

JAN 2 1 2016

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. This legislature finds that the employees'
2 retirement system should divest its investment portfolio of all
3 coal, oil, and gas companies in order to demonstrate the State's
4 commitment to addressing climate change, and to disassociate the
5 State's interests from that of the fossil fuel industry.

6 At the 2010 United Nations Climate Change Conference in
7 Cancun, Mexico, the nations of the world agreed that climate
8 change presents a palpable danger that must be addressed, and
9 agreed that the permissible increase in global average
10 temperature is 3.6 degrees Fahrenheit (two degrees Celsius) over
11 the preindustrial average temperature.

12 Despite the findings of the 2010 Climate Change Conference,
13 the International Energy Agency has recently reported that
14 carbon emissions have increased to record levels since 2010, and
15 the agency has projected that continuing this current trend of
16 carbon emissions will lead to approximately double the agreed



1 upon 3.6 degree Fahrenheit limit by 2050, which will result in
2 drastic changes in the earth's climate.

3 Noting the International Energy Agency's report, Bevis
4 Longstreth, a former Commissioner of the United States
5 Securities and Exchange Commission, has recommended divestment
6 of fossil fuel companies as an important strategy to help
7 control carbon emissions and to reduce the financial impact on
8 investment funds resulting from the inevitable policy changes
9 that will be needed to reduce carbon emissions.

10 At the 2015 United Nations Climate Change Conference in
11 Paris, France, the nations of the world again recognized the
12 importance of keeping the increase in the global average
13 temperature from pre-industrial levels to less than 3.6 degrees
14 Fahrenheit, but also added an aspirational goal of keeping the
15 increase in the global average temperature below 2.5 degrees
16 Fahrenheit (1.5 degrees Celsius).

17 In May 2015, the University of Hawaii Board of Regents
18 incorporated a policy to divest its endowment funds of fossil
19 fuel investments citing the need to show leadership on the issue
20 of climate change, and the need to address concerns that fossil
21 fuel company values may decrease because the measures taken to



1 address climate change in the future may impede fossil fuel
2 assets from being developed.

3 Additionally, it is the judgment of this legislature that
4 investment in coal, oil, and gas companies can discourage
5 investment in competing renewable energy technologies, and
6 therefore impedes Hawaii from achieving its renewable portfolio
7 standard goal of one hundred per cent by 2045.

8 The purpose of this Act is to require the employees'
9 retirement system to divest its investment portfolio of coal,
10 oil, and gas companies within five years of this Act's effective
11 date.

12 SECTION 2. Definitions. As used in this Act, the
13 following definitions shall apply:

14 "Business operations" means engaging in commerce in any
15 form, including by acquiring, developing, maintaining, owning,
16 selling, possessing, leasing, or operating equipment,
17 facilities, personnel, products, services, personal property,
18 real property, or any other apparatus of business or commerce.

19 "Company" means any sole proprietorship, organization,
20 association, corporation, partnership, joint venture, limited
21 partnership, limited liability partnership, limited liability



1 company, or other entity or business association, including all
2 wholly-owned subsidiaries, majority-owned subsidiaries, parent
3 companies, or affiliates of such entities or business
4 associations, that exists for profit-making purposes.

5 "Direct holdings" in a company means all securities of that
6 company held directly by the public fund or in an account or
7 fund in which the public fund owns all shares or interests.

8 "Indirect holdings" in a company means all securities of
9 that company held in an account or fund, such as a mutual fund,
10 managed by one or more persons not employed by the public fund,
11 in which the public fund owns shares or interests together with
12 other investors not subject to this Act.

13 "Public fund" means the employees' retirement system of the
14 State of Hawaii or the board of trustees in charge of the
15 employees' retirement system.

16 "Scrutinized company" means a company identified by a
17 Global Industry Classification Standard code in one of the
18 following sectors:

- 19 (1) Coal and consumable fuels;
- 20 (2) Integrated oil and gas; or
- 21 (3) Oil and gas exploration and production.



1 SECTION 3. Identification of companies. (a) By
2 January 1, 2017, the public fund shall make its best efforts to
3 identify all scrutinized companies in which the public fund has
4 direct or indirect holdings. Those efforts shall include, as
5 appropriate:

6 (1) Reviewing publicly available information regarding
7 scrutinized companies. In conducting the review, the
8 public fund may rely on information provided by
9 nonprofit organizations, research firms, international
10 organizations, and government entities;

11 (2) Contacting asset managers contracted by the public
12 fund that invest in scrutinized companies; and

13 (3) Contacting other institutional investors that have
14 divested from or engaged with scrutinized companies.

15 (b) By the first meeting of the public fund after
16 January 1, 2017, the public fund shall assemble, into a
17 "scrutinized companies list", all scrutinized companies
18 identified in which the public fund has direct holdings.

