
A BILL FOR AN ACT

RELATING TO VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 245, Session Laws of Hawaii 2005, is
2 amended by amending section 1 to read as follows:
3 "SECTION 1. The purpose of this Act is to allow for the
4 temporary establishment of an employee organization sponsored
5 trust that would provide health benefits for state and county
6 employees [~~of a particular bargaining unit, as well as future~~
7 ~~retirees of that bargaining unit and existing retirees who wish~~
8 ~~to participate in such a trust~~]. The trust would be established
9 as a voluntary employees' beneficiary association (VEBA) trust
10 pursuant to section 501(c)(9) of the Internal Revenue Code of
11 1986, as amended. The trust would be funded by employer
12 contributions negotiated pursuant to a collective bargaining
13 agreement and employee contributions to be determined by the
14 trust's board of trustees for active employees. The Act imposes
15 on the trust all of the standards and requirements of the
16 Employee Retirement Income Security Act of 1974, as amended
17 (ERISA). Even if the trust is deemed to be a governmental plan
18 exempt from ERISA, the legislative intent is that the trust must



1 comply with the standards and requirements of ERISA as a matter
2 of state law and that such shall be enforced by the attorney
3 general as well as participants, beneficiaries, and fiduciaries
4 of the plan or plans established by the trust.

5 ~~[This Act also provides for retiree coverage for any~~
6 ~~employee who retires from the State or the counties who was a~~
7 ~~member of an employee organization that establishes a VEBA trust~~
8 ~~pursuant to a collective bargaining agreement effective on or~~
9 ~~after July 1, 2005. Existing retirees who are members of an~~
10 ~~employee organization and who were previously covered by a~~
11 ~~collective bargaining agreement will be provided a one-time~~
12 ~~opportunity to join the VEBA trust once established. Retiree~~
13 ~~coverage for existing retirees provided by an employee~~
14 ~~organization's VEBA trust would be funded by employer~~
15 ~~contributions made directly to the VEBA trust by the employer.]~~

16 The requirement of establishing a VEBA trust in order to be
17 exempt from participation in the Hawaii employer-union health
18 benefits trust fund is intended to be a cost containment measure
19 in response to the ever-increasing costs of health care
20 throughout the state. However, because of the lack of data
21 available on the impact of a VEBA trust on the Hawaii employer-
22 union health benefits trust fund, this Act would allow the



1 establishment of a VEBA trust pilot program for a period of
2 three years. During this period, a thorough analysis of the
3 costs and benefits of a VEBA trust can be evaluated against the
4 Hawaii employer-union health benefits trust fund to determine
5 what actual savings could be realized by the State through this
6 mechanism."

7 SECTION 2. Section 87D-1, Hawaii Revised Statutes, is
8 amended by deleting the definition of "retiree".

9 [~~"Retiree" means an individual who has retired from the~~
10 ~~State or its counties."]~~

11 SECTION 3. Section 87D-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[~~+~~§87D-2[~~+~~] **Establishment of the trust.** An employee
14 organization shall be exempt from chapter 87A and meet the
15 following requirements in order to establish a voluntary
16 employees' beneficiary association trust under this chapter:

17 (1) The employee organization shall establish a tax-exempt
18 trust pursuant to Title 26 United States Code section
19 501(c)(9), as amended, and related regulations, known
20 as a voluntary employees' beneficiary association
21 trust;



- 1 (2) The trust may offer health benefits in accordance with
2 Title 26 United States Code section 501(c)(9), as
3 amended, and related regulations;
- 4 (3) The trust shall meet all the standards and
5 requirements applicable to employee welfare benefit
6 plans under Title 29 United States Code sections 1001-
7 1191, as amended, and related regulations. The assets
8 of any plan provided by or through the trust shall not
9 inure to the benefit of any employee organization and
10 shall be held for the exclusive purposes of providing
11 benefits to participants and beneficiaries and
12 defraying reasonable expenses of administration;
13 provided that this shall not preclude the trust from
14 returning contributions or payments made by an
15 employer under a mistake of fact within one year after
16 the payment of the contributions or payments;
- 17 (4) Each plan offered by the trust shall be established
18 and maintained pursuant to a written instrument that:
19 (A) Provides a procedure for establishing and
20 carrying out a funding policy and method
21 consistent with the objectives of the plan and
22 the requirements of this chapter;



