

JAN 25 2006

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. Section 89-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "employee or public
3 employee" to read as follows:

4 ""Employee" or "public employee" means any person employed
5 by a public employer, except elected and appointed officials and
6 other employees who are excluded from coverage in section
7 ~~[89-6(g).]~~ 89-6(f)."

8 SECTION 2. Section 89-3, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§89-3 Rights of employees.** Employees shall have the
11 right of self-organization and the right to form, join, or
12 assist any employee organization for the purpose of bargaining
13 collectively through representatives of their own choosing on
14 questions of wages, hours, and other terms and conditions of
15 employment, [~~including retiree health benefit contributions,~~]
16 and to engage in lawful, concerted activities for the purpose of
17 collective bargaining or other mutual aid or protection, free
18 from interference, restraint, or coercion. An employee shall



1 have the right to refrain from any or all of such activities,
2 except for having a payroll deduction equivalent to regular dues
3 remitted to an exclusive representative as provided in section
4 89-4."

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

7 **"§89-6 Appropriate bargaining units.** (a) All employees
8 throughout the State within any of the following categories
9 shall constitute an appropriate bargaining unit:

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



- 1 (8) Personnel of the University of Hawaii and the
- 2 community college system, other than faculty;
- 3 (9) Registered professional nurses;
- 4 (10) Institutional, health, and correctional workers;
- 5 (11) Firefighters;
- 6 (12) Police officers; and
- 7 (13) Professional and scientific employees, who cannot be
- 8 included in any of the other bargaining units.

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

15 (c) The classification systems of each jurisdiction shall
16 be the bases for differentiating blue collar from white collar
17 employees, professional from institutional, health and
18 correctional workers, supervisory from nonsupervisory employees,
19 teachers from educational officers, and faculty from nonfaculty.
20 In differentiating supervisory from nonsupervisory employees,
21 class titles alone shall not be the basis for determination.
22 The nature of the work, including whether a major portion of the

1 working time of a supervisory employee is spent as part of a
2 crew or team with nonsupervisory employees, shall be considered
3 also.

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

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

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

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

19 (4) For bargaining units (7) and (8), the governor shall
20 have three votes, the board of regents of the
21 University of Hawaii shall have two votes, and the



1 president of the University of Hawaii shall have one
2 vote.

3 Any decision to be reached by the applicable employer group
4 shall be on the basis of simple majority, except when a
5 bargaining unit includes county employees from more than one
6 county. In such case, the simple majority shall include at
7 least one county.

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

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



1 [~~(g)~~] (f) The following individuals shall not be included
2 in any appropriate bargaining unit or be entitled to coverage
3 under this chapter:

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

- 1 (10) Employee of the executive office of the mayor;
- 2 (11) Staff of the legislative branch of the State;
- 3 (12) Staff of the legislative branches of the counties,
- 4 except employees of the clerks' offices of the
- 5 counties;
- 6 (13) Any commissioned and enlisted personnel of the Hawaii
- 7 national guard;
- 8 (14) Inmate, kokua, patient, ward, or student of a state
- 9 institution;
- 10 (15) Student help;
- 11 (16) Staff of the Hawaii labor relations board;
- 12 (17) Employee of the Hawaii national guard youth challenge
- 13 academy; or
- 14 (18) Employees of the office of elections.

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

20 SECTION 4. Section 89-9, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:



1 "(e) Negotiations relating to contributions to the Hawaii
2 employer-union health benefits trust fund or a voluntary
3 employees' beneficiary association trust shall be for the
4 purpose of agreeing upon the amounts that the State and counties
5 shall contribute under [~~sections~~] section 87A-32 [~~through~~
6 ~~87A-37~~], toward the payment of the costs for a health benefits
7 plan, as defined in section 87A-1 and group life insurance
8 benefits, and the parties shall not be bound by the amounts
9 contributed under prior agreements; provided that section 89-11
10 for the resolution of disputes by way of arbitration shall not
11 be available to resolve impasses or disputes relating to the
12 amounts the State and counties shall contribute to the Hawaii
13 employer-union health benefits trust fund or a voluntary
14 employees' beneficiary association trust established under
15 chapter 87D."

