

DAVID Y. IGE  
GOVERNOR



THOMAS WILLIAMS  
EXECUTIVE DIRECTOR

KANOE MARGOL  
DEPUTY EXECUTIVE DIRECTOR

**STATE OF HAWAII  
EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS  
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM  
STATE OF HAWAII

TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
AND  
THE SENATE COMMITTEE LABOR, CULTURE AND THE ARTS  
ON

SENATE BILL NO. 2869

**February 11, 2020  
2:51 P.M.  
Conference Room 225**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS

Chairs Thielen and Taniguchi, Vice Chairs Inouye and Ihara, and Members of the Committees,

S.B. 2869 identifies certain specific types of alternative investment fund information, the disclosure of which would likely put the Employees' Retirement System ("ERS") at a competitive disadvantage, and therefore exempts such categories of information from disclosure under chapter 92F, Hawaii Revised Statutes (HRS), consistent with market best practices. With ERS's \$14 billion unfunded liability and its 55% funded ratio, ERS's assets must be protected and its ability to be competitive in alternative private markets should not be impaired. The ERS Board of Trustees strongly supports this legislation.

This bill amends section 88-103 to exempt certain specific types of alternative investment fund information from disclosure under chapter 92F. This is in order to enable the ERS to efficiently maintain the confidentiality of information relating to alternative investments such as investments in private equity, private credit and private real estate funds, consistent with competitive investment market best practices. This will help ensure that the system will not be disadvantaged as a competitive investor due to the public records disclosure requirements of chapter 92F, HRS.



Employees' Retirement System  
of the State of Hawaii

In order to address the system's unfunded liability and other financial needs, the system, as a prudent investor, engages in diversified investment, including high-yield private alternative investment funds. Due diligence into such investments requires that the system invest time and money for detailed proprietary and confidential information regarding the projected performance of each fund. If the system is required to disclose such confidential information, the system is disadvantaged as a competitive investor. Competing investors would be able to acquire, at no cost, the system's investment intelligence, resulting in oversubscription of the system's best investments, reducing the system's access. Further, if the system is required to disclose confidential information which the investment funds require to be kept confidential, some high-performing funds will be deterred from allowing the system to invest with them. In order to manage such risks, the system currently expends significant resources and efforts in responding to requests for such confidential information.

This S.B. 2869 identifies certain specific types of alternative investment fund information the disclosure of which would likely put the system at a competitive disadvantage, and therefore categorically exempts such categories of information from disclosure under chapter 92F, consistent with market best practices. A byproduct is that investment staff will be allowed to focus its attention on ERS high value investment activities as opposed to information gathering and disclosure to commercial entities.

The ERS Board of Trustees is in strong support of S.B. 2869.

Thank you for this opportunity to testify.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

Office: (808) 531-4000  
Fax: (808) 380-3580  
info@civilbeatlawcenter.org

Senate Committee on Government Operations  
Honorable Laura H. Thielen, Chair  
Honorable Lorraine R. Inouye, Vice Chair

Senate Committee on Labor, Culture and the Arts  
Honorable Brian T. Taniguchi, Chair  
Honorable Les Ihara, Vice Chair

**RE: Testimony Opposing S.B. 2869,  
Relating to Employees' Retirement System Investments**  
Hearing: February 11, 2020 at 2:51 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to **oppose S.B. 2869 as currently worded to exempt everything that the Employees' Retirement System does from public disclosure.**

This bill seeks to exempt from the public records law "information or records that are related to the legitimate government function of managing and investing the funds of [ERS]." *Managing and investing funds is the definition of ERS's function.* Thus, this bill proposes to eliminate all public scrutiny of a State entity that has a \$13.41 billion unfunded liability, which is expected to persist for at least two decades. Dave Segal, *Hawaii State Pension Fund Begins Fiscal Year with a Gain*, Honolulu Star-Advertiser (Nov. 13, 2019).

The public records law already provides an exception from disclosure for confidential business information. The standard for confidential business information considers whether disclosure will "(1) impair the government's future ability to obtain necessary information; or (2) substantially harm the competitive position of the person who provided the information." *E.g.*, OIP Op. No. 17-02 at 7-13. *It is unclear why ERS needs the proposed confidentiality provision in light of the existing protection for confidential business information.* The Law Center is not aware of any OIP decision or court ruling that required disclosure of any of the records identified in the bill.

If the Committee nevertheless will pass the bill, please limit it to specifically identified records, not an open-ended exclusion for information related to ERS managing and investing funds. Subsection (d) should provide: "The following records shall be kept

Senate Committee on Government Operations  
Senate Committee on Labor, Culture and the Arts  
February 11, 2020  
Page 2

confidential pursuant to HRS § 92F-13(4): . . . .” And subsection (e) should be deleted because it simply restates existing law.

Thank you again for the opportunity to provide testimony opposing S.B. 2869.

Statement Before The  
**SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
AND  
SENATE COMMITTEE ON LABOR, CULTURE AND THE ARTS**  
Tuesday, February 11, 2020  
2:51 PM  
State Capitol, Conference Room 225

in consideration of  
**SB 2869**  
**RELATING TO EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS.**

Chairs THIELEN and TANIGUCHI, Vice Chairs INOUYE and IHARA, and Members of the Senate Committees on Government Operations and Labor, Culture and the Arts

Common Cause Hawaii opposes SB 2869, which would exempt certain specific types of alternative investment fund information from disclosure under chapter 92F, Hawaii Revised Statutes, the disclosure of which would put the system at a competitive disadvantage and frustrate its legitimate government function.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening democracy through ethics, accountability, and transparency reforms.

SB 2869 seeks to shield ERS from having to disclose “certain information or records that are related to the legitimate government function of managing and investing the funds of the system . . .” Pages 4-5. ERS’s main function is the managing and investing of funds. ERS is proposing to shield itself, through SB 2869, from public oversight and accountability. It is unclear, if SB 2869 were to pass, whether or not information of ERS’s enormous unfunded liability, which is of tremendous import, could be further publicly investigated. This should not be allowed.

For this reason, Common Cause Hawaii opposes SB 2869. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



Feb. 11, 2020

Sen. Laura Thielen  
Sen. Brian Taniguchi  
Committees on Government Operations and  
Labor, Culture and the Arts  
State Capitol  
Honolulu, HI

Re: SB 2869

Chairs Thielen and Taniguchi and Committee Members:

The Hawaii Professional Chapter of the Society of Professional Journalists opposes this measure.

This bill grants a broad exemption from public disclosure of “information or records that are related to the legitimate government function of managing and investing the funds” of the Employees Retirement System. In essence, this is all the information that the occasionally criticized ERS handles.

This is far too broad, and the token bits of information the bill purports to make public are not enough and are the wrong approach.

State law already allows an exception from disclosure for confidential business information if it impairs the government’s future ability to obtain necessary information or substantially harms the competitive position of the person who provided the information.

The bill should specify the types of information that would be shunted from public view, not the opposite way – of saying all this information is closed except for small bits of inconsequential information.

We hope you will shelve this misguided bill that would make it more difficult to look at an agency that needs watching.

Thank you for your time and attention,

Stirling Morita  
Hawaii Chapter SPJ

**SB-2869**

Submitted on: 2/9/2020 8:40:58 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Sherry Pollack	Individual	Oppose	No

Comments:

**SB-2869**

Submitted on: 2/9/2020 10:51:35 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Victoria Anderson	Individual	Oppose	No

Comments:

Please do not pass this bill.





---

183 Pinana St., Kailua, HI 96734 • 808-262-1285 • [info@350Hawaii.org](mailto:info@350Hawaii.org)

To: The Senate Committees on Labor, Culture and the Arts;  
and Government Operations  
From: Brodie Lockard, Founder, 350Hawaii.org  
Date: Tuesday, February 11, 2020, 2:51 pm

**In opposition to SB 2869**

Dear Chairs Taniguchi and Thielen, and members:

350Hawaii.org opposes SB 2869.

350Hawaii.org led the successful campaign to divest UH from fossil fuels in 2015. The UH Regents voted unanimously to remove all fossil fuel investments from UH's \$66 million Legacy Fund. The Board of Regents cited both “a moral and leadership rationale” and “a long term economic argument” for its decision. [<https://350hawaii.org/?p=274>]

Divestment is financially wise in the long term, because carbon-restrictive legislation will eventually lower the value of fossil fuel companies greatly.

Divestment can also be an effective tool against the Climate Crisis. It weakens the social legitimacy of fossil fuel companies by showing the public, and investors, that respected, influential institutions disapprove of fossil fuels, and have no faith in the long-term value of companies that deal in them.

One significant obstacle we faced was uncovering how much of the Fund was in fossil fuel investments. We later approached ERS about divesting from fossil fuels, and met the same obstacle.

In the case of ERS, this information should be subject to full disclosure. This bill tries to exempt "any other assets held by" a "limited partnership, limited liability company, collective investment trust, or other legal structure of the alternative investment" from full disclosure. It would hinder any future divestment efforts aimed at ERS's billions.

This money is for the secure retirement of 135,000 state employees [<http://ers.ehawaii.gov/>]. How it is invested should be public information, not subject to secrecy at the convenience of ERS trustees and their fund managers.

Please defeat this attempt to hide ERS investment information.

Brodie Lockard  
Founder, 350Hawaii.org

**SB-2869**

Submitted on: 2/10/2020 8:20:59 AM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nanea Lo	Individual	Oppose	No

Comments:

Hello,

My name is Nanea Lo. I am a lifelong resident of Hawai'i on O'ahu. I am writing in to say I oppose this bill.

me ke aloha 'Ä• ina,

Nanea Lo

**SB-2869**

Submitted on: 2/10/2020 2:30:17 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Justin Salisbury	Individual	Oppose	No

Comments:

I echo the testimony provided by 350 Hawaii.

**SB-2869**

Submitted on: 2/11/2020 5:28:16 AM

Testimony for LCA on 2/11/2020 2:51:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Caroline Kunitake	Individual	Oppose	No

Comments:

Dear Chair Thielen, Chair Taniguchi and Members of the Joint Committee on Government Operations and Committee on Labor, Culture and the Arts,

I am writing in opposition to SB2869,

[350Hawaii.org](http://350hawaii.org) led the successful campaign to divest UH from fossil fuels in 2015. The UH Regents voted unanimously to remove all fossil fuel investments from UH's \$66 million Legacy Fund. The Board of Regents cited both "a moral and leadership rationale" and "a long term economic argument" for its decision.

[\[https://350hawaii.org/?p=274\]](https://350hawaii.org/?p=274)

Divestment is financially wise in the long term, because carbon-restrictive legislation will eventually lower the value of fossil fuel companies greatly.

Divestment can also be an effective tool against the Climate Crisis. It weakens the social legitimacy of fossil fuel companies by showing the public, and investors, that respected, influential institutions disapprove of fossil fuels, and have no faith in the long-term value of companies that deal in them.

One significant obstacle we faced was uncovering how much of the Fund was in fossil fuel investments. We later approached ERS about divesting from fossil fuels, and met the same obstacle.

In the case of ERS, this information should be subject to full disclosure. This bill tries to exempt "any other assets held by" a "limited partnership, limited liability company, collective investment trust, or other legal structure of the alternative investment" from full disclosure. It would hinder any future divestment efforts aimed at ERS's billions.

This money is for the secure retirement of 135,000 state employees [\[http://ers.ehawaii.gov/\]](http://ers.ehawaii.gov/). How it is invested should be public information, not subject to secrecy at the convenience of ERS trustees and their fund managers.

Please defeat this attempt to hide ERS investment information.

Mahalo,

Caroline Kunitake

**SB-2869**

Submitted on: 2/11/2020 8:29:16 AM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Peg Sullivan-Miller	Individual	Oppose	No

Comments:

Alternative Investment Information for Retirements should be open to the light of day. It is important that we know how and where investments are being made. The word, "alternative", in my mind, means being responsive to folks. Having a disadvantage over open information a moot point. If the investments are on the up and up, what is there to hide?

**SB-2869**

Submitted on: 2/11/2020 3:11:06 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Noel Morin	Individual	Oppose	No

Comments:

Dear Chairs Taniguchi and Thielen, and members:

I oppose SB 2869.

Details about how ERS money is invested must be public information. State employees deserve transparency and visibility into how their retirement funds are invested. They need awareness of their investment holdings so that there can be accountability and trust.

Please defeat this SB2869.

Sincerely,

Noel Morin

**SB-2869**

Submitted on: 2/11/2020 4:39:21 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mark A. Koppel	Individual	Oppose	No

Comments:

There should be no exemptions for some types of alternative funds.

Mahalo



**SB-2869**

Submitted on: 2/11/2020 5:00:58 PM

Testimony for LCA on 2/11/2020 2:51:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nathan A Sparks	Individual	Oppose	No

Comments:

To: The Senate Committees on Labor, Culture and the Arts;  
and Government Operations

From: **Nathan Sparks**

Date: Tuesday, February 11, 2020, 2:51 pm

**In opposition to SB 2869**

Dear Chairs Taniguchi and Thielen, and members:

I oppose SB 2869.

350Hawaii.org led the successful campaign to divest UH from fossil fuels in 2015. The UH Regents voted unanimously to remove all fossil fuel investments from UH's \$66 million Legacy Fund. The Board of Regents cited both "a moral and leadership rationale" and "a long term economic argument" for its decision.

[<https://350hawaii.org/?p=274>]

Divestment is financially wise in the long term, because carbon-restrictive legislation will eventually lower the value of fossil fuel companies greatly.

Divestment can also be an effective tool against the Climate Crisis. It weakens the social legitimacy of fossil fuel companies by showing the public, and investors, that respected, influential institutions disapprove of fossil fuels, and have no faith in the long-term value of companies that deal in them.

One significant obstacle we faced was uncovering how much of the Fund was in fossil fuel investments. We later approached ERS about divesting from fossil fuels, and met the same obstacle.

In the case of ERS, this information should be subject to full disclosure. This bill tries to exempt "any other assets held by" a "limited partnership, limited liability company, collective investment trust, or other legal structure of the alternative investment" from full disclosure. It would hinder any future divestment efforts aimed at ERS's billions.

This money is for the secure retirement of 135,000 state employees [<http://ers.ehawaii.gov/>]. How it is invested should be public information, not subject to secrecy at the convenience of ERS trustees and their fund managers.

Please defeat this attempt to hide ERS investment information.

**Nathan Sparks**