- 1 (B) Describes any procedure under the plan for the
- 2 allocation of responsibilities for the operation
- 3 and administration of the plan;
- 4 (C) Provides a procedure for amending the plan;
- 5 (D) Specifies the basis on which payments are made to
- 6 and from the plan; and
- 7 (E) Provides a procedure for providing adequate
- 8 notice in writing to any participant or
- 9 beneficiary whose claim for benefits has been
- 10 denied, setting forth the specific reasons for
- 11 such denial, and affording a reasonable
- 12 opportunity for any participant whose claim has
- 13 been denied for a full and fair review. The
- 14 written instrument shall meet any other standards
- 15 and requirements of Title 29 United States Code
- 16 [‡]sections[‡] 1001-1191, as amended, and related
- 17 regulations;
- 18 (5) The trust shall provide a summary plan description,
- 19 material modifications or amendments to the summary
- 20 plan description, and updates to the summary plan
- 21 description that meet the standards and requirements
- 22 of this chapter;

1 (6) All of the assets of the trust's plans shall be held
2 in trust by the governing board of the trust, at least
3 one member of which shall be a retiree and a member of
4 the employee organization sponsoring the trust;

5 (7) The governing board of the trust shall hold regularly
6 scheduled meetings open to all participants and
7 beneficiaries and shall provide such persons with
8 advance notice of all meetings; and

9 (8) The employee organization shall have an applicable
10 collective bargaining agreement with the employer;
11 provided that the agreement shall specify that the
12 employee organization agrees to comply with all
13 requirements of this chapter without regard to whether
14 or not the trust is deemed a governmental plan under
15 federal law."

16 SECTION 4. Section 87D-4, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) The annual report shall contain the following:

19 (1) The number of employees [~~retirees~~] and other persons
20 covered by the plan;

21 (2) The name and address of each fiduciary;



- 1 (3) Except in the case of a person whose compensation is
2 minimal and who performs solely ministerial duties,
3 the name of each person (including but not limited to
4 any consultant, broker, trustee, accountant, insurance
5 carrier, actuary, administrator, investment manager,
6 or custodian who rendered services to the plan or who
7 had transactions with the plan) who received directly
8 or indirectly compensation from the plan during the
9 preceding plan year for services rendered to the plan
10 or its participants, the amount of such compensation,
11 the nature of the person's services to the plan or its
12 participants, the person's relationship to the
13 employee organization, and any other office, position,
14 or employment that the person holds with a party in
15 interest;
- 16 (4) An explanation of the reason for any change in
17 appointment of any trustee, accountant, insurance
18 carrier, enrolled actuary, administrator, investment
19 manager, or custodian; and
- 20 (5) A financial statement that meets the requirements of
21 this chapter.



1 The annual report shall contain any other information
2 required by Title 29 United States Code sections 1001-1191, as
3 amended, and related regulations."

4 SECTION 5. Section 87D-9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~[+]§87D-9[+] State and county contributions to the~~
7 ~~trust[; retired employees].~~ ~~[-(a) Any individual who becomes a~~
8 ~~retiree on or after the establishment of a voluntary employees'~~
9 ~~beneficiary association trust, and who, immediately prior to~~
10 ~~retirement, was a member of the bargaining unit of the~~
11 ~~sponsoring employee organization, shall be enrolled in that~~
12 ~~voluntary employees' beneficiary association trust. Upon the~~
13 ~~establishment of a voluntary employees' beneficiary association~~
14 ~~trust, the State, through the department of budget and finance,~~
15 ~~and the counties through their respective departments of~~
16 ~~finance, shall pay to the trust for each retiree who retires on~~
17 ~~or after July 1, 2005, a monthly contribution pursuant to the~~
18 ~~applicable collective bargaining agreement that shall not exceed~~
19 ~~the base monthly contributions or the specific contribution~~
20 ~~limits set forth in chapter 87A.~~

21 ~~(b) Any retiree who, immediately prior to retirement, was~~
22 ~~a member of an employee organization prior to the establishment~~



