
A BILL FOR AN ACT

RELATING TO THE PUBLIC EMPLOYEES' TRUST FUND.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **PUBLIC EMPLOYEES' TRUST FUND**

6 § -1 **Definitions.** The following words and phrases as
7 used in this chapter, unless a different meaning is plainly
8 required by the context, shall have the following meanings:

9 "Board" means the board of trustees of the public
10 employees' trust fund.

11 "Dependent-beneficiary" has the same meaning as that term
12 is defined in section 87A-1.

13 "Employee" has the same meaning as that term is defined in
14 section 87A-1.

15 "Employee-beneficiary" has the same meaning as that term is
16 defined in section 87A-1.

17 "Regular interest" means interest at four and one-half per
18 cent a year, compounded annually.



1 "Trustee" means a trustee serving on the board of trustees
2 of the public employees' trust fund.

3 "Trust fund" means the public employees' trust fund
4 established pursuant to section -2.

5 § -2 **Public employees' trust fund; established.** There
6 shall be a public employees' trust fund for the purpose of
7 offsetting the funding liability incurred by the State, as a
8 public employer, as required under sections 87A-33, 87A-34, 87A-
9 35, 87A-36, and 87A-37. It shall have the powers and privileges
10 of a corporation and shall be known as the "public employees'
11 trust fund of the State of Hawaii" and by that name may sue or
12 be sued, transact all of its business, invest all of its funds,
13 and hold all of its cash and securities and other property.

14 § -3 **General administration of the public employees'**
15 **trust fund vested in its board of trustees.** The general
16 administration and the responsibility for the proper operation
17 of the public employees' trust fund and for making effective the
18 provisions of this chapter are vested in a board of trustees,
19 subject, however, to the area of administrative control vested
20 in the department of budget and finance by sections 26-8 and
21 26-35. To fulfill its responsibilities, the trust fund may
22 require any department or agency of the State to furnish



1 information to the trust fund to carry out the purposes of this
2 chapter.

3 **§ -4 Composition of board.** The board of trustees of the
4 public employees' trust fund shall consist of eight members as
5 follows:

- 6 (1) The director of finance of the State, ex officio;
- 7 (2) Four members of the employer-union health benefits
8 trust fund, two of whom shall be general employees of
9 the State, one of whom shall be a teacher, and one of
10 whom shall be a retirant to be elected by the members
11 and retirants who receive benefits from the employer-
12 union health benefits trust fund, under rules adopted
13 by the board governing the election, to serve for
14 terms of six years each, with one of the terms
15 expiring on January 1 of each even-numbered year;
16 provided that, if after the close of filing of
17 petitions for candidacy, a member is unopposed for
18 election to a trustee position, the member shall be
19 declared duly and legally elected to the position of
20 trustee without an election; and
- 21 (3) Three citizens of the State who are not employees, one
22 of whom shall be a responsible officer of a bank



1 authorized to do business within the State or a person
2 of similar experience, to be appointed by the
3 governor, with the advice and consent of the senate,
4 to serve for a term of six years each, one of the
5 terms to expire January 1 of each odd-numbered year.

6 Each trustee shall serve until the trustee's successor is
7 elected or appointed, as the case may be, and qualified.

8 § -5 **Oath of trustees.** Each trustee, within ten days
9 after the trustee's appointment or election, shall take an oath
10 of office that, so far as it devolves upon the trustee, the
11 trustee will diligently and honestly administer the affairs of
12 the board of trustees and will not knowingly violate, or
13 willingly permit to be violated, any of the provisions of law
14 applicable to the trust fund. The oath shall be subscribed to
15 by the member making it and certified by the officer before whom
16 it is taken and shall be immediately filed in the office of the
17 lieutenant governor.

18 § -6 **Voting; rules.** Each trustee shall be entitled to
19 one vote on the board of trustees. Five concurring votes shall
20 be necessary for a decision by the trustees at any meeting of
21 the board.



1 Subject to the limitations of this chapter, the board, from
2 time to time, shall establish rules for the administration of
3 the funds of the trust fund and for the transaction of its
4 business.

