

## **CHAPTER 87A**

### **HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

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### **Note**

Applicability of the following to health benefits plans under this chapter:

- (1) Coverage for annual screenings of sexually transmitted diseases, including screenings for human immunodeficiency virus and acquired immunodeficiency syndrome, required by L 2016, c 204. L 2016, c 204, §6;
- (2) Nondiscrimination provisions required by L 2016, c 135. L 2016, c 135, §5;
- (3) Reimbursement for prescription contraceptive supplies required by L 2016, c 205. L 2016, c 205, §4; and
- (4) Requirement for reimbursement for telehealth services by L 2016, c 226. L 2016, c 226, §13.

## **Cross References**

**Hawaii health authority, see chapter 322H.**

**Health and dental insurance data; mandatory reporting for certain insurers, see §323D-18.5.**

**Prescription drug benefits, see chapter 431R.**

## **Case Notes**

This chapter's use of general trust language does not impose upon the trustees all of the common law fiduciary duties; although this chapter does not use "discretion" in requiring the board to decide upon the structure of the health benefits plan, the legislature clearly intended that the board have broad discretion in its design; where trustees expressed concern regarding the impact a change to a three- or four-tier structure would have on the collective bargaining process, and also determined that the two-tiered structure would have a negative impact on the smallest percentage of plan participants, trustees did not abuse their discretion. 115 H. 126, 165 P.3d 1027.

The words "similarly situated beneficiary not eligible for medicare", as those words are used in §87A-23(1), or "similarly situated employee-beneficiary not eligible for medicare", as those words are used in §87A-23(3), invoke a comparison between medicare eligible retirees and retirees who do not qualify for medicare; thus, this chapter does not require the board of the employer-union health benefits trust fund to provide health benefits plans to retirees whose benefits "reasonably approximate" those benefits provided to active employees. 122 H. 402, 228 P.3d 282.

## PART I. GENERAL PROVISIONS

**§87A-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 87A-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.

"Credited service" means service as an officer or employee paid by the State or county, service during the period of leave of absence or exchange if the individual is paid by the State or county during the leave of absence or exchange, and service during the period of unpaid leave of absence or exchange if the individual is engaged in the performance of a governmental function or if the unpaid leave of absence is an approved leave of absence for professional improvement.

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

- (1) Spouse;
- (2) Child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child, but excluding a child born or legally adopted more than ten months after the date of the death of:
  - (A) An active employee killed in the performance of duty;
  - (B) An active employee who was eligible to retire on the date of death; or
  - (C) A retired 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) An officer or employee under an authorized leave of absence;

- (C) An employee of the Hawaii national guard although paid from federal funds;
  - (D) 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;
  - (E) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and
  - (F) 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;
  - (8) Except as allowed under paragraph (1)(F), 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, including:
    - (A) The surviving child, if there is no surviving parent who is eligible to be an employee-beneficiary and the child is unmarried and under the limiting age as defined by the board; and
    - (8) The surviving spouse, if the surviving spouse does not subsequently remarry;
  - (3) An employee who retired prior to 1961; and
  - (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, including:
    - (A) The surviving child, if there is no surviving parent who is eligible to be an employee-beneficiary and the child is

unmarried and under the limiting age as defined by the board; and

- (B) The surviving spouse, 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 87A-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 or 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.

"State agency" includes the office of Hawaiian affairs.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section 87A-5.

[L 2001, c 88, pt of §1; am L 2003, c 152, §1; am L 2012, c 36, §1; am L 2019, c 51, §2]

## **PART II. BOARD OF TRUSTEES**

**§87A-5 Composition of board.** *[See explanatory note below.]* The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor in accordance with the following procedure:

- (1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries and to be selected as follows:
  - (A) Three trustees shall be appointed from a list of two nominees per trustee selected by each of the three exclusive representative organizations that have the largest number of employee-beneficiaries;
  - (B) One trustee shall be appointed from a list of two nominees selected by mutual agreement of the remaining exclusive employee representative organizations; and
  - (C) One trustee representing retirees shall be appointed from a list of two nominees selected by mutual agreement of all eligible exclusive representatives; and
- (2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms. Notwithstanding any other provision of this section, no exclusive representative of a bargaining unit that sponsors or participates in a voluntary employee beneficiary association shall be eligible to select nominees or to be represented by a trustee on the board.

