
A BILL FOR AN ACT

RELATING TO THE INNOVATION ECONOMY.

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

1 SECTION 1. The purpose of this Act is to encourage the
2 employees' retirement system to invest in Hawaii venture capital
3 by establishing the Hawaii innovation investment fund, a
4 professionally-managed fund of funds, in which the employees'
5 retirement system may invest. These actions will allow the
6 retirement system to achieve investment returns for the pension
7 fund, attract private investment capital and expertise, and
8 assist the growth of Hawaii's technology companies and high
9 growth businesses.

10 SECTION 2. Chapter 211F, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "211F-___. **Definitions.** As used in this part:

14 "Agency" means each state or county board, commission,
15 department, or officer authorized by law to make rules, except
16 those in the legislative or judicial branches.



1 "Fiduciaries" means pension funds, corporations, limited
2 liability companies, partnerships, banks, savings institutions,
3 trust companies, and the officers, directors, trustees,
4 partners, managers, advisors, employees, and representatives of
5 the State employees' retirement system.

6 "Hawaii venture capital investments" means any of the
7 following investments in a business:

8 (1) Direct debt and equity investments in privately-held
9 Hawaii companies; and

10 (2) Investment in limited partnerships, limited liability
11 companies, or other entities that make private debt
12 and equity investments in privately held Hawaii
13 companies, whether directly or through investments in
14 limited partnerships, limited liability companies, or
15 other entities, including but not limited to
16 investments consisting of shares of capital stock,
17 convertible notes and other debt instruments,
18 securities, warrants, options, or other rights to
19 acquire such securities from privately held Hawaii
20 companies.

21 "Privately held Hawaii companies" means any privately held
22 corporation, limited liability company, partnership, or other



1 entity that is headquartered, or has substantial operations, in
2 Hawaii.

3 "System" means the employees' retirement system of the State
4 of Hawaii."

5 SECTION 3. Chapter 211F, Hawaii Revised Statutes, is
6 amended by adding a new section to be appropriately designated
7 and to read as follows:

8 "211F- . Hawaii innovation investment fund. (a)

9 There is established the Hawaii innovation investment fund
10 into which shall be deposited:

11 (1) Moneys from the system;

12 (2) Moneys from private investors; and

13 (3) Interest payments and proceeds from investments made
14 by the fund.

15 (b) Moneys in the Hawaii innovation investment fund shall
16 be used to invest in Hawaii and other venture capital investment
17 opportunities.

18 (c) Should the system choose to invest a portion of its
19 assets in the fund, investment of the fund in one or more
20 professionally managed venture capital funds or one or more
21 venture capital fund of funds will be overseen by an advisory



1 board comprised of seven members: four members from the
2 business community with experience in venture capital investing,
3 fund of funds management, or as an entrepreneur growing
4 companies and achieving liquidity events; a representative of
5 the Board of the Employees' Retirement System; a representative
6 from the department of budget and finance; and a representative
7 of the department of business, economic development, and tourism
8 or an attached agency thereof. Members of the advisory board
9 shall be selected based on their knowledge and ability to
10 successfully manage venture capital investments, attract capital
11 from local and external sources, and assist companies to grow.

12 (d) Of the four members private sector members of the
13 advisory board, one shall be appointed by the governor, one
14 shall be appointed by the governor from a list of three names
15 nominated by the president of the senate, and one shall be
16 appointed by the governor from a list of three names nominated
17 by the speaker of the house of representatives for staggered
18 terms pursuant to section 26-34. The representative from the
19 department of business, economic development, and tourism shall
20 serve as chairperson of the board until such time as a
21 chairperson is elected by the board from the membership. The
22 board shall elect such officers as may be necessary.



1 The members of the advisory board shall serve without
2 compensation, but may be reimbursed for expenses, including
3 travel expenses, incurred in the performance of their duties.

4 (e) The advisory board shall be attached to the department
5 of business, economic development, and tourism for
6 administrative purposes.

