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# 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  
16 part-time employees working less than twenty hours a  
17 week who are equal to one-half of a full-time  
18 equivalent;
- 19 (6) Educational officers and other personnel of the  
20 department of education under the same pay schedule;
- 21 (7) Faculty of the University of Hawaii and the community  
22 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. An employee organization that establishes a  
19 voluntary employees' beneficiary association trust shall ensure  
20 that a retiree who has become a participant of a 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 September 30, 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 sections 1 and 2 to read as follows:

8 "SECTION 1. The purpose of this Act is to allow for the  
9 temporary establishment of an employee organization sponsored  
10 trust that would provide health benefits for state and county  
11 employees [~~of a particular bargaining unit, as well as future~~  
12 ~~retirees of that bargaining unit and existing retirees who wish~~  
13 ~~to participate in such a trust.] represented by that employee  
14 organization. The trust would be established as a voluntary  
15 employees' beneficiary association (VEBA) trust pursuant to  
16 section 501(c)(9) of the Internal Revenue Code of 1986, as  
17 amended. The trust would be funded by employer contributions  
18 negotiated pursuant to a collective bargaining agreement and  
19 employee contributions to be determined by the trust's board of  
20 trustees for active employees. The Act imposes on the trust all  
21 of the standards and requirements of the Employee Retirement  
22 Income Security Act of 1974, as amended (ERISA). Even if the~~



1 trust is deemed to be a governmental plan exempt from ERISA, the  
2 legislative intent is that the trust must comply with the  
3 standards and requirements of ERISA as a matter of state law and  
4 that such shall be enforced by the attorney general as well as  
5 participants, beneficiaries, and fiduciaries of the plan or  
6 plans established by the trust.

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

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



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

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

12 **"CHAPTER**

13 **VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS**

14 **§ -1 Definitions.** As used in this chapter:

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

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

1 between an employer and the exclusive representatives of the  
2 employees of the employer.

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

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

8 "Employee organization" means the employee organization as  
9 defined in section 89-2.

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

16 "Employer" or "public employer" means "employer" or "public  
17 employer" as defined in section 89-2.

18 "Exclusive representative" means "exclusive representative"  
19 as defined in section 89-2.

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



1           (1) Exercises any discretionary authority or discretionary  
2           control respecting management of such plan or  
3           exercises authority or control respecting management  
4           or disposition of its assets;

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

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

11 Without limiting the foregoing, "fiduciary" shall include each  
12 trustee of the trust.

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

16           "Party in interest" means:

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

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

3           "Trust" means a voluntary employees' beneficiary  
4 association trust established under this chapter.

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

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

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

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



1 organization and shall be held for the exclusive  
2 purposes of providing benefits to participants and  
3 beneficiaries and defraying reasonable expenses of  
4 administration; provided that this shall not preclude  
5 the trust from returning contributions or payments  
6 made by an employer under a mistake of fact within one  
7 year after the payment of the contributions or  
8 payments;

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

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

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

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

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

21 (E) Provides a procedure for providing adequate  
22 notice in writing to any participant or



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

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

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

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





1           (8) The employee organization shall have an applicable  
2           collective bargaining agreement with the employer;  
3           provided that the agreement shall specify that the  
4           employee organization agrees to comply with all  
5           requirements of this chapter without regard to whether  
6           or not the trust is deemed a governmental plan under  
7           federal law.

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

17          (b) The summary plan description shall contain the  
18          following information:

- 19           (1) The name and type of administration of the plan;  
20           (2) In the case of a group health plan, whether a health  
21           insurance issuer is responsible for the financing or

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



1 (11) The procedures to be followed in presenting claims for  
2 benefits under the plan and the remedies available  
3 under the plan procedures.

4 The summary plan description shall contain any other  
5 information required under Title 29 United States Code sections  
6 1001-1191, as amended, and related regulations.

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

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

14 (1) The number of employees[~~, retirees,~~] and other persons  
15 covered by the plan;

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

17 (3) Except in the case of a person whose compensation is  
18 minimal and who performs solely ministerial duties,  
19 the name of each person (including but not limited to  
20 any consultant, broker, trustee, accountant, insurance  
21 carrier, actuary, administrator, investment manager,  
22 or custodian who rendered services to the plan or who

1 had transactions with the plan) who received directly  
2 or indirectly compensation from the plan during the  
3 preceding plan year for services rendered to the plan  
4 or its participants, the amount of such compensation,  
5 the nature of the person's services to the plan or its  
6 participants, the person's relationship to the  
7 employee organization, and any other office, position,  
8 or employment that the person holds with a party in  
9 interest;

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

14 (5) A financial statement that meets the requirements of  
15 this chapter.

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

19 (c) The financial statement of the annual report shall  
20 contain the following information with respect to an employee  
21 welfare benefit plan:

22 (1) A statement of assets and liabilities;

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



1 information as is required by the administrator in  
2 order to comply with this chapter; and

3 (10) A schedule of each reportable transaction.

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

7 **§ -5 Filing and furnishing of information requirements.**

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

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

19 (c) The trust shall provide summary plan descriptions to  
20 each participant and beneficiary of each employee welfare  
21 benefit plan covered by this chapter within ninety days of a  
22 participant becoming enrolled in a plan or within ninety days of



1 a beneficiary first receiving benefits under a plan. No less  
2 than every fifth year after a plan is established, the trust  
3 shall provide updated summary plan descriptions to each  
4 participant and beneficiary. If a material modification or  
5 amendment is made to a plan, the trust shall provide a summary  
6 description of such modification or amendment to each  
7 participant or beneficiary within two hundred ten days after the  
8 plan year in which the modification or amendment is made.

