ACT 88

S.B. NO. 1044

A Bill for an Act Relating to Public Employee Health Benefits.

Be It Enacted by the Legislature of the State of Hawaii:

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

"CHAPTER
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
PART I. GENERAL PROVISIONS

§ -1 Definitions. As used in this chapter:

"Board" means the board of trustees of the Hawaii employer-union health benefits trust fund described in section -5.

''Carrier'' means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health benefits or long-term care benefits under group insurance contracts.

''Contribution'' means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

''County'' means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

''Dependent-beneficiary'' means an employee-beneficiary's:

(1) Spouse;
(2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
(3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.

''Employee'' means an employee or officer of the State, county, or legislature,

(1) Including:
    (A) An elective officer;
    (B) A per diem employee;
    (C) An officer or employee under an authorized leave of absence;
    (D) An employee of the Hawaii national guard although paid from federal funds;
    (E) A retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
    (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
    (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,
(2) But excluding:
    (A) A designated beneficiary of a retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
    (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
    (C) A part-time, temporary, and seasonal or casual employee.

''Employee-beneficiary'' means:

(1) An employee;
(2) The beneficiary of an employee who is killed in the performance of the employee's duty;
(3) An employee who retired prior to 1961;
(4) The beneficiary of a retired member of the employees' retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
(5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or

(6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry;

provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

''Fund'' means the Hawaii employer-union health benefits trust fund established in section -30.

''Health benefits plan'' means:

(1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
(2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

''Long-term care benefits plan'' means:

(1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
(2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

''Part-time, temporary, and seasonal or casual employee'' means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

''Periodic charge'' means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.

''Qualified-beneficiary'' means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours, including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

''Trustee'' means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section -5.

PART II. BOARD OF TRUSTEES

§ -5 Composition of board. The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor as follows:

(1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries. The trustees shall be appointed from a list of three nominees per trustee submitted by the exclusive employee representative organizations; and
(2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms.

§ -6 Term of a trustee; vacancy. The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term. Each term shall commence on January 1 and expire on December 31. The governor may reduce the terms of those initially appointed so as to provide, as far as practicable, for the expiration of an equal number of terms at intervals of one year.

A vacancy on the board shall be filled by appointment of the governor; provided that the criteria used for selecting the successor shall be the same criteria used for selecting the person's predecessor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

If by the end of a trustee's term a trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed.

§ -7 Chair, vice-chair, and secretary-treasurer. The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer.

§ -8 Compensation and expenses. Each trustee shall serve without compensation, but the trustees may be reimbursed from the fund for any reasonable expenses incurred in carrying out the purposes of the fund.

§ -9 Legal adviser. The attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund.

§ -10 Meetings; notice. Meetings may be scheduled, and notice of meetings shall be provided as follows:

(1) The chairperson may call a meeting of the board at any time by giving at least six calendar days' written notice of the time and place of the meeting to all trustees; and
(2) A majority of the trustees may call a meeting of the board by giving at least ten calendar days' written notice of the time and place to all other trustees.

§ -11 Quorum; board actions; voting. (a) Six trustees, three of whom represent the public employer and three of whom represent employee-beneficiaries, shall constitute a quorum for the transaction of business.

(b) Trustees representing the public employers shall collectively have one vote. Trustees representing the employee-beneficiaries shall collectively have one vote.

For any vote of the trustees representing the public employers to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the public employers shall be deemed to have abstained from voting.

For any vote of the trustees representing the employee-beneficiaries to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the employee-beneficiaries shall be deemed to have abstained from voting.

An abstention shall not be counted as either a vote in favor or against a matter before the board.

(c) Any action taken by the board shall be by the concurrence of at least two votes. In the event of a tie vote on any motion, the motion shall fail. Upon the concurrence of six trustees, the board shall participate in dispute resolution.

§ -12 Records and minutes. The board shall keep records and minutes of all meetings of the board.

PART III. BOARD POWERS AND DUTIES

§ -15 Administration of the fund. The board shall administer and carry out the purpose of the fund. Health and other benefit plans shall be provided at a cost affordable to both the public employers and the public employees.

§ -16 Health benefits plan; carriers. (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits.

§ -17 Group life insurance benefits or group life insurance program. The board may provide benefits under a group life insurance benefits program or group life insurance program to employees.

