

JAN 25 2012

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





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

4 "Collective bargaining agreement" means the formal written  
5 agreement over wages, hours, amounts of contributions by the  
6 State and counties to a trust established under this chapter,  
7 and other terms and conditions of employment, entered into  
8 between an employer and the exclusive representatives of the  
9 employees of the employer. A collective bargaining agreement  
10 shall include provisions specifying contributions to a voluntary  
11 employees' beneficiary association trust.

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

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

17 "Employee organization" means the employee organization as  
18 defined in section 89-2.

19 "Employee welfare benefit plan" or "plan" means any plan,  
20 fund, or program which is established by the trust for the  
21 purpose of providing participants or their beneficiaries,  
22 through the purchase of insurance or otherwise, medical,



1 surgical, or hospital care or benefits, or benefits in the event  
2 of sickness, accident, disability, or death.

3 "Employer" or "public employer" means "employer" or "public  
4 employer" as defined in section 89-2.

5 "Exclusive representative" means "exclusive representative"  
6 as defined in section 89-2.

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

- 9 (1) Exercises any discretionary authority or discretionary  
10 control respecting management of such plan or  
11 exercises authority or control respecting management  
12 or disposition of its assets;
- 13 (2) Renders investment advice for a fee or other  
14 compensation, direct or indirect, with respect to any  
15 moneys or other property of such plan, or has  
16 authority or responsibility to do so; or
- 17 (3) Has any discretionary authority or discretionary  
18 responsibility in the administration of such plan.

19 The term "fiduciary" includes each trustee of the trust.

20 "Participant" means any employee or retiree who is a member  
21 of the trust and is eligible to receive benefits under an  
22 employee welfare benefit plan provided by or through the trust.



1 "Party in interest" means:

- 2 (1) Any fiduciary, counsel, or employee of a trust;
- 3 (2) A person providing services to a trust or its plans;
- 4 (3) An employer, any of whose employees are covered by a
- 5 trust's plans; and
- 6 (4) An employee organization, any of whose members are
- 7 covered by a trust's plans.

8 "Retiree" means an individual who has retired from the  
9 State or its counties.

10 "Trust" means a voluntary employees' beneficiary  
11 association trust established under this chapter.

12 § -2 **Establishment of the trust.** (a) An employee  
13 organization shall be exempt from chapter 87A and meet the  
14 following requirements in order to establish a voluntary  
15 employees' beneficiary association trust under this chapter:

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



- 1           (2) The trust may offer health benefits in accordance with  
2                   title 26 United States Code section 501(c)(9), as  
3                   amended, and related regulations;
- 4           (3) The trust shall meet all the standards and  
5                   requirements applicable to employee welfare benefit  
6                   plans under title 29 United States Code sections 1001-  
7                   1191, as amended, relating to the Employee Retirement  
8                   Income Security Act of 1974, and related regulations.  
9                   The assets of any plan provided by or through the  
10                  trust shall not inure to the benefit of any employee  
11                  organization and shall be held for the exclusive  
12                  purposes of providing benefits to participants and  
13                  beneficiaries and defraying reasonable expenses of  
14                  administration; provided that this shall not preclude  
15                  the trust from returning contributions or payments  
16                  made by an employer under a mistake of fact within one  
17                  year after the payment of the contributions or  
18                  payments;
- 19          (4) Each plan offered by the trust shall be established  
20                  and maintained pursuant to a written instrument that:
- 21                  (A) Provides a procedure for establishing and  
22                          carrying out a funding policy and method



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



- 1 description that meet the standards and requirements  
2 of this chapter;
- 3 (6) All of the assets of the trust's plans shall be held  
4 in trust by the governing board of the trust, at least  
5 one member of which shall be a retiree and a member of  
6 the employee organization sponsoring the trust;
- 7 (7) The governing board of the trust shall hold regularly  
8 scheduled meetings open to all participants and  
9 beneficiaries and shall provide such persons with  
10 advance notice of all meetings; and
- 11 (8) The employee organization shall have an applicable  
12 collective bargaining agreement with the employer;  
13 provided that the agreement shall specify that the  
14 employee organization agrees to comply with all  
15 requirements of this chapter without regard to whether  
16 or not the trust is deemed a governmental plan under  
17 federal law.

