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**STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM**

TESTIMONY BY THOMAS WILLIAMS
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STATE OF HAWAII

TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON

HOUSE BILL NO. 2313

**February 6, 2020
9:20 A.M.
Conference Room 309**

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS

Chair Johanson, Vice Chair Eli, and Members of the Committee,

H.B. 2313 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 the Uniform Information Practices Act (Modified) 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 the 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 while still providing complete aggregate information. This is to enable the ERS to efficiently maintain the confidentiality of information relating to alternative investments such as investments in



Employees' Retirement System
of the State of Hawaii

private equity, private credit and private real estate funds, consistent with competitive investment market best practices. H.B. 2313 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.

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 H.B. 2313 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, preparation, and disclosure to commercial entities.

The ERS Board of Trustees is in strong support of H.B. 1213.

Thank you for this opportunity to testify.

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House Committee on Labor & Public Employment
Honorable Aaron Ling Johanson, Chair
Honorable Stacelynn K.M. Eli, Vice Chair

**RE: Testimony Opposing H.B. 2313,
Relating to Employees' Retirement System**
Hearing: February 6, 2020 at 9:20 a.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 H.B. 2313 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 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 H.B. 2313.

Late Testimonies

Statement Before The
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Thursday, February 6, 2020
9:20 AM
State Capitol, Conference Room 309

in consideration of
HB 2313
RELATING TO THE STATE ETHICS CODE.

Chair JOHANSON, Vice Chair ELI, and Members of the House Labor & Public Employment Committee

Common Cause Hawaii opposes HB 2313, 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.

HB 2313 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 HB 2313, from public oversight and accountability. It is unclear, if HB 2313 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 HB 2313. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii