
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. The legislature finds that it is in the public
2 interest to join with major cities such as Seattle, San
3 Francisco, Portland, Boulder, Santa Fe, Madison, and dozens of
4 others around the country, major investment trusts and
5 foundations such as the Rockefeller foundation, religious
6 institutions such as the United Church of Christ, universities
7 such as Stanford University, and more than eight hundred other
8 major global investors who have already pledged to withdraw a
9 total of \$50,000,000,000 from fossil fuel investments over the
10 next five years. Divestment is a market-based solution that can
11 help protect taxpayers from having public funds used for
12 purposes that may actually unintentionally harm them.

13 The legislature further finds that it is the mission of the
14 employees' retirement system to support its beneficiaries
15 without harming taxpayers. However, the employees' retirement
16 system currently invests public funds in fossil fuel companies
17 that are contributing to rising costs to taxpayers. Fossil fuel



1 companies are a significant source of greenhouse gases
2 accelerating climate change, which the State will need to spend
3 billions of taxpayer dollars to address in coming decades.
4 Fossil fuel companies also spend tens of millions of dollars
5 lobbying state and federal governments for policies contrary to
6 the State's energy goals and the public interest. These efforts
7 have set back federal and state efforts to pursue cheaper
8 renewable energy developments intended to save taxpayers money.

9 The legislature further finds that fossil fuel investments
10 can be extremely volatile, and fossil fuels such as oil are
11 subject to wide fluctuations in price due to global politics and
12 demand outside of the State's control. Technological advances
13 that aid in the transition away from fossil fuels are becoming
14 more affordable, and the demand for renewable energy is
15 increasing, which may leave fossil fuel assets stranded in the
16 near future, making them increasingly risky investments in the
17 long run.

18 The State has taken action on climate change, but its laws
19 have no effect on companies producing greenhouse gases outside
20 the State, which raises costs for our local taxpayers.
21 Divesting from fossil fuel investments is one of the only ways



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1 that the State may have an impact on an industry that is
2 contributing to problems that affect the State.

3 The legislature believes that, with protections to ensure
4 that there is no negative impact on the employees' retirement
5 system's ability to meet its investment earning obligations,
6 there is no reason not to act.

7 The purpose of this Act is to prohibit the employees'
8 retirement system from investing in fossil fuel companies and to
9 require divestiture of direct holdings in fossil fuel companies.

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

12 "§88-119 Investments. (a) Investments may be made in:

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

16 (A) Obligations secured by mortgages of nonprofit
17 corporations desiring to build multirental units
18 (ten units or more) subject to control of the
19 government for occupancy by families displaced as
20 a result of government action;



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- 1 (B) Obligations secured by mortgages insured by the
2 Federal Housing Administration;
- 3 (C) Obligations for the repayment of home loans made
4 under the Servicemen's Readjustment Act of 1944
5 or under Title II of the National Housing Act;
- 6 (D) Other obligations secured by first mortgages on
7 unencumbered improved real estate owned in fee
8 simple; provided that the amount of the
9 obligation at the time investment is made therein
10 shall not exceed eighty per cent of the value of
11 the real estate and improvements mortgaged to
12 secure it, and except that the amount of the
13 obligation at the time investment is made therein
14 may exceed eighty per cent but no more than
15 ninety per cent of the value of the real estate
16 and improvements mortgaged to secure it; provided
17 further that the obligation is insured or
18 guaranteed against default or loss under a
19 mortgage insurance policy issued by a casualty
20 insurance company licensed to do business in the
21 State. The coverage provided by the insurer



1 shall be sufficient to reduce the system's
2 exposure to not more than eighty per cent of the
3 value of the real estate and improvements
4 mortgaged to secure it. The insurance coverage
5 shall remain in force until the principal amount
6 of the obligation is reduced to eighty per cent
7 of the market value of the real estate and
8 improvements mortgaged to secure it, at which
9 time the coverage shall be subject to
10 cancellation solely at the option of the board.
11 Real estate shall not be deemed to be encumbered
12 within the meaning of this subparagraph by reason
13 of the existence of any of the restrictions,
14 charges, or claims described in section 431:6-
15 308;

16 (E) Other obligations secured by first mortgages of
17 leasehold interests in improved real estate;
18 provided that:

19 (i) Each leasehold interest at the time shall
20 have a current term extending at least two