16 SECTION 5. Act 245, Session Laws of Hawaii 2005, is
17 amended by adding a new section to read as follows:

18 "SECTION 6A. Each employee organization that establishes a
19 voluntary employees' beneficiary association trust shall ensure
20 that a retiree who has become a participant in the voluntary
21 employees' beneficiary association trust pursuant to this Act
22 shall retain uninterrupted health benefits coverage and shall be



1 enrolled in the Hawaii employer-union health benefits trust,
 2 pursuant to Act , Session Laws of Hawaii 2006, on or before
 3 October 1, 2006. The Hawaii employer-union health benefits
 4 trust shall also develop procedures to ensure that immediate
 5 enrollment of these retirees is accomplished."

6 SECTION 6. Act 245, Session Laws of Hawaii 2005, is
 7 amended by amending section 2 to read as follows:

8 "SECTION 2. The Hawaii Revised Statutes is amended by
 9 adding a new chapter to be appropriately designated and to read
 10 as follows:

11 **"CHAPTER**

12 **VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS**

13 **§ -1 Definitions.** As used in this chapter:

14 "Beneficiary" means a person designated by a participant,
 15 or by the terms of an employee welfare benefit plan, who is or
 16 may become entitled to a benefit thereunder.

17 "Collective bargaining agreement" means the formal written
 18 agreement over wages, hours, amounts of contributions by the
 19 State and counties to a trust established under this chapter,
 20 and other terms and conditions of employment, entered into
 21 between an employer and the exclusive representatives of the
 22 employees of the employer.



1 "Contribution" means money payments made to the trust by
2 the State, counties, or a state or county employee.

3 "Employee" or "public employee" means any person employed
4 by a public employer except elected and appointed officials and
5 other employees excluded from coverage in section 89-6(g).

6 "Employee organization" means the employee organization as
7 defined in section 89-2.

8 "Employee welfare benefit plan" or "plan" shall mean any
9 plan, fund, or program which is established by the trust for the
10 purpose of providing participants or their beneficiaries,
11 through the purchase of insurance or otherwise, medical,
12 surgical, or hospital care or benefits, or benefits in the event
13 of sickness, accident, disability, or death.

14 "Employer" or "public employer" means "employer" or "public
15 employer" as defined in section 89-2.

16 "Exclusive representative" means "exclusive representative"
17 as defined in section 89-2.

18 "Fiduciary" means any person, with respect to a plan, to
19 the extent that such person:

20 (1) Exercises any discretionary authority or discretionary
21 control respecting management of such plan or



1 exercises authority or control respecting management
2 or disposition of its assets;

3 (2) Renders investment advice for a fee or other
4 compensation, direct or indirect, with respect to any
5 moneys or other property of such plan, or has
6 authority or responsibility to do so; or

7 (3) Has any discretionary authority or discretionary
8 responsibility in the administration of such plan.

9 Without limiting the foregoing, "fiduciary" shall include each
10 trustee of the trust.

11 "Participant" means any employee [~~or retiree~~] who is a
12 member of the trust and is eligible to receive benefits under an
13 employee welfare benefit plan provided by or through the trust.

14 "Party in interest" means:

- 15 (1) Any fiduciary, counsel, or employee of the trust;
16 (2) A person providing services to the trust or its plans;
17 (3) An employer, any of whose employees are covered by
18 such plans; and
19 (4) An employee organization, any of whose members are
20 covered by the trust's plans.

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



1 "Trust" means a voluntary employees' beneficiary
2 association trust established under this chapter.

3 **§ -2 Establishment of the trust.** (a) An employee
4 organization shall be exempt from chapter 87A and meet the
5 following requirements in order to establish a voluntary
6 employees' beneficiary association trust under this chapter:

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

12 (2) The trust may offer health benefits in accordance with
13 Title 26 United States Code section 501(c)(9), as
14 amended, and related regulations;

15 (3) The trust shall meet all the standards and
16 requirements applicable to employee welfare benefit
17 plans under Title 29 United States Code sections
18 1001-1191, as amended, and related regulations. The
19 assets of any plan provided by or through the trust
20 shall not inure to the benefit of any employee
21 organization and shall be held for the exclusive
22 purposes of providing benefits to participants and