18 § -3 **Summary plan description.** (a) Each summary plan  
19 description provided under this chapter shall be written in a  
20 manner calculated to be understood by the average plan  
21 participant, and shall be sufficiently accurate and  
22 comprehensive to reasonably apprise participants and





1 beneficiaries of their rights and obligations under the plan. A  
2 summary of any material modification in the terms of the plan  
3 shall be written in a manner calculated to be understood by the  
4 average participant.

5 (b) The summary plan description shall contain the  
6 following information:

- 7 (1) The name and type of administration of the plan;
- 8 (2) In the case of a group health plan, whether a health  
9 insurance issuer is responsible for the financing or  
10 administration (including payment of claims) of the  
11 plan and if so, the name and address of such issuer;
- 12 (3) The name and address of the person designated as agent  
13 for the service of legal process, if such person is  
14 not the administrator;
- 15 (4) The name and address of the administrator;
- 16 (5) The names, titles, and addresses of any trustee or  
17 trustees;
- 18 (6) A description of the relevant provisions of any  
19 applicable collective bargaining agreement;
- 20 (7) The plan's requirements respecting eligibility for  
21 participation and benefits;



- 1           (8) Circumstances that may result in disqualification,  
2           ineligibility, or denial or loss of benefits;
- 3           (9) The source of financing of the plan and the identity  
4           of any organization through which benefits are  
5           provided;
- 6           (10) The date of the end of the plan year and whether  
7           records of the plan are kept on a calendar, policy, or  
8           fiscal year basis; and
- 9           (11) The procedures to be followed in presenting claims for  
10          benefits under the plan and the remedies available  
11          under the plan procedures.

12           The summary plan description shall contain any other  
13 information required under title 29 United States Code sections  
14 1001-1191, as amended, and related regulations.

15           §    **-4 Annual report.** (a) The trust shall publish an  
16 annual report with respect to every employee welfare benefit  
17 plan to which this chapter applies. The report shall be filed  
18 with the department of accounting and general services and the  
19 respective departments of the counties as their interests may  
20 appear.

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

- 1           (1) The number of employees, retirees, and other persons  
2                   covered by the plan;
- 3           (2) The name and address of each fiduciary;
- 4           (3) Except in the case of a person whose compensation is  
5                   minimal and who performs solely ministerial duties,  
6                   the name of each person (including any consultant,  
7                   broker, trustee, accountant, insurance carrier,  
8                   actuary, administrator, investment manager, or  
9                   custodian who rendered services to the plan or who had  
10                  transactions with the plan) who received directly or  
11                  indirectly compensation from the plan during the  
12                  preceding plan year for services rendered to the plan  
13                  or its participants, the amount of such compensation,  
14                  the nature of the person's services to the plan or its  
15                  participants, the person's relationship to the  
16                  employee organization, and any other office, position,  
17                  or employment that the person holds with a party in  
18                  interest;
- 19          (4) An explanation of the reason for any change in  
20                  appointment of any trustee, accountant, insurance  
21                  carrier, enrolled actuary, administrator, investment  
22                  manager, or custodian; and



1 (5) A financial statement that meets the requirements of  
2 this chapter.

3 The annual report shall contain any other information  
4 required by title 29 United States Code sections 1001-1191, as  
5 amended, and related regulations.

6 (c) The financial statement of the annual report shall  
7 contain the following information with respect to an employee  
8 welfare benefit plan:

- 9 (1) A statement of assets and liabilities;
- 10 (2) A statement of changes in fund balance;
- 11 (3) A statement of changes in financial position;
- 12 (4) A statement of receipts and disbursements during the  
13 preceding twelve-month period;
- 14 (5) A schedule of all assets held for investment purposes;
- 15 (6) A schedule of each transaction involving a person  
16 known to be a party in interest;
- 17 (7) A schedule of all loans or fixed income obligations  
18 which were in default as of the close of the plan's  
19 fiscal year or were classified during the year as  
20 uncollectible;
- 21 (8) A list of all leases that were in default or were  
22 classified during the year as uncollectible;



1 (9) If some or all of the assets of the plan or plans are  
2 held in a common or collective trust maintained by a  
3 bank or similar institution or in a separate account  
4 maintained by an insurance carrier or a separate trust  
5 maintained by an insurance carrier or a separate trust  
6 maintained by a bank as trustee, the most recent  
7 annual statement of assets and liabilities of such  
8 common or collective trust, and in the case of a  
9 separate account or a separate trust, such other  
10 information as is required by the administrator in  
11 order to comply with this chapter; and

12 (10) A schedule of each reportable transaction.

