
A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1 SECTION 1. The legislature finds that the employees'
2 retirement system should divest its investment portfolio of all
3 coal, oil, and gas companies to demonstrate the State's
4 commitment to addressing climate change, and to disassociate the
5 State's interests from that of the fossil fuel industry.

6 At the 2010 United Nations Climate Change Conference in
7 Cancun, Mexico, the nations of the world agreed that climate
8 change presents a palpable danger that must be addressed, and
9 agreed that the permissible increase in global average
10 temperature is 3.6 degrees Fahrenheit (two degrees Celsius) over
11 the preindustrial average temperature.

12 Despite the findings of the 2010 Climate Change Conference,
13 the International Energy Agency recently reported that carbon
14 emissions have increased to record levels since 2010, and the
15 agency has projected that continuing this current trend of
16 carbon emissions will lead to approximately double the agreed
17 upon 3.6 degree Fahrenheit limit by 2050, which will result in
18 drastic changes in the earth's climate.



1 Noting the International Energy Agency's report, Bevis
2 Longstreth, a former Commissioner of the United States
3 Securities and Exchange Commission, has recommended divestment
4 of fossil fuel companies as an important strategy to help
5 control carbon emissions and to reduce the financial impact on
6 investment funds resulting from the inevitable policy changes
7 that will be needed to reduce carbon emissions.

8 At the 2015 United Nations Climate Change Conference in
9 Paris, France, the nations of the world again recognized the
10 importance of keeping the increase in the global average
11 temperature from pre-industrial levels to less than 3.6 degrees
12 Fahrenheit, but also added an aspirational goal of keeping the
13 increase in the global average temperature below 2.5 degrees
14 Fahrenheit (1.5 degrees Celsius).

15 In May 2015, the University of Hawaii board of regents
16 incorporated a policy to divest its endowment funds of fossil
17 fuel investments citing the need to show leadership on the issue
18 of climate change, and the need to address concerns that fossil
19 fuel company values may decrease because the measures taken to
20 address climate change in the future may impede fossil fuel
21 assets from being developed.



1 Additionally, it is the judgment of this legislature that
2 investment in coal, oil, and gas companies can discourage
3 investment in competing renewable energy technologies, and
4 therefore impedes Hawaii from achieving its renewable portfolio
5 standard goal of one hundred per cent by 2045.

6 The purpose of this Act is to require the employees'
7 retirement system to divest its investment portfolio of coal,
8 oil, and gas companies within five years of this Act's effective
9 date.

10 SECTION 2. Definitions. As used in this Act, the
11 following definitions shall apply:

12 "Business operations" means engaging in commerce in any
13 form, including by acquiring, developing, maintaining, owning,
14 selling, possessing, leasing, or operating equipment,
15 facilities, personnel, products, services, personal property,
16 real property, or any other apparatus of business or commerce.

17 "Company" means any sole proprietorship, organization,
18 association, corporation, partnership, joint venture, limited
19 partnership, limited liability partnership, limited liability
20 company, or other entity or business association, including all
21 wholly-owned subsidiaries, majority-owned subsidiaries, parent



1 companies, or affiliates of such entities or business
2 associations, that exists for profit-making purposes.

3 "Direct holdings" means all securities of a company held
4 directly by the public fund or in an account or fund in which
5 the public fund owns all shares or interests.

6 "Indirect holdings" means all securities of a company held
7 in an account or fund, such as a mutual fund, managed by one or
8 more persons not employed by the public fund, in which the
9 public fund owns shares or interests together with other
10 investors not subject to this Act.

11 "Public fund" means the employees' retirement system of the
12 State of Hawaii or the board of trustees in charge of the
13 employees' retirement system.

14 "Scrutinized company" means a company identified by a
15 Global Industry Classification Standard code in one of the
16 following sectors:

- 17 (1) Coal and consumable fuels;
18 (2) Integrated oil and gas; or
19 (3) Oil and gas exploration and production.

20 SECTION 3. Identification of companies. (a) By
21 January 1, 2017, the public fund shall make its best efforts to



1 identify all scrutinized companies in which the public fund has
2 direct or indirect holdings. Those efforts shall include, as
3 appropriate:

4 (1) Reviewing publicly available information regarding
5 scrutinized companies. In conducting the review, the
6 public fund may rely on information provided by
7 nonprofit organizations, research firms, international
8 organizations, and government entities;

9 (2) Contacting asset managers contracted by the public
10 fund that invest in scrutinized companies; and

11 (3) Contacting other institutional investors that have
12 divested from or engaged with scrutinized companies.