7 (f) The advisory board shall adopt rules for its conduct
8 and management of the fund and shall use its best efforts to
9 maximize return on investments by developing investment
10 strategies for a diverse portfolio focused on investments in
11 Hawaii in order to attract private investment in the fund,
12 develop local investment expertise, stimulate the development of
13 emerging venture capital funds, and encourage opportunities for
14 co-investment with offshore funds.

15 The advisory board may hire a fund manager to direct the
16 investment operations. Any investments made through the Hawaii
17 innovation investment fund will be reported to the legislature
18 on an annual aggregated basis, indicating the number of
19 investments made into venture capital funds investing in Hawaii,
20 the amount of investment made in those venture capital funds,
21 and the number and amount of investments made by those venture
22 capital funds in Hawaii companies.



1 (g) A board member shall not participate in any
2 corporation decision to invest in, purchase from, sell to,
3 borrow from, loan to, contract with, or otherwise deal with any
4 person with whom or entity in which the board member has a
5 substantial financial interest.

6 (h) Any returns on investment made by tax-paying investors
7 in the fund shall be exempt from Hawaii state income and
8 franchise taxes under chapters 235, 241, and 431.

9 (i) Expenditures associated with operations and oversight
10 of the fund, exclusive of actual investments made, will be
11 provided through the Hawaii strategic development corporation
12 revolving fund."

13 SECTION 4. Section 88-119, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§88-119 Investments.** Investments may be made in:

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

19 (A) Obligations secured by mortgages of nonprofit
20 corporations desiring to build multirental units
21 (ten units or more) subject to control of the



1 government for occupancy by families displaced as
2 a result of government action;

3 (B) Obligations secured by mortgages insured by the
4 Federal Housing Administration;

5 (C) Obligations for the repayment of home loans made
6 under the Servicemen's Readjustment Act of 1944
7 or under Title II of the National Housing Act;

8 (D) Other obligations secured by first mortgages on
9 unencumbered improved real estate owned in fee
10 simple; provided that the amount of the
11 obligation at the time investment is made therein
12 shall not exceed eighty per cent of the value of
13 the real estate and improvements mortgaged to
14 secure it, and except that the amount of the
15 obligation at the time investment is made therein
16 may exceed eighty per cent but no more than
17 ninety per cent of the value of the real estate
18 and improvements mortgaged to secure it; provided
19 further that the obligation is insured or
20 guaranteed against default or loss under a
21 mortgage insurance policy issued by a casualty
22 insurance company licensed to do business in the



1 State. The coverage provided by the insurer
2 shall be sufficient to reduce the system's
3 exposure to not more than eighty per cent of the
4 value of the real estate and improvements
5 mortgaged to secure it. The insurance coverage
6 shall remain in force until the principal amount
7 of the obligation is reduced to eighty per cent
8 of the market value of the real estate and
9 improvements mortgaged to secure it, at which
10 time the coverage shall be subject to
11 cancellation solely at the option of the board.
12 Real estate shall not be deemed to be encumbered
13 within the meaning of this subparagraph by reason
14 of the existence of any of the restrictions,
15 charges, or claims described in section 431:6-
16 308;

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

20 (i) Each leasehold interest at the time shall
21 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
22 shall remain in force until the principal amount



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

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

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

20 The board may retain the real estate, including
21 leasehold interests therein, as it may acquire by
22 foreclosure of mortgages or in enforcement of



1 security, or as may be conveyed to it in satisfaction
2 of debts previously contracted; provided that all the
3 real estate, other than leasehold interests, shall be
4 sold within five years after acquiring the same,
5 subject to extension by the governor for additional
6 periods not exceeding five years each, and that all
7 the leasehold interests shall be sold within one year
8 after acquiring the same, subject to extension by the
9 governor for additional periods not exceeding one year
10 each;

11 (2) Government obligations, etc. Obligations of any of
12 the following classes:

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



1 (B) Revenue bonds, whether or not permitted by any
2 other provision hereof, of the State or any
3 municipal or political subdivision thereof,
4 including the board of water supply of the city
5 and county of Honolulu, and street or improvement
6 district bonds of any district or project in the
7 State; and

