
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.** As used in this chapter, unless the
7 context otherwise requires:

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

10 "Dependent-beneficiary" has the same meaning as defined in
11 section 87A-1.

12 "Employee" has the same meaning as defined in section 87A-
13 1.

14 "Employee-beneficiary" has the same meaning as defined in
15 section 87A-1.

16 "Regular interest" means interest at four and one-half per
17 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 established a public employees' trust fund for the
7 purpose of offsetting the funding liability incurred by the
8 State, as a public employer, as required under sections 87A-33,
9 87A-34, 87A-35, 87A-36, and 87A-37. The fund shall have the
10 powers and privileges of a corporation and shall be known as the
11 "public employees' trust fund of the State of Hawaii" and by
12 that name may sue or be sued, transact all of its business,
13 invest all of its funds, and hold all of its cash and securities
14 and other property.

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



1 require any department or agency of the State to furnish
2 information to the trust fund to carry out the purposes of this
3 chapter.

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

- 7 (1) The director of finance of the State, ex officio;
- 8 (2) Four members of the employer-union health benefits
9 trust fund, two of whom shall be general employees of
10 the State, one of whom shall be a teacher, and one of
11 whom shall be a retirant to be elected by the members
12 and retirants who receive benefits from the employer-
13 union health benefits trust fund, under rules adopted
14 by the board governing the election, to serve for
15 terms of six years each, with one of the terms
16 expiring on January 1 of each even-numbered year;
17 provided that, if after the close of filing of
18 petitions for candidacy, a member is unopposed for
19 election to a trustee position, the member shall be
20 declared duly and legally elected to the position of
21 trustee without an election; and



1 (3) Three citizens of the State who are not employees, one
2 of whom shall be a responsible officer of a bank
3 authorized to do business within the state or a person
4 of similar experience, to be appointed by the
5 governor, with the advice and consent of the senate,
6 to serve for a term of six years each, one of the
7 terms to expire January 1 of each odd-numbered year.

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

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

20 § -6 **Voting; rules.** Each trustee shall be entitled to
21 one vote on the board of trustees. Five concurring votes shall



1 be necessary for a decision by the trustees at any meeting of
2 the board.

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

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

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



1 § **-8 Vacancy.** If a vacancy occurs in the office of
2 trustee, the vacancy shall be filled for the unexpired term in
3 the same manner as the office was previously filled, except in
4 the case of the trustees elected by the members, in which case
5 the vacancy may be filled for the unexpired term by the
6 appointment of a member by the remaining trustees of the board
7 of trustees.

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

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

- 18 (1) The fiscal transactions of the trust fund for the year
19 ending the preceding June 30;
- 20 (2) The amount of the accumulated cash and securities of
21 the trust fund; and



1 (3) An actuarial valuation of the assets and liabilities
2 of the trust fund.

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

7 (b) The board shall include in its annual report submitted
8 prior to January 1 of each odd-numbered year a comparison of the
9 investment performance of the trust fund with the investment
10 performances of the public employees' trust funds of other
11 jurisdictions that have authority to make investments
12 substantially similar to the investment authorized under section
13 -16.

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

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

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



1 § **-12 Cash for meeting disbursements.** For the purpose
2 of meeting disbursements to offset the State's contribution cost
3 obligation as required under sections 87A-33, 87A-34, 87A-35,
4 87A-36, and 87A-37 and other payments, there may be kept
5 available cash, not exceeding ten per cent of the total amount
6 in the funds of the trust fund, on deposit in any one or more
7 banks or trust companies of the state, organized under the laws
8 thereof or of the United States. The sum on deposit in any one
9 bank or trust company shall not exceed twenty-five per cent of
10 the paid up capital and surplus of the bank or trust company.

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

1 § **-14 Custodian of the funds.** The state director of
2 finance shall be the custodian of the funds established under
3 this chapter. All payment from the funds shall be made by the
4 director of finance only upon vouchers signed by the chairperson
5 and countersigned by such other person as may be designated by
6 the board of trustees.

