

S.B. NO. 2813

JAN 23 2014

A BILL FOR AN ACT

RELATING TO INVESTMENT AUTHORITY OF THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. Section 88-119, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§88-119 **Investments.** Investments may be made in:

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

7 (A) Obligations secured by mortgages of nonprofit
8 corporations desiring to build multirental units
9 (ten units or more) subject to control of the
10 government for occupancy by families displaced as
11 a result of government action;

12 (B) Obligations secured by mortgages insured by the
13 Federal Housing Administration;

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

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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
23 of the market value of the real estate and

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1 improvements mortgaged to secure it, at which
2 time the coverage shall be subject to
3 cancellation solely at the option of the board.
4 Real estate shall not be deemed to be encumbered
5 within the meaning of this subparagraph by reason
6 of the existence of any of the restrictions,
7 charges, or claims described in section 431:6-
8 308;

9 (E) Other obligations secured by first mortgages of
10 leasehold interests in improved real estate;
11 provided that:

12 (i) Each leasehold interest at the time shall
13 have a current term extending at least two
14 years beyond the stated maturity of the
15 obligation it secures; and

16 (ii) The amount of the obligation at the time
17 investment is made therein shall not exceed
18 eighty per cent of the value of the
19 respective leasehold interest and
20 improvements, and except that the amount of
21 the obligation at the time investment is
22 made therein may exceed eighty per cent but
23 no more than ninety per cent of the value of

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1 the leasehold interest and improvements
2 mortgaged to secure it;
3 provided further that the obligation is insured
4 or guaranteed against default or loss under a
5 mortgage insurance policy issued by a casualty
6 insurance company licensed to do business in the
7 State. The coverage provided by the insurer
8 shall be sufficient to reduce the system's
9 exposure to not more than eighty per cent of the
10 value of the leasehold interest and improvements
11 mortgaged to secure it. The insurance coverage
12 shall remain in force until the principal amount
13 of the obligation is reduced to eighty per cent
14 of the market value of the leasehold interest and
15 improvements mortgaged to secure it, at which
16 time the coverage shall be subject to
17 cancellation solely at the option of the board;
18 (F) Obligations for the repayment of home loans
19 guaranteed by the department of Hawaiian home
20 lands pursuant to section 214(b) of the Hawaiian
21 Homes Commission Act, 1920; and
22 (G) Obligations secured by second mortgages on
23 improved real estate for which the mortgagor

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1 procures a second mortgage on the improved real
2 estate for the purpose of acquiring the
3 leaseholder's fee simple interest in the improved
4 real estate; provided that any prior mortgage
5 shall not contain provisions that might
6 jeopardize the security position of the
7 retirement system or the borrower's ability to
8 repay the mortgage loan.

9 The board may retain or dispose of the real estate,
10 including leasehold interests therein, as it may
11 acquire by foreclosure of mortgages or in enforcement
12 of security, or as may be conveyed to it in
13 satisfaction of debts previously contracted[~~; provided~~
14 ~~that all the real estate, other than leasehold~~
15 ~~interests, shall be sold within five years after~~
16 ~~acquiring the same, subject to extension by the~~
17 ~~governor for additional periods not exceeding five~~
18 ~~years each, and that all the leasehold interests shall~~
19 ~~be sold within one year after acquiring the same,~~
20 ~~subject to extension by the governor for additional~~
21 ~~periods not exceeding one year each;~~ in the same
22 manner as other investments in interest in real
23 property authorized by this section;

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

3 (A) Obligations issued or guaranteed as to principal
4 and interest by the United States or by any state
5 thereof or by any municipal or political
6 subdivision or school district of any of the
7 foregoing; provided that principal of and
8 interest on the obligations are payable in
9 currency of the United States; or sovereign debt
10 instruments issued by agencies of, or guaranteed
11 by foreign governments;

12 (B) Revenue bonds, whether or not permitted by any
13 other provision hereof, of the State or any
14 municipal or political subdivision thereof,
15 including the board of water supply of the city
16 and county of Honolulu, and street or improvement
17 district bonds of any district or project in the
18 State; and

19 (C) Obligations issued or guaranteed by any federal
20 home loan bank, including consolidated federal
21 home loan bank obligations, the Home Owner's Loan
22 Corporation, the Federal National Mortgage

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- 1 Association, or the Small Business
2 Administration;
- 3 (3) Corporate obligations. Below investment grade or
4 nonrated debt instruments, foreign or domestic, in
5 accordance with investment guidelines adopted by the
6 board;
- 7 (4) Preferred and common stocks. Shares of preferred or
8 common stock of any corporation created or existing
9 under the laws of the United States or of any state or
10 district thereof or of any country;
- 11 (5) Obligations eligible by law for purchase in the open
12 market by federal reserve banks;
- 13 (6) Obligations issued or guaranteed by the International
14 Bank for Reconstruction and Development, the Inter-
15 American Development Bank, the Asian Development Bank,
16 or the African Development Bank;
- 17 (7) Obligations secured by collateral consisting of any of
18 the securities or stock listed above and worth at the
19 time the investment is made at least fifteen per cent
20 more than the amount of the respective obligations;
- 21 (8) Insurance company obligations. Contracts and
22 agreements supplemental thereto providing for
23 participation in one or more accounts of a life