5 **§ -7 Officers, employees, legal adviser.** The board of
6 trustees shall elect from its membership a chairperson and, by a
7 majority vote of all its members, shall appoint an administrator
8 and a chief investment officer who shall be exempt from chapter
9 76 and serve under and at the pleasure of the board. The salary
10 of the administrator shall be set by the board; provided that
11 the salary shall be set at not more than the salary of the
12 governor, as established under section 26-51. The board shall
13 engage actuarial and other services as shall be required to
14 transact the business of the trust fund. The compensation for
15 all services engaged by the board, and all other expenses of the
16 board necessary for the operation of the trust fund, shall be
17 paid at rates and in amounts the board shall approve.

18 The attorney general or an appointed representative may
19 serve as legal adviser to the board of trustees or the board of
20 trustees may select its own legal counsel.

21 **§ -8 Vacancy.** If a vacancy occurs in the office of
22 trustee, the vacancy shall be filled for the unexpired term in



1 the same manner as the office was previously filled, except in
2 the case of the trustees elected by the members, in which case
3 the vacancy may be filled for the unexpired term by the
4 appointment of a member by the remaining trustees of the board
5 of trustees.

6 **§ -9 Expenses of trustees.** The trustees shall serve
7 without compensation but shall be reimbursed from the expense
8 fund established under section -11 for all necessary
9 expenses, including travel and lodging expenses, and for any
10 loss of salary or wages they may suffer through serving the
11 board of trustees.

12 **§ -10 Records.** (a) The board of trustees shall keep a
13 record of all its proceedings that shall be open to public
14 inspection. It shall publish annually a report showing in
15 detail:

- 16 (1) The fiscal transactions of the trust fund for the year
17 ending the preceding June 30;
- 18 (2) The amount of the accumulated cash and securities of
19 the trust fund; and
- 20 (3) An actuarial valuation of the assets and liabilities
21 of the trust fund.



1 The board shall submit the report to the governor and the
2 legislature and shall furnish copies thereof to the heads of the
3 various departments of the State for their use and the use of
4 the members employed therein.

5 (b) The board shall include in its annual report submitted
6 prior to January 1 of each odd-numbered year a comparison of the
7 investment performance of the trust fund with the investment
8 performances of the public employees' trust funds of other
9 jurisdictions that have authority to make investments
10 substantially similar to the investment authorized under section
11 -16.

12 § **-11 Interest.** The board of trustees shall establish
13 an expense fund and a public employer contribution fund and
14 annually allocate the interest and other earnings of the trust
15 fund to the funds of the trust fund, as follows:

16 (1) The expense fund shall be credited with such sums as
17 provided in section -15; and

18 (2) The remaining investment earnings, if any, shall be
19 credited to the public employer contribution fund.

20 § **-12 Cash for meeting disbursements.** For the purpose
21 of meeting disbursements to offset the State's contribution cost
22 obligation as required under sections 87A-33, 87A-34, 87A-35,



1 87A-36, and 87A-37 and other payments, there may be kept
2 available cash, not exceeding ten per cent of the total amount
3 in the funds of the trust fund, on deposit in any one or more
4 banks or trust companies of the State, organized under the laws
5 thereof or of the United States. The sum on deposit in any one
6 bank or trust company shall not exceed twenty-five per cent of
7 the paid up capital and surplus of the bank or trust company.

8 **§ -13 Board; trustees of funds.** The board of trustees
9 shall be trustees of the funds of the trust fund and may invest
10 and reinvest moneys under the board's control as authorized by
11 this chapter and as may be otherwise provided by law. Subject
12 to the terms, conditions, limitations, and restrictions of this
13 chapter and as may be otherwise provided by law, the trustees
14 may hold, purchase, sell, assign, transfer, or dispose of any of
15 the securities and investments in which any of the funds created
16 under this chapter shall have been invested, as well as of the
17 proceeds of the investments and any moneys belonging to the
18 funds.

19 **§ -14 Custodian of the funds.** The state director of
20 finance shall be the custodian of the funds established under
21 this chapter. All payment from the funds shall be made by the
22 director of finance only upon vouchers signed by the chairperson



1 and countersigned by such other person as may be designated by
2 the board of trustees.

3 § **-15 Expense fund.** The expense fund shall be the fund
4 to which shall be credited all money to pay the administration
5 expenses of the trust fund and from which shall be paid all the
6 expenses necessary in connection with the administration and
7 operation of the trust fund. Biennially, the board of trustees
8 shall estimate the amount of money necessary to be paid into the
9 expense fund during the ensuing biennium to provide for the
10 expense of operation of the trust fund. The board shall pay the
11 estimated amount into the expense fund from the investment
12 earnings of the trust fund, subject to review by the legislature
13 and approval by the governor.

14 § **-16 Investments.** Investments may be made in:

15 (1) Real estate loans and mortgages. Obligations (as
16 defined in section 431:6-101) of any of the following
17 classes:

18 (A) Obligations secured by mortgages of nonprofit
19 corporations desiring to build multirental units
20 (ten units or more) subject to control of the
21 government for occupancy by families displaced as
22 a result of government action;



- 1 (B) Obligations secured by mortgages insured by the
2 Federal Housing Administration;
- 3 (C) Obligations for the repayment of home loans made
4 under the Servicemen's Readjustment Act of 1944
5 or under Title II of the National Housing Act;
- 6 (D) Other obligations secured by first mortgages on
7 unencumbered improved real estate owned in fee
8 simple; provided that the amount of the
9 obligation at the time investment is made therein
10 shall not exceed eighty per cent of the value of
11 the real estate and improvements mortgaged to
12 secure it, and except that the amount of the
13 obligation at the time investment is made therein
14 may exceed eighty per cent but no more than
15 ninety per cent of the value of the real estate
16 and improvements mortgaged to secure it; provided
17 further that the obligation is insured or
18 guaranteed against default or loss under a
19 mortgage insurance policy issued by a casualty
20 insurance company licensed to do business in the
21 State. The coverage provided by the insurer
22 shall be sufficient to reduce the trust fund's



1 exposure to not more than eighty per cent of the
2 value of the real estate and improvements
3 mortgaged to secure it. The insurance coverage
4 shall remain in force until the principal amount
5 of the obligation is reduced to eighty per cent
6 of the market value of the real estate and
7 improvements mortgaged to secure it, at which
8 time the coverage shall be subject to
9 cancellation solely at the option of the board of
10 trustees. Real estate shall not be deemed to be
11 encumbered within the meaning of this
12 subparagraph by reason of the existence of any of
13 the restrictions, charges, or claims described in
14 section 431:6-308;

15 (E) Other obligations secured by first mortgages of
16 leasehold interests in improved real estate;
17 provided that:

18 (i) Each such leasehold interest at such time
19 shall have a current term extending at least
20 two years beyond the stated maturity of the
21 obligation it secures; and



1 (ii) The amount of the obligation at the time
2 investment is made therein shall not exceed
3 eighty per cent of the value of the
4 respective leasehold interest and
5 improvements, and except that the amount of
6 the obligation at the time investment is
7 made therein may exceed eighty per cent but
8 no more than ninety per cent of the value of
9 the leasehold interest and improvements
10 mortgaged to secure it;
11 provided further that the obligation is insured
12 or guaranteed against default or loss under a
13 mortgage insurance policy issued by a casualty
14 insurance company licensed to do business in the
15 State. The coverage provided by the insurer
16 shall be sufficient to reduce the trust fund's
17 exposure to not more than eighty per cent of the
18 value of the leasehold interest and improvements
19 mortgaged to secure it. The insurance coverage
20 shall remain in force until the principal amount
21 of the obligation is reduced to eighty per cent
22 of the market value of the leasehold interest and



1 improvements mortgaged to secure it, at which
2 time the coverage shall be subject to
3 cancellation solely at the option of the board of
4 trustees;

5 (F) Obligations for the repayment of home loans
6 guaranteed by the department of Hawaiian home
7 lands pursuant to section 214(b) of the Hawaiian
8 Homes Commission Act, 1920; and

9 (G) Obligations secured by second mortgages on
10 improved real estate for which the mortgagor
11 procures a second mortgage on the improved real
12 estate for the purpose of acquiring the
13 leaseholder's fee simple interest in the improved
14 real estate; provided that any prior mortgage
15 does not contain provisions that might jeopardize
16 the security position of the trust fund or the
17 borrower's ability to repay the mortgage loan.

18 The board of trustees may retain real estate,
19 including leasehold interests therein, as it may
20 acquire by foreclosure of mortgages or in enforcement
21 of security, or as may be conveyed to it in
22 satisfaction of debts previously contracted; provided



1 that all such real estate, other than leasehold
2 interests, shall be sold within five years after
3 acquiring the real estate, subject to extension by the
4 governor for additional periods not exceeding five
5 years each, and that all such leasehold interests
6 shall be sold within one year after acquiring the
7 interests, subject to extension by the governor for
8 additional periods not exceeding one year each;

9 (2) Government obligations, etc. Obligations of any of
10 the following classes:

11 (A) Obligations issued or guaranteed as to principal
12 and interest by the United States or by any state
13 thereof or by any municipal or political
14 subdivision or school district of any of the
15 foregoing; provided that principal of and
16 interest on such obligations are payable in
17 currency of the United States; or sovereign debt
18 instruments issued by agencies of, or guaranteed
19 by foreign governments;

20 (B) Revenue bonds, whether or not permitted by any
21 other provision hereof, of the State or any
22 municipal or political subdivision thereof,



- 1 including the board of water supply of the city
2 and county of Honolulu, and street or improvement
3 district bonds of any district or project in the
4 State; and
- 5 (C) Obligations issued or guaranteed by any federal
6 home loan bank including consolidated federal
7 home loan bank obligations, the Home Owner's Loan
8 Corporation, the Federal National Mortgage
9 Association, or the Small Business
10 Administration;
- 11 (3) Corporate obligations. Below investment grade or
12 nonrated debt instruments, foreign or domestic, in
13 accordance with investment guidelines adopted by the
14 board of trustees;
- 15 (4) Preferred and common stocks. Shares of preferred or
16 common stock of any corporation created or existing
17 under the laws of the United States or of any state or
18 district thereof or of any country;
- 19 (5) Obligations eligible by law for purchase in the open
20 market by federal reserve banks;
- 21 (6) Obligations issued or guaranteed by the International
22 Bank for Reconstruction and Development, the Inter-



1 American Development Bank, the Asian Development Bank,
2 or the African Development Bank;

3 (7) Obligations secured by collateral consisting of any of
4 the securities or stock listed above and worth at the
5 time the investment is made at least fifteen per cent
6 more than the amount of the respective obligations;

7 (8) Insurance company obligations. Contracts and
8 agreements supplemental thereto providing for
9 participation in one or more accounts of a life
10 insurance company authorized to do business in Hawaii,
11 including its separate accounts, and whether the
12 investments allocated thereto are comprised of stocks
13 or other securities or of real or personal property or
14 interests therein;

15 (9) Interests in real property. Interests in improved or
16 productive real property in which, in the informed
17 opinion of the board of trustees, it is prudent to
18 invest funds of the trust fund. For purposes of this
19 paragraph, "real property" includes any property
20 treated as real property either by local law or for
21 federal income tax purposes. Investments in improved
22 or productive real property may be made directly or



1 through pooled funds, including common or collective
2 trust funds of banks and trust companies, group or
3 unit trusts, limited partnerships, limited liability
4 companies, investment trusts, title-holding
5 corporations recognized under section 501(c) of the
6 Internal Revenue Code of 1986, as amended, similar
7 entities that would protect the trust fund's interest,
8 and other pooled funds invested on behalf of the trust
9 fund by investment managers retained by the trust
10 fund;

11 (10) Other securities and futures contracts. Securities
12 and futures contracts that, in the informed opinion of
13 the board of trustees, it is prudent to invest funds
14 of the trust fund, including currency, interest rate,
15 bond, and stock index futures contracts and options on
16 such contracts to hedge against anticipated changes in
17 currencies, interest rates, and bond and stock prices
18 that might otherwise have an adverse effect upon the
19 value of the trust fund's securities portfolios;
20 covered put and call options on securities; and stock;
21 whether or not the securities, stock, futures
22 contracts, or options on futures are expressly



1 authorized by or qualify under the foregoing
2 paragraphs, and notwithstanding any limitation of any
3 of the foregoing paragraphs (including paragraph (4));
4 and

5 (11) Private placements. Investments in institutional
6 blind pool limited partnerships or direct investments
7 that make private debt and equity investments in
8 privately held companies, including but not limited to
9 investments in Hawaii high technology businesses or
10 venture capital investments that, in the informed
11 opinion of the board of trustees, are appropriate to
12 invest funds of the trust fund. In evaluating venture
13 capital investments, the board of trustees shall
14 consider, among other things, the impact an investment
15 may have on job creation in Hawaii and on the state
16 economy.