13 The financial statement shall contain any other information  
14 required under title 29 United States Code sections 1001-1191,  
15 as amended, and regulated regulations.

16 § -5 **Filing and furnishing of information requirements.**

17 (a) The trust shall comply with all the form and report filing  
18 requirements imposed on the trust by the Internal Revenue  
19 Service and title 29 United States Code sections 1001-1191, as  
20 amended, and regulated regulations.

21 (b) Within two hundred ten days of the closing of each  
22 plan year, the trust shall provide an annual report for each



1 employee welfare benefit plan covered by this chapter to the  
2 department of accounting and general services and the respective  
3 departments of the counties as their interests may appear. The  
4 annual reports shall be government records open to public  
5 inspection.

6 (c) The trust shall provide summary plan descriptions to  
7 each participant and beneficiary of each employee welfare  
8 benefit plan covered by this chapter within ninety days of a  
9 participant becoming enrolled in a plan or within ninety days of  
10 a beneficiary first receiving benefits under a plan. No less  
11 than every fifth year after a plan is established, the trust  
12 shall provide updated summary plan descriptions to each  
13 participant and beneficiary. If a material modification or  
14 amendment is made to a plan, the trust shall provide a summary  
15 description of such modification or amendment to each  
16 participant or beneficiary within two hundred ten days after the  
17 plan year in which the modification or amendment is made.

18 (d) Upon request of any participant or beneficiary, the  
19 trust shall provide such person with the latest updated summary  
20 plan description, the latest annual report, the applicable  
21 collective bargaining agreement, the trust agreement, and any



1 other instruments under which the trust and plan were  
2 established or are operated.

3 (e) The trust shall file a copy of all documents under  
4 subsections (a) and (c) with the department of human resources  
5 development and the respective departments of the counties as  
6 their interests may appear.

7 § -6 **Fiduciary duties; prohibited transactions.** (a) A  
8 fiduciary of the trust shall with respect to a plan comply with  
9 all fiduciary duties imposed on fiduciaries under title 29  
10 United States Code sections 1001-1191, as amended, and regulated  
11 regulations.

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

15 (1) For the exclusive purpose of:

16 (A) Providing benefits to participants and their  
17 beneficiaries; and

18 (B) Defraying reasonable expenses of administering  
19 the plan;

20 (2) With the care, skill, prudence, and diligence under  
21 the circumstances then prevailing that a prudent  
22 person acting in a similar capacity and familiar with



1           those matters would use in the conduct of an  
2           enterprise of a similar character and with like aims;  
3       (3) By diversifying the investments of the plan so as to  
4           minimize the risk of large losses, unless, under the  
5           circumstances, it is clearly prudent not to do so; and  
6       (4) In accordance with the documents and instruments  
7           governing the plan insofar as such documents and  
8           instruments are consistent with the provisions of this  
9           chapter.

10       (c) In addition to any liability that a fiduciary may have  
11       under this chapter, a fiduciary with respect to a plan shall be  
12       liable for a breach of fiduciary responsibility of another  
13       fiduciary with respect to the same plan in the following  
14       circumstances:

15       (1) If the fiduciary participates knowingly in, or  
16           knowingly undertakes to conceal, an act or omission of  
17           the other fiduciary, knowing that act or omission is a  
18           breach;

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





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

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

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

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

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

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

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

19 (e) A fiduciary shall not:

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



- 1           (2) In the fiduciary's individual capacity or in any other  
2           capacity act in any transaction involving the plan on  
3           behalf of a party (or represent a party) whose  
4           interests are adverse to the interests of the plan or  
5           the interests of its participants or beneficiaries; or  
6           (3) Receive any consideration for the fiduciary's own  
7           personal account from any party dealing with the plan  
8           in connection with a transaction involving the assets  
9           of the plan.

