, HRS, definition does not exactly mirror the Health Fund's definition but the two definitions are basically the same. An AG opinion (March 3, 1998) for the Health Fund interpreted the language of the definition to be applied as "or", i.e., where an employee would be part-time if the employee met either criteria. The opinion indicated that part-time employees were not eligible for benefits based upon legislative history. Mr. Miyahira commented that the Board would have to also request an AG opinion to handle this situation. Mr. Uwaine indicated he did not have a problem addressing the problem as long as it was not the Board's position.

The Chair indicated that the Board has to identify who it is covering so the Board would have to address it. Mr. Uwaine indicated he did not believe that a language change is necessary.

MOTION to submit the Administrative Committee's amendment to Chapter 87A, Section 1, lines 1 – 7, to the legislature was made by Mr. Miyahira and seconded by Ms. Matayoshi.

Mr. Uwaine asked Mr. Aburano if it was permissible for one trustee to consult with another trustee under the sunshine law. Mr. Aburano answered affirmatively.

RECESS 11:50 a.m.; reconvened 11:53 a.m.

DISCUSSION:

Ms. Lewis asked if there was another way to fix this problem in the statute. Mr. Aburano commented that there were other possibilities but under these possibilities there could be no guarantee that the problem would be resolved. The Board could ask the AG for an opinion or it could promulgate a clarifying rule; however, these actions cannot override a court's interpretation of a statute. In the Health Fund's situation, the definition of employee was amended and the legislative committee report made it fairly clear that to be covered, an employee had to satisfy both factors. He stated that the AG had relied on the theory that when the legislature has expressed a clear intent as to the meaning of legislation and a literal reading of the language of the legislation is contrary to that intent, the court could ignore the literal interpretation and follow the spirit and intent of the law. Mr. Miyake suggested that the Board either request an AG opinion or ask the legislature for clarification on the intent of the definition. Mr. Aburano commented that he was doubtful that the current legislature could interpret what had been done by a past legislature.

PUBLIC COMMENT:

C. Khim commented that the definition for employee is not exhaustive and the Board can address the situation within its rules.

The motion was not passed. (Employer trustees 4/Employee-Beneficiary trustees 2;  
6 For: Mr. Callejo, Ms. Hidano, Ms. Lewis, Ms. Matayoshi, Mr. Miyahira, Mr. Williams/  
Opposed 3: Mr. Uwaine, Mr. Miyake, and Mr. Yasuda; 0 Abstentions)

RECESS: 12 p.m.; reconvened at 1 p.m.

Mr. Yasuda notified the Chair that he had an emergency and would not return to the afternoon portion of the meeting. Mr. Yogi joined the meeting at 1 p.m.

K. PROCUREMENT OF LIABILITY INSURANCE (Agenda Item V.1-2)

Ms. Matayoshi stated that the trustees previously received information from the insurance brokers and their responses to the Board's follow-up questions. The evaluation factors to be considered were specified in the packet of information distributed to each broker. There were

questions on the broker's background, a series of requests with respect to three desired coverages, a request for quotes for several different coverage limits, and the broker's recommendation as to coverage levels for the needs of the Board.

Mr. Williams requested that the AG be open in providing the information that he would have given in an executive session. Mr. Aburano commented that even though the procurement of the Board's insurance is not subject to Chapter 103D, HRS, there were still legal considerations to take into account. As noted by Mr. Khim, the board's selection should generally be fair and not arbitrary and capricious. This means that the board's decision should be supported by reasons that can be articulated and those reasons should be supported by some evidence or information provided in the proposals or presentations.

In his review of the proposals, both brokers appeared to meet the basic requirements of providing fiduciary liability insurance, errors and omissions insurance (E&O), and fidelity bond coverage. He commented that it appeared that Aon was using one insurer (Kemper) to cover both fiduciary liability and errors and omission coverage. Mr. Aburano had wanted clarification from Aon that the Kemper policy would provide both coverages; however, Aon's response was not clear. While Aon's approach was to provide one policy for two of the required coverages, Marsh's proposal provides separate insurers for each coverage. Giving the benefit of the doubt to Aon, Mr. Aburano said that both brokers' proposals appeared to provide for basically the same coverages.