1 beneficiaries and defraying reasonable expenses of
2 administration; provided that this shall not preclude
3 the trust from returning contributions or payments
4 made by an employer under a mistake of fact within one
5 year after the payment of the contributions or
6 payments;

7 (4) Each plan offered by the trust shall be established
8 and maintained pursuant to a written instrument that:

9 (A) Provides a procedure for establishing and
10 carrying out a funding policy and method
11 consistent with the objectives of the plan and
12 the requirements of this chapter;

13 (B) Describes any procedure under the plan for the
14 allocation of responsibilities for the operation
15 and administration of the plan;

16 (C) Provides a procedure for amending the plan;

17 (D) Specifies the basis on which payments are made to
18 and from the plan; and

19 (E) Provides a procedure for providing adequate
20 notice in writing to any participant or
21 beneficiary whose claim for benefits has been
22 denied, setting forth the specific reasons for



1 such denial, and affording a reasonable
2 opportunity for any participant whose claim has
3 been denied for a full and fair review. The
4 written instrument shall meet any other standards
5 and requirements of Title 29 United States Code
6 section 1001-1191, as amended, and related
7 regulations;

8 (5) The trust shall provide a summary plan description,
9 material modifications or amendments to the summary
10 plan description, and updates to the summary plan
11 description that meet the standards and requirements
12 of this chapter;

13 (6) All of the assets of the trust's plans shall be held
14 in trust by the governing board of the trust, at least
15 one member of which shall be a [~~retiree and a~~] member
16 of the employee organization sponsoring the trust.

17 (7) The governing board of the trust shall hold regularly
18 scheduled meetings open to all participants and
19 beneficiaries and shall provide such persons with
20 advance notice of all meetings; and

21 (8) The employee organization shall have an applicable
22 collective bargaining agreement with the employer;



1 provided that the agreement shall specify that the
2 employee organization agrees to comply with all
3 requirements of this chapter without regard to whether
4 or not the trust is deemed a governmental plan under
5 federal law.

6 § -3 **Summary plan description.** (a) Each summary plan
7 description provided under this chapter shall be written in a
8 manner calculated to be understood by the average plan
9 participant, and shall be sufficiently accurate and
10 comprehensive to reasonably apprise participants and
11 beneficiaries of their rights and obligations under the plan. A
12 summary of any material modification in the terms of the plan
13 shall be written in a manner calculated to be understood by the
14 average participant.

15 (b) The summary plan description shall contain the
16 following information:

- 17 (1) The name and type of administration of the plan;
18 (2) In the case of a group health plan, whether a health
19 insurance issuer is responsible for the financing or
20 administration (including payment of claims) of the
21 plan and if so, the name and address of such issuer;



- 1 (3) The name and address of the person designated as agent
- 2 for the service of legal process, if such person is
- 3 not the administrator;
- 4 (4) The name and address of the administrator;
- 5 (5) The names, titles, and addresses of any trustee or
- 6 trustees;
- 7 (6) A description of the relevant provisions of any
- 8 applicable collective bargaining agreement;
- 9 (7) The plan's requirements respecting eligibility for
- 10 participation and benefits;
- 11 (8) Circumstances that may result in disqualification,
- 12 ineligibility, or denial or loss of benefits;
- 13 (9) The source of financing of the plan and the identity
- 14 of any organization through which benefits are
- 15 provided;
- 16 (10) The date of the end of the plan year and whether
- 17 records of the plan are kept on a calendar, policy, or
- 18 fiscal year basis; and
- 19 (11) The procedures to be followed in presenting claims for
- 20 benefits under the plan and the remedies available
- 21 under the plan procedures.



1 The summary plan description shall contain any other
2 information required under Title 29 United States Code sections
3 1001-1191, as amended, and related regulations.

4 **§ -4 Annual report.** (a) The trust shall publish an
5 annual report with respect to every employee welfare benefit
6 plan to which this chapter applies. The report shall be filed
7 with the department of accounting and general services and the
8 respective departments of the counties as their interests may
9 appear.