As used in this section, the term "exclusive representative" shall have the same meaning as in section 89-2. [L 2001, c 88, pt of §1; am L 2005, c250, §1]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**§87A-6 Term of a trustee; vacancy.** *[See explanatory note below.]*

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.

A vacancy on the board shall be filled in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for nominating or appointing the successor shall be the same criteria used for nominating or appointing the person's predecessor; provided further that vacancies on the board for each trustee position representing retirees and employee-beneficiaries appointed under section 87A-5(1)(A) and (B) shall be filled by appointment of the governor as follows:

- (1) If a vacancy occurs in one of the trustee positions described in section 87A-5(1)(A), then the vacancy shall be appointed from a list of two nominees submitted by the exclusive employee representative from among the three largest exclusive employee representatives that does not have a trustee among the three trustee positions;
- (2) If a vacancy occurs in a trustee position described in section 87A-5(1)(B), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of the exclusive employee representatives described in section 87A-5(1)(B); and
- (3) If a vacancy occurs in the retiree position described in section 87A-5(1)(C), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of all eligible exclusive employee representatives.

If by the end of a trustee's term the trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed. [L 2001, c 88, pt of §1; am L 2005, c 250, §2]

**Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature

assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**[§87A-7] Chair, vice-chair, and secretary-treasurer.** The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer. [L 2001, c 88, pt of§ 1]

**[§87A-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. [L 2001, c 88, pt of §1]

**[\$87A-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. [L 2001, c 88, pt of §1]

**[\$87A-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. [L 2001, c 88, pt of §1]

**[§87A-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. [L 2001, c 88, pt of §1]

**[\$87A-12] Records and minutes. The board shall keep records and minutes of all meetings of the board. [L 2001, c 88, pt of §1]**

### **PART III. BOARD POWERS AND DUTIES**

**[§87A-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. [L 2001, c 88, pt of §1]

**[§87A-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. [L 2001, c 88, pt of §1]

**[\$87A-16.3] Prescription drugs; mail order opt out option.** A Hawaii employer-union health benefits trust fund health benefits plan shall permit each beneficiary to fill any covered prescription in accordance with chapter 431R. [L 2013, c 226, §3]

**[\$87A-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. [L 2001, c 88, pt of §1]

**§87A-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) The board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits. [L2001, c88, ptof§1; am L2004, c216, §14]

**[§87A-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 87A-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.  
[L 2001, c 88, pt of §1]

**§87A-20 REPEALED. L 2004, c 216, §45.**

**[§87A-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. [L 2001, c 88, pt of §1]

### **Case Notes**

A retired employee's health benefits that are included in a health benefits plan falls within the constitutional protection contemplated by article XVI, §2 of the Hawaii constitution inasmuch as subsection (b) clearly and unambiguously conditions a retired state or county government employee's eligibility for health benefits on, inter alia, being a retired member of the employees' retirement system. 122 H. 402, 228 P.3d 282.

**[§87A-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. [L 2001, c 88, pt of §1]

**§87A-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 an amount not less than the medicare part B premium, excluding medicare income-related monthly adjustment amounts for a retired employee hired after June 30, 2023, and their spouse, for each of the following who are enrolled in the medicare part B medical insurance plan: (A) an employee-beneficiary who is a retired employee, (B) a spouse of an employee-beneficiary hired prior to July 1, 2023, while the employee-beneficiary is living, and (C) an employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary. If the amount reimbursed by the fund under this section is less than the actual cost of the medicare part B medical insurance plan, excluding medicare income-related monthly adjustment amounts for a retired employee hired after June 30, 2023, and their spouse, due to an increase in the medicare part B medical insurance plan rate, the fund shall reimburse each employee-beneficiary and spouse of an employee-beneficiary hired prior to July 1, 2023, for the cost increase within thirty days of the rate change. Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. This method of payment may be waived by the fund if another

method is determined to be more appropriate. For purposes of this section, a "retired employee" means 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;

- (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. [L 2001, c 88, pt of §1; am L 2003, c 111, §1; am L 2006, c 39, §1; am L 2023, c 40, §2 and c 41, §2]

### **Case Notes**

The words "similarly situated beneficiary not eligible for medicare", as those words are used in paragraph (1), or "similarly situated employee-beneficiary not eligible for medicare", as those words are used in paragraph (3), invoke a comparison between medicare eligible retirees and retirees who do not qualify for medicare; thus, this chapter does not require the board of the employer-union health benefits trust fund to provide health benefits plans to retirees whose benefits "reasonably approximate" those benefits provided to active employees. 122 H. 402, 228 P.3d 282.