1 years beyond the stated maturity of the
2 obligation it secures; and
3 (ii) The amount of the obligation at the time
4 investment is made therein shall not exceed
5 eighty per cent of the value of the
6 respective leasehold interest and
7 improvements, and except that the amount of
8 the obligation at the time investment is
9 made therein may exceed eighty per cent but
10 no more than ninety per cent of the value of
11 the leasehold interest and improvements
12 mortgaged to secure it;
13 provided further that the obligation is insured
14 or guaranteed against default or loss under a
15 mortgage insurance policy issued by a casualty
16 insurance company licensed to do business in the
17 State. The coverage provided by the insurer
18 shall be sufficient to reduce the system's
19 exposure to not more than eighty per cent of the
20 value of the leasehold interest and improvements
21 mortgaged to secure it. The insurance coverage



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1 shall remain in force until the principal amount
2 of the obligation is reduced to eighty per cent
3 of the market value of the leasehold interest and
4 improvements mortgaged to secure it, at which
5 time the coverage shall be subject to
6 cancellation solely at the option of the board;

7 (F) Obligations for the repayment of home loans
8 guaranteed by the department of Hawaiian home
9 lands pursuant to section 214(b) of the Hawaiian
10 Homes Commission Act, 1920; and

11 (G) Obligations secured by second mortgages on
12 improved real estate for which the mortgagor
13 procures a second mortgage on the improved real
14 estate for the purpose of acquiring the
15 leaseholder's fee simple interest in the improved
16 real estate; provided that any prior mortgage
17 shall not contain provisions that might
18 jeopardize the security position of the
19 retirement system or the borrower's ability to
20 repay the mortgage loan.



1 The board may retain or dispose of the real estate,
2 including leasehold interests therein, as it may
3 acquire by foreclosure of mortgages or in enforcement
4 of security, or as may be conveyed to it in
5 satisfaction of debts previously contracted in the
6 same manner as other investments in interest in real
7 property authorized by this section;

8 (2) Government obligations, etc. Obligations of any of
9 the following classes:

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

19 (B) Revenue bonds, whether or not permitted by any
20 other provision hereof, of the State or any
21 municipal or political subdivision thereof,



1 including the board of water supply of the city
2 and county of Honolulu, and street or improvement
3 district bonds of any district or project in the
4 State; and

5 (C) Obligations issued or guaranteed by any federal
6 home loan bank, including consolidated federal
7 home loan bank obligations, the Home Owner's Loan
8 Corporation, the Federal National Mortgage
9 Association, or the Small Business
10 Administration;

11 (3) Corporate obligations. Below investment grade or
12 nonrated debt instruments, foreign or domestic, in
13 accordance with investment guidelines adopted by the
14 board;

15 (4) Preferred and common stocks. Shares of preferred or
16 common stock of any corporation created or existing
17 under the laws of the United States or of any state or
18 district thereof or of any country;

19 (5) Obligations eligible by law for purchase in the open
20 market by federal reserve banks;



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- 1 (6) Obligations issued or guaranteed by the International
2 Bank for Reconstruction and Development, the Inter-
3 American Development Bank, the Asian Development Bank,
4 or the African Development Bank;
- 5 (7) Obligations secured by collateral consisting of any of
6 the securities or stock listed above and worth at the
7 time the investment is made at least fifteen per cent
8 more than the amount of the respective obligations;
- 9 (8) Insurance company obligations. Contracts and
10 agreements supplemental thereto providing for
11 participation in one or more accounts of a life
12 insurance company authorized to do business in Hawaii,
13 including its separate accounts, and whether the
14 investments allocated thereto are comprised of stocks
15 or other securities or of real or personal property or
16 interests therein;
- 17 (9) Interests in real property. Interests in improved or
18 productive real property in which, in the informed
19 opinion of the board, it is prudent to invest funds of
20 the system. For purposes of this paragraph, "real
21 property" includes any property treated as real



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1 property either by local law or for federal income tax
2 purposes. Investments in improved or productive real
3 property may be made directly or through pooled funds,
4 including common or collective trust funds of banks
5 and trust companies, group or unit trusts, limited
6 partnerships, limited liability companies, investment
7 trusts, title-holding corporations recognized under
8 section 501(c) of the Internal Revenue Code of 1986,
9 as amended, similar entities that would protect the
10 system's interest, and other pooled funds invested on
11 behalf of the system by investment managers retained
12 by the system;