19 (c) The public fund shall update the scrutinized companies
20 list on a quarterly basis based on evolving information from,
21 among other sources, those listed in subsection (a).



1 SECTION 4. Required actions. (a) The public fund shall
2 take the following actions in relation to the companies on the
3 scrutinized companies list in which the fund owns direct or
4 indirect holdings:

5 (1) The public fund shall sell, redeem, divest, or
6 withdraw all publicly-traded securities of each
7 company identified in section 3 according to the
8 following schedule:

9 (A) By July 1, 2017, at least twenty per cent of such
10 assets shall be removed from the public fund's
11 assets under management;

12 (B) By July 1, 2018, at least forty per cent of such
13 assets shall be removed from the public fund's
14 assets under management;

15 (C) By July 1, 2019, at least sixty per cent of such
16 assets shall be removed from the public fund's
17 assets under management;

18 (D) By July 1, 2020, at least eighty per cent of such
19 assets shall be removed from the public fund's
20 assets under management; and



1 (E) By July 1, 2021, one hundred per cent of such
2 assets shall be removed from the public fund's
3 assets under management.

4 (b) At no time shall the public fund acquire new assets or
5 securities of companies on the scrutinized companies list.

6 (c) Notwithstanding anything herein to the contrary,
7 subsections (a) and (b) shall not apply to indirect holdings in
8 actively managed investment funds; provided that the public fund
9 shall submit letters to the managers of such investment funds
10 containing scrutinized companies requesting that they consider
11 removing such companies from the investment fund or create a
12 similar actively managed fund with indirect holdings devoid of
13 such companies. If the manager creates a similar fund, the
14 public fund shall replace all applicable investments with
15 investments in the similar fund in an expedited timeframe
16 consistent with prudent investing standards. For the purposes
17 of this section, private equity funds shall be deemed to be
18 actively managed investment funds.

19 SECTION 5. Reporting. (a) The public fund shall file a
20 publicly-available report to the legislature that includes the



1 scrutinized companies list within ninety days after the list is
2 created.

3 (b) Annually thereafter, the public fund shall file a
4 publicly-available report to the legislature that includes:

- 5 (1) All investments sold, redeemed, divested, or withdrawn
6 in compliance with section 4;
- 7 (2) All prohibited investments under section 4; and
- 8 (3) Any progress made under section 4.

9 SECTION 6. Other legal obligations. With respect to
10 actions taken in compliance with this Act, including all good
11 faith determinations regarding companies as required by this
12 Act, the public fund shall be exempt from any conflicting
13 statutory or common law obligations, including any obligations
14 in respect to choice of asset managers, investment funds, or
15 investments for the public fund's securities portfolios.
16 Nothing in this Act requires the public fund to take action as
17 described in this Act unless the board of trustees of the public
18 fund determines, in good faith, that the action is consistent
19 with the responsibilities of the board as described in section
20 88-22.5(a)(1), Hawaii Revised Statutes.



1 SECTION 7. Reinvestment in scrutinized companies.
2 Notwithstanding anything in this Act to the contrary, the public
3 fund may cease divesting from scrutinized companies pursuant to
4 section 4 and may reinvest in scrutinized companies from which
5 it divested pursuant to section 4 if, in the good faith judgment
6 of the board of trustees of the public fund, the value for all
7 assets under management by the public fund becomes equal to or
8 less than 99.50 per cent (fifty basis points) of the
9 hypothetical value of all assets under management by the public
10 fund assuming no divestment for any company had occurred under
11 section 4. Cessation of divestment, reinvestment, or any
12 subsequent ongoing investment authorized by this section is
13 strictly limited to the minimum steps necessary to avoid the
14 contingency set forth in the preceding sentence. For any
15 cessation of divestment, reinvestment, or subsequent ongoing
16 investment authorized by this section, the public fund shall
17 provide a written report to the legislature, accompanied by
18 supporting documentation that includes objective numerical
19 estimates, for its decisions to cease divestment, reinvest, or
20 remain invested in scrutinized companies. The public fund shall
21 update the report annually thereafter as applicable.



S.B. NO. 2155

1 SECTION 8. If any provision of this Act, or the
 2 application thereof to any person or circumstance, is held
 3 invalid, the invalidity does not affect other provisions or
 4 applications of the Act that can be given effect without the
 5 invalid provision or application, and to this end the provisions
 6 of this Act are severable.

7 SECTION 9. This Act shall take effect on July 1, 2016.

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INTRODUCED BY:

Walter J. Gifford

Mark

Bruce Hunt

J. Gudhard

Randy H. Baker

D.C. Good-Agona

Russell E. Proff



S.B. NO. 2155

Report Title:

Coal, Oil, Gas Company Divestment; Fossil Fuel; ERS

Description:

Requires the employees' retirement system to divest its investment portfolio of coal, oil, and gas companies within five years.

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