13 (b) By the first meeting of the public fund after
14 January 1, 2017, the public fund shall assemble a scrutinized
15 companies list of all identified scrutinized companies in which
16 the public fund has direct holdings.

17 (c) The public fund shall update the scrutinized companies
18 list on a quarterly basis based on evolving information from,
19 among other sources, those listed in subsection (a).

20 SECTION 4. Required actions. (a) The public fund shall
21 take the following actions in relation to the companies on the



1 scrutinized companies list in which the fund owns direct or
2 indirect holdings:

3 (1) The public fund shall sell, redeem, divest, or
4 withdraw all publicly-traded securities of each
5 company identified in section 3 according to the
6 following schedule:

7 (A) By July 1, 2017, at least twenty per cent of such
8 assets shall be removed from the public fund's
9 assets under management;

10 (B) By July 1, 2018, at least forty per cent of such
11 assets shall be removed from the public fund's
12 assets under management;

13 (C) By July 1, 2019, at least sixty per cent of such
14 assets shall be removed from the public fund's
15 assets under management;

16 (D) By July 1, 2020, at least eighty per cent of such
17 assets shall be removed from the public fund's
18 assets under management; and

19 (E) By July 1, 2021, one hundred per cent of such
20 assets shall be removed from the public fund's
21 assets under management.



1 (b) At no time shall the public fund acquire new assets or
2 securities of companies on the scrutinized companies list.

3 (c) Notwithstanding anything herein to the contrary,
4 subsections (a) and (b) shall not apply to indirect holdings in
5 actively managed investment funds; provided that the public fund
6 shall submit letters to the managers of such investment funds
7 containing scrutinized companies requesting that they consider
8 removing such companies from the investment fund or create a
9 similar actively managed fund with indirect holdings devoid of
10 such companies. If the manager creates a similar fund, the
11 public fund shall replace all applicable investments with
12 investments in the similar fund in an expedited timeframe
13 consistent with prudent investing standards. For the purposes
14 of this section, private equity funds shall be deemed to be
15 actively managed investment funds.

16 SECTION 5. Reporting. (a) The public fund shall file a
17 publicly-available report to the legislature that includes the
18 scrutinized companies list within ninety days after the list is
19 created.

20 (b) Annually thereafter, the public fund shall file a
21 publicly-available report to the legislature that includes:



- 1 (1) All investments sold, redeemed, divested, or withdrawn
2 in compliance with section 4;
3 (2) All prohibited investments under section 4; and
4 (3) Any progress made under section 4.

5 SECTION 6. Other legal obligations. With respect to
6 actions taken in compliance with this Act, including all good
7 faith determinations regarding companies as required by this
8 Act, the public fund shall be exempt from any conflicting
9 statutory or common law obligations, including any obligations
10 in respect to choice of asset managers, investment funds, or
11 investments for the public fund's securities portfolios.
12 Nothing in this Act requires the public fund to take action as
13 described in this Act unless the board of trustees of the public
14 fund determines, in good faith, that the action is consistent
15 with the responsibilities of the board as described in section
16 88-22.5(a)(1), Hawaii Revised Statutes.

17 SECTION 7. Reinvestment in scrutinized companies.
18 Notwithstanding anything in this Act to the contrary, the public
19 fund may cease divestment in a company on the scrutinized
20 companies list and may reinvest in a company on the scrutinized
21 companies list from which it divested pursuant to section 4 if,



1 in the good faith judgment of the board of trustees of the
2 public fund, the value for all assets under management by the
3 public fund becomes equal to or less than 99.50 per cent (fifty
4 basis points) of the hypothetical value of all assets under
5 management by the public fund assuming no divestment for any
6 company occurred under section 4. Cessation of divestment,
7 reinvestment, or any subsequent ongoing investment authorized by
8 this section is strictly limited to the minimum steps necessary
9 to avoid the contingency set forth in the preceding sentence.
10 For any cessation of divestment, reinvestment, or subsequent
11 ongoing investment authorized by this section, the public fund
12 shall provide a written report to the legislature, accompanied
13 by supporting documentation that includes objective numerical
14 estimates, of its decisions to cease divestment, reinvest, or
15 remain invested in companies on the scrutinized companies list.
16 The public fund shall update the report annually thereafter as
17 applicable.

18 SECTION 8. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 9. This Act shall take effect on January 7, 2059.

4



Report Title:

Coal, Oil, Gas Company Divestment; Fossil Fuel; ERS

Description:

Requires the employees' retirement system to divest its investment portfolio of coal, oil, and gas companies within five years and to report certain information to the legislature. Effective January 7, 2059. (SD1)

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