
A BILL FOR AN ACT

RELATING TO EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This Act is necessary to enable the Employees'
2 Retirement System of the State of Hawaii (the "system") to
3 efficiently maintain the confidentiality of information relating
4 to alternative investments such as investments in private
5 equity, private credit, and private real estate funds,
6 consistent with competitive investment market best practices.
7 This will help ensure that the system will not be disadvantaged
8 as a competitive investor due to the public records disclosure
9 requirements of chapter 92F, Hawaii Revised Statutes.

10 In order to address the system's unfunded liability and
11 other financial needs, the system, as a prudent investor,
12 engages in diversified investment, including high-yield private
13 alternative investment funds. Due diligence into such
14 investments requires that the system invest time and money for
15 detailed proprietary and confidential information regarding the
16 projected performance of each fund. If the system is required
17 to disclose such confidential information, the system is



1 disadvantaged as a competitive investor. Competing investors
2 would be able to acquire, at no cost, the system's investment
3 intelligence, resulting in oversubscription of the system's best
4 investments, reducing the system's access. Further, to the
5 extent that the system has disclosed or may be required to
6 disclose information that the investment funds require to be
7 kept confidential, some high-performing funds have been deterred
8 from allowing the system to invest with them. In order to
9 manage such risks, the system currently expends significant
10 efforts in responding to requests for such confidential
11 information.

12 To serve the public interest in monitoring the system's
13 investment performance, the system already publishes non-
14 confidential aggregate performance data for the entire system
15 investment portfolio, in its "Hawaii ERS Quarterly Performance
16 Report", which includes: (1) name of asset or strategy;
17 (2) rate of return for the month, 3 months, fiscal year-to-date,
18 calendar year-to-date, 1, 3, and 5 years, and inception to date;
19 and (3) inception date. The system further publishes in its
20 monthly Statement of Investments, private equity fund data on:



1 (a) name of fund; (b) commitments; (c) contributions; (d) market
2 value; (e) strategy; and (f) vintage year or year started.

3 This Act identifies certain specific types of alternative
4 investment fund information the disclosure of which would likely
5 put the system at a competitive disadvantage and, therefore,
6 categorically exempts such categories of information from
7 disclosure under chapter 92F, Hawaii Revised Statutes,
8 consistent with market best practices.

9 SECTION 2. Section 88-103, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§88-103 Records.** (a) The board of trustees shall keep a
12 record of all its proceedings which record shall be open to
13 public inspection. It shall publish annually a report showing
14 in detail: (1) the fiscal transactions of the system for the
15 year ending the preceding June 30, (2) the amount of the
16 accumulated cash and securities of the system, and (3) an
17 actuarial valuation of the assets and liabilities of the system.
18 The board shall submit the report to the governor and shall
19 furnish copies thereof to the heads of the various departments
20 of the State and county for their use and the use of the members
21 employed therein.



1 (b) The board shall include in its annual report submitted
2 prior to January 1 of each odd-numbered year: (1) a comparison
3 of the investment performance of the system with the investment
4 performances of the public employees' retirement systems of
5 other jurisdictions [~~which~~] that have authority to make
6 investments substantially similar to the investment authorized
7 under section 88-119, and (2) a comparison of the funded ratio
8 on June 30 of the preceding year with the funded ratios of the
9 public employees' retirement systems of other jurisdictions.

10 (c) In response to any public records request pursuant to
11 chapter 92F, or other law, the following documents relating to
12 alternative investments are categorically exempt from disclosure
13 under chapter 92F:

- 14 (1) Private placement memoranda;
15 (2) Fund agreements and related documents, including,
16 without limitation, subscription agreements,
17 management agreements, side letters, guarantees,
18 credit facility agreements, participation agreements,
19 and trust documents;
20 (3) Confidential presentations or recommendations made to
21 the system;



- 1 (4) Due diligence memoranda and other due diligence
2 materials, including due diligence questionnaires;
- 3 (5) Documents containing information on any portfolio
4 company, real property, or any other assets held by
5 the alternative investment vehicle;
- 6 (6) Financial statements and other documents containing
7 financial information of a fund, or its general
8 partner or manager, whether audited or unaudited,
9 including but not limited to statements or information
10 related to:
- 11 (A) Income statements;
- 12 (B) Balance sheets;
- 13 (C) Cash flows;
- 14 (D) Capital accounts;
- 15 (E) Investment rate-of-returns to include internal
16 rate of returns and time weighted rate of
17 returns;
- 18 (F) Cash or in-kind distributions;
- 19 (G) Carried interests;
- 20 (H) Management and other fees; and
- 21 (I) Return multiples;



- 1 (7) Confidential correspondence between an alternative
2 investment vehicle or its general partner, manager,
3 advisor, or limited partner advisory committee, and
4 the system;
- 5 (8) Capital call and distribution notices;
- 6 (9) Limited partner advisory committee and limited partner
7 meeting notices, minutes, and materials, including
8 without limitation any materials distributed at such
9 meetings;
- 10 (10) Investment management agreements; and
- 11 (11) Placement agent disclosures and similar documents.
- 12 (d) The foregoing categorical exemptions from chapter 92F
13 are in addition to any other records that may be exempt from
14 disclosure as information or records related to the management
15 or investing of the funds of the system, the release of which
16 would create a likelihood of substantial competitive harm to the
17 system or the provider of the information, or impair the ability
18 of the system to obtain investment opportunities or similar
19 information in the future, or information or records that are
20 otherwise exempt from disclosure pursuant to chapter 92F or
21 other law.



1 (e) As used in this section:

2 "Alternative investment" means an actual or proposed
3 investment by the system in a private equity fund, venture fund,
4 hedge fund, fund of funds, absolute return fund, real estate
5 fund, infrastructure fund, private credit, or other similar
6 private market investments.

7 "Alternative investment vehicle" means the limited
8 partnership, limited liability company, collective investment
9 trust, or other legal structure of the alternative investment.

10 "Investment management agreement" means a contract to
11 manage assets of the system.

12 "Limited partner advisory committee" means any limited
13 partner or other advisory committee of an alternative investment
14 vehicle."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on December 25,
18 2040.



Report Title:

Employees' Retirement System; Investment Records

Description:

Exempts certain specific types of alternative investment fund information from disclosure under chapter 92F, HRS, the disclosure of which would put the system at a competitive disadvantage and frustrate its legitimate government investment function. Effective 12/25/2040. (HD1)

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