1 ~~of a voluntary employees' beneficiary association trust by the~~
2 ~~employee organization, and who was previously covered by a~~
3 ~~collective bargaining agreement, shall be given a one-time~~
4 ~~option to transfer participation from the Hawaii employer-union~~
5 ~~health benefits trust fund established under chapter 87A to the~~
6 ~~organization's voluntary employees' beneficiary association~~
7 ~~trust once the latter is established. Upon the establishment of~~
8 ~~the voluntary employees' beneficiary association trust, the~~
9 ~~State, through the department of budget and finance[,] and the~~
10 ~~counties, through their respective departments of finance, shall~~
11 ~~pay to the trust for each retiree who opts to transfer into a~~
12 ~~voluntary employees' beneficiary association trust, a monthly~~
13 ~~contribution equal to the contribution paid on behalf of a~~
14 ~~similarly situated retiree under the Hawaii employer-union~~
15 ~~health benefits trust fund.~~

16 ~~(e)]~~ (a) Medicare part B reimbursements established
17 pursuant to section 87A-23(2) shall be directly disbursed by the
18 State, through the department of budget and finance, and the
19 counties, through their respective departments of finance, to
20 those [~~retirees and their beneficiaries~~] who qualify and are
21 covered by a voluntary employees' beneficiary association trust
22 to the same extent [~~retirees and their beneficiaries~~] under the



1 Hawaii employer-union health benefits trust fund [~~receive those~~
2 reimbursements].

3 [~~(d)~~] (b) For the purposes of this chapter, a collective
4 bargaining agreement shall include provisions specifying
5 contributions to a voluntary employees' beneficiary association
6 trust."

7 SECTION 6. Section 89-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§89-3 Rights of employees.** Employees shall have the
10 right of self-organization and the right to form, join, or
11 assist any employee organization for the purpose of bargaining
12 collectively through representatives of their own choosing on
13 questions of wages, hours, and other terms and conditions of
14 employment, [~~including retiree health benefit contributions,~~]
15 and to engage in lawful, concerted activities for the purpose of
16 collective bargaining or other mutual aid or protection, free
17 from interference, restraint, or coercion. An employee shall
18 have the right to refrain from any or all of such activities,
19 except for having a payroll deduction equivalent to regular dues
20 remitted to an exclusive representative as provided in section
21 89-4."

1 SECTION 7. Section 89-6, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§89-6 Appropriate bargaining units.** (a) All employees
4 throughout the State within any of the following categories
5 shall constitute an appropriate bargaining unit:

- 6 (1) Nonsupervisory employees in blue collar positions;
- 7 (2) Supervisory employees in blue collar positions;
- 8 (3) Nonsupervisory employees in white collar positions;
- 9 (4) Supervisory employees in white collar positions;
- 10 (5) Teachers and other personnel of the department of
11 education under the same pay schedule, including part-
12 time employees working less than twenty hours a week
13 who are equal to one-half of a full-time equivalent;
- 14 (6) Educational officers and other personnel of the
15 department of education under the same pay schedule;
- 16 (7) Faculty of the University of Hawaii and the community
17 college system;
- 18 (8) Personnel of the University of Hawaii and the
19 community college system, other than faculty;
- 20 (9) Registered professional nurses;
- 21 (10) Institutional, health, and correctional workers;
- 22 (11) Firefighters;

1 (12) Police officers; and

2 (13) Professional and scientific employees, who cannot be
3 included in any of the other bargaining units.

4 (b) Because of the nature of the work involved and the
5 essentiality of certain occupations that require specialized
6 training, supervisory employees who are eligible for inclusion
7 in bargaining units (9) through (13) shall be included in
8 bargaining units (9) through (13), respectively, instead of
9 bargaining unit (2) or (4).

10 (c) The classification systems of each jurisdiction shall
11 be the bases for differentiating blue collar from white collar
12 employees, professional from institutional, health and
13 correctional workers, supervisory from nonsupervisory employees,
14 teachers from educational officers, and faculty from nonfaculty.
15 In differentiating supervisory from nonsupervisory employees,
16 class titles alone shall not be the basis for determination.
17 The nature of the work, including whether a major portion of the
18 working time of a supervisory employee is spent as part of a
19 crew or team with nonsupervisory employees, shall be considered
20 also.