§ -18 Long-term care benefits plan; carrier or third-party administrator. (a) The board may establish a long-term care benefits plan or plans for employee-beneficiaries; the spouses, parents, grandparents, in-law parents, and in-law grandparents of employee-beneficiaries; and qualified-beneficiaries. The plan or plans shall be at no cost to employers and shall comply with article 10H of chapter 431.

(b) Notwithstanding any other law to the contrary, long-term care benefits shall be available only to:

(1) Employee-beneficiaries and their spouses, parents, and grandparents;
(2) Employee-beneficiary in-law parents and grandparents; and
(3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five,

who comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) Without regard to chapter 103D, the board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits.

§ -19 Plans for part-time, temporary, and seasonal or casual employees. (a) The board may offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. The board may determine eligibility for part-time, temporary, and seasonal or casual employees by rules exempt from chapter 91 as provided in section -26.

(b) The board shall establish the medical, hospital, or surgical benefits plan or plans, which shall be exempt from the minimum group requirements of article 10A of chapter 431. The medical, hospital, or surgical benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of medical, hospital, or surgical services, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the medical, hospital, or surgical benefits plan or plans. Each part-time, temporary, and seasonal or casual employee enrolled for medical, hospital, or surgical benefits shall pay monthly contributions directly to the board's designated carriers. The monthly contributions may include the carrier's administrative costs.

§ -20 Selection of benefits plan carriers or third-party administrators. Procurement of a carrier or third-party administrator for any benefits plan shall be exempt from chapter 103D.

§ -21 Eligibility. (a) The board shall establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified-beneficiary, consistent with the provisions of this chapter.

(b) A retired member of the employees' retirement system; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee-beneficiary:

(1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
(2) Without regard to the date of the retired member's retirement.

(c) A dependent of a retired member shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary:

(1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
(2) Without regard to the date of the retired member's retirement.

§ -22 Benefits plan information and enrollment. (a) The board shall make information summarizing approved benefits plans available to each employee-beneficiary. The information shall, to the extent reasonably possible, be distributed to each employee-beneficiary at the same time and in the same manner.

(b) The board shall establish conditions and procedures for benefits plan enrollment.

§ -23 Health benefits plan supplemental to medicare. The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

(1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;
(2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to $50.00 per month, or such other amount to be determined by the board, for voluntary medical insurance coverage under medicare for retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88. The contribution shall be made for each:
    (A) Employee-beneficiary who is a retired employee;
    (B) Employee-beneficiary's spouse while the employee-beneficiary is living; and
    (C) The employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary;
(3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
(4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired

employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
(5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund.

§ -24 **Other powers.** In addition to the power to administer the fund, the board may:
(1) Collect, receive, deposit, and withdraw money on behalf of the fund;
(2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
(3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
(4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from chapters 76 and 77 and shall serve under and at the pleasure of the board;
(5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;
(6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
(7) Without the necessity of complying with the requirements of chapter 103D, retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
(8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
(9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter.

§ -25 **Other duties.** The board shall:
(1) Authorize charges and payments from the fund only upon vouchers countersigned by the chairperson and any other person designated by the board;
(2) Maintain accurate records and accounts of all financial transactions of the fund that shall be audited annually and summarized in an annual report to the governor and legislature;
(3) Maintain suitable and adequate records and provide information requested by State and county employers as necessary to carry out the purpose of the fund;
(4) Procure fiduciary liability insurance and error and omissions coverage for all trustees; and
(5) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys.

§ -26 **Rules; policies, standards, and procedures.** (a) The board may adopt rules for the purposes of this chapter. Rules shall be adopted without regard to chapter 91. Rule-making procedures shall be adopted by the board and shall minimally provide for:
(1) Consultation with employers and affected employee organizations with regard to proposed rules;

(2) Adoption of rules at open meetings that permit the attendance of any interested persons;
(3) Approval of rules by the governor; and
(4) Filing of rules with the lieutenant governor.

(b) The board may also issue policies, standards, and procedures consistent with its rules.

(c) The board may adopt rules, without regard to chapter 91, governing dispute resolution procedures in the event of impasse in decision-making; provided that the rules shall be adopted with the concurrence of six trustees.

