
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 In order to address the system's unfunded liability and
12 other financial needs, the system, as a prudent investor,
13 engages in diversified investment, including high-yield private
14 alternative investment funds. Due diligence into such
15 investments requires that the system invest time and money for
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, if the
6 system is required to disclose confidential information that the
7 investment funds require to be kept confidential, some high-
8 performing funds will be deterred from allowing the system to
9 invest with them. In order to manage these risks, the system
10 currently expends significant efforts in responding to requests
11 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:

- 17 (1) Name of asset or strategy;
- 18 (2) Rate of return for the month, 3 months, fiscal year-
19 to-date, calendar year-to-date, 1, 3, and 5 years, and
20 inception to date; and
- 21 (3) Inception date.



1 The system further publishes in its monthly Statement of
2 Investments, private equity fund data on:

- 3 (1) Name of fund;
- 4 (2) Commitments;
- 5 (3) Contributions;
- 6 (4) Market value;
- 7 (5) Strategy; and
- 8 (6) Vintage year or year started.

9 This Act identifies certain specific types of alternative
10 investment fund information the disclosure of which would likely
11 put the system at a competitive disadvantage, and therefore
12 categorically exempts such categories of information from
13 disclosure under chapter 92F, consistent with market best
14 practices.

15 SECTION 2. Section 88-103, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§88-103 Records.** (a) The board of trustees shall keep a
18 record of all its proceedings which record shall be open to
19 public inspection. It shall publish annually a report showing
20 in detail: (1) the fiscal transactions of the system for the
21 year ending the preceding June 30, (2) the amount of the



1 accumulated cash and securities of the system, and (3) an
2 actuarial valuation of the assets and liabilities of the system.
3 The board shall submit the report to the governor and shall
4 furnish copies thereof to the heads of the various departments
5 of the State and county for their use and the use of the members
6 employed therein.

7 (b) The board shall include in its annual report submitted
8 prior to January 1 of each odd-numbered year: (1) a comparison
9 of the investment performance of the system with the investment
10 performances of the public employees' retirement systems of
11 other jurisdictions which have authority to make investments
12 substantially similar to the investment authorized under section
13 88-119, and (2) a comparison of the funded ratio on June 30 of
14 the preceding year with the funded ratios of the public
15 employees' retirement systems of other jurisdictions.

16 (c) As used in this section:

17 "Alternative investment" means an investment that is not
18 publicly traded, including but not limited to a private equity
19 fund, venture fund, hedge fund, fund of funds, absolute return
20 fund, real estate fund, infrastructure fund, private credit or
21 other similar private market investments.



1 "Alternative investment vehicle" means the limited
2 partnership, limited liability company, collective investment
3 trust, or other legal structure of the alternative investment.

4 "Investment management agreement" means a contract to
5 manage assets of the system.

6 "Limited partner advisory committee" means any limited
7 partner or other advisory committee of an alternative investment
8 vehicle.

9 (d) In response to any public records request pursuant to
10 chapter 92F, the board shall not disclose the following records
11 relating to alternative investments, which shall be kept
12 confidential pursuant to section 92F-13 as records that are
13 protected from disclosure pursuant to state or federal law:

14 (1) Private placement memoranda;

15 (2) Fund agreements and related documents (including,
16 without limitation, subscription agreements,
17 management agreements, side letters, guarantees,
18 credit facility agreements, participation agreements
19 and trust documents);

20 (3) Confidential presentations or recommendations made to
21 the system;



- 1 (4) Due diligence memoranda and other due diligence
2 materials (including due diligence questionnaires);
- 3 (5) Documents containing information on any portfolio
4 company, real property, or any other assets held by
5 the alternative investment vehicle;
- 6 (6) Financial statements and other documents containing
7 financial information of a fund, or its general
8 partner or manager, whether audited or unaudited,
9 including but not limited to statements or information
10 related to:
- 11 (A) Income statements;
- 12 (B) Balance sheets;
- 13 (C) Cash flows;
- 14 (D) Capital accounts;
- 15 (E) Investment rate-of-returns to include Internal
16 Rate of Returns and Time Weighted rate of
17 returns;
- 18 (F) Cash or in-kind distributions;
- 19 (G) Carried interests;
- 20 (H) Management and other fees; and
- 21 (I) Return multiples;



- 1 (7) Confidential correspondence between an alternative
- 2 investment vehicle, or its general partner, manager,
- 3 advisor or limited partner advisory committee, and the
- 4 system;
- 5 (8) Capital call and distribution notices;
- 6 (9) Limited partner advisory committee and limited partner
- 7 meeting notices, minutes and materials (including
- 8 without limitation any materials distributed at such
- 9 meetings);
- 10 (10) Investment management agreements; and
- 11 (11) Placement agent disclosures and similar documents."

12 SECTION 3. New statutory material is underscored.

13 SECTION 4. This Act shall take effect on July 1, 2020.



Report Title:

Employees' Retirement System; Investment Records

Description:

Exempts certain specific types of alternative investment fund information from disclosure under chapter 92F, the disclosure of which would put the system at a competitive disadvantage and frustrate its legitimate government function. Effective 7/1/20.
(SD1)

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