17 § -17 **Investment guidelines.** Notwithstanding any other
18 law to the contrary, real estate loans and mortgages made
19 pursuant to section -16(1)(D) and (E) shall be in accordance
20 with conditions and restrictions set forth by the board of
21 trustees; provided that the board may establish the minimum and
22 maximum loan amounts and interest rates for these real estate



1 loans and mortgages by motion, at any duly noticed meeting of
2 the board. The board of trustees, subject to chapter 91, shall
3 adopt, amend, and repeal rules having the force of and effect of
4 law to implement all provisions of this section other than those
5 relating to loan amounts and interest rates for its real estate
6 loans and mortgages.

7 **§ -18 Service charges.** The board of trustees may pay
8 out of any of the funds held for investment a reasonable amount
9 to:

10 (1) Any person for servicing and handling of mortgages
11 purchased by the board or for supplying investment
12 advisory or consultative services; and

13 (2) Meet such other costs incident to the prudent
14 investment of trust fund funds as the board may
15 approve.

16 **§ -19 Power to make agreements to protect securities on**
17 **reorganization or otherwise.** Anything in this chapter to the
18 contrary notwithstanding, the board of trustees may enter into
19 an agreement or agreements for the purpose of protecting the
20 interests of the trust fund in securities held by the trust
21 fund, or for the purpose of reorganization of a corporation that
22 issued securities so held, and deposit of securities thereunder



1 with a committee or depositories appointed under the agreement;
2 provided that the agreement and deposit shall first be approved
3 in writing by a majority of the members of the board with a
4 statement of their reasons for such approval. The board may
5 accept corporate stock or bonds or other securities, which may
6 be distributed pursuant to any agreement approved pursuant to
7 this section or to any plan or reorganization approved in
8 writing by a majority of the members of the board with a
9 statement of their reasons for such approval. But if securities
10 so received consist in whole or in part of stock in any
11 corporation or of bonds or obligations that are not secured by
12 adequate collateral security or where less than two-thirds of
13 the total value of the required collateral security therefor
14 consist of collateral other than stock, then any stock and any
15 such bond or obligation so received shall be disposed of within
16 five years from the time of acquisition or before expiration of
17 such further period or periods of time as may be fixed in
18 writing for that purpose by the governor.

19 **§ -20 Power to enter into security loan agreements.**

20 Anything in this chapter to the contrary notwithstanding, the
21 board of trustees may enter into an agreement or agreements with
22 a financially responsible stock or bond brokerage firm, bank, or



1 similar financial institution ("borrower") authorized to do
2 business under the laws of any state or the United States for
3 the purpose of lending to the borrower securities held by the
4 trust fund, subject to the following conditions:

5 (1) The securities shall be loaned to the borrower for a
6 period not to exceed one year;

7 (2) At the termination of the loan period, the borrower
8 shall deliver to the board of trustees certificates
9 for identical securities that are of the same class
10 and issue as the loaned securities;

11 (3) For the protection of the trust fund, the borrower
12 shall deliver to the board of trustees or its agent
13 collateral in the form of cash, letters of credit,
14 bonds, or other interest-bearing notes and obligations
15 of the United States or federal instrumentalities that
16 are eligible for investment by the board of trustees,
17 in an amount not less than one hundred two per cent of
18 the market value of the loaned securities, as
19 determined by the board of trustees. The trust fund
20 shall have a security interest in the collateral to
21 secure borrower's obligations under the agreement.