PART IV. TRUST FUND

§ -30 Hawaii employer-union health benefits trust fund; establishment. There is established outside the state treasury, a trust fund to be known as the "Hawaii Employer-Union Health Benefits Trust Fund." The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes.

§ -31 Trust fund; purpose. (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections -32 and -37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

§ -32 State and county contributions; active employees. (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

(1) The monthly contribution shall be a specified dollar amount;
(2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
(3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
(4) If the State or any of the counties establish cafeteria plans in accordance with title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contribu-

tions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee.

§ -33 State and county contributions; retired employees. (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

(1) The dependent-beneficiary of an employee who is killed in the performance of duty;
(2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section -36;
(3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
(4) An employee-beneficiary who retired before July 1, 1984;
(5) An employee-beneficiary who:
    (A) Was hired before July 1, 1996;
    (B) Retired after June 30, 1984; and
    (C) Who has ten years or more of credited service, excluding sick leave;
(6) An employee-beneficiary who:
    (A) Was hired after June 30, 1996; and
    (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section -36;

    and
(7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

(1) $218.00 for each employee-beneficiary enrolled in supplemental medicare self plans;
(2) $671.00 for each employee-beneficiary enrolled in supplemental medicare family plans;
(3) $342.00 for each employee-beneficiary enrolled in non-medicare self plans; and
(4) $928.00 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year (July 1st until June 30th) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1st or on the business day closest to November 1st of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

§ -34 State and county contributions; retired employees with fewer than ten years of service. (a) This section shall apply to state and county contributions to the fund for employees specified in paragraph (1)(E) of the definition of "employee" in section -1 who:

(1) Were hired on or before June 30, 1996; and
(2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the base monthly contribution set forth under section -33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for supplemental medicare family or non-medicare family plan, as appropriate.

§ -35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service. (a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to:

(1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996; and
(2) An employee hired prior to July 1, 1996, who has at least ten years of credited service and who has had a break in service.

For purposes of this section, "transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

(1) For retired employees enrolled in medicare or non-medicare health benefit plans with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base monthly contribution set forth under section -33(b); and
(2) For retired employees enrolled in medicare or non-medicare health benefit plans with at least fifteen but fewer than twenty-five years of service, a monthly contribution of seventy-five per cent of the base monthly contribution set forth under section -33(b).

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

§ -36 State and county contributions; employees hired after June 30, 2001, and retired. (a) This section shall apply to state and county contributions to the fund for employees hired after June 30, 2001, and who retired, except that this section shall not apply to:

(1) An employee hired prior to July 1, 2001, who transfers employment after June 30, 2001; and
(2) An employee hired prior to July 1, 2001, who has at least ten years of credited service and who has had a break in service.

For the purposes of this section, "transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after July 1, 2001, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

(1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section -33(b);
(2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section -33(b);
(3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to one-hundred per cent of the base medicare or non-medicare monthly contribution set forth under section -33(b); and
(4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph (1)(E) of the definition of "employee" in section -1.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate.

§ -37 Group life insurance benefits plans for retired employees; contributions. (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a base monthly contribution as set forth in subsection (b) for each retired employee enrolled in the fund's group life insurance benefits plan under section -34, -35, and -36.

(b) Effective July 1, 2003, there is established a base monthly contribution of $4.16 for each retired employee enrolled in a group life insurance plan; provided that the monthly contribution shall not exceed the actual cost of the group life insurance benefits plan. The base composite monthly contribution shall be adjusted annually beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years. The percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subection, ''medicare part B premium rate'' means the rate published in the Federal Register each year on November 1st or on the business day closest to November 1st of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress.

§ -38 **State and county contributions not considered wages or salary.** Contributions made by the State or the counties under this part shall not be considered wages or salary of an employee-beneficiary. No employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund.

§ -39 **Reimbursement for state contributions.** (a) All state agencies having control of funds other than the general fund shall reimburse the State for contributions made by the State pursuant to sections -32, -33, -34, -35, -36, and -37 on account of agency employees whose compensation is paid in whole or part from funds other than the general fund.

(b) All state and county agencies receiving federal funds, which may be expended for the purpose of replacing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to sections -32, -33, -34, -35, -36, and -37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds.

