

# A BILL FOR AN ACT

## RELATING TO ECONOMIC DEVELOPMENT.

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

1 PART I

2 SECTION 1. The legislature finds that Hawaii's desire for  
3 economic growth that benefits all residents depends on building  
4 our State's human resources, and in turn, applying these highly  
5 skilled resources to the creation and adoption of innovation  
6 across its economy.

7       The legislature further finds that economic growth and  
8 diversification throughout many communities has been enhanced by  
9 the availability of venture capital funding for entrepreneurs  
10 engaged in building innovative new ventures. Well-known regions  
11 such as Silicon Valley, Route 128 in Boston, Austin, Texas, and  
12 the Research Triangle in North Carolina have benefited greatly  
13 from the combination of scientific research, an entrepreneurial  
14 culture driving high technology growth, and funding availability  
15 for early stage equity investments. Other areas similar in size  
16 and population to Hawaii, including San Diego, Salt Lake City,



1 Seattle, and Boulder have also developed strong technology-based  
2 businesses with the assistance of venture capital.

3 The source of this venture capital is derived in large part  
4 through employee pension funds. Of the approximately  
5 \$25,000,000,000 of venture investment taking place in 2006, over  
6 half was provided by pension funds. Many public pension funds  
7 target investments in-state to provide enhanced returns to the  
8 pensioners and support the development of high-growth businesses  
9 within local communities.

10 The employees' retirement system of the State of Hawaii has  
11 committed approximately \$300,000,000 to the alternative asset  
12 category including venture capital, but none of it is invested  
13 in Hawaii. The legislature finds that this lack of investment  
14 in Hawaii venture capital by the employees' retirement system may  
15 be due to a lack of large-scale qualified investment  
16 opportunities and concerns over the possible breach of fiduciary  
17 duty and prudent investor rules related to early stage  
18 investing. Some jurisdictions such as Arkansas and Michigan  
19 encourage local investment by pension funds by relieving  
20 fiduciaries of liability for investing in local venture capital.  
21 Others, such as the state of Oregon, have legislated investment



1 by the public pension fund in local venture capital where  
2 prudent.

3 PART II

4 The purpose of this part is to encourage the employees'  
5 retirement system to invest in Hawaii venture capital.

6 SECTION 2. Section 88-119, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        " 88-119 Investments. Investments may be made in:

9               (1) Real estate loans and mortgages. Obligations (as  
10              defined in section 431:6-101) of any of the following  
11              classes:

19 (C) Obligations for the repayment of home loans made  
20 under the Servicemen's Readjustment Act of 1944  
21 or under Title II of the National Housing Act;



1                             (D) Other obligations secured by first mortgages on  
2                             unencumbered improved real estate owned in fee  
3                             simple; provided that the amount of the  
4                             obligation at the time investment is made therein  
5                             shall not exceed eighty per cent of the value of  
6                             the real estate and improvements mortgaged to  
7                             secure it, and except that the amount of the  
8                             obligation at the time investment is made therein  
9                             may exceed eighty per cent but no more than  
10                             ninety per cent of the value of the real estate  
11                             and improvements mortgaged to secure it; provided  
12                             further that the obligation is insured or  
13                             guaranteed against default or loss under a  
14                             mortgage insurance policy issued by a casualty  
15                             insurance company licensed to do business in the  
16                             State. The coverage provided by the insurer  
17                             shall be sufficient to reduce the system's  
18                             exposure to not more than eighty per cent of the  
19                             value of the real estate and improvements  
20                             mortgaged to secure it. The insurance coverage  
21                             shall remain in force until the principal amount  
22                             of the obligation is reduced to eighty per cent



1                   of the market value of the real estate and  
2                   improvements mortgaged to secure it, at which  
3                   time the coverage shall be subject to  
4                   cancellation solely at the option of the board.  
5                   Real estate shall not be deemed to be encumbered  
6                   within the meaning of this subparagraph by reason  
7                   of the existence of any of the restrictions,  
8                   charges, or claims described in section  
9                   431:6-308;

10                 (E) Other obligations secured by first mortgages of  
11                 leasehold interests in improved real estate;  
12                 provided that:

13                 (i) Each leasehold interest at the time shall  
14                 have a current term extending at least two  
15                 years beyond the stated maturity of the  
16                 obligation it secures; and

17                 (ii) The amount of the obligation at the time  
18                 investment is made therein shall not exceed  
19                 eighty per cent of the value of the  
20                 respective leasehold interest and  
21                 improvements, and except that the amount of  
22                 the obligation at the time investment is