10        §   -7   **Liability for breach of fiduciary duty.** (a) Any  
11   person who is a fiduciary with respect to a plan and who  
12   breaches any of the responsibilities, obligations, or duties  
13   imposed on fiduciaries by this chapter shall be personally  
14   liable to make good to the plan any losses to the plan resulting  
15   from each breach, and to restore to the plan any profits of the  
16   fiduciary that have been made through the use of assets of the  
17   plan by the fiduciary, and shall be subject to any other  
18   equitable and remedial relief as the court may deem appropriate,  
19   including removal of the fiduciary.

20           (b) Any provision in any agreement or instrument that  
21   purports to relieve a fiduciary of responsibility or liability  
22   for any responsibility, obligation, or duty under this chapter



1 shall be void as against public policy. However, nothing in  
2 this section shall preclude:

- 3 (1) A plan from purchasing insurance for its fiduciaries  
4 or for itself to cover liability or losses occurring  
5 by reason of the act or omission of a fiduciary in the  
6 case of a breach of a fiduciary obligation by the  
7 fiduciary, if the insurance permits recourse by the  
8 insurer against the fiduciary in the case of a breach  
9 of fiduciary obligation by the fiduciary;
- 10 (2) A fiduciary from purchasing insurance to cover  
11 liability under this chapter from and for the  
12 fiduciary's own account; or
- 13 (3) An employee organization from purchasing insurance to  
14 cover potential liability of one or more persons who  
15 serve in a fiduciary capacity with regard to an  
16 employee welfare benefit plan.

17 § -8 **State and county contributions to the trust; active**  
18 **employees.** Upon the establishment of a voluntary employees'  
19 beneficiary association trust, the State, through the department  
20 of budget and finance, the counties through their respective  
21 departments of finance, shall pay to the trust a monthly  
22 contribution equal to the amount specified in the applicable



1 public sector collective bargaining agreement from July 1, 2012,  
2 and thereafter.

3       §   -9   State and county contributions to the trust;  
4 **retired employees.** (a) Any individual who becomes a retiree on  
5 or after the establishment of a voluntary employees' beneficiary  
6 association trust, and who, immediately prior to retirement, was  
7 a member of the bargaining unit of the sponsoring employee  
8 organization, shall be enrolled in that voluntary employees'  
9 beneficiary association trust. Upon the establishment of a  
10 voluntary employees' beneficiary association trust, the State,  
11 through the department of budget and finance, and the counties  
12 through their respective departments of finance, shall pay to  
13 the trust for each retiree who retires on or after July 1, 2012,  
14 a monthly contribution pursuant to the applicable collective  
15 bargaining agreement that shall not exceed the base monthly  
16 contributions or the specific contribution limits set forth in  
17 chapter 87A.

18       (b) Any retiree who, immediately prior to retirement, was  
19 a member of an employee organization prior to the establishment  
20 of a voluntary employees' beneficiary association trust by the  
21 employee organization and who was previously covered by a  
22 collective bargaining agreement, shall be given a one-time



1 option to transfer participation from the Hawaii employer-union  
2 health benefits trust fund established under chapter 87A to the  
3 organization's voluntary employees' beneficiary association  
4 trust under this chapter. Upon the establishment of the  
5 voluntary employees' beneficiary association trust, the State,  
6 through the department of budget and finance, and the counties,  
7 through their respective departments of finance, shall pay to  
8 the trust for each retiree who opts to transfer into a voluntary  
9 employees' beneficiary association trust, a monthly contribution  
10 equal to the contribution paid on behalf of a similarly situated  
11 retiree under the Hawaii employer-union health benefits trust  
12 fund.

13 (c) Medicare part B reimbursements established pursuant to  
14 section 87A-23(2) shall be directly disbursed by the State,  
15 through the department of budget and finance, and the counties,  
16 through their respective departments of finance, to those  
17 retirees and their beneficiaries who qualify and are covered by  
18 a voluntary employees' beneficiary association trust to the same  
19 extent retirees and their beneficiaries under the Hawaii  
20 employer-union health benefits trust fund receive those  
21 reimbursements.