10 (b) The annual report shall contain the following:

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

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

14 (3) Except in the case of a person whose compensation is
15 minimal and who performs solely ministerial duties,
16 the name of each person (including but not limited to
17 any consultant, broker, trustee, accountant, insurance
18 carrier, actuary, administrator, investment manager,
19 or custodian who rendered services to the plan or who
20 had transactions with the plan) who received directly
21 or indirectly compensation from the plan during the
22 preceding plan year for services rendered to the plan



1 or its participants, the amount of such compensation,
2 the nature of the person's services to the plan or its
3 participants, the person's relationship to the
4 employee organization, and any other office, position,
5 or employment that the person holds with a party in
6 interest;

7 (4) An explanation of the reason for any change in
8 appointment of any trustee, accountant, insurance
9 carrier, enrolled actuary, administrator, investment
10 manager, or custodian; and

11 (5) A financial statement that meets the requirements of
12 this chapter.

13 The annual report shall contain any other information
14 required by Title 29 United States Code sections 1001-1191, as
15 amended, and related regulations.

16 (c) The financial statement of the annual report shall
17 contain the following information with respect to an employee
18 welfare benefit plan:

19 (1) A statement of assets and liabilities;

20 (2) A statement of changes in fund balance;

21 (3) A statement of changes in financial position;



- 1 (4) A statement of receipts and disbursements during the
- 2 preceding twelve-month period;
- 3 (5) A schedule of all assets held for investment purposes;
- 4 (6) A schedule of each transaction involving a person
- 5 known to be a party in interest;
- 6 (7) A schedule of all loans or fixed income obligations
- 7 which were in default as of the close of the plan's
- 8 fiscal year or were classified during the year as
- 9 uncollectible;
- 10 (8) A list of all leases that were in default or were
- 11 classified during the year as uncollectible;
- 12 (9) If some or all of the assets of the plan or plans are
- 13 held in a common or collective trust maintained by a
- 14 bank or similar institution or in a separate account
- 15 maintained by an insurance carrier or a separate trust
- 16 maintained by an insurance carrier or a separate trust
- 17 maintained by a bank as trustee, the most recent
- 18 annual statement of assets and liabilities of such
- 19 common or collective trust, and in the case of a
- 20 separate account or a separate trust, such other
- 21 information as is required by the administrator in
- 22 order to comply with this chapter; and



1 (10) A schedule of each reportable transaction.

2 The financial statement shall contain any other information
3 required under Title 29 United States Code sections 1001-1191,
4 as amended, and regulated regulations.

5 **§ -5 Filing and furnishing of information requirements.**

6 (a) Once established, the trust shall comply with all the form
7 and report filing requirements imposed on the trust by the
8 Internal Revenue Service and Title 29 United States Code
9 sections 1001-1191, as amended, and regulated regulations.

10 (b) Within two hundred ten days of the closing of each
11 plan year, the trust shall provide an annual report for each
12 employee welfare benefit plan covered by this chapter to the
13 department of accounting and general services and the respective
14 departments of the counties as their interests may appear. The
15 annual reports shall be government records open to public
16 inspection.

17 (c) The trust shall provide summary plan descriptions to
18 each participant and beneficiary of each employee welfare
19 benefit plan covered by this chapter within ninety days of a
20 participant becoming enrolled in a plan or within ninety days of
21 a beneficiary first receiving benefits under a plan. No less
22 than every fifth year after a plan is established, the trust



1 shall provide updated summary plan descriptions to each
2 participant and beneficiary. If a material modification or
3 amendment is made to a plan, the trust shall provide a summary
4 description of such modification or amendment to each
5 participant or beneficiary within two hundred ten days after the
6 plan year in which the modification or amendment is made.

7 (d) Upon request of any participant or beneficiary, the
8 trust shall provide such person with the latest updated summary
9 plan description, the latest annual report, the applicable
10 collective bargaining agreement, the trust agreement, and any
11 other instruments under which the trust and plan were
12 established or are operated.

13 (e) The trust shall file a copy of all documents
14 referenced in subsections (a) and (c) with the department of
15 human resources development and the respective departments of
16 the counties as their interests may appear.

17 **§ -6 Fiduciary duties; prohibited transactions.** (a) A
18 fiduciary of the trust shall with respect to a plan comply with
19 all fiduciary duties imposed on fiduciaries under Title 29
20 United States Code sections 1001-1191, as amended, and regulated
21 regulations.



