
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 such 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) As used in this section:

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

13 "Alternative investment vehicle" means the limited
14 partnership, limited liability company, collective investment
15 trust, or other legal structure of the alternative investment.

16 "Investment management agreement" means a contract to
17 manage assets of the system.

18 "Limited partner advisory committee" means any limited
19 partner or other advisory committee of an alternative investment
20 vehicle.



- 1 (d) The following documents relating to the system's
2 alternative investments shall be exempt from disclosure under
3 chapter 92F:
- 4 (1) Private placement memoranda;
5 (2) Fund agreements and related documents, including
6 subscription agreements, management agreements, side
7 letters, guarantees, credit facility agreements,
8 participation agreements, and trust documents;
9 (3) Confidential presentations or recommendations made to
10 the system;
11 (4) Due diligence memoranda and other due diligence
12 materials, including due diligence questionnaires;
13 (5) Documents containing information on any portfolio
14 company, real property, or any other assets held by
15 the alternative investment vehicle;
16 (6) Financial statements and other documents containing
17 financial information of a fund or its general partner
18 or manager, whether audited or unaudited, including
19 but not limited to statements or information related
20 to:
21 (A) Income statements;



- 1 (B) Balance sheets;
- 2 (C) Cash flows;
- 3 (D) Capital accounts;
- 4 (E) Investment rate-of-returns, including internal
5 rate of returns and time weighted rate of
6 returns;
- 7 (F) Cash or in-kind distributions;
- 8 (G) Carried interests;
- 9 (H) Management and other fees; and
- 10 (I) Return multiples;
- 11 (7) Confidential correspondences between an alternative
12 investment vehicle or its general partner, manager,
13 advisor, or limited partner advisory committee, and
14 the system;
- 15 (8) Capital call and distribution notices;
- 16 (9) Limited partner advisory committee and limited partner
17 meeting notices, minutes, and materials, including
18 without limitation any materials distributed at such
19 meetings;
- 20 (10) Investment management agreements; and
- 21 (11) Placement agent disclosures and similar documents.



1 (e) The exemptions from disclosure under chapter 92F set
2 forth in subsection (d) are in addition to any other records
3 that may be exempt from disclosure pursuant to chapter 92F or
4 any other law."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on December 25,
7 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.
(SD1)

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