

STAND. COM. REP. NO.

480

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 1084
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Labor, Culture and the Arts, to which was referred S.B. No. 1084 entitled:

"A BILL FOR AN ACT RELATING TO EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS,"

begs leave to report as follows:

The purpose and intent of this measure is to amend section 88-103, Hawaii Revised Statutes, to exempt the Employees' Retirement System (ERS) from disclosing certain types of alternative investment fund information, the disclosure of which would likely put the ERS at a competitive disadvantage, pursuant to the Uniform Information Practices Act (Modified), codified at chapter 92F, Hawaii Revised Statutes (UIPA).

Your Committee received testimony in support of this measure from the ERS. Your Committee received testimony in opposition to this measure from The Civil Beat Law Center for the Public Interest and UNITE HERE Local 5. Your Committee received comments on this measure from the Office of Information Practices.

Your Committee finds that the ERS engages in diversified investment, including high-yield private alternative investment funds, to address its \$14.6 million unfunded liability and other financial needs. Due diligence into such investments requires the ERS to invest time and money in acquiring and analyzing detailed proprietary and confidential information regarding the projected



performance of each fund. Under current law, information held by the ERS pertaining to such proprietary or confidential information is not explicitly exempted from disclosure under the UIPA. However, public disclosure of such proprietary and confidential information will put the ERS at a disadvantaged as a competitive investor, since competing investors could acquire ERS's investment intelligence at no cost and invest in the ERS's best investments. This may cause an oversubscription of such investments and thereby hinder the ERS from investing in them. Your Committee further finds that based on the potential risk of the ERS disclosing or being required to disclose proprietary and confidential information pertaining to its portfolio, some high-performing funds have been deterred from allowing the ERS to invest with them.

Your Committee notes that S.B. No. 2869, S.D. 1 (Regular Session of 2020), is a substantially similar measure that exempted the ERS from disclosing certain types of alternative investment fund information pursuant to the UIPA. S.B. No. 2869 drew concern that the language of the exemption was written loosely enough for the ERS to assert in the future that the exemption applied not only to the information listed in the measure, but also to any records relating to the management and investment of ERS funds. Your Committee believes that the language in this measure clarifies that the only information being statutorily exempted from disclosure under the UIPA is information relating to ERS's alternative investments funds and leaves no room for an interpretation that the exemption may apply to records related to the ERS's general management and investment practices.

Your Committee acknowledges the concerns of The Civil Beat Law Center for the Public Interest and its request to revise the language to clarify that information that is currently subject to disclosure under the UIPA and other laws and is not exempted from disclosure under this measure remains subject to disclosure. Your Committee also believes that it is more appropriate to have provisions pertaining to disclosure of information by the ERS in section 88-103.5, Hawaii Revised Statutes, titled "Disclosure of information," rather than section 88-103, titled "Records".

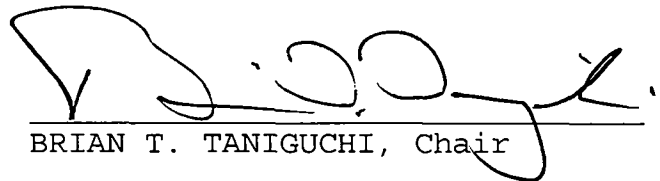


Accordingly, your Committee has amended this measure by:

- (1) Amending section 2 to:
 - (A) Make amendments to section 88-103.5, Hawaii Revised Statutes, instead of section 88-103, Hawaii Revised Statutes; and
 - (B) Clarify that the exemptions from disclosure under this measure are in addition to any other records that may be exempt from disclosure pursuant to other laws;
- (2) Inserting an effective date of July 1, 2050, to encourage further discussion; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Labor, Culture and the Arts that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1084, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1084, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Labor, Culture and
the Arts,



BRIAN T. TANIGUCHI, Chair