13 (10) Other securities and futures contracts. Securities
14 and futures contracts in which in the informed opinion
15 of the board, it is prudent to invest funds of the
16 system, including currency, interest rate, bond, and
17 stock index futures contracts and options on the
18 contracts to hedge against anticipated changes in
19 currencies, interest rates, and bond and stock prices
20 that might otherwise have an adverse effect upon the
21 value of the system's securities portfolios; covered



1 put and call options on securities; and stock; whether
2 or not the securities, stock, futures contracts, or
3 options on futures are expressly authorized by or
4 qualify under the foregoing paragraphs, and
5 notwithstanding any limitation of any of the foregoing
6 paragraphs (including paragraph (4)); and

7 (11) Private placements. Investments in institutional
8 blind pool limited partnerships, limited liability
9 companies, or direct investments that make private
10 debt and equity investments in privately held
11 companies, including but not limited to investments in
12 Hawaii high technology businesses or venture capital
13 investments that, in the informed opinion of the
14 board, are appropriate to invest funds of the system.
15 In evaluating venture capital investments, the board
16 shall consider, among other things, the impact an
17 investment may have on job creation in Hawaii and on
18 the state economy. The board shall report annually to
19 the legislature on any Hawaii venture capital
20 investments it has made; provided that if the board
21 determines it is not prudent to invest in any Hawaii



1 venture capital investments the board shall report the
2 rationale for the decision. The board, by January 1,
3 2008, shall develop criteria to determine the amount
4 of funds that may be prudently invested in Hawaii
5 private placement investments.

6 (b) Notwithstanding subsection (a), investments may not be
7 made in the corporate obligations, preferred and common stocks,
8 or other securities and futures contracts of any fossil fuel
9 company unless:

10 (1) The investments are indirect holdings; provided that
11 the board of trustees shall contact the fund managers
12 of the indirect holdings in fossil fuel companies to
13 request that the fund managers consider removing
14 fossil fuel companies from the investment fund or
15 create a similar fossil-fuel-free fund; or

16 (2) The total value of the assets in the system is reduced
17 to 99.5 per cent of the hypothetical value of the
18 assets in the system on the assumption that there had
19 been no divestment; provided that the board of
20 trustees shall report semi-annually to the legislature



1 its reasons for reinvesting or retaining investments
2 in fossil fuel companies.

3 (c) For the purposes of subsection (b), a "fossil fuel
4 company" means a company that is identified by a global industry
5 classification system code in one of the following sectors:

- 6 (1) Coal and consumable fuels;
- 7 (2) Integrated oil and gas; or
- 8 (3) Oil and gas exploration and production."

9 SECTION 3. The board of trustees of the employees'
10 retirement system shall:

- 11 (1) Identify all holdings in fossil fuel companies by
12 December 31, 2015;
- 13 (2) Refrain from acquiring new assets or securities in
14 fossil fuel companies;
- 15 (3) Divest all holdings in all publicly traded fossil fuel
16 companies identified under paragraph (1) within five
17 years at a divestment rate of twenty per cent each
18 year as follows:
 - 19 (A) December 31, 2016 Twenty per cent;
 - 20 (B) December 31, 2017 Forty per cent;
 - 21 (C) December 31, 2018 Sixty per cent;



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1 (D) December 31, 2019 Eighty per cent; and
 2 (E) December 31, 2020 One hundred per cent;
 3 and

4 (4) Beginning on December 31, 2015, and annually
 5 thereafter, post on its website a list of all fossil
 6 fuel companies in which it has holdings.

7 SECTION 4. The board of trustees of the employees'
 8 retirement system shall not be held liable for any action taken
 9 in good faith to execute the requirements of this Act.

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect on July 1, 2015.
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INTRODUCED BY:

[Handwritten signature]
 Nicole E. Lowen

[Handwritten signature]
 Cynthia Hoelen

[Handwritten signature]
 Denise Orr

[Handwritten signature]
 Richard Long

[Handwritten signature]
 Tom Brown

[Handwritten signature]
 Kelly

[Handwritten signature]
 Cindy Evans

[Handwritten signature]



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Report Title:

ERS; Investments; Fossil Fuels

Description:

Prohibits the ERS from investing directly in fossil fuel companies. Requires divestiture.

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