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JADE T. BUTAY
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DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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HAWAII RETIREMENT
SAVINGS BOARD

Co-Chairs
Jade T. Butay
Luis Salaveria

Members
Jessie Keola Dean
Barbara Krieg
Andrew Nomura
Brian Taniguchi
Karen Yasukawa
Senator Sharon Moriwaki

HAWAII RETIREMENT SAVINGS PROGRAM BOARD MEETING

Thursday, May 25, 2023

1:00 p.m. – 4:00 p.m.

830 Punchbowl Street, Room 310

MINUTES

MEMBER ATTENDEES

Jade T. Butay, Co-Chair, Department of Labor and Industrial Relations (DLIR)
Luis Salaveria, Co-Chair, Department of Budget & Finance (B&F)
Jessie Keola Dean, Member
Barbara Krieg, Member
Andrew Nomura, Member
Brian Taniguchi, Member
Karen Yasukawa, Member
Senator Sharon Moriwaki, Member

GUESTS

William Kunstman, DLIR Director Designee
Nancy L. Bernal, DLIR
David Rodriguez, DLIR
Michael Moriyama, Department of the Attorney General (AG)
Staci Teruya, AG
Kealii Lopez, AARP Hawaii
Audrey Suga-Nakagawa, AARP Hawaii
Charles Izumoto, Staff for Senator Moriwaki
Kim Olson, Pew Charitable Trusts
Kiran Siddique, AKF Consulting Group
Angela Antonelli, Georgetown University Center for Retirement Initiatives
Tom Heinrich
Kevin Simon

I. Call Meeting to Order

Mr. Kunstman called the meeting to order at 1:00 p.m.

Agenda was taken out of order to take up item V(a). Budget FY2023, FY2024.

Co-chair Salaveria presented the budget information as outlined in the board packet presentation materials.

Member Krieg asked if the funds are deposited into a trust account and if there are any restrictions on the year that the funds are spent. Co-chair Salaveria responded that the

account is a special fund with the possibility of future legislation to move the funds into a trust account. Once the funds are deposited into the special fund, they remain there until expended and are no longer subject to lapsing.

Co-chair Butay asked if the special fund 5% fee for general services could be excluded from this charge. Co-chair Salaveria said that he will look to see if the Hawaii Retirement Savings Program special fund is subject to this fee. He further indicated that B&F would support legislation to exempt this charge.

II. Historical Background

- a. Senate Resolution 76 (Session Laws of Hawaii (SLH), 2021)
- b. Retirement Savings Taskforce: Findings and Recommendations
- c. Act 296 (SLH, 2022) – Chapter 389, Hawaii Revised Statutes (HRS)

Ms. Lopez presented the historical background as outlined in the board packet presentation materials.

III. Board Requirements & Responsibilities

- a. Ethics Law, Standards of Conduct, Chapter 84, HRS
- b. Sunshine Law, Public Agency Meetings and Records, Chapter 92, HRS
- c. Hawaii Retirement Savings, Chapter 389, HRS

Mr. Kunstman presented the board requirements and responsibilities as outlined in the board packet presentation materials and announced that the ethics commission informed him that they contacted the board members to file their financial disclosures. However, the members confirmed that they were not contacted and that Mr. Kunstman would follow-up with the Ethics Commission.

Member Yasukawa asked if communication outside of board meetings are permissible. Mr. Kunstman clarified that members cannot meet to discuss matters pertaining to board business. However, there is an exemption for research purposes for permitted interaction groups (PIGs). A question was raised on whether or not PIGs are subject to the Sunshine Law in which Mr. Kunstman indicated that he would look into this. Member Yasukawa as well as other board members and certain members from the public expressed concern regarding the broad language on the permissibility for board members to discuss matters for informational or clarification purposes.

Member Dean inquired if it was permissible for PIGs to participate online via zoom or if PIGs are required to meet in-person only. Co-chair Salaveria shared that PIGs could happen independently as long as they are placed on an agenda, and PIGs allow members a greater degree of interaction. Permitted interaction groups may be useful for future meetings, particularly if the board plans to create sub-committees.

Luis exited the meeting at 1:36 p.m.

Member Krieg asked and Mr. Kunstman confirmed that board participation of public meetings via zoom constitutes quorum similar to attending the meeting in-person. She further asked if participation via the telephone could be counted as quorum. Mr. Kunstman indicated that he does not think it can and that the individual must be visually and auditorily available to be a bona fide participatory board member.

Member Taniguchi asked what the parameters are when meeting with other board members from other states, like Oregon, or when attending a conference. Member Moriwaki shared that the current law as written would not be applicable to members if gatherings are done for informational purposes.

Member Krieg asked if the procurement law would apply should Hawaii choose to participate in an intrastate compact. Mr. Moriyama responded that he would look into it and report back to the board.

Member Dean inquired if there's an existing administrative hearing process that the board would be able to utilize. Mr. Kunstman answered in the negative but added that there are different existing models that exist within the DLIR that could be applicable. Member Krieg added that the state's Island Savings Plan and the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) would be good resources to look into to see how these programs are set up for contracting services and administrative rules and to see how such issues are handled and addressed.