Mr. Aburano indicated that there were two particular issues that must be dealt with: 1) Marsh provided firm quotes from insurers while Aon did not – Aon's proposal requires that the Board complete an application before Aon obtains a firm quote; and 2) Marsh's quotes are substantially lower than the estimated range of quotes that Aon provided. With respect to these issues, if Aon was selected as the Board's broker, Marsh may have some legal objections.

In his comparison of the coverages, Mr. Aburano indicated that Aon's fiduciary liability policy does not cover wrongful employment practices whereas Marsh's public officials liability policy does. It is clearer that Aon's fiduciary policy would cover an administrator who was an employee of the EUTF. While he thought Marsh's fiduciary policy also provides such coverage, Marsh's response in this respect was not clear. Both policies indicate that if the Board wishes to cover a third party administrator (not an employee of the EUTF) there would be an extra charge. Both policies include a provision for the payment of claims in excess of other valid and collectable insurance policies. For example, if there was a \$5 million loss, the Board's insurer would cover first \$2 million and the State's excess insurance policy would pay the balance. Aon indicated that it could structure the Board's coverage so that it would be primary. Both broker's proposed policies provide for legal defense.

Mr. Uwaine asked for particulars on the level of coverages as related to the State's insurance coverage which Ms. Matayoshi indicated were \$2 million - \$50 million. The trustees discussed the brokers' recommendations regarding deductibles. Both brokers recommended against

purchasing coverage from the first dollar. Mr. Williams asked if a comparative summary was developed and Mr. Miyake commented that such a matrix would be helpful in the Board's decision-making. Ms. Matayoshi indicated that Marsh provided a summary of the coverages and estimated costs. Marsh recommended coverage of a \$2 million aggregate with National Union Fire Insurance with a deductible of \$10,000 and \$25,000; for fiduciary liability insurance, proposal number one; and for the fidelity bond, a lower amount since the Trust Fund was not handling money at this time.

Ms. Matayoshi said that Aon did not provide firm quotes. The Board would have to select Aon as its broker and complete an application before Aon would be able to provide firm quotes. Mr. Uwaine said he understood that a broker who contacts an insurer first locks up that insurer and prevents another broker from getting a quote from that insurer. If the first broker is not retained, the second broker would be free to get a quote from the insurer. Mr. Uwaine said that Marsh had contacted certain insurers first so Aon was not able to obtain quotes from the same insurers. Ms. Matayoshi commented that she felt that Marsh was more responsive to the committee's requests and that Marsh's prices are significantly lower than the range provided by Aon. The Board could bind the coverages and prices immediately with Marsh as a broker. Mr. Uwaine commented that Aon was unable to obtain quotes from the same insurers that Marsh proposed because Marsh contacted the insurers first. He stated that the Board should be looking at the broker and its services and once selected the broker would obtain quotes. The trustees discussed that Aon and Marsh obtained information packets at approximately the same time. Mr. Miyahira and Ms. Matayoshi commented that the information provided was clear as to what the Board desired and how quickly the coverage was wanted. One broker submitted a proposal that was reasonable and available immediately and the other broker submitted a proposal that is not firm. Should Aon's final prices be within their quoted ranges, the costs for insurance would exceed the Board's budget and there would be a delay with the additional application process required by Aon.

Mr. Uwaine asked if the brokers provided for coverages from \$0 - \$2 million. Mr. Aburano answered negatively because all of the proposed policies have deductibles. Ms. Matayoshi indicated that both brokers recommended that the Board not purchase such coverage because of the premium cost. All policies cover up to \$2 million less a deductible. Mr. Aburano commented that if there is a claim, the insurer defends the Board, and if there is a settlement or judgment the insurer will pay and probably request that the Trust Fund pay an amount that is the deductible. It would be possible to ask the Legislature to fund the deductible amount but it is the responsibility of the Trust Fund to pay the deductible amount.

Mr. Williams wanted clarification on \$50 million coverage amount. Ms. Matayoshi explained that Mr. Uwaine did not want to rely on the State's insurance (\$2 million - \$50 million) for any coverages and that is the reason the request for proposals requested coverages at \$2 million to cover the gap in the State's insurance program; similarly, the request for proposals for coverages at \$5 million and \$10 million were to cover the possibility of the Board purchasing insurance without regard to the State's program.

