
A BILL FOR AN ACT

RELATING TO THE INNOVATION ECONOMY.

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

1 SECTION 1. The legislature finds that Hawaii's desire for
2 economic growth that benefits all residents depends on building
3 our State's human resources, and in turn, applying these highly
4 skilled resources to the creation and adoption of innovation
5 across its economy.

6 The legislature further finds that economic growth and
7 diversification throughout many communities has been enhanced by
8 the availability of venture capital funding for entrepreneurs
9 engaged in building innovative new ventures. Well-known regions
10 such as Silicon Valley; Route 128 in Boston; Austin, Texas; and
11 the Research Triangle in North Carolina have benefited greatly
12 from the combination of scientific research, an entrepreneurial
13 culture driving high technology growth, and funding availability
14 for early-stage equity investments. Other areas similar in size
15 and population to Hawaii, including San Diego, Salt Lake City,
16 Seattle, and Boulder, have also developed strong technology-
17 based businesses with the assistance of venture capital.



1 The source of this venture capital is derived in large part
2 through employee pension funds. Of the approximately
3 \$25,000,000,000 of venture investment in 2006, over half was
4 provided by pension funds. Many public pension funds target
5 investments in-state to provide enhanced returns to pensioners
6 and support the development of high-growth businesses within
7 local communities.

8 The state employees' retirement system has committed
9 approximately \$300,000,000 to the alternative asset category,
10 including venture capital, but none of it is invested in Hawaii.
11 The legislature finds that this lack of investment in Hawaii
12 venture capital by the employees' retirement system may be due to
13 a lack of large-scale qualified investment opportunities and
14 concerns over the possible breach of fiduciary duty and prudent
15 investor rules related to early-stage investing. Some
16 jurisdictions such as Arkansas and Michigan encourage local
17 investment by pension funds by relieving fiduciaries of
18 liability for investing in local venture capital. Others, such
19 as the state of Oregon, have legislated investment by the public
20 pension fund in local venture capital where prudent.



1 PART I

2 SECTION 2. The purpose of this part is to encourage the
3 employees' retirement system to invest in Hawaii venture capital.

4 SECTION 3. Section 88-119, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§88-119 Investments.** Investments may be made in:

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

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

15 (B) Obligations secured by mortgages insured by the
16 Federal Housing Administration;

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

20 (D) Other obligations secured by first mortgages on
21 unencumbered improved real estate owned in fee
22 simple; provided that the amount of the



1 obligation at the time investment is made therein
2 shall not exceed eighty per cent of the value of
3 the real estate and improvements mortgaged to
4 secure it, and except that the amount of the
5 obligation at the time investment is made therein
6 may exceed eighty per cent but no more than
7 ninety per cent of the value of the real estate
8 and improvements mortgaged to secure it; provided
9 further that the obligation is insured or
10 guaranteed against default or loss under a
11 mortgage insurance policy issued by a casualty
12 insurance company licensed to do business in the
13 [~~State.~~] state. The coverage provided by the
14 insurer shall be sufficient to reduce the
15 system's exposure to not more than eighty per
16 cent of the value of the real estate and
17 improvements mortgaged to secure it. The
18 insurance coverage shall remain in force until
19 the principal amount of the obligation is reduced
20 to eighty per cent of the market value of the
21 real estate and improvements mortgaged to secure
22 it, at which time the coverage shall be subject



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

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

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

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



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.~~] state. The coverage provided by the
8 insurer shall be sufficient to reduce the
9 system's exposure to not more than eighty per
10 cent of the value of the leasehold interest and
11 improvements mortgaged to secure it. The
12 insurance coverage shall remain in force until
13 the principal amount of the obligation is reduced
14 to eighty per cent of the market value of the
15 leasehold interest and improvements mortgaged to
16 secure it, at which time the coverage shall be
17 subject to cancellation solely at the option of
18 the board;

19 (F) Obligations for the repayment of home loans
20 guaranteed by the department of Hawaiian home
21 lands pursuant to section 214(b) of the Hawaiian
22 Homes Commission Act, 1920; and



1 (G) Obligations secured by second mortgages on
2 improved real estate for which the mortgagor
3 procures a second mortgage on the improved real
4 estate for the purpose of acquiring the
5 leaseholder's fee simple interest in the improved
6 real estate; provided that any prior mortgage
7 [~~does~~] shall not contain provisions that might
8 jeopardize the security position of the
9 retirement system or the borrower's ability to
10 repay the mortgage loan.