Member Nomura questioned if board members are open to liability issues. Mr. Kunstman answered that the law provides for some degree of protection for liability. Member Krieg added that the board, should they deem it necessary, does have the authority to purchase additional insurance coverage. She requested that the AG look into the degree of protections for the board members and get back to the board on recommendations based on the current statute to protect the board from liability.

Member Krieg commented on the need to possibility hire consultants if a formal evaluation study were to occur and inquired about the board's budget to carry out such a study. Mr. Kunstman answered that the existing budget includes \$1,000,000 to cover the study which could include an actuarial study, and the same amount was approved by the legislature and will be available for the department in the next fiscal year.

Member Moriwaki asked if a fee would be charged for those who participate in the program and if that would be the process going forward. Mr. Kunstman answered that this fee still needs to be determined and the feasibility study would look into this matter in relation to the program's sustainability. In terms of how long it would take to reimburse the state for the expenses as well as keep the ongoing expenses going, Member Taniguchi commented that there were a number of estimates that were developed, and it would be up to the board to determine what that fee would be. Mr. Kunstman added that one of the recommendations by the task force to help implement the program was to partner with other states to help defray the costs.

Member Dean inquired if the \$25,000,000 for outreach and education would lapse in June of 2024. Mr. Kunstman responded that he inquired with Co-chair Salaveria about this lapse and is awaiting his response. If the funds were to lapse, the DLIR could put in a request in its departmental budget to extend the use of these funds, if necessary.

IV. Best Practices and Lessons Learned from Other State Retirement Savings Programs

Ms. Olson presented PEW's presentation as outlined in the board packet presentation materials.

PEW's presentation indicated that 80% of employees reported no or few employee concerns for the program. Member Dean asked if there were any data on employees' concerns for the remaining 20%. Ms. Olson responded that she would get back to the board on that information.

Member Krieg asked and Ms. Olson confirmed that most of the states' programs start with a Roth IRA because the population and demographic for these participants are concerned about access to their money.

Member Dean asked if there was a correlation of not having a retirement savings account

to adult protective service cases. Ms. Olson responded that she had not seen any data suggesting a correlation but that it may exist.

Of the states that have a retirement savings program, Member Nomura asked how many have a matching contribution program. Ms. Olson answered that none of the states have such a program because employers cannot match into a Roth or traditional IRA. She added that Hawaii's matching contribution is a new idea, which is somewhat similar to what is happening on the federal level with Secure 2.0. Member Nomura reiterated and Ms. Olson confirmed that Hawaii's voluntary opt-in option and \$500 contribution is unique to Hawaii and added that the best practice for these programs have been automatic enrollment as it gets the maximum amount of people to save.

Member Krieg asked if Oregon used a contractor to retrieve employer data. Ms. Olson shared that Oregon created an interagency agreement with the state's agencies that had the data, which was then given to the program administrator. Mr. Kunstman added that the DLIR's Unemployment Insurance Division (UI) have employer information. In order to use that data, the board would have to develop a memorandum of understanding with the UI. However, since the UI is an entirely federally funded function, any associated costs with using that data would have to be paid for by the board since that would be considered a non-allowable cost under the UI program.

Member Dean asked how Mr. Olson was able to identify employers who did not offer a 401(k) plan. She answered that Oregon required all employers to submit that information on the state's portal. Oregon later discovered that every business that offers a plan was required to file a Form 5500 with the federal government, and through that data, Oregon was able to exempt those businesses.

Regarding pay back requirement for up front funding, Ms. Lopez inquired if other states have that provision, and if not, since that is included in Hawaii's program, if that would impact a partnership with other states. Ms. Olson responded that there are several states that require a loan payback, but there are no time limits for those paybacks. States are trying to structure their fees in a way that is not too high but making enough money to stop taking out loans. If Hawaii were to enter into a partnership, Hawaii would have to look at the other state's fee and determine if that is enough for Hawaii or if an extra fee would be necessary.

Ms. Olson shared that Oregon's timeframe from its first board meeting to the program's implementation was about two years. Since Oregon was the first state to implement a retirement program, there was no precedent. Now current states have a roadmap to work off of, which is taking them less time for program implementation. Ms. Antonelli added that the timeline from a board's first meeting to program launch is running about 18 months. She shared that Georgetown University Center for Retirement Initiatives is a clearinghouse for some of the questions raised during the meeting and to encourage the members to visit their website, cri.georgetown.edu.

Member Yasukawa expressed that Hawaii would have to do its own program since it is the only state that has an opt-in and matching fund component. Ms. Olson suggested that Hawaii would need to talk to other states that already have programs and see if they would be interested in partnering with Hawaii given its differing components. She added that the \$500 match would not be much of a problem, but the opt-in option may be an issue.