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

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

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



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



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

14 (10) Other securities and futures contracts. Securities
15 and futures contracts in which in the informed opinion
16 of the board, it is prudent to invest funds of the
17 system, including currency, interest rate, bond, and
18 stock index futures contracts and options on the
19 contracts to hedge against anticipated changes in
20 currencies, interest rates, and bond and stock prices
21 that might otherwise have an adverse effect upon the
22 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.] Hawaii venture capital investment~~
19 ~~opportunities unless, under the circumstances, it is~~
20 ~~not prudent to do so. At any given time, the system~~
21 ~~shall have \$100 million allocated for Hawaii venture~~
22 ~~capital investments unless, under the circumstances,~~



1 it is not prudent to do so. The system may contract
2 with one or more management companies to manage and
3 invest these moneys. The system may enter into
4 contracts for the provision of investment advice or
5 other services that the board deems reasonable and
6 necessary to fulfill its duties.

7 Investment of these funds may be made in whole or
8 in part through the Hawaii Innovation Investment Fund.

9 (A) Limited investment in privately-held Hawaii
10 companies authorized.

11 (i) Unless prohibited by federal law or
12 regulations promulgated thereunder, and
13 notwithstanding any law to the contrary,
14 or rules adopted pursuant thereto,
15 fiduciaries may invest in Hawaii venture
16 capital investments up to two and one-
17 half per cent of their funds eligible for
18 investment; provided that their total
19 outlay in Hawaii venture capital
20 investments shall not be more than ten
21 per cent of their capital, which includes
22 common capital stock, certified surplus,



1 capital notes, and undivided profits.
2 Fiduciaries acting in accordance with
3 this section shall not be in violation of
4 any prudent person or prudent investor
5 rule. If any venture capital investments
6 in privately held Hawaii companies are in
7 violation of this chapter by virtue of a
8 subsequent reduction in the amount of
9 funds eligible for investment, the
10 fiduciary shall not be in violation of
11 any prudent person or prudent investor
12 rule.

13 (ii) The director of any agency whose duties
14 and powers include regulating the
15 activities of any fiduciaries governed by
16 this chapter may adopt rules for the
17 implementation of this chapter in
18 accordance with chapter 91.

19 The board shall report annually to the legislature on any Hawaii
20 venture capital investments it has made; provided that if the
21 board determines it is not prudent to invest in any Hawaii
22 venture capital investments the board shall report the rationale



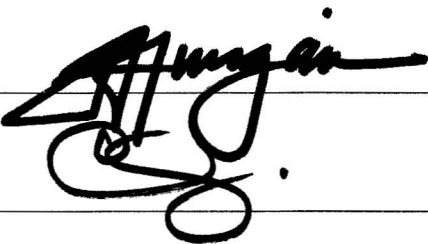
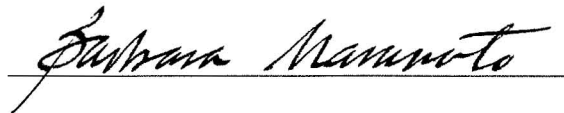
1 for the decision. The board, by January 1, 2008, shall develop
2 criteria to determine the amount of funds that may be prudently
3 invested in Hawaii private placement investments."

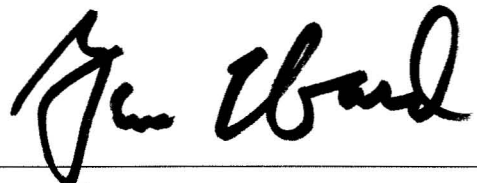

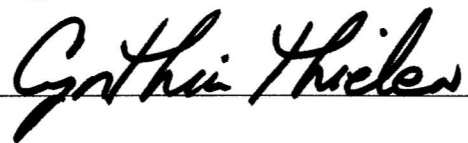
4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect on July 1, 2009.

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8

INTRODUCED BY:

JAN 23 2009



Report Title:

Hawaii Innovation Investment Fund

Description:

Establishes the Hawaii Innovation Investment Fund, a professionally managed fund of funds, and allows the ERS to invest moderate amounts in Hawaii venture capital.

