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

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



1 to disclose such confidential information, the system is  
2 disadvantaged as a competitive investor. Competing investors  
3 would be able to acquire, at no cost, the system's investment  
4 intelligence, resulting in oversubscription of the system's best  
5 investments, reducing the system's access. Further, to the  
6 extent that the system has disclosed or may be required to  
7 disclose information that the investment funds require to be  
8 kept confidential, some high-performing funds have been deterred  
9 from allowing the system to invest with them. To manage these  
10 risks, the system currently expends significant efforts in  
11 responding to requests for such confidential 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: the name of asset or strategy; rate of  
17 return for the month, three months, fiscal year-to-date,  
18 calendar year-to-date, one year, three years, five years, and  
19 inception to date; and inception date. The system further  
20 publishes in its monthly statement of investments, private  
21 equity fund data on: the name of fund; commitments;



1 contributions; market value; strategy; and vintage year or year  
2 started.

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

9 SECTION 2. Section 88-103.5, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§88-103.5 Disclosure of information.** (a) The employees'  
12 retirement system shall:

13 (1) Disclose to the Hawaii employer-union health benefits  
14 trust fund and employee organizations information  
15 related to the administration of pension, annuity, or  
16 retirement allowance deductions, as follows: name,  
17 social security number, and amounts and dates of both  
18 voluntary and mandatory deductions remitted to the  
19 recipient; and

20 (2) Release the records of its retirants and beneficiaries  
21 to the Hawaii employer-union health benefits trust



1 fund for the disbursement of payments authorized under  
2 section 87A-23.

3 (b) Any government agency or employee organization  
4 receiving government records pursuant to this section shall be  
5 subject to the same restrictions on disclosure of the records as  
6 the originating agency.

7 (c) The following documents relating to the system's  
8 alternative investments shall be exempt from disclosure under  
9 chapter 92F:

- 10 (1) Private placement memoranda;  
11 (2) Fund agreements and related documents, including  
12 subscription agreements, management agreements, side  
13 letters, guarantees, credit facility agreements,  
14 participation agreements, and trust documents;  
15 (3) Confidential presentations or recommendations made to  
16 the system;  
17 (4) Due diligence memoranda and other due diligence  
18 materials, including due diligence questionnaires;  
19 (5) Documents containing information on any portfolio  
20 company, real property, or any other assets held by an  
21 alternative investment vehicle;



- 1       (6) Financial statements and other documents containing
- 2       financial information of a fund or its general partner
- 3       or manager, whether audited or unaudited, including
- 4       but not limited to statements or information related
- 5       to:
- 6       (A) Income statements;
- 7       (B) Balance sheets;
- 8       (C) Cash flows;
- 9       (D) Capital accounts;
- 10       (E) Investment rate-of-returns, including internal
- 11       rate of returns and time-weighted rate of
- 12       returns;
- 13       (F) Cash or in-kind distributions;
- 14       (G) Carried interests;
- 15       (H) Management and other fees; and
- 16       (I) Return multiples;
- 17       (7) Confidential correspondences between an alternative
- 18       investment vehicle or its general partner, manager,
- 19       advisor, or limited partner advisory committee, and
- 20       the system;
- 21       (8) Capital call and distribution notices;



1       (9) Limited partner advisory committee and limited partner  
2       meeting notices, minutes, and materials, including  
3       without limitation any materials distributed at those  
4       meetings;

5       (10) Investment management agreements; and

6       (11) Placement agent disclosures and similar documents.

7       (d) The exemptions from disclosure under chapter 92F set  
8       forth in subsection (c) are in addition to any other records  
9       that may be exempt from disclosure pursuant to chapter 92F or  
10       any other law.

11       (e) As used in this section:

12       "Alternative investment" means an actual or proposed  
13       investment by the system in a private equity fund, venture fund,  
14       hedge fund, fund of funds, absolute return fund, real estate  
15       fund, infrastructure fund, private credit, or other similar  
16       private market investments.

17       "Alternative investment vehicle" means the limited  
18       partnership, limited liability company, collective investment  
19       trust, or other legal structure of the alternative investment.

20       "Investment management agreement" means a contract to  
21       manage assets of the system.



1       "Limited partner advisory committee" means any limited  
2 partner or other advisory committee of an alternative investment  
3 vehicle."

4       SECTION 3. New statutory material is underscored.

5       SECTION 4. This Act shall take effect on December 25,  
6 2040.



**Report Title:**

Employees' Retirement System; Investment Records

**Description:**

Exempts the employees' retirement system from disclosing under chapter 92F, Hawaii Revised Statutes, certain types of alternative investment fund information. Effective 12/25/2040. (SD2)

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

