

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 2262

Honorable Members  
Twenty-Fourth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 2262, entitled "A Bill for an Act Relating to Health."

The purposes of this bill are to extend the repeal date of Act 245, Session Laws of Hawaii 2005 ("Act 245"), from July 1, 2009, to July 1, 2010; to require the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") to conduct a certified independent financial audit of the EUTF that covers the Hawaii State Teachers Association (HSTA) employees, retirees, and employee-beneficiaries who have remained with the EUTF; and to require the State Auditor to make findings and recommendations regarding the benefit and administrative costs of the EUTF and the voluntary employees' beneficiary association trust ("VEBA trust") sponsored by HSTA based on the independent financial audit.

This bill is objectionable because if VEBA trusts improve benefits, they likely do so for a select group of employees at the expense of others. As noted in my statement of concerns regarding the original passage of Act 245 and my message regarding the passage of Act 294, Session Laws of Hawaii 2007 ("Act 294"), VEBA trusts result in increased costs for employee groups that consist of older, less healthy members. If bargaining units that have employees with better than average claims or loss experience are allowed to form VEBA trusts and

exit the EUTF, the average claims and loss experience for the remaining EUTF membership will increase, leading to increased rates for the EUTF membership. The EUTF testified that this has been the effect of the HSTA VEBA trust. The EUTF's testimony on this bill states that the EUTF consultant calculated that EUTF rates would have been lower if bargaining unit 5 members had remained in the EUTF rather than transferring to the HSTA VEBA trust. In addition, since Act 245 provides for VEBA trusts to cover all future retirees, but not all current retirees, this causes the EUTF to be left with an increasingly older group of retirees, resulting in higher rates for EUTF plans.

The provision of health benefits through a single health benefits delivery system, the EUTF, is the most effective way to control health benefits costs and meet the needs of all State and county employees, retirees, and their dependents. In Act 88, Session Laws of Hawaii 2001 ("Act 88"), the Legislature created the EUTF, in part: (1) to eliminate the negative effect on health benefits plan rates due to adverse selection caused by employee organization sponsored health benefits plans, (2) to eliminate the duplication of administrative costs caused by having multiple health benefits plans, and (3) to establish one large health plan that would have the leverage to negotiate better rates and benefits with insurance carriers and others offering health benefits plans.

The legislative history of Act 88 indicates that the Legislature also created the EUTF in order to have better oversight and control over the use of public funds appropriated for public employee and retiree health benefits plans. Act 88 was correct in 2001 and it is still correct today.

I remain concerned about the effectiveness of

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safeguards against fraud or mismanagement by VEBA trustees. VEBA trusts established under Act 245 are not covered by the strict standards of the federal Employee Retirement Income Security Act of 1974 ("ERISA"). There is no single State agency responsible for administering and regulating VEBA trusts. No State agency has been authorized to make rules for administering and regulating VEBA trusts and no funding has been provided for such administration and regulation.

In addition to the foregoing objections regarding VEBA trusts, this bill is objectionable because it does away with the thorough analysis and comprehensive study that the Legislature itself said was necessary in order to determine whether Act 245 should or should not be extended or made permanent. Act 245 stated that the VEBA trust program was to be a three-year pilot program during which a "thorough analysis" of the costs and benefits of a VEBA trust can be evaluated against the EUTF to determine what actual savings could be realized through VEBA trusts. Last year, in Senate Concurrent Resolution No. 178 ("S.C.R. No. 178"), the Legislature stated that in order for the Legislature to make a sound determination regarding whether or not to extend or make permanent Act 245, the Legislature required data, along with an independent study of that data, regarding all aspects of the impact of Act 245, and the possible impact of additional VEBA trusts. S.C.R. No. 178 requested the State Auditor to conduct a "comprehensive study" on the impact of Act 245, both historically and prospectively, on: (1) HSTA members and retirees, (2) members and retirees of other bargaining units who remained in the EUTF, (3) public employees who would be ineligible to join any VEBA trust, (4) the public employers, (5) the public employers' compliance with Governmental Accounting

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Standards Board Statement Numbers 43 and 45, (6) the operations and finances of the EUTF, (7) the ramifications of the coexistence of both VEBA trusts and the EUTF, and (8) any other persons or areas identified by the Auditor. The State Auditor has not conducted the requested study and the certified independent financial audit required by this bill is far from the thorough analysis and comprehensive study called for by Act 245 and S.C.R. No. 178. It should also be noted that the Legislature did not appropriate any funds for the EUTF to conduct the independent financial audit.

The State Auditor should conduct the comprehensive study requested under S.C.R. No. 178 and submit a report to the Legislature for consideration. Based on that report, the Legislature should make a decision as to whether to extend the VEBA trust pilot program.

For the foregoing reasons, I am returning Senate Bill No. 2262 without my approval.

Respectfully,



LINDA LINGLE  
Governor of Hawaii