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

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

19 § -6 **Fiduciary duties; prohibited transactions.** (a) A  
20 fiduciary of the trust shall with respect to a plan comply with  
21 all fiduciary duties imposed on fiduciaries under Title 29

1 United States Code sections 1001-1191, as amended, and regulated  
2 regulations.

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

6 (1) For the exclusive purpose of:

7 (A) Providing benefits to participants and their  
8 beneficiaries; and

9 (B) Defraying reasonable expenses of administering  
10 the plan;

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

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

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



1 (c) In addition to any liability that a fiduciary may have  
2 under this chapter, a fiduciary with respect to a plan shall be  
3 liable for a breach of fiduciary responsibility of another  
4 fiduciary with respect to the same plan in the following  
5 circumstances:

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

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

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

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

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



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

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

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

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

9 (e) A fiduciary shall not:

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

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

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

21 **§ -7 Liability for breach of fiduciary duty.** (a) Any  
 22 person who is a fiduciary with respect to a plan and who

1 breaches any of the responsibilities, obligations, or duties  
2 imposed on fiduciaries by this chapter shall be personally  
3 liable to make good to the plan any losses to the plan resulting  
4 from each breach, and to restore to the plan any profits of the  
5 fiduciary that have been made through the use of assets of the  
6 plan by the fiduciary, and shall be subject to any other  
7 equitable and remedial relief as the court may deem appropriate,  
8 including removal of the fiduciary.

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

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



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

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

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

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



1 ~~voluntary employees' beneficiary association trust, the State,~~  
2 ~~through the department of budget and finance, and the counties~~  
3 ~~through their respective departments of finance, shall pay to~~  
4 ~~the trust for each retiree who retires on or after July 1, 2005,~~  
5 ~~a monthly contribution pursuant to the applicable collective~~  
6 ~~bargaining agreement that shall not exceed the base monthly~~  
7 ~~contributions or the specific contribution limits set forth in~~  
8 ~~chapter 87A.~~

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



1 ~~contribution equal to the contribution paid on behalf of a~~  
2 ~~similarly situated retiree under the Hawaii employer-union~~  
3 ~~health benefits trust fund.~~

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

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

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



1 employer-union health benefits trust fund upon the date that  
2 health benefits cease to be provided. All participants electing  
3 to return to the Hawaii employer-union health benefits trust  
4 fund shall be given the same rights and benefits as if the  
5 participant had first participated in the Hawaii employer-union  
6 health benefits trust fund from the inception of that trust fund  
7 without loss of benefits or accrued time.

8 ~~§ -11~~ § -10 **Violation of the chapter; enforcement.**

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

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

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



- 1           (3) For appropriate relief against any breach of fiduciary  
2           duty under section     -7; or
- 3           (4) To enjoin any act or practice that violates any  
4           provision of this chapter or the terms of the plan, or  
5           to obtain any other appropriate equitable relief, or  
6           to redress such violations, or to enforce any  
7           provisions of this chapter or the terms of the plan.
- 8           (b) A civil action may be brought by the attorney general:
- 9           (1) For relief, if a trust fails to provide any  
10           information required by this chapter, or if a trust  
11           fails to comply with any request for information that  
12           the trust is required to furnish any state or county  
13           department;
- 14           (2) To enjoin any act or practice that violates any  
15           provision of this chapter;
- 16           (3) To redress the violations;
- 17           (4) To enforce any provision of this chapter; or
- 18           (5) To suspend contributions from the State and counties  
19           made pursuant to a collective bargaining agreement  
20           required under section     -2(a)(8) made to any trust  
21           established under this chapter.





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

4 (1) To conduct an investigation and in connection  
5 therewith to require submission of reports, books, and  
6 records, and the filing of data in support of any  
7 information required to be filed under this chapter;  
8 and

9 (2) To enter any place, inspect any books and records, and  
10 question any persons as the attorney general may deem  
11 necessary to enable the attorney general to determine  
12 the facts relative to an investigation.

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

17 (d) The rights and remedies provided in this section are  
18 in addition to any rights or remedies that the participants,  
19 beneficiaries, fiduciaries, attorney general, or other state or  
20 federal agencies may have over the trust, the plans provided by  
21 or through the trust, and fiduciaries of the plans.

1            [~~§ 12~~] § 11 Insurance; immunity of State and

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

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

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

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

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

18            "SECTION 8. This Act shall take effect upon its approval,  
19 for the purpose of establishing a voluntary [~~employees~~]  
20 employees' beneficiary association trust pilot program and shall  
21 be repealed on July 1, 2008; provided that sections 89-2, 89-3,  
22 89-6, and 89-9, Hawaii Revised Statutes, are reenacted in the



1 form in which they read on the day before the effective date of  
 2 this Act[-], except that amendments to section 89-2 contained  
 3 within this Act that delete references to the public employees  
 4 health fund and replace them with references to the  
 5 employer-union health benefits trust fund shall be retained."

6 SECTION 8. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8 SECTION 9. This Act shall take effect upon its approval  
 9 and shall apply to retirees no later than September 30, 2006.

10

INTRODUCED BY: *Di Kanno*  
*Shirley R. Young*  
*Shirley Chun Oakland*

*Yue Sheng*  
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**Report Title:**

VEBA Trusts; Exclusion of Retirees

**Description:**

Excludes retirees from participation in the VEBA trusts pilot program. Requires an employee organization and the EUTF to ensure that any retiree who has become a participant of a VEBA trust shall be restored to membership in the EUTF on or before September 30, 2006 and shall enjoy uninterrupted health benefits coverage.