**§87A-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;
- (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 shall be exempt from chapter 76. Other fund staff may be exempt from chapter 76 as determined by the board. The administrator and staff who are exempt from chapter 76 shall serve under and at the pleasure of the board; provided that civil service exempt positions under this section that are created after July 1, 2014, shall be exempt from section 76-16(b)(17)(A); provided further that the salaries of the administrator and chief investment officer shall be set by 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) Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter, including the retaining of an actuary to determine the annual required public employer contribution for the separate trust fund established under section 87A-42;
- (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. [L 2001, c 88, pt of §1; am L 2004, c 216, §15; am L 2013, c 268, §7; am L 2016, c 30, §2; am L 2017, c 145, §2; am L 2021, c 229, §§2, 9; am L 2023, c 38, §2]

**[§87A-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. [L 2001, c 88, pt of §1]

**[§87A-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. Rulemaking 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. [L 2001, c 88, pt of§ 1]

**[§87A-27] Actuarial investigation; valuations.** Beginning on July 1, 2017, the actuary retained by the board pursuant to section 87A-42 shall make an annual valuation of the assets and liabilities of the fund based on tables and other factors adopted by the board annually. The annual valuation shall include an update of assumptions specific to the fund that are not updated pursuant to section 88-105, as deemed necessary by the actuary, at least once in each three-year period. [L 2017, c 93, §2]

## PART IV. TRUST FUND

**§87A-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. It is hereby declared that any and all sums contributed or paid from any source to the fund created by this part, and all assets of the fund including any and all interest and earnings on the same, are and shall be held in trust by the board for the exclusive use and benefit of the employee-beneficiaries and dependent-beneficiaries and shall not be subject to appropriation for any other purpose whatsoever. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes. [L 2001, c 88, pt of §1; am L 2006, c 57, §3]

**§87A-31 Trust fund; purpose; disclosure of information. (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. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(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 87A-32 and 87A-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 section 78-30.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund's future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each separate fund shall be subject to all provisions of this chapter.

(f) If after commencing the reimbursement of medicare part B premiums in section 87A-23, or any other debt payable under this chapter, the fund cannot locate the employee-beneficiary or other person or entity entitled to payment, further payment shall be forfeited to the fund if the total amount is less than \$500 and shall not escheat under the laws of any state; provided that the forfeited payment shall be restored if the employee-beneficiary, or other person or entity entitled to the forfeited payment makes a proper application to the fund for restoration of the benefit no later than ten years following the last valid reimbursement or payment. All applications for restoration of a forfeited benefit or payment shall be in a form satisfactory to the fund. For forfeited benefits or payments in existence on June 30, 2017, the ten-

year time limitation on claiming the benefits or payments shall commence on July 1, 2017.

(g) The exemptions from disclosure of information pursuant to chapter 92F set forth in section 88-103.5(c) through (e) shall apply to the disclosure of information relating to the fund's alternative investments; provided that references to the "system" in section 88-103.5(c) and (e) shall be replaced with the "fund" for purposes of the fund's alternative investments. [L 2001, c 88, pt of §1; am L 2006, c 57, §4; am L 2017, c 144, §2; am L 2022, c 75, §2]

### **Revision Note**

In subsection (d), reference to "section 78-30" substituted for "part II of chapter 78".

**[§87A-31.1] Public employers; defined.** For the purposes of this part, "public employer" means a governmental entity whose employees', beneficiaries', and retirees' health benefits coverage is provided through the fund. [L 2013, c 268, pt of §6]

**[§87A-31.5] Employer contributions irrevocable.** Notwithstanding any law to the contrary, all of the monthly contributions that the State and counties make to the fund under sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and all other contributions that the State and counties may make to the fund, shall be irrevocable; provided that this shall not preclude the fund from returning contributions or payments made by the State or any county under a mistake of fact within one year after the payment of the contributions or payments. [L 2006, c 57, §2]

**§87A-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 two employee-beneficiaries are married or in a civil union, 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 section 78-30, 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 contributions 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. [L 2001, c 88, pt of §1; am L 2019, c 51, §3]

**Revision Note**

In subsection (a)(4), reference to "section 78-30" substituted for "part II of chapter 78".