Mr. Williams commented that both proposals have excess claim provisions that include coordination with the State's program. He indicated that it appears Marsh distinguishes between public officials liability (E&O) because it coordinates coverage with the State's policy but does not for the fiduciary liability insurance. Mr. Williams asked whether that meant the State's policy does not provide such coverage. Mr. Aburano said that the insuring language in the State's excess policy covers breach of duty, and he could not find any exclusion in the policy that clearly excluded breaches of fiduciary duty (outside of ERISA). Unless the State's excess insurer could point out such an exclusion, this indicated to him that there was potential coverage for breach of fiduciary duty under the State's excess policy. Mr. Williams commented that if the Board is covered under the State from \$2 million - \$50 million then the Board only needs a policy for \$2 million. Mr. Aburano indicated that the insurance in Marsh's proposal for public official liability insurance (E&O coverage) would only cover the Board up to \$2 million which is reasonable because the State's excess policy covers the additional liability. Ms. Matayoshi commented that as the Board's liability increases, the coverage can be increased accordingly in the future especially since the policies are claims-made policies. Ms. Lewis asked if insurance is necessary since there is coverage under the State's program and in consideration of the work the Board is currently doing. Trustees indicated that Chapter 87A, HRS, requires coverage, there had been a desire to have insurance coverage should the State refuse to pay on claims made, and concerns about legal defense.

The trustees discussed Aon's proposal. Mr. Aburano commented that the Aon proposal considered the fidelity bond coverage as disaster coverage and not first dollar coverage; Marsh's proposal looked at the first dollar with lower limits. Mr. Miyake asked about the claims process, for example, if there is a \$10 million claim, the insurer would pay up to \$2 million and the State would pay the remaining \$8 million. Mr. Miyake asked whether the Board needed to have an agreement from the State or would the State just pay the claim or does the State have a process to follow in order to pay a claim. Mr. Uwayne asked what happens when the same broker represents the Board and the State. Mr. Aburano indicated that the broker is supposed to represent the client and not the insurer. Ms. Hidano commented that using the same broker is beneficial because when there is a claim one broker will handle it while there may be disputes with two separate brokers.

The Chair commented that the Board requested that the proposals include a coverage that coordinated with the State program and additional coverages because trustees had wanted separate coverages from the State. However, knowing about the State coverages, Marsh and Aon took that into consideration. Mr. Williams expressed that a written confirmation from the broker should be requested for assurance that the Board is covered under the State policies. Ms. Matayoshi suggested that if the Board selected Marsh as the broker, the Board would procure the \$2 million coverage immediately and ask Marsh to prepare a summary of the State's program and the Board's proposed program. The Chair indicated that as a State agency, the State's policy will provide coverage to the Board.

There was discussion as to how legal defense would work. Mr. Aburano commented that the legal defense is provided by the insurer (the primary carrier) in consultation with the Board for the selection of an attorney from the insurer's pre-approved panel. However, it is possible that in a situation where the client had exhausted the insurer's coverage of \$2 million due to attorney's fees and costs, the insurer may require that the excess insurance pay for continued legal defense. The Chair commented that Marsh had in-house counsel that would assist the client. Mr. Aburano commented that both Marsh and Aon have in-house counsel who ostensibly would help the Board with any insurance coverage problems.

Mr. Aburano suggested that the Board obtain information from the State's excess insurance carrier on the coverage for breach of fiduciary liability insurance. If the response is that the State's policy does not cover such liability then the Board will have to decide on the amount of coverage it wants to purchase.

MOTION was made by Ms. Matayoshi and seconded by Mr. Miyahira to: 1) retain Marsh and secure the insurance as summarized on the last page of Marsh's proposal; 2) if Marsh has a recommendation that is different then Marsh should come back to the Board and the Board will consider the recommendation; and 3) Marsh should confirm the Board's coverages which includes a written assurance on the excess coverage for fiduciary liability insurance.

Mr. Miyake asked for clarification of the crime coverage differences.

**PUBLIC COMMENT:**

C. Khim commented that based on the Board's February 12, 2002 minutes, Aon's presentation indicated that their proposal was as a primary insurance and Marsh's proposal coordinated coverages with the State's insurance programs. He understood that the Board wanted insurance coverages that did not rely on the State's existing coverages. He suggested that is the reason for the disparity between Aon and Marsh's costs. Based upon that premise, he felt that Marsh's premiums are high. He feels that the Board should review the policies more closely. He suggested that the Board is selecting the broker and not the underwriter.

