



GOV. MSG. NO. 1173

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 24, 2021

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 24, 2021, the following bill was signed into law:

HB0930 HD1 SD2 CD1

RELATING TO EMPLOYEES' RETIREMENT
SYSTEM INVESTMENTS
ACT 071 (21)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

Approved by the Governor

ORIGINAL

on JUN 24 2021

HOUSE OF REPRESENTATIVES
THIRTY-FIRST LEGISLATURE, 2021
STATE OF HAWAII

ACT 071

H.B. NO.

930
H.D. 1
S.D. 2
C.D. 1

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 To address the system's unfunded liability and other
12 financial needs, the system, as a prudent investor, engages in
13 diversified investment, including high-yield private alternative
14 investment funds. Due diligence into such investments requires
15 the system to invest time and money to acquire and analyze
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, to the
6 extent that the system has disclosed or may be required to
7 disclose information that the investment funds require to be
8 kept confidential, some high-performing funds have been deterred
9 from allowing the system to invest with them. To manage these
10 risks, the system currently expends significant efforts in
11 responding to requests 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: the name of asset or strategy; rate of
17 return for the month, three months, fiscal year-to-date,
18 calendar year-to-date, one year, three years, five years, and
19 inception to date; and inception date. The system further
20 publishes in its monthly statement of investments, private
21 equity fund data on: the name of fund; commitments;



1 contributions; market value; strategy; and vintage year or year
2 started.

3 This Act identifies certain types of alternative investment
4 fund information, the disclosure of which would likely put the
5 system at a competitive disadvantage, and categorically exempts
6 those categories of information from disclosure under
7 chapter 92F, Hawaii Revised Statutes, consistent with market
8 best practices.

9 SECTION 2. Section 88-103.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§88-103.5 Disclosure of information.** (a) The employees'
12 retirement system shall:

13 (1) Disclose to the Hawaii employer-union health benefits
14 trust fund and employee organizations information
15 related to the administration of pension, annuity, or
16 retirement allowance deductions, as follows: name,
17 social security number, and amounts and dates of both
18 voluntary and mandatory deductions remitted to the
19 recipient; and

20 (2) Release the records of its retirants and beneficiaries
21 to the Hawaii employer-union health benefits trust



1 fund for the disbursement of payments authorized under
2 section 87A-23.

3 (b) Any government agency or employee organization
4 receiving government records pursuant to this section shall be
5 subject to the same restrictions on disclosure of the records as
6 the originating agency.

7 (c) The following documents relating to the system's
8 alternative investments shall be exempt from disclosure under
9 chapter 92F:

- 10 (1) Private placement memoranda;
11 (2) Fund agreements and related documents, including
12 subscription agreements, management agreements, side
13 letters, guarantees, credit facility agreements,
14 participation agreements, and trust documents;
15 (3) Confidential presentations or recommendations made to
16 the system;
17 (4) Due diligence memoranda and other due diligence
18 materials, including due diligence questionnaires;
19 (5) Documents containing information on any portfolio
20 company, real property, or any other assets held by an
21 alternative investment vehicle;



- 1 (6) Financial statements and other documents containing
2 financial information of a fund or its general partner
3 or manager, whether audited or unaudited, including
4 but not limited to statements or information related
5 to:
- 6 (A) Income statements;
7 (B) Balance sheets;
8 (C) Cash flows;
9 (D) Capital accounts;
10 (E) Investment rate-of-returns, including internal
11 rate of returns and time-weighted rate of
12 returns;
- 13 (F) Cash or in-kind distributions;
14 (G) Carried interests;
15 (H) Management and other fees; and
16 (I) Return multiples;
- 17 (7) Confidential correspondences between an alternative
18 investment vehicle or its general partner, manager,
19 advisor, or limited partner advisory committee, and
20 the system;
- 21 (8) Capital call and distribution notices;



1 (9) Limited partner advisory committee and limited partner
2 meeting notices, minutes, and materials, including
3 without limitation any materials distributed at those
4 meetings;

5 (10) Investment management agreements; and

6 (11) Placement agent disclosures and similar documents.

7 (d) The exemptions from disclosure under chapter 92F set
8 forth in subsection (c) are in addition to any other records
9 that may be exempt from disclosure pursuant to chapter 92F or
10 any other law.

11 (e) As used in this section:

12 "Alternative investment" means an actual or proposed
13 investment by the system in a private equity fund, venture fund,
14 hedge fund, fund of funds, absolute return fund, real estate
15 fund, infrastructure fund, private credit, or other similar
16 private market investments.

17 "Alternative investment vehicle" means the limited
18 partnership, limited liability company, collective investment
19 trust, or other legal structure of the alternative investment.

20 "Investment management agreement" means a contract to
21 manage assets of the system.



1 "Limited partner advisory committee" means any limited
2 partner or other advisory committee of an alternative investment
3 vehicle."

4 SECTION 3. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

APPROVED this 24 day of JUN , 2021

David Y. Ige

GOVERNOR OF THE STATE OF HAWAII



HB No. 930, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2021
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2021.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: April 27, 2021
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate
of the Thirty-First Legislature of the State of Hawai‘i, Regular Session of 2021.


President of the Senate


Clerk of the Senate