**§87A-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 87A-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 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective January 1, 2014, 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) \$524.73 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$1,051.70 for each employee-beneficiary enrolled in supplemental medicare two-party plans;
- (3) \$1,531.78 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (4) \$736.60 for each employee-beneficiary enrolled in non-medicare self plans;
- (5) \$1,484.72 for each employee-beneficiary enrolled in non-medicare two-party plans; and
- (6) \$2,173.06 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 benefit plan or plans and shall not be required

to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005. If two employee-beneficiaries are married or in a civil union, 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 January 1, 2015. The adjusted base composite monthly contribution for each new plan year (January 1 until December 31) 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 at the beginning 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 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the United States Secretary of Health and Human Services and approved by the United States Congress.

(d) If the board adopts a rate structure that provides for other than self and family rates for the health benefit plans, the base monthly contribution for the rate structure adopted by the board shall be adjusted to provide the equivalent underwriting cost as the base monthly contribution that is provided for in this section. [L 2001, c 88, pt of §1; am L 2003, c 111, §2; am L 2007, c 26, §1; am L 2012, c 38, §1; am L 2013, c 282, §1; am L 2019, c 51, §4]

**[§87A-33.5] State and county contribution; reimbursement for retired employees.** Effective July 1, 2007, an employee-beneficiary who retires and relocates outside of the State shall be reimbursed for the premiums paid by the employee-beneficiary for a personal health insurance policy; provided that the board shall determine which employee-beneficiaries and what types of personal health insurance policies shall be eligible for reimbursement and may set other conditions that shall be met for the employee-beneficiary to receive the reimbursements provided under this section.

The reimbursement shall be the lesser of:

- (1) The actual cost of the personal health insurance policy; or
- (2) The amount of the state or county contribution for the most comparable health benefits plan.

Reimbursements shall be paid by the fund on a quarterly basis upon the presentation of documentation that the premiums for the personal health insurance policy have been paid by the employee-beneficiary. This section shall apply to all employee-beneficiaries who retire and relocate outside of the State, regardless of their date of retirement. [L 2006, c 167, §1)

**§87A-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)(D) of the definition of "employee" in section 87A-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 87A-33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If two employee-beneficiaries are married or in a civil union, 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. [L 2001, c 88, pt of §1; am L 2017, c 12, §5; am L 2019, c 51, §5]

**§87A-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 the following employees, for whom state and county contributions shall be made as provided by section 87A-33:

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

For the purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"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 87A-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 87A-33(b).

If two employee-beneficiaries are married or in a civil union, 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. [L 2001, c 88, pt of §1; am L 2004, c 184, §1; am L 2019, c 51, §6]

**§87A-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 the following employees, for whom state and county contributions shall be made as provided by section 87A-35:

- (1) An employee hired after June 30, 1996, and prior to July 1, 2001, who transfers employment after June 30, 2001, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired after June 30, 1996, and prior to July 1, 2001, who has at least ten years of credited service prior to a break in service.

For purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"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 87A-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 87A-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 87A-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)(D) of the definition of "employee" in section 87A-1[.]

If two employee-beneficiaries are married or in a civil union, 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. [L 2001, c 88, pt of §1; am L 2004, c 184, §2; am L 2017, c 12, §6; am L 2019, c 51, §7]

**[§87A-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 87A-34, 87A-35, and 87A-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 subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 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. [L 2001, c 88, pt of §1]

**[§87A-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. [L 2001, c 88, pt of §1]

**[§87A-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 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-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 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds. [L 2001, c 88, pt of §1]

**§87A-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 section 78-30.

(b) Except as provided in subsection (c), 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 directly to the fund by the first day of each month.

(c) Each employee-beneficiary who retires after June 30, 2020, and each surviving spouse or surviving child who enrolls in a health plan offered by the fund as an employee-beneficiary after June 30, 2020, shall authorize their contribution to the fund to be electronically withheld or deducted and transmitted to the fund monthly by the employees' retirement system or the financial institution of the retirant or retirant's surviving beneficiary. This method may be waived by the fund if another method is determined to be more appropriate. If the contribution by the retirant or the retirant's surviving beneficiary is not electronically withheld, deducted, or transmitted to the fund, the retirant or the retirant's surviving beneficiary shall pay their monthly contribution directly to the fund by the first day of each month.