There was discussion surrounding the possibility of changing the current statute to opt-out. Member Taniguchi explained that there was a lot of support and momentum when the law was passed. Going forward, it would be important to establish champions in the House and Senate to provide leadership and garner legislative support. Additionally, the board would have to decide if they would like to amend the law and prepare legislation for such

amendments for the next legislative session. It would be prudent for the board to be well prepared and organized to present its changes to the legislature rather than having the legislature make their own amendments. It would also be helpful to have the opt-out data from the other states to help justify that potential change to the legislature. Pew has models for opt-out programs, but there are no models for opt-in programs so it would be difficult to provide a feasibility analysis. One possibility would be to look at the private sector data since they offer both opt-in and opt-out options while recognizing that the state program is still somewhat different in that the private sector includes a matching contribution.

V. Overview of Hiring Staff and Consultants

- a. Budget FY2023, FY2024
- b. Executive Director, Program Specialist V, Secretary III
- c. Consultants – Hawaii Public Procurement Code, Chapter 103D, HRS

As explained earlier, positions and funding exist in the current and new budget for an executive director (ED), program specialist V, and secretary III. The DLIR's recommendation for the staffing was to bring on an ED, which is the only exempt position, and the ED would bring in the program staff. Concerns were raised about the ED's education requirements and the possibility of broadening those requirements rather than requiring specific baccalaureate degrees, which would eliminate a lot of well-qualified individuals. It was suggested that the board should review and discuss any changes to the position description (PD) before recruiting for an ED. It would be helpful for the board to look at other states' PDs and minimum qualifications to ensure a certain caliber of applicants. Ms. Antonelli reiterated that Georgetown's website contains the PDs for all the EDs. It was also recommended that the board look into the introductory language in the PD since, as written, the ED is placed in the director's office, but the long-term plan for the program is to have it as a free-standing attached agency.

While it was suggested that the board amend the job description at the meeting so that they could start recruiting as soon as possible, due to the significance of the position, Member Moriwaki recommended that the board look at other states' PD, such as CalSavers. It was also suggested that delegation should be given to the DLIR to make the PD changes; however, the DLIR would prefer that the board deliberate on this matter rather than leaving it to the DLIR to determine the changes.

VI. Preview of Decision-Making for Future Meetings

- a. Recruitment of Executive Director
- b. Evaluation/Feasibility Study of the Program – Program Consultant
- c. Future Meetings

It was recommended that a PIG could be created to further examine and amend the ED's PD as needed and then report to the board with its findings. However, there were also concerns that the PIG would delay the process in recruiting for and hiring an ED due to the Sunshine Law requirements. A solution would be to post pertinent informational materials onto the DLIR's website for the board and the public to view and access and to notify the board when such materials are available. It was noted that, due to today's job market, Maine and New Jersey's recruitment process was relatively lengthy, and New Jersey utilized a recruiting firm which took them about 8 months to find an ED.

Because the ED position is an exempt position, there is no deadline as to when the position should be advertised. The board has the latitude to select and appoint an ED at any time. Should an outside firm be used for an executive search, it would be beneficial to consult with the State Procurement Office (SPO). Funds are available to hire a consultant and the procurement process would have to occur to procure a consultant. However, the ED's PD could be advertised simultaneous to procuring a consultant. The SPO already

has pre-existing contracts and lists for consultants that staff could look into to help expedite the process.

The salary attached to the current PD is up to \$100,000, not including fringe benefits. Concerns were raised about the salary being too low and the difficulty of finding someone with that set amount. There is flexibility to change the salary amount, but the budget may be challenging. A possible solution would be for the board to agree to reallocate some of the defined categories in the appropriation and consult with B&F.

Regarding the evaluation and feasibility study of the program, the scope would have to include but not be limited to references in the existing statute as well as looking at the opt-in versus opt-out options. It would be prudent for the board to come up with some ideas of what should be outlined in the request for proposal and then report those findings at a subsequent board meeting. The study would also be used to help justify possible changes in the existing statute and discuss the parameters before the board decides what changes to adopt before presenting them to the legislature. Additionally, the study should be compact and done quickly to account for the time it would take for the board to deliberate on the recommendations and present those items to the legislature.

Discussion about the frequency for the board to meet occurred with the suggestion of meeting more frequently since the board is in its premature stages. It was shared that other state's boards in their first 18-month period were meeting as frequently as monthly.

VII. Public Comment Period

Kealii thanked Mr. Kunstman, Co-chair Butay, and Ms. Bernal for all their work in preparing for this meeting and for the DLIR's willingness to take on this project.

VIII. Board's Powers, Duties, Privileges, Immunities, and Liabilities

- a. Executive Session pursuant to HRS § 92-5(a)(4) to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities

Upon the board's consensus, executive session was deemed unnecessary.

IX. Announcements

- a. Next Meeting(s) to be Determined

It was determined that the next meeting would be scheduled for Friday, June 9, 2023, at 1:00 p.m. at the DLIR building conference room 310.

X. Adjournment

There being no further business, Mr. Kunstman adjourned the meeting at 3:53 p.m.