1                         made therein may exceed eighty per cent but  
2                         no more than ninety per cent of the value of  
3                         the leasehold interest and improvements  
4                         mortgaged to secure it;  
5                         provided further that the obligation is insured  
6                         or guaranteed against default or loss under a  
7                         mortgage insurance policy issued by a casualty  
8                         insurance company licensed to do business in the  
9                         State. The coverage provided by the insurer  
10                         shall be sufficient to reduce the system's  
11                         exposure to not more than eighty per cent of the  
12                         value of the leasehold interest and improvements  
13                         mortgaged to secure it. The insurance coverage  
14                         shall remain in force until the principal amount  
15                         of the obligation is reduced to eighty per cent  
16                         of the market value of the leasehold interest and  
17                         improvements mortgaged to secure it, at which  
18                         time the coverage shall be subject to  
19                         cancellation solely at the option of the board;  
20                         (F) Obligations for the repayment of home loans  
21                         guaranteed by the department of Hawaiian home



1                   lands pursuant to section 214(b) of the Hawaiian  
2                   Homes Commission Act, 1920; and  
3                 (G) Obligations secured by second mortgages on  
4                   improved real estate for which the mortgagor  
5                   procures a second mortgage on the improved real  
6                   estate for the purpose of acquiring the  
7                   leaseholder's fee simple interest in the improved  
8                   real estate; provided that any prior mortgage  
9                   does not contain provisions that might jeopardize  
10                  the security position of the retirement system or  
11                  the borrower's ability to repay the mortgage  
12                  loan.

13                  The board may retain the real estate, including  
14                  leasehold interests therein, as it may acquire by  
15                  foreclosure of mortgages or in enforcement of  
16                  security, or as may be conveyed to it in satisfaction  
17                  of debts previously contracted; provided that all the  
18                  real estate, other than leasehold interests, shall be  
19                  sold within five years after acquiring the same,  
20                  subject to extension by the governor for additional  
21                  periods not exceeding five years each, and that all  
22                  the leasehold interests shall be sold within one year



1                   after acquiring the same, subject to extension by the  
2                   governor for additional periods not exceeding one year  
3                   each;

4                 (2) Government obligations, etc. Obligations of any of  
5                   the following classes:

6                 (A) Obligations issued or guaranteed as to principal  
7                   and interest by the United States or by any state  
8                   thereof or by any municipal or political  
9                   subdivision or school district of any of the  
10                  foregoing; provided that principal of and  
11                  interest on the obligations are payable in  
12                  currency of the United States; or sovereign debt  
13                  instruments issued by agencies of, or guaranteed  
14                  by foreign governments;

15                (B) Revenue bonds, whether or not permitted by any  
16                  other provision hereof, of the State or any  
17                  municipal or political subdivision thereof,  
18                  including the board of water supply of the city  
19                  and county of Honolulu, and street or improvement  
20                  district bonds of any district or project in the  
21                  State; and



- (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;
  - (3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board;
  - (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;
  - (5) Obligations eligible by law for purchase in the open market by federal reserve banks;
  - (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;
  - (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the



1                   time the investment is made at least fifteen per cent  
2                   more than the amount of the respective obligations;

3         (8) Insurance company obligations. Contracts and  
4                   agreements supplemental thereto providing for  
5                   participation in one or more accounts of a life  
6                   insurance company authorized to do business in Hawaii,  
7                   including its separate accounts, and whether the  
8                   investments allocated thereto are comprised of stocks  
9                   or other securities or of real or personal property or  
10                  interests therein;

11         (9) Interests in real property. Interests in improved or  
12                  productive real property in which, in the informed  
13                  opinion of the board, it is prudent to invest funds of  
14                  the system. For purposes of this paragraph, "real  
15                  property" includes any property treated as real  
16                  property either by local law or for federal income tax  
17                  purposes. Investments in improved or productive real  
18                  property may be made directly or through pooled funds,  
19                  including common or collective trust funds of banks  
20                  and trust companies, group or unit trusts, limited  
21                  partnerships, limited liability companies, investment  
22                  trusts, title-holding corporations recognized under



1 section 501(c) of the Internal Revenue Code of 1986,  
2 as amended, similar entities that would protect the  
3 system's interest, and other pooled funds invested on  
4 behalf of the system by investment managers retained  
5 by the system;

