
A BILL FOR AN ACT

RELATING TO THE INNOVATION ECONOMY.

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 in 2006, over half was
6 provided by pension funds. Many public pension funds target
7 investments in-state to provide enhanced returns to pensioners
8 and support the development of high-growth businesses within
9 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:

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

17 (B) Obligations secured by mortgages insured by the
18 Federal Housing Administration;

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~~] shall not contain provisions that might
10 jeopardize the security position of the
11 retirement system or the borrower's ability to
12 repay the mortgage 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



- 1 (C) Obligations issued or guaranteed by any federal
2 home loan bank, including consolidated federal
3 home loan bank obligations, the Home Owner's Loan
4 Corporation, the Federal National Mortgage
5 Association, or the Small Business
6 Administration;
- 7 (3) Corporate obligations. Below investment grade or
8 nonrated debt instruments, foreign or domestic, in
9 accordance with investment guidelines adopted by the
10 board;
- 11 (4) Preferred and common stocks. Shares of preferred or
12 common stock of any corporation created or existing
13 under the laws of the United States or of any state or
14 district thereof or of any country;
- 15 (5) Obligations eligible by law for purchase in the open
16 market by federal reserve banks;
- 17 (6) Obligations issued or guaranteed by the International
18 Bank for Reconstruction and Development, the
19 Inter-American Development Bank, the Asian Development
20 Bank, or the African Development Bank;
- 21 (7) Obligations secured by collateral consisting of any of
22 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. To address these opportunities,~~
13 ~~at any given time, the system shall allocate _____ per~~
14 ~~cent of the funds for Hawaii venture capital~~
15 ~~investments unless, under the circumstances, it is not~~
16 ~~prudent to do so. The system may contract with one or~~
17 ~~more management companies to manage and invest these~~
18 ~~moneys. The system may enter into contracts for the~~
19 ~~provision of investment advice or other services that~~
20 ~~the board deems reasonable and necessary to fulfill~~
21 ~~its duties. If any venture capital investments in~~
22 ~~privately held Hawaii companies are in violation of~~



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

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

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



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. Effective July 1, 2050. (SB1365 HD2)