(d) 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. [L 2001, c 88, pt of §1; am L 2020, c 62, §2]

**[§87A-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. [L 2001, c 88, pt of §1]

**§87A-42 Other post-employment benefits trust. (a)**

Notwithstanding sections 87A-31 and 87A-31.5, the board, upon terms and conditions set by the board, shall establish and administer a separate trust fund for the purpose of receiving employer contributions that will prefund other post-employment health and other benefit plan costs for retirees and their beneficiaries. The separate trust fund shall meet the requirements of the Governmental Accounting Standards Board regarding other post-employment benefits trusts. The board shall establish and maintain a separate account for each public employer within the separate trust fund to accept and account for each public employer's contributions. Employer contributions to the separate trust fund shall be irrevocable, all assets of the fund shall be dedicated exclusively to providing health and other benefits to retirees and their beneficiaries, and assets of the fund shall not be subject to appropriation for any other purpose and shall not be subject to claims by creditors of the employers or the board or plan administrator. The board's powers under section 87A-24 shall also apply to the fund established pursuant to this section.

(b) Public employer contributions shall be paid into the fund in each fiscal year, and commencing with the 2018-2019 fiscal year, the amount of the annual public employer contribution shall be equal to the amount of the annual required contribution, as determined by an actuary retained by the board.

(c) In any fiscal year subsequent to the 2017-2018 fiscal year in which the state public employer's contributions into the fund are less than the amount of the annual required contribution, the amount that represents the excess of the annual required contribution over the state public employer's contributions shall be deposited into the appropriate account of the separate trust fund from a portion of all general excise tax revenues collected by the department of taxation under section 237-31.

If any general excise tax revenues are deposited into the separate trust fund in any fiscal year as a result of this subsection, the director of finance shall notify the legislature and governor whether the general fund expenditure ceiling for that fiscal year would have been exceeded if those revenues had been legislatively appropriated instead of deposited without appropriation into the trust fund. The notification shall be submitted within thirty days following the end of the applicable fiscal year.

(d) In any fiscal year subsequent to fiscal year 2017-2018 in which a public employer's contributions into the fund are less than the amount of the annual required contribution, the public employer's contributions

shall be deposited into the fund from portions of any other revenues collected on behalf of the public employer or held by the State. The director of finance shall deduct the amount necessary to meet the public employer's annual required contribution from any revenues collected on behalf of the public employer held by the State, except the tax revenues deposited into the mass transit special fund pursuant to section 237D-2(e)(1), and transfer the amount to the board for deposit into the appropriate account of the separate trust fund.

(e) For the purposes of this section, "annual required contribution" means a public employer's required contribution to the trust fund established in this section that is sufficient to cover:

- (1) The normal cost, which is the cost of other post-employment benefits attributable to the current year of service; and
- (2) An amortization payment, which is a catch-up payment for past service costs to fund the unfunded actuarial accrued liability over the next thirty years. If the State issues general obligation bonds to pay or prepay all or any portion of the State's unfunded actuarial accrued liability and contributes the proceeds to the trust fund, the outstanding balance of the general obligation bonds shall be considered part of the State's unfunded actuarial accrued liability for the purpose of determining the preliminary annual required contribution. The annual required contribution would be the greater of:
  - (A) The preliminary annual required contribution less the related general obligation bond payment; or
  - (B) The amount calculated under this paragraph without any special consideration given to the outstanding balance of the general obligation bonds or any related general obligation bond payments. [L 2012, c 304, §1; am L 2013, c 268, §8; am L 2015, c 121, §4; am L 2020, c 70, §2; am L 2021, c 229, §§3, 9; am L Sp 2021, c I, §8; am L 2022, c 247, §2]

### **Note**

Authorization to create fund requires Government Accounting Standards Board requirements. L 2012, c 304, §2.

Public employer contributions into trust fund (fiscal period 2014-2019).  
**L 2013, c 268, §11.**

**[§87A-43] Payment of public employer contributions to the other post-employment benefits trust.** (a) Commencing with fiscal year 2018-2019, each of the counties and all other public employers shall make annual required contributions in accordance with section 87A-42 for the benefit of their retirees and beneficiaries.

(b) The board shall determine the annual required contribution owed by each public employer under this part for each fiscal year, beginning with fiscal year 2018-2019. [L 2013, c 268, pt of §6; am L 2021, c 229, §§7, 9]