- 6 (10) Other securities and futures contracts. Securities  
7 and futures contracts in which in the informed opinion  
8 of the board it is prudent to invest funds of the  
9 system, including currency, interest rate, bond, and  
10 stock index futures contracts and options on the  
11 contracts to hedge against anticipated changes in  
12 currencies, interest rates, and bond and stock prices  
13 that might otherwise have an adverse effect upon the  
14 value of the system's securities portfolios; covered  
15 put and call options on securities; and stock; whether  
16 or not the securities, stock, futures contracts, or  
17 options on futures are expressly authorized by or  
18 qualify under the foregoing paragraphs, and  
19 notwithstanding any limitation of any of the foregoing  
20 paragraphs (including paragraph (4)); and  
21 (11) Private placements. Investments in institutional  
22 blind pool limited partnerships, limited liability



1 companies, or direct investments that make private  
2 debt and equity investments in privately held  
3 companies, including but not limited to investments in  
4 Hawaii high technology businesses or venture capital  
5 investments that, in the informed opinion of the  
6 board, are appropriate to invest funds of the system.  
7 In evaluating venture capital investments, the board  
8 shall consider[~~, among other things, the impact an~~  
9 ~~investment may have on job creation in Hawaii and on~~  
10 ~~the state economy.]~~ Hawaii venture capital investment  
11 opportunities unless, under the circumstances, it is  
12 not prudent to do so. In order to address these  
13 opportunities, at any given time, the system shall  
14 allocate        per cent of funds for Hawaii venture  
15 capital investments unless, under the circumstances,  
16 it is not prudent to do so. The system may contract  
17 with one or more management companies to manage and  
18 invest these moneys. The system may enter into  
19 contracts for the provision of investment advice or  
20 other services that the board deems reasonable and  
21 necessary to fulfill its duties. If any venture  
22 capital investments in privately held Hawaii companies



1           are in violation of this chapter by virtue of a  
2           subsequent reduction in the amount of funds eligible  
3           for investment, the fiduciary shall not be in  
4           violation of any prudent person or prudent investor  
5           rule."

### PART III

7 SECTION 3. Universities that generate new knowledge and  
8 discoveries can be important contributors in developing a  
9 State's technology-based economy. But for a university to make  
10 that contribution, there must be effective mechanisms to move  
11 innovation into the marketplace. At the University of Hawaii,  
12 commercialization assistance is provided by the office of  
13 technology transfer and economic development. Activities  
14 include securing patents, seeking licensing opportunities, and  
15 assisting university researchers to transform ideas and  
16 innovations into products ready for commercialization. The  
17 office of technology transfer and economic development's ability  
18 to fulfill its mandate would be enhanced by collaboration with  
19 commercialization experts and funding from the private sector.

20 The purpose of this part is to enhance the ability of the  
21 office of technology transfer and economic development to  
22 increase commercialization of University of Hawaii discoveries



1 by providing funds to the department of business, economic  
2 development, and tourism to fund a partnership with a qualified  
3 and experienced private sector entity to work with the office of  
4 technology transfer and economic development. This partnership  
5 will provide the University of Hawaii with resources and  
6 expertise to ramp up the number of discoveries disclosed and the  
7 number of partnerships and arrangements to commercialize those  
8 discoveries. The department of business, economic development,  
9 and tourism, the private sector partner, and the University of  
10 Hawaii shall contribute to this commercialization joint venture;  
11 and the private sector partner and the University of Hawaii  
12 shall share in the return of their efforts.

13 SECTION 4. There is appropriated out of the general  
14 revenues of the State of Hawaii the sum of \$ or so  
15 much thereof as may be necessary for fiscal year 2007-2008 and  
16 the same sum or so much thereof as may be necessary for fiscal  
17 year 2008-2009 for the public-private university research  
18 commercialization partnership.

19 The sums appropriated shall be expended by the department  
20 of business, economic development, and tourism for the purposes  
21 of this Act.



- 1 SECTION 5. Statutory material to be repealed is bracketed
- 2 and stricken. New statutory material is underscored.
- 3 SECTION 6. This Act shall take effect on July 1, 2050.



H.B. NO. 338  
H.D. 2  
S.D. 1

**Report Title:**

Innovation Economy; Employees' Retirement System; University of Hawaii

**Description:**

Requires the employees' retirement system to consider the allocation of funds for Hawaii venture capital investments, unless it is not prudent to do so; appropriates funds to the University of Hawaii office of technology transfer and economic development to enter into a partnership with a private sector entity. (SD1)