1           §   -10   **Termination of the trust.**  If an employee  
2 organization or a collective bargaining agreement that  
3 establishes a voluntary employees' beneficiary association trust  
4 terminates the voluntary employees' beneficiary association  
5 trust, or ceases to provide health benefits, the participants in  
6 the trust may elect to return to the Hawaii employer-union  
7 health benefits trust fund upon the date that health benefits  
8 cease to be provided; provided that all participants electing to  
9 return to the Hawaii employer-union health benefits trust fund  
10 shall be given the same rights and benefits as if the  
11 participant had first participated in the Hawaii employer-union  
12 health benefits trust fund from the inception of the Hawaii  
13 employer-union health benefits trust fund without loss of  
14 benefits or accrued time.

15           §   -11   **Violation of the chapter; enforcement.**  (a)  A  
16 civil action may be brought by a participant, beneficiary, or  
17 fiduciary:

18           (1)  For relief, if a trust fails to provide any  
19 information required under this chapter, or if a trust  
20 fails to comply with any request for information that  
21 the trust is required to furnish to the participant or  
22 beneficiary;



- 1           (2) To recover benefits due the participant or beneficiary  
2                   under the terms of the plan, or to enforce the  
3                   participant's or beneficiary's rights under the terms  
4                   of the plan, or to clarify the participant's or  
5                   beneficiary's rights to future benefits under the  
6                   terms of the plan;
- 7           (3) For appropriate relief against any breach of fiduciary  
8                   duty under section       -7; or
- 9           (4) To enjoin any act or practice that violates any  
10                   provision of this chapter or the terms of the plan, or  
11                   to obtain any other appropriate equitable relief, or  
12                   to redress such violations, or to enforce any  
13                   provisions of this chapter or the terms of the plan.
- 14           (b) A civil action may be brought by the attorney general:
- 15           (1) For relief, if a trust fails to provide any  
16                   information required by this chapter, or if a trust  
17                   fails to comply with any request for information that  
18                   the trust is required to furnish any state or county  
19                   department;
- 20           (2) To enjoin any act or practice that violates any  
21                   provision of this chapter;
- 22           (3) To redress the violations;



- 1           (4) To enforce any provision of this chapter; or
- 2           (5) To suspend contributions from the State and counties
- 3                 made pursuant to a collective bargaining agreement
- 4                 required under section       -8 made to any trust
- 5                 established under this chapter.

6           (c) The attorney general shall have the power, in order to

7 determine whether any person has violated or is about to violate

8 any provision of this chapter:

- 9           (1) To conduct an investigation and in connection
- 10                 therewith to require submission of reports, books, and
- 11                 records, and the filing of data in support of any
- 12                 information required to be filed under this chapter;
- 13                 and
- 14           (2) To enter any place, inspect any books and records, and
- 15                 question any persons as the attorney general may deem
- 16                 necessary to enable the attorney general to determine
- 17                 the facts relative to an investigation.

18           For purposes of any investigation provided for in this

19 chapter, the attorney general may utilize the investigation

20 procedures set forth in section 480-18 and the remedies and

21 penalties of that section are hereby made applicable.





1 (d) The rights and remedies provided in this section are  
2 in addition to any rights or remedies that the participants,  
3 beneficiaries, fiduciaries, attorney general, or other state or  
4 federal agencies may have over the trust, the plans provided by  
5 or through the trust, and fiduciaries of the plans.

6 § -12 Insurance; immunity of State and counties. (a)

7 The employee organization or the trust's governing board shall  
8 procure:

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

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

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



1 SECTION 3. Section 89-2, Hawaii Revised Statutes, is  
2 amended by amending the definitions of "employee" or "public  
3 employee" and "employee organization" 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 89-  
7 6(f).

8 "Employee organization" means any organization of any kind  
9 in which public employees participate and which exists for the  
10 primary purpose of dealing with public employers concerning  
11 grievances, labor disputes, wages, hours, amounts of  
12 contributions by the State and counties to the Hawaii employer-  
13 union health benefits trust fund<sup>[7]</sup> or a voluntary employees'  
14 beneficiary association trust, and other terms and conditions of  
15 employment of public employees."