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



1 governor for additional periods not exceeding one year
2 each;

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

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

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

21 (C) Obligations issued or guaranteed by any federal
22 home loan bank, including consolidated federal



1 home loan bank obligations, the Home Owner's Loan
2 Corporation, the Federal National Mortgage
3 Association, or the Small Business
4 Administration;

5 (3) Corporate obligations. Below investment grade or
6 nonrated debt instruments, foreign or domestic, in
7 accordance with investment guidelines adopted by the
8 board;

9 (4) Preferred and common stocks. Shares of preferred or
10 common stock of any corporation created or existing
11 under the laws of the United States or of any state or
12 district thereof or of any country;

13 (5) Obligations eligible by law for purchase in the open
14 market by federal reserve banks;

15 (6) Obligations issued or guaranteed by the International
16 Bank for Reconstruction and Development, the
17 Inter-American Development Bank, the Asian Development
18 Bank, or the African Development Bank;

19 (7) Obligations secured by collateral consisting of any of
20 the securities or stock listed above and worth at the
21 time the investment is made at least fifteen per cent
22 more than the amount of the respective obligations;



- 1 (8) Insurance company obligations. Contracts and
2 agreements supplemental thereto providing for
3 participation in one or more accounts of a life
4 insurance company authorized to do business in Hawaii,
5 including its separate accounts, and whether the
6 investments allocated thereto are comprised of stocks
7 or other securities or of real or personal property or
8 interests therein;
- 9 (9) Interests in real property. Interests in improved or
10 productive real property in which, in the informed
11 opinion of the board, it is prudent to invest funds of
12 the system. For purposes of this paragraph, "real
13 property" includes any property treated as real
14 property either by local law or for federal income tax
15 purposes. Investments in improved or productive real
16 property may be made directly or through pooled funds,
17 including common or collective trust funds of banks
18 and trust companies, group or unit trusts, limited
19 partnerships, limited liability companies, investment
20 trusts, title-holding corporations recognized under
21 section 501(c) of the Internal Revenue Code of 1986,
22 as amended, similar entities that would protect the



1 system's interest, and other pooled funds invested on
2 behalf of the system by investment managers retained
3 by the system;

4 (10) Other securities and futures contracts. Securities
5 and futures contracts in which in the informed opinion
6 of the board, it is prudent to invest funds of the
7 system, including currency, interest rate, bond, and
8 stock index futures contracts and options on the
9 contracts to hedge against anticipated changes in
10 currencies, interest rates, and bond and stock prices
11 that might otherwise have an adverse effect upon the
12 value of the system's securities portfolios; covered
13 put and call options on securities; and stock; whether
14 or not the securities, stock, futures contracts, or
15 options on futures are expressly authorized by or
16 qualify under the foregoing paragraphs, and
17 notwithstanding any limitation of any of the foregoing
18 paragraphs (including paragraph (4)); and

19 (11) Private placements. Investments in institutional
20 blind pool limited partnerships, limited liability
21 companies, or direct investments that make private
22 debt and equity investments in privately held



1 companies, including but not limited to investments in
2 Hawaii high technology businesses or venture capital
3 investments that, in the informed opinion of the
4 board, are appropriate to invest funds of the
5 system[-]; provided that:

6 (A) By January 1, 2009, and to the extent that it is
7 prudent to so do, the board shall develop
8 criteria to ensure that in considering any
9 investment in an out-of-state private placement,
10 it shall determine whether there is available,
11 and instead invest in any Hawaii private
12 placement that is of equal or lesser risk and
13 equal or greater return;

14 (B) In evaluating venture capital investments, the
15 board shall consider, among other things, the
16 impact an investment may have on job creation in
17 Hawaii and on the state economy[-];

18 (C) In selecting its investment manager, the board
19 shall require the manager to consider Hawaii
20 venture capital investments, which may include
21 having the investment manager establish a
22 physical presence in the state; and



1 The purpose of this part is to enhance the ability of the
2 office of technology transfer and economic development to
3 increase commercialization of University of Hawaii discoveries
4 by providing funds to fund a partnership with a qualified and
5 experienced private sector entity to work with the office of
6 technology transfer and economic development. This partnership
7 will provide the University of Hawaii with resources and
8 expertise to increase the number of discoveries disclosed and
9 the number of partnerships and arrangements to commercialize
10 those discoveries. The department of business, economic
11 development, and tourism, the private sector partner, and the
12 University of Hawaii shall contribute to this commercialization
13 joint venture; and the private sector partner and the University
14 of Hawaii shall share in the return of their efforts.

15 SECTION 5. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$, or so
17 much thereof as may be necessary for fiscal year 2007-2008, and
18 the same sum, or so much thereof as may be necessary for fiscal
19 year 2008-2009, for the public-private university research
20 commercialization partnership.



Report Title:

Innovation Economy; Employees' Retirement System; University of Hawaii

Description:

Requires the Employees' Retirement System, by January 1, 2009, to develop criteria to ensure that it gives preference to Hawaii venture capital investments of equal or lesser risk and equal or greater return to out-of-state investments and caps these investments at three percent of system funds. Appropriates funds to the University of Hawaii Office of Technology Transfer and Economic Development to enter into a partnership with a private sector entity. Effective July 1, 2020. (SB1365 HD3)