1 (d) For the purpose of negotiating a collective bargaining
2 agreement, the public employer of an appropriate bargaining unit
3 shall mean the governor together with the following employers:

4 (1) For bargaining units (1), (2), (3), (4), (9), (10),
5 and (13), the governor shall have six votes and the
6 mayors, the chief justice, and the Hawaii health
7 systems corporation board shall each have one vote if
8 they have employees in the particular bargaining unit;

9 (2) For bargaining units (11) and (12), the governor shall
10 have four votes and the mayors shall each have one
11 vote;

12 (3) For bargaining units (5) and (6), the governor shall
13 have three votes, the board of education shall have
14 two votes, and the superintendent of education shall
15 have one vote;

16 (4) For bargaining units (7) and (8), the governor shall
17 have three votes, the board of regents of the
18 University of Hawaii shall have two votes, and the
19 president of the University of Hawaii shall have one
20 vote.

21 Any decision to be reached by the applicable employer group
22 shall be on the basis of simple majority, except when a



1 bargaining unit includes county employees from more than one
2 county. In such case, the simple majority shall include at
3 least one county.

4 (e) In addition to a collective bargaining agreement under
5 subsection (d), each employer may negotiate, independently of
6 one another, supplemental agreements that apply to their
7 respective employees; provided that any supplemental agreement
8 reached between the employer and the exclusive representative
9 shall not extend beyond the term of the applicable collective
10 bargaining agreement and shall not require ratification by
11 employees in the bargaining unit.

12 ~~[(f) For the purposes of negotiating contributions by the~~
13 ~~State and the counties to a voluntary employees' beneficiary~~
14 ~~association trust as part of a collective bargaining agreement,~~
15 ~~all prospective retirees who retire on or after July 1, 2005,~~
16 ~~shall be considered members of the bargaining unit to which they~~
17 ~~belonged immediately prior to their retirement from the State or~~
18 ~~the counties.~~

19 ~~(g)]~~ (f) The following individuals shall not be included
20 in any appropriate bargaining unit or be entitled to coverage
21 under this chapter:

22 (1) Elected or appointed official;



- 1 (2) Member of any board or commission;
- 2 (3) Top-level managerial and administrative personnel,
3 including the department head, deputy or assistant to
4 a department head, administrative officer, director,
5 or chief of a state or county agency or major
6 division, and legal counsel;
- 7 (4) Secretary to top-level managerial and administrative
8 personnel under paragraph (3);
- 9 (5) Individual concerned with confidential matters
10 affecting employee-employer relations;
- 11 (6) Part-time employee working less than twenty hours per
12 week, except part-time employees included in
13 bargaining unit (5);
- 14 (7) Temporary employee of three months' duration or less;
- 15 (8) Employee of the executive office of the governor or a
16 household employee at Washington Place;
- 17 (9) Employee of the executive office of the lieutenant
18 governor;
- 19 (10) Employee of the executive office of the mayor;
- 20 (11) Staff of the legislative branch of the State;

1 (12) Staff of the legislative branches of the counties,
2 except employees of the clerks' offices of the
3 counties;

4 (13) Any commissioned and enlisted personnel of the Hawaii
5 national guard;

6 (14) Inmate, kokua, patient, ward, or student of a state
7 institution;

8 (15) Student help;

9 (16) Staff of the Hawaii labor relations board;

10 (17) Employee of the Hawaii national guard youth challenge
11 academy; or

12 (18) Employees of the office of elections.

13 [~~(h)~~] (g) Where any controversy arises under this section,
14 the board, pursuant to chapter 91, shall make an investigation
15 and, after a hearing upon due notice, make a final determination
16 on the applicability of this section to specific individuals,
17 employees, or positions."

18 SECTION 8. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 9. This Act shall take effect upon its approval.

21

INTRODUCED BY: Kirk Caldwell (BR)

JAN 24 2006



HB 2559

Report Title:
VEBA; Retirees

Description:
Removes VEBA coverage for retirees.