16 SECTION 4. Section 89-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "**§89-3 Rights of employees.** Employees shall have the  
19 right of self-organization and the right to form, join, or  
20 assist any employee organization for the purpose of bargaining  
21 collectively through representatives of their own choosing on  
22 questions of wages, hours, and other terms and conditions of



1 employment, including retiree health benefit contributions, and  
2 to engage in lawful, concerted activities for the purpose of  
3 collective bargaining or other mutual aid or protection, free  
4 from interference, restraint, or coercion. An employee shall  
5 have the right to refrain from any or all of such activities,  
6 except for having a payroll deduction equivalent to regular dues  
7 remitted to an exclusive representative as provided in section  
8 89-4."

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

11 "**§89-6 Appropriate bargaining units.** (a) All employees  
12 throughout the State within any of the following categories  
13 shall constitute an appropriate bargaining unit:

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



- 1           (6) Educational officers and other personnel of the
- 2           department of education under the same pay schedule;
- 3           (7) Faculty of the University of Hawaii and the community
- 4           college system;
- 5           (8) Personnel of the University of Hawaii and the
- 6           community college system, other than faculty;
- 7           (9) Registered professional nurses;
- 8           (10) Institutional, health, and correctional workers;
- 9           (11) Firefighters;
- 10          (12) Police officers; and
- 11          (13) Professional and scientific employees, who cannot be
- 12          included in any of the other bargaining units.
- 13          (b) Because of the nature of the work involved and the
- 14          essentiality of certain occupations that require specialized
- 15          training, supervisory employees who are eligible for inclusion
- 16          in bargaining units (9) through (13) shall be included in
- 17          bargaining units (9) through (13), respectively, instead of
- 18          bargaining unit (2) or (4).
- 19          (c) The classification systems of each jurisdiction shall
- 20          be the bases for differentiating blue collar from white collar
- 21          employees, professional from institutional, health and
- 22          correctional workers, supervisory from nonsupervisory employees,



1 teachers from educational officers, and faculty from nonfaculty.  
2 In differentiating supervisory from nonsupervisory employees,  
3 class titles alone shall not be the basis for determination.  
4 The nature of the work, including whether a major portion of the  
5 working time of a supervisory employee is spent as part of a  
6 crew or team with nonsupervisory employees, shall be considered  
7 also.

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

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

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

19 (3) For bargaining units (5) and (6), the governor shall  
20 have three votes, the board of education shall have  
21 two votes, and the superintendent of education shall  
22 have one vote; and



1           (4) For bargaining units (7) and (8), the governor shall  
2           have three votes, the board of regents of the  
3           University of Hawaii shall have two votes, and the  
4           president of the University of Hawaii shall have one  
5           vote.

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

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

19           (f) For the purposes of negotiating contributions by the  
20 State and the counties to a voluntary employees' beneficiary  
21 association trust as part of a collective bargaining agreement,  
22 all prospective retirees who retire on or after July 1, 2012,



1 shall be considered members of the bargaining unit to which they  
2 belonged immediately prior to their retirement from the State or  
3 the counties.

4       ~~(f)~~ (g) The following individuals shall not be included  
5 in any appropriate bargaining unit or be entitled to coverage  
6 under this chapter:

- 7       (1) Elected or appointed official;
- 8       (2) Member of any board or commission; provided that  
9             nothing in this paragraph shall prohibit a member of a  
10            collective bargaining unit from serving on a local  
11            school board of a charter school or the charter school  
12            review panel established under chapter 302B;
- 13       (3) Top-level managerial and administrative personnel,  
14            including the department head, deputy or assistant to  
15            a department head, administrative officer, director,  
16            or chief of a state or county agency or major  
17            division, and legal counsel;
- 18       (4) Secretary to top-level managerial and administrative  
19            personnel under paragraph (3);
- 20       (5) Individual concerned with confidential matters  
21            affecting employee-employer relations;



- 1 (6) Part-time employee working less than twenty hours per  
2 week, except part-time employees included in  
3 bargaining unit (5);
- 4 (7) Temporary employee of three months' duration or less;
- 5 (8) Employee of the executive office of the governor or a  
6 household employee at Washington Place;
- 7 (9) Employee of the executive office of the lieutenant  
8 governor;
- 9 (10) Employee of the executive office of the mayor;
- 10 (11) Staff of the legislative branch of the State;
- 11 (12) Staff of the legislative branches of the counties,  
12 except employees of the clerks' offices of the  
13 counties;
- 14 (13) Any commissioned and enlisted personnel of the Hawaii  
15 national guard;
- 16 (14) Inmate, kokua, patient, ward, or student of a state  
17 institution;
- 18 (15) Student help;
- 19 (16) Staff of the Hawaii labor relations board;
- 20 (17) [~~Employees~~] Employee of the Hawaii national guard  
21 youth challenge academy; or
- 22 (18) Employees of the office of elections.





