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

# H.B. NO. 557

# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

SECTION 1. The legislature finds that there is increasing concern in Hawaii and worldwide about risks from fossil fuel emissions and the climate crisis. At the 2015 United Nations Climate Change Conference in Paris, France, the participating nations agreed that climate change presents a palpable danger that must be addressed and actions are necessary to keep the increase in global average temperature within 3.6 degrees Fahrenheit (two degrees Celsius) and within 2.7 degrees Fahrenheit (1.5 degrees Celsius) if possible over the pre-industrial average temperature. Failing to do so presents grave, existential risks to humanity, agriculture, and biodiversity on a global scale.

The International Energy Agency projects that, given the current rates of carbon emissions, temperature rise by 2050 will be approximately twice the agreed—upon 3.6 degrees Fahrenheit limit, resulting in catastrophic changes in the earth's climate, weather patterns, marine and terrestrial ecosystems, and the ability to grow food. The legislature finds that the risks to the Hawaiian islands is perhaps even greater: Hawaii is exposed to severe storms and is currently unprepared to grow food locally to support its population.

The legislature also finds that, given the severely adverse impacts of climate change, the State has a responsibility to take steps to avert and mitigate the climate crisis. Furthermore, the threat of climate change and transformation of the global energy system to mitigate the climate crisis will have a serious negative impact on investors whose assets are not aligned with fossil fuel reduction strategies. The legislature notes that several pension and other funds in states and nations, such as the United Kingdom's National Employment Savings Trust; Norwegian Sovereign Wealth Fund; Universities of California, Hawaii, Cambridge, and Oxford; and twelve major cities including New York and London with fund assets around $300,000,000,000, have moved to divest their investments in fossil fuel companies. Most recently, one of Sweden's pension funds with $43,000,000,000 in assets and the New York State Common Retirement Fund with $226,000,000,000 in assets announced they would divest in fossil fuel companies. Overall, more than

1,300 institutions representing more than $14 trillion in assets have pledged to fully or partially divest from fossil fuels in the last decade. For the past decade, even before the coronavirus pandemic, fossil fuel investments underperformed the broader market. Experts estimate that demand for fossil fuels is likely to peak in the next decade but despite this, the majority of fossil fuel producers still invest billions of dollars in exploring and extracting new reserves, thereby creating stranded asset risk and the potential for rapid, unexpected, and significant loss of value.

However, the legislature notes that the tide is shifting. All six major United States banks have said no to Arctic drilling and, in 2021, major oil and gas companies would not bid on leases for reserves in the Arctic.

The legislature additionally finds that continued investment in fossil fuel producers poses unacceptable risk to the long-term sustainability of the public fund. Furthermore, attempting to beat the market by holding these investments until the last possible moment is a high-risk strategy that could result in the loss of investment principal. According to the Decarbonization Advisory Panel for the New York State Common

Retirement Fund, being too early in the avoidance of the risk of permanent loss is much less of a danger than being too late.

Given these trends, the employees' retirement system should protect the public fund in the long term by re-evaluating its investments in coal, oil, natural gas, oil and gas services, and pipeline companies; divesting as soon as appropriate; and in the future, avoiding potential investments in these companies.

The legislature is bound by a fiduciary responsibility over the pension fund, which includes a duty to future and current beneficiaries. It is therefore incumbent upon the legislature as fiduciary to concern