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

18 § **-16 Investments.** Investments may be made in:

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



- 1 (A) Obligations secured by mortgages of nonprofit
2 corporations desiring to build multirental units
3 (ten units or more) subject to control of the
4 government for occupancy by families displaced as
5 a result of government action;
- 6 (B) Obligations secured by mortgages insured by the
7 Federal Housing Administration;
- 8 (C) Obligations for the repayment of home loans made
9 under the Servicemen's Readjustment Act of 1944
10 or under Title II of the National Housing Act;
- 11 (D) Other obligations secured by first mortgages on
12 unencumbered improved real estate owned in fee
13 simple; provided that the amount of the
14 obligation at the time investment is made therein
15 shall not exceed eighty per cent of the value of
16 the real estate and improvements mortgaged to
17 secure it, and except that the amount of the
18 obligation at the time investment is made therein
19 may exceed eighty per cent but no more than
20 ninety per cent of the value of the real estate
21 and improvements mortgaged to secure it; provided
22 further that the obligation is insured or



1 guaranteed against default or loss under a
2 mortgage insurance policy issued by a casualty
3 insurance company licensed to do business in the
4 State. The coverage provided by the insurer
5 shall be sufficient to reduce the trust fund's
6 exposure to not more than eighty per cent of the
7 value of the real estate and improvements
8 mortgaged to secure it. The insurance coverage
9 shall remain in force until the principal amount
10 of the obligation is reduced to eighty per cent
11 of the market value of the real estate and
12 improvements mortgaged to secure it, at which
13 time the coverage shall be subject to
14 cancellation solely at the option of the board of
15 trustees. Real estate shall not be deemed to be
16 encumbered within the meaning of this
17 subparagraph by reason of the existence of any of
18 the restrictions, charges, or claims described in
19 section 431:6-308;

20 (E) Other obligations secured by first mortgages of
21 leasehold interests in improved real estate;
22 provided that:



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



1 mortgaged to secure it. The insurance coverage
2 shall remain in force until the principal amount
3 of the obligation is reduced to eighty per cent
4 of the market value of the leasehold interest and
5 improvements mortgaged to secure it, at which
6 time the coverage shall be subject to
7 cancellation solely at the option of the board of
8 trustees;

9 (F) Obligations for the repayment of home loans
10 guaranteed by the department of Hawaiian home
11 lands pursuant to section 214(b) of the Hawaiian
12 Homes Commission Act, 1920; and

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



1 The board of trustees may retain real estate,
2 including leasehold interests therein, as it may
3 acquire by foreclosure of mortgages or in enforcement
4 of security, or as may be conveyed to it in
5 satisfaction of debts previously contracted; provided
6 that all such real estate, other than leasehold
7 interests, shall be sold within five years after
8 acquiring the real estate, subject to extension by the
9 governor for additional periods not exceeding five
10 years each, and that all such leasehold interests
11 shall be sold within one year after acquiring the
12 interests, subject to extension by the governor for
13 additional periods not exceeding one year each;

14 (2) Government obligations, etc. Obligations of any of
15 the following classes:

16 (A) Obligations issued or guaranteed as to principal
17 and interest by the United States or by any state
18 thereof or by any municipal or political
19 subdivision or school district of any of the
20 foregoing; provided that principal of and
21 interest on such obligations are payable in
22 currency of the United States; or sovereign debt



- 1 instruments issued by agencies of, or guaranteed
2 by foreign governments;
- 3 (B) Revenue bonds, whether or not permitted by any
4 other provision hereof, of the State or any
5 municipal or political subdivision thereof,
6 including the board of water supply of the city
7 and county of Honolulu, and street or improvement
8 district bonds of any district or project in the
9 State; and
- 10 (C) Obligations issued or guaranteed by any federal
11 home loan bank including consolidated federal
12 home loan bank obligations, the Home Owner's Loan
13 Corporation, the Federal National Mortgage
14 Association, or the Small Business
15 Administration;
- 16 (3) Corporate obligations. Below investment grade or
17 nonrated debt instruments, foreign or domestic, in
18 accordance with investment guidelines adopted by the
19 board of trustees;
- 20 (4) Preferred and common stocks. Shares of preferred or
21 common stock of any corporation created or existing