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

6        SECTION 6. Section 89-9, Hawaii Revised Statutes, is  
7 amended as follows:

8        1. By amending subsection (a) to read:

9        "(a) The employer and the exclusive representative shall  
10 meet at reasonable times, including meetings sufficiently in  
11 advance of the February 1 impasse date under section 89-11, and  
12 shall negotiate in good faith with respect to wages, hours, the  
13 amounts of contributions by the State and respective counties to  
14 the Hawaii employer-union health benefits trust fund or a  
15 voluntary employees' beneficiary association trust to the extent  
16 allowed in subsection (e), and other terms and conditions of  
17 employment [~~which~~] that are subject to collective bargaining and  
18 [~~which~~] that are to be embodied in a written agreement as  
19 specified in section 89-10, but [~~such~~] the obligation does not  
20 compel either party to agree to a proposal or make a concession;  
21 provided that the parties may not negotiate with respect to cost  
22 items as defined by section 89-2 for the biennium 1999 to 2001,



1 and the cost items of employees in bargaining units under  
2 section 89-6 in effect on June 30, 1999, shall remain in effect  
3 until July 1, 2001."

4 2. By amending subsections (d) and (e) to read:

5 "(d) Excluded from the subjects of negotiations are  
6 matters of classification, reclassification, benefits of but not  
7 contributions to the Hawaii employer-union health benefits trust  
8 fund[7] or a voluntary employees' beneficiary association trust,  
9 recruitment, examination, initial pricing, and retirement  
10 benefits except as provided in section 88-8(h). The employer  
11 and the exclusive representative shall not agree to any proposal  
12 [~~which~~] that would be inconsistent with the merit principle or  
13 the principle of equal pay for equal work pursuant to section  
14 76-1 or [~~which~~] that would interfere with the rights and  
15 obligations of a public employer to:

- 16 (1) Direct employees;
- 17 (2) Determine qualifications, standards for work, and the  
18 nature and contents of examinations;
- 19 (3) Hire, promote, transfer, assign, and retain employees  
20 in positions;
- 21 (4) Suspend, demote, discharge, or take other disciplinary  
22 action against employees for proper cause;



- 1           (5) Relieve an employee from duties because of lack of
- 2                   work or other legitimate reason;
- 3           (6) Maintain efficiency and productivity, including
- 4                   maximizing the use of advanced technology, in
- 5                   government operations;
- 6           (7) Determine methods, means, and personnel by which the
- 7                   employer's operations are to be conducted; and
- 8           (8) Take such actions as may be necessary to carry out the
- 9                   missions of the employer in cases of emergencies.

10           This subsection shall not be used to invalidate provisions  
11 of collective bargaining agreements in effect on and after June  
12 30, 2007, and shall not preclude negotiations over the  
13 procedures and criteria on promotions, transfers, assignments,  
14 demotions, layoffs, suspensions, terminations, discharges, or  
15 other disciplinary actions as a permissive subject of bargaining  
16 during collective bargaining negotiations or negotiations over a  
17 memorandum of agreement, memorandum of understanding, or other  
18 supplemental agreement.

19           Violations of the procedures and criteria so negotiated may  
20 be subject to the grievance procedure in the collective  
21 bargaining agreement.



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

16 SECTION 7. Statutory material to be repealed is bracketed  
 17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.  
 19

INTRODUCED BY:

*Michelle Kadani*  
*John*  
*Tobias*  
*Jan*



S.B. NO. 2689

*Matt*

*Al D. V.*

*Greg de la*

*Franne Chun Oakland*

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*Robert K. K.*



# S.B. NO. 2689

**Report Title:**

VEBA Trust; Authorized

**Description:**

Authorizes and sets forth the requirements for the establishment of a VEBA trust by public employee organizations to provide health benefits for its members.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