1 (b) All fiduciaries of the trust shall discharge their
2 duties with respect to a plan solely in the interest of the
3 participants and beneficiaries and:

4 (1) For the exclusive purpose of:

5 (A) Providing benefits to participants and their
6 beneficiaries; and

7 (B) Defraying reasonable expenses of administering
8 the plan;

9 (2) With the care, skill, prudence, and diligence under
10 the circumstances then prevailing that a prudent
11 person acting in a similar capacity and familiar with
12 those matters would use in the conduct of an
13 enterprise of a similar character and with like aims;

14 (3) By diversifying the investments of the plan so as to
15 minimize the risk of large losses, unless, under the
16 circumstances, it is clearly prudent not to do so; and

17 (4) In accordance with the documents and instruments
18 governing the plan insofar as such documents and
19 instruments are consistent with the provisions of this
20 chapter.

21 (c) In addition to any liability that a fiduciary may have
22 under this chapter, a fiduciary with respect to a plan shall be



1 liable for a breach of fiduciary responsibility of another
2 fiduciary with respect to the same plan in the following
3 circumstances:

4 (1) If the fiduciary participates knowingly in, or
5 knowingly undertakes to conceal, an act or omission of
6 the other fiduciary, knowing that act or omission is a
7 breach;

8 (2) If, by the fiduciary's failure to comply with
9 subsection (a) or (b), the fiduciary has been enabled
10 such other fiduciary to commit breach; or

11 (3) If the fiduciary has knowledge of the breach by such
12 other fiduciary, unless the fiduciary makes reasonable
13 efforts under the circumstances to remedy the breach.

14 If the assets of the plan are held by two or more trustees,
15 each shall use reasonable care to prevent a co-trustee from
16 committing a breach, and each shall be responsible for jointly
17 managing and controlling the assets of the plan.

18 (d) A fiduciary shall not cause a plan to engage in a
19 transaction, if the fiduciary knows or should know that the
20 transaction constitutes a direct or indirect:

21 (1) Sale or exchange, or leasing, of any property between
22 the plan and a party in interest;



1 (2) Lending of money or other extension of credit between
2 the plan and a party in interest;

3 (3) Furnishing of goods, services, or facilities between
4 the plan and a party in interest; or

5 (4) Transfer to, or use by or for the benefit of, a party
6 in interest, of any assets of the plan.

7 (e) A fiduciary shall not:

8 (1) Deal with the assets of the plan in the fiduciary's
9 own interest or for the fiduciary's own account;

10 (2) In the fiduciary's individual capacity or in any other
11 capacity act in any transaction involving the plan on
12 behalf of a party (or represent a party) whose
13 interests are adverse to the interests of the plan or
14 the interests of its participants or beneficiaries; or

15 (3) Receive any consideration for the fiduciary's own
16 personal account from any party dealing with the plan
17 in connection with a transaction involving the assets
18 of the plan.

19 § -7 **Liability for breach of fiduciary duty.** (a) Any
20 person who is a fiduciary with respect to a plan and who
21 breaches any of the responsibilities, obligations, or duties
22 imposed on fiduciaries by this chapter shall be personally



1 liable to make good to the plan any losses to the plan resulting
2 from each breach, and to restore to the plan any profits of the
3 fiduciary that have been made through the use of assets of the
4 plan by the fiduciary, and shall be subject to any other
5 equitable and remedial relief as the court may deem appropriate,
6 including removal of the fiduciary.

7 (b) Any provision in any agreement or instrument that
8 purports to relieve a fiduciary of responsibility or liability
9 for any responsibility, obligation, or duty under this chapter
10 shall be void as against public policy. However, nothing in
11 this section shall preclude:

12 (1) A plan from purchasing insurance for its fiduciaries
13 or for itself to cover liability or losses occurring
14 by reason of the act or omission of a fiduciary in the
15 case of a breach of a fiduciary obligation by the
16 fiduciary, if the insurance permits recourse by the
17 insurer against the fiduciary in the case of a breach
18 of fiduciary obligation by the fiduciary;

19 (2) A fiduciary from purchasing insurance to cover
20 liability under this chapter from and for the
21 fiduciary's own account; or



1 (3) An employee organization from purchasing insurance to
2 cover potential liability of one or more persons who
3 serve in a fiduciary capacity with regard to an
4 employee welfare benefit plan.