- 1 under the laws of the United States or of any state or
2 district thereof or of any country;
- 3 (5) Obligations eligible by law for purchase in the open
4 market by federal reserve banks;
- 5 (6) Obligations issued or guaranteed by the International
6 Bank for Reconstruction and Development, the Inter-
7 American Development Bank, the Asian Development Bank,
8 or the African Development Bank;
- 9 (7) Obligations secured by collateral consisting of any of
10 the securities or stock listed above and worth at the
11 time the investment is made at least fifteen per cent
12 more than the amount of the respective obligations;
- 13 (8) Insurance company obligations. Contracts and
14 agreements supplemental thereto providing for
15 participation in one or more accounts of a life
16 insurance company authorized to do business in Hawaii,
17 including its separate accounts, and whether the
18 investments allocated thereto are comprised of stocks
19 or other securities or of real or personal property or
20 interests therein;
- 21 (9) Interests in real property. Interests in improved or
22 productive real property in which, in the informed



1 opinion of the board of trustees, it is prudent to
2 invest funds of the trust fund. For purposes of this
3 paragraph, "real property" includes any property
4 treated as real property either by local law or for
5 federal income tax purposes. Investments in improved
6 or productive real property may be made directly or
7 through pooled funds, including common or collective
8 trust funds of banks and trust companies, group or
9 unit trusts, limited partnerships, limited liability
10 companies, investment trusts, title-holding
11 corporations recognized under section 501(c) of the
12 Internal Revenue Code of 1986, as amended, similar
13 entities that would protect the trust fund's interest,
14 and other pooled funds invested on behalf of the trust
15 fund by investment managers retained by the trust
16 fund;

17 (10) Other securities and futures contracts. Securities
18 and futures contracts that, in the informed opinion of
19 the board of trustees, it is prudent to invest funds
20 of the trust fund, including currency, interest rate,
21 bond, and stock index futures contracts and options on
22 such contracts to hedge against anticipated changes in



1 currencies, interest rates, and bond and stock prices
2 that might otherwise have an adverse effect upon the
3 value of the trust fund's securities portfolios;
4 covered put and call options on securities; and stock;
5 whether or not the securities, stock, futures
6 contracts, or options on futures are expressly
7 authorized by or qualify under the foregoing
8 paragraphs, and notwithstanding any limitation of any
9 of the foregoing paragraphs (including paragraph (4));
10 and

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



1 § **-17 Investment guidelines.** Notwithstanding any other
2 law to the contrary, real estate loans and mortgages made
3 pursuant to section -16(1)(D) and (E) shall be in accordance
4 with conditions and restrictions set forth by the board of
5 trustees; provided that the board may establish the minimum and
6 maximum loan amounts and interest rates for these real estate
7 loans and mortgages by motion, at any duly noticed meeting of
8 the board. The board of trustees, subject to chapter 91, shall
9 adopt, amend, and repeal rules having the force of and effect of
10 law to implement all provisions of this section other than those
11 relating to loan amounts and interest rates for its real estate
12 loans and mortgages.

13 § **-18 Service charges.** The board of trustees may pay
14 out of any of the funds held for investment a reasonable amount
15 to:

- 16 (1) Any person for servicing and handling of mortgages
17 purchased by the board or for supplying investment
18 advisory or consultative services; and
- 19 (2) Meet such other costs incident to the prudent
20 investment of trust fund funds as the board may
21 approve.