22 The board of trustees shall not be obligated to return



1 the collateral or any part thereof to the borrower,
2 except upon borrower's delivery to the board or its
3 agent of securities identical to the loaned
4 securities, as provided in paragraph (2). The board
5 of trustees or its designated agent shall monitor the
6 market value of the loaned securities daily, and if,
7 on any business day, the amount of the collateral
8 deposited by the borrower is less than one hundred two
9 per cent of the market value of the loaned securities
10 on that day, the borrower shall immediately deposit
11 with the board or its agent additional collateral in
12 the form of cash, letters of credit, bonds, or other
13 interest-bearing notes and obligations of the United
14 States or federal instrumentalities that are eligible
15 for investment by the board of trustees. Such
16 additional collateral, together with the collateral
17 previously on deposit, shall be in an amount not less
18 than one hundred two per cent of the market value of
19 the loaned securities at the time of the deposit;

20 (4) The board of trustees, at its election, may use or
21 invest any collateral delivered by a borrower to the
22 board or its agent pursuant to the agreement, and any



1 income and profits earned on the collateral shall be
2 retained for the benefit of the trust fund. Any
3 investment of the collateral shall be subject to
4 section -16;

5 (5) Until the termination of the loan, the borrower may
6 exercise all the incidents of ownership of loaned
7 securities, including the right to transfer the loaned
8 securities to others and vote or otherwise consent as
9 a holder of the securities; provided that the borrower
10 shall be obligated to the board of trustees for all
11 dividends and distributions made with respect to the
12 loaned securities during the period of the agreement,
13 including, without limitation, cash, stock or property
14 dividends or distributions, interest payments, and
15 subscription rights;

16 (6) If the borrower, at the termination of the loan
17 period, fails to deliver to the board of trustees
18 certificates for identical securities that are of the
19 same class and issue as the loaned securities, the
20 borrowers shall forfeit to the trust fund the
21 collateral deposited.



1 **§ -21 Guaranty.** Regular interest charges payable, the
2 creation and maintenance of reserves in the public employer
3 contribution fund, and all expenses in connection with the
4 administration and operation of the trust fund are made
5 obligations of the State. All income, interest, and dividends
6 derived from deposits and investments authorized by this chapter
7 shall be used for the payment of these obligations. After
8 June 30, 2007, the income shall include capital gains or losses,
9 whether realized or unrealized, in the value of the trust fund
10 assets as taken from time to time thereafter by the board of
11 trustees. It is hereby declared that any and all sums
12 contributed or paid from whatever source to the trust fund for
13 the funds created by this chapter, and all funds of the trust
14 fund, including any and all interest and earnings of the trust
15 fund, are and shall be held in trust by the board for the
16 exclusive use and benefit of the trust fund and for offsetting
17 the costs incurred by the State, as a public employer, under
18 sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and shall
19 not be subject to appropriation for any other purpose
20 whatsoever.

21 **§ -22 Use of trust fund moneys to offset employer**
22 **contribution costs; threshold requirement.** (a) Except as may



1 be otherwise provided by law, no funds shall be expended from
 2 the public employee's trust fund for the purpose of offsetting
 3 the State's contribution cost obligation established under
 4 sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37 until the
 5 value of principal assets contained in the public employee's
 6 trust fund exceeds \$1,000,000,000.

7 (b) Once the \$1,000,000,000 threshold established under
 8 subsection (a) has been achieved, only the interest on the
 9 \$1,000,000,000 principal may be used by the board of trustees to
 10 offset the State's contribution cost obligation established
 11 under sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37."

12 SECTION 2. There is appropriated out of the general
 13 revenues of the State of Hawaii the sum of \$150,000,000, or so
 14 much thereof as may be necessary for fiscal year 2006-2007, for
 15 deposit into the public employees' trust fund.

16 SECTION 3. The sum appropriated shall be expended by the
 17 public employees' trust fund for the purposes of this Act.

18 SECTION 4. This Act shall take effect on July 1, 2006.

19

INTRODUCED BY:

Calvin K. By
IC: RIC Caldwell

JAN 25 2006



Report Title:

Public Employees' Trust Fund; Established; Health Benefits Costs

Description:

Establishes a Public Employees' Trust Fund and a board of trustees for the fund to offset costs incurred by the State to fund public employee health benefit costs. Makes an appropriation to the fund. Prohibits the tapping of moneys until the fund's principal reaches \$1,000,000,000.