5 § -8 State and county contributions to the trust; active
6 employees. Upon the establishment of a voluntary employees'
7 beneficiary association trust, the State, through the department
8 of budget and finance, the counties through their respective
9 departments of finance, shall pay to the trust a monthly
10 contribution equal to the amount specified in the applicable
11 public sector collective bargaining agreement from July 1, 2005,
12 and thereafter.

13 ~~§ -9 State and county contributions to the trust;~~
14 ~~retired employees. (a) Any individual who becomes a retiree on~~
15 ~~or after the establishment of a voluntary employees' beneficiary~~
16 ~~association trust, and who, immediately prior to retirement, was~~
17 ~~a member of the bargaining unit of the sponsoring employee~~
18 ~~organization, shall be enrolled in that voluntary employees'~~
19 ~~beneficiary association trust. Upon the establishment of a~~
20 ~~voluntary employees' beneficiary association trust, the State,~~
21 ~~through the department of budget and finance, and the counties~~
22 ~~through their respective departments of finance, shall pay to~~



1 ~~the trust for each retiree who retires on or after July 1, 2005,~~
2 ~~a monthly contribution pursuant to the applicable collective~~
3 ~~bargaining agreement that shall not exceed the base monthly~~
4 ~~contributions or the specific contribution limits set forth in~~
5 ~~chapter 87A.~~

6 ~~(b) Any retiree who, immediately prior to retirement, was~~
7 ~~a member of an employee organization prior to the establishment~~
8 ~~of a voluntary employees' beneficiary association trust by the~~
9 ~~employee organization, and who was previously covered by a~~
10 ~~collective bargaining agreement, shall be given a one-time~~
11 ~~option to transfer participation from the Hawaii employer union~~
12 ~~health benefits trust fund established under chapter 87A to the~~
13 ~~organization's voluntary employees' beneficiary association~~
14 ~~trust once the latter is established. Upon the establishment of~~
15 ~~the voluntary employees' beneficiary association trust, the~~
16 ~~State, through the department of budget and finance and the~~
17 ~~counties, through their respective departments of finance, shall~~
18 ~~pay to the trust for each retiree who opts to transfer into a~~
19 ~~voluntary employees' beneficiary association trust, a monthly~~
20 ~~contribution equal to the contribution paid on behalf of a~~
21 ~~similarly situated retiree under the Hawaii employer union~~
22 ~~health benefits trust fund.~~



1 ~~(c) Medicare part B reimbursements established pursuant to~~
2 ~~section 87A-23(2) shall be directly disbursed by the State,~~
3 ~~through the department of budget and finance, and the counties,~~
4 ~~through their respective departments of finance, to those~~
5 ~~retirees and their beneficiaries who qualify and are covered by~~
6 ~~a voluntary employees' beneficiary association trust to the same~~
7 ~~extent retirees and their beneficiaries under the Hawaii~~
8 ~~employer union health benefits trust fund receive those~~
9 ~~reimbursements.~~

10 ~~(d) For the purposes of this chapter, a collective~~
11 ~~bargaining agreement shall include provisions specifying~~
12 ~~contributions to a voluntary employees' beneficiary association~~
13 ~~trust.~~

14 ~~§ 10]~~ § -9 **Termination of the trust.** If an employee
15 organization or a collective bargaining agreement that
16 establishes a voluntary employees' beneficiary association trust
17 terminates the voluntary employees' beneficiary association
18 trust, or ceases to provide health benefits, the participants in
19 the trust shall be allowed to return to the Hawaii employer-
20 union health benefits trust fund upon the date that health
21 benefits cease to be provided. All participants electing to
22 return to the Hawaii employer-union health benefits trust fund



1 shall be given the same rights and benefits as if the
2 participant had first participated in the Hawaii employer-union
3 health benefits trust fund from the inception of that trust fund
4 without loss of benefits or accrued time.