1 § -19 **Power to make agreements to protect securities on**
2 **reorganization or otherwise.** Anything in this chapter to the
3 contrary notwithstanding, the board of trustees may enter into
4 an agreement or agreements for the purpose of protecting the
5 interests of the trust fund in securities held by the trust
6 fund, or for the purpose of reorganization of a corporation that
7 issued securities so held, and deposit of securities thereunder
8 with a committee or depositories appointed under the agreement;
9 provided that the agreement and deposit shall first be approved
10 in writing by a majority of the members of the board with a
11 statement of their reasons for such approval. The board may
12 accept corporate stock or bonds or other securities, which may
13 be distributed pursuant to any agreement approved pursuant to
14 this section or to any plan or reorganization approved in
15 writing by a majority of the members of the board with a
16 statement of their reasons for such approval. But if securities
17 so received consist in whole or in part of stock in any
18 corporation or of bonds or obligations that are not secured by
19 adequate collateral security or where less than two-thirds of
20 the total value of the required collateral security therefor
21 consist of collateral other than stock, then any stock and any
22 such bond or obligation so received shall be disposed of within



1 five years from the time of acquisition or before expiration of
2 such further period or periods of time as may be fixed in
3 writing for that purpose by the governor.

4 § -20 Power to enter into security loan agreements.

5 Anything in this chapter to the contrary notwithstanding, the
6 board of trustees may enter into an agreement or agreements with
7 a financially responsible stock or bond brokerage firm, bank, or
8 similar financial institution ("borrower") authorized to do
9 business under the laws of any state or the United States for
10 the purpose of lending to the borrower securities held by the
11 trust fund, subject to the following conditions:

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

14 (2) At the termination of the loan period, the borrower
15 shall deliver to the board of trustees certificates
16 for identical securities that are of the same class
17 and issue as the loaned securities;

18 (3) For the protection of the trust fund, the borrower
19 shall deliver to the board of trustees or its agent
20 collateral in the form of cash, letters of credit,
21 bonds, or other interest-bearing notes and obligations
22 of the United States or federal instrumentalities that



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



1 additional collateral, together with the collateral
2 previously on deposit, shall be in an amount not less
3 than one hundred two per cent of the market value of
4 the loaned securities at the time of the deposit;

5 (4) The board of trustees, at its election, may use or
6 invest any collateral delivered by a borrower to the
7 board or its agent pursuant to the agreement, and any
8 income and profits earned on the collateral shall be
9 retained for the benefit of the trust fund. Any
10 investment of the collateral shall be subject to
11 section -16;

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



1 (6) If the borrower, at the termination of the loan
2 period, fails to deliver to the board of trustees
3 certificates for identical securities that are of the
4 same class and issue as the loaned securities, the
5 borrowers shall forfeit to the trust fund the
6 collateral deposited.

7 § -21 **Guaranty.** Regular interest charges payable, the
8 creation and maintenance of reserves in the public employer
9 contribution fund, and all expenses in connection with the
10 administration and operation of the trust fund are made
11 obligations of the State. All income, interest, and dividends
12 derived from deposits and investments authorized by this chapter
13 shall be used for the payment of these obligations. After
14 June 30, 2007, the income shall include capital gains or losses,
15 whether realized or unrealized, in the value of the trust fund
16 assets as taken from time to time thereafter by the board of
17 trustees. It is hereby declared that any and all sums
18 contributed or paid from whatever source to the trust fund for
19 the funds created by this chapter, and all funds of the trust
20 fund, including any and all interest and earnings of the trust
21 fund, are and shall be held in trust by the board for the
22 exclusive use and benefit of the trust fund and for offsetting



1 the costs incurred by the State, as a public employer, under
2 sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and shall
3 not be subject to appropriation for any other purpose
4 whatsoever.

5 **§ -22 Use of trust fund moneys to offset employer**

6 **contribution costs; threshold requirement.** (a) Except as may
7 be otherwise provided by law, no funds shall be expended from
8 the public employee's trust fund for the purpose of offsetting
9 the State's contribution cost obligation established under
10 sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37 until the
11 value of principal assets contained in the public employee's
12 trust fund exceeds \$1,000,000,000.

13 (b) Once the \$1,000,000,000 threshold established under
14 subsection (a) has been achieved, only the interest on the
15 \$1,000,000,000 principal may be used by the board of trustees to
16 offset the State's contribution cost obligation established
17 under sections 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37."

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



1 The sum appropriated shall be expended by the public
2 employees' trust fund for the purposes of this Act.

3 SECTION 3. This Act shall take effect on July 1, 2050.



HB 3089
HD1

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. (HB3089 HD1)