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1 insurance company authorized to do business in Hawaii,
2 including its separate accounts, and whether the
3 investments allocated thereto are comprised of stocks
4 or other securities or of real or personal property or
5 interests therein;

- 6 (9) Interests in real property. Interests in improved or
7 productive real property in which, in the informed
8 opinion of the board, it is prudent to invest funds of
9 the system. For purposes of this paragraph, "real
10 property" includes any property treated as real
11 property either by local law or for federal income tax
12 purposes. Investments in improved or productive real
13 property may be made directly or through pooled funds,
14 including common or collective trust funds of banks
15 and trust companies, group or unit trusts, limited
16 partnerships, limited liability companies, investment
17 trusts, title-holding corporations recognized under
18 section 501(c) of the Internal Revenue Code of 1986,
19 as amended, similar entities that would protect the
20 system's interest, and other pooled funds invested on
21 behalf of the system by investment managers retained
22 by the system;

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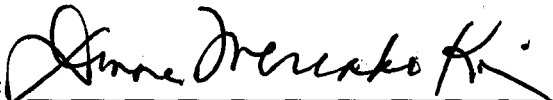
- 1 (10) Other securities and futures contracts. Securities
2 and futures contracts in which in the informed opinion
3 of the board, it is prudent to invest funds of the
4 system, including currency, interest rate, bond, and
5 stock index futures contracts and options on the
6 contracts to hedge against anticipated changes in
7 currencies, interest rates, and bond and stock prices
8 that might otherwise have an adverse effect upon the
9 value of the system's securities portfolios; covered
10 put and call options on securities; and stock; whether
11 or not the securities, stock, futures contracts, or
12 options on futures are expressly authorized by or
13 qualify under the foregoing paragraphs, and
14 notwithstanding any limitation of any of the foregoing
15 paragraphs (including paragraph (4)); and
- 16 (11) Private placements. Investments in institutional
17 blind pool limited partnerships, limited liability
18 companies, or direct investments that make private
19 debt and equity investments in privately held
20 companies, including but not limited to investments in
21 Hawaii high technology businesses or venture capital
22 investments that, in the informed opinion of the
23 board, are appropriate to invest funds of the system.

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1 In evaluating venture capital investments, the board
2 shall consider, among other things, the impact an
3 investment may have on job creation in Hawaii and on
4 the state economy. The board shall report annually to
5 the legislature on any Hawaii venture capital
6 investments it has made; provided that if the board
7 determines it is not prudent to invest in any Hawaii
8 venture capital investments the board shall report the
9 rationale for the decision. The board, by January 1,
10 2008, shall develop criteria to determine the amount
11 of funds that may be prudently invested in Hawaii
12 private placement investments."

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act shall take effect upon its approval.

16
17 INTRODUCED BY: 

18 BY REQUEST
19

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Report Title:

Employees' Retirement System; Investments

Description:

Repeals the limitation on the holding period for real estate acquired by the Employees' Retirement System by foreclosure, enforcement of security, or in satisfaction of debts.

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

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JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO THE INVESTMENT AUTHORITY OF THE EMPLOYEES' RETIREMENT SYSTEM.

PURPOSE: To repeal the limitation on the holding period for real estate acquired by the Employees' Retirement System of the State of Hawaii by foreclosure, enforcement of security or in satisfaction of debts so that the real estate may be held and disposed of like any other investment in interests in real property.

MEANS: Amend section 88-119, Hawaii Revised Statutes.

JUSTIFICATION: The Employees' Retirement System is authorized by section 88-119, Hawaii Revised Statute, to invest real estate. There are no restrictions imposed by section 88-119 on how long the Employees' Retirement System must hold its real estate investments except for section 88-119(a)(1), which requires that any real estate, other than leasehold interests, acquired by the Employees' Retirement System of the State of Hawaii by foreclosure of mortgages, enforcement of security, or in satisfaction of debts previously contracted, be sold within five years after acquisition and that leasehold interests so acquired be sold in one year after acquisition. The holding period for non-leasehold interests may be extended by the Governor for additional periods not exceeding five years each. The holding period for leasehold interests may be extended by the Governor for additional periods not exceeding one year each. The limitation on the holding period for real estate acquired by the Employees' Retirement System through foreclosure, enforcement of security, or in satisfaction of debts

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predates the enactment of legislation authorizing the Employees' Retirement System to invest in real estate. In order to prudently manage the Employees' Retirement System's real estate portfolio, the Board of Trustees of the Employees' Retirement System needs to be able to evaluate and plan for the retention or disposition of the real estate without distinction as to how the real estate was acquired. The limitation on the holding period for real estate acquired through foreclosure, enforcement of security or satisfaction of debts prevents the Board of Trustees of the Employees' Retirement System from making long range plans for the affected property, which are necessary for the prudent management of the real estate investment portfolio.

Impact on the public: None.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	BUF 141/Retirement
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	Upon approval.