§ -40 **Employee-beneficiary contributions; health benefit plans.** (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution:

(1) In the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller or employees' retirement system, directly to the fund by the first day of each month; or

(2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month.

(c) Notwithstanding subsection (a), an employee-beneficiary's monthly contribution to the fund shall include the amount that would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan.

§ -41 **Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan.** (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator as specified by the board.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator as specified by the board."

SECTION 2. Section 87-28, Hawaii Revised Statutes, is amended to read as follows:

"**§87-28 Other powers.** In addition to the power to administer the fund, the board of trustees may:

(1) Collect, receive, deposit, withdraw, and invest money on behalf of the fund;

(2) Appoint an administrator [~~and~~] who shall be exempt from chapters 76 and 77 and shall serve under and at the pleasure of the board. The board of trustees may appoint staff necessary to carry out this chapter, subject to the limitations of available appropriations and chapters 76 and 77 and section 78-1;

(3) Make payments of periodic charges and pay for reasonable expenses incurred to[~~:~~

~~(A) Perform financial audits of the fund and claims audits of its insurance carriers; or~~

~~(B) Carry~~] carry out the purposes of the fund; [~~or~~]

(4) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers; or

[~~(4)~~](5) Require any department, agency, or employee of the State and county to furnish information to the board to carry out the purposes of this chapter."

SECTION 3. Chapter 87, Hawaii Revised Statutes, is repealed.

SECTION 4. Effective July 1, 2003, all positions and employees of the Hawaii public employees health fund who are subject to chapters 76, Hawaii Revised Statutes, shall be transferred to the Hawaii employer-union health benefits trust fund. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

All civil service positions and incumbents of the Hawaii public employees health fund transferred by this Act shall remain in the civil service and subject to chapters 76 and 77, Hawaii Revised Statutes; provided that in the event the civil service administrator position becomes vacant prior to July 1, 2003, its successor shall be appointed pursuant to section 87-28 as amended in section 2 of this Act. When such positions are vacated on or after July 1, 2003, the positions shall be exempt from civil service and prospective appointments shall be made pursuant to section 1 of this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to the applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, assets, including funds to be refunded to employees and any funds in benefit plans and cafeteria plans, records, equipment, machines, computer software and hardware, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the Hawaii public employees health fund shall be transferred to the Hawaii employer-union health benefits trust fund, effective July 1, 2003.

SECTION 6. (a) The governor shall appoint all trustees of the Hawaii employer-union health benefits trust fund no later than December 31, 2001. The trustees representing employee-beneficiaries shall serve four-year staggered terms; provided that the initial appointments shall be as follows: two members shall be appointed for four years; two members shall be appointed for three years; and one member shall be appointed for two years.

When submitting the list of nominees for the trustees representing the employee-beneficiaries, the exclusive employee representative organizations shall indicate preferences for the length of the trustee's term for each set of nominees recommended to the governor.

(b) Upon appointment, the board of trustees of the Hawaii employer-union health benefits trust fund may develop and issue rules, policies, and procedures and contract for health benefits plans and group life insurance benefits plans, which shall become effective on July 1, 2003. The board of trustees and administrator of the Hawaii public employees health fund shall give necessary assistance to the board of trustees of the Hawaii employer-union health benefits trust fund during the transition.

SECTION 7. Notwithstanding chapter 103D, Hawaii Revised Statutes, the board of trustees of the Hawaii public employees health fund under chapter 87, Hawaii Revised Statutes, may extend current health benefits and life insurance plan contracts through June 30, 2003.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of $300,000 or so much thereof as may be necessary for fiscal year 2001-2002 to carry out the purposes of this Act, including the hiring of necessary staff, consultants, and other administrative expenses. All unexpended and unencumbered balances of the appropriation made by this section as of the close of business on June 30, 2002, shall not lapse and shall be carried over and may be expended during fiscal year 2002-2003; provided that on June 30, 2003, all unexpended and unencumbered balances shall lapse into the general fund of the State.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2001; provided that:

(1) Section 3 shall take effect on July 1, 2003; and
(2) All rules governing the Hawaii public employees health fund under chapter 87, Hawaii Revised Statutes, if not contrary to this Act, shall remain in effect until such time that the Hawaii employer-union health benefits trust fund adopts new rules.

(Approved May 3, 2001.)