Mr. Miyake responded that the Marsh indicated that it would be primary in paying for claims under the State's \$2 million retention amount. Mr. Aburano remembered that the State's excess policy limit had been lowered from \$50 million to \$15 million as a result the insurance industry turmoil since the September 11 events. Mr. Miyahira commented that the Board should purchase the necessary amounts of insurance to cover what the Board needs to do at this time. The trustees discussed the State's excess liability insurance. Mr. Uwayne wanted clarification on whether Marsh covers from the deductible to \$2 million. Mr. Aburano commented that the policy most applicable to the loss would cover from the deductible up to \$2 million and the State's excess liability carrier would pay from \$2 million - \$15 million. He suggested that the Board attempt to obtain confirmation from the State's excess insurer that fiduciary liability is covered by the state's excess policy. If so, then the Board is primarily looking at purchasing the first \$2 million if satisfied with \$15 million in overall coverage. If

the State's excess insurer says that its policy does not cover fiduciary liability, then the Board must decide on the amount of fiduciary insurance it desires.

**PUBLIC COMMENT:**

G. Murakami, Royal State, commented that the Board should ask Marsh for that statement. He commented that the excess liability limits have been reduced to \$15 million and he suggested that the Board ask Marsh what would happen should the State's \$15 million excess insurance cannot handle a claim.

Mr. Yogi commented that he understood that the policy would be retro-active to January 1, 2002 to December 2002. Marsh's proposal was for a one-year period and the Board would be looking at higher coverages from January 2003.

**PUBLIC COMMENT:**

C. Khim commented that the Board should be sure that the policy is covering what the Board think it is covering. He suggested that the Board ask the legislature for an appropriation to cover the deductibles and, if the appropriation is unused, it would be returned.

Mr. Uwaine asked for clarification on whether the State's coverage is an aggregate or per occurrence amount. Mr. Miyahira commented that the Board should consider what it is doing now to determine the amounts of insurance needed.

Motion was passed unanimously. (Employer trustees 5/Employee-Beneficiary trustees 5).

Chair asked staff to work with the insurance committee members to secure the insurance.

**L. EXECUTIVE SESSION (Agenda Item VI.A)**

MOTION to move into Executive Session to discuss the minutes of February 26, 2002 was moved by Ms. Matayoshi and seconded by Mr. Miyahira.

For the record, the following is taken from the Executive Session minutes to be shared as public information:

After discussion, the trustees agreed that the project staff would be retained and that Trustees Miyahira and Yogi would draft a letter assigning the staff full time to the board effective immediately to June 30, 2002, with the understanding that some of the staff's time may be required by B&F to help respond to questions regarding the Health Fund. Any assignment will go through the Chairperson, Vice-Chairperson, and the Secretary-Treasurer (Officers). Organizational structure will be covered, i.e., staff's assignments will be organized through Board Officers.

Trustee Lewis recommended that the Board Officers and Trustees Miyahira and Yogi (as Directors of staff's respective departments) sit with staff, provide them in writing what is their role until June 30, 2002, and give them the assurance that they will not be put in such a situation again.

M. ADJOURNMENT

A motion to adjourn the meeting was made by Mr. Miyahira and seconded by Ms. Hidano. There were no objections; the motion was unanimously passed.

The meeting was adjourned at 2:45 p.m.

Respectfully submitted,

/s/

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James Williams, Secretary-Treasurer

APPROVED on April 9, 2002.

Documents Distributed:

1. Minutes of February 12, 2002. (8 pages)
2. Minutes of February 26, 2002. (10 pages)
3. Minutes of February 28, 2002. (3 pages)
4. Minutes of March 5, 2002. (9 pages)
5. International Foundation Membership Application. (6 pages)
6. Recruitment Process. (1 page)
7. Amendments to Chapter 87A. (16 pages)
8. Interim budget. (2 pages)
9. Discussions with Public Employees Health Fund. (3 pages)
10. Approved minutes of January 29, 2002. (9 pages)
11. Approved minutes of February 5, 2002. (7 pages)