5 ~~§ 11~~ § -10 **Violation of the chapter; enforcement.**

6 (a) A civil action may be brought by a participant,
7 beneficiary, or fiduciary:

8 (1) For relief, if a trust fails to provide any
9 information required under this chapter, or if a trust
10 fails to comply with any request for information that
11 the trust is required to furnish to the participant or
12 beneficiary;

13 (2) To recover benefits due the participant or beneficiary
14 under the terms of the plan, or to enforce the
15 participant's or beneficiary's rights under the terms
16 of the plan, or to clarify the participant's or
17 beneficiary's rights to future benefits under the
18 terms of the plan;

19 (3) For appropriate relief against any breach of fiduciary
20 duty under section -7; or

21 (4) To enjoin any act or practice that violates any
22 provision of this chapter or the terms of the plan, or

1 to obtain any other appropriate equitable relief, or
2 to redress such violations, or to enforce any
3 provisions of this chapter or the terms of the plan.

4 (b) A civil action may be brought by the attorney general:

5 (1) For relief, if a trust fails to provide any
6 information required by this chapter, or if a trust
7 fails to comply with any request for information that
8 the trust is required to furnish any state or county
9 department;

10 (2) To enjoin any act or practice that violates any
11 provision of this chapter;

12 (3) To redress the violations;

13 (4) To enforce any provision of this chapter; or

14 (5) To suspend contributions from the State and counties
15 made pursuant to a collective bargaining agreement
16 required under section -2(a)(8) made to any trust
17 established under this chapter.

18 (c) The attorney general shall have the power, in order to
19 determine whether any person has violated or is about to violate
20 any provision of this chapter:

21 (1) To conduct an investigation and in connection
22 therewith to require submission of reports, books, and



1 records, and the filing of data in support of any
 2 information required to be filed under this chapter;
 3 and

4 (2) To enter any place, inspect any books and records, and
 5 question any persons as the attorney general may deem
 6 necessary to enable the attorney general to determine
 7 the facts relative to an investigation.

8 For purposes of any investigation provided for in this
 9 chapter, the attorney general may utilize the investigation
 10 procedures set forth in section 480-18 and the remedies and
 11 penalties of that section are hereby made applicable.

12 (d) The rights and remedies provided in this section are
 13 in addition to any rights or remedies that the participants,
 14 beneficiaries, fiduciaries, attorney general, or other state or
 15 federal agencies may have over the trust, the plans provided by
 16 or through the trust, and fiduciaries of the plans.

17 **§ [~~12~~] 11 Insurance; immunity of State and**

18 **counties.** (a) The employee organization or the trust's
 19 governing board shall procure:

20 (1) Fiduciary liability insurance and errors and omissions
 21 coverage for members of the governing board; and



1 (2) A fidelity bond of a reasonable amount for the
2 chairperson of the governing board and any other
3 person authorized to handle trust moneys.

4 (b) Notwithstanding any law to the contrary, the State and
5 the counties, and their officers, agents, and employees, shall
6 not be liable for any benefits provided by a trust or which it
7 fails to provide, any losses suffered by a trust, and any
8 losses, damages, or penalties arising out of the operations of a
9 trust or the acts or omissions of a trust's governing board or
10 any fiduciary of a trust."

11 SECTION 7. Act 245, Session Laws of Hawaii 2005, is
12 amended by amending section 8 to read as follows:

13 "SECTION 8. This Act shall take effect upon its approval,
14 for the purpose of establishing a voluntary [~~employees~~]
15 employees' beneficiary association trust pilot program and shall
16 be repealed on July 1, 2008; provided that sections 89-2, 89-3,
17 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the
18 form in which they read on the day before the effective date of
19 this Act [~~-~~]; except that the amendments to section 89-2
20 contained within this Act deleting the reference to the public
21 employees health fund and replacing it with references to the
22 employer-union health benefits trust fund shall be retained."



S.B. NO. 2207

1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on approval and
4 shall apply to retirees no later than October 1, 2006.

5

INTRODUCED BY:

Brian Karno
 G.S.T.
Jessie Q. Thompson
 Cleve W. Michibara

[Signature]



SB2207

Report Title:

VEBA Trusts; Retirees

Description:

Excludes retirees from participation in the pilot program for VEBA trusts. Requires any retiree who has become a participant in a VEBA trust to be restored to membership in the EUTF on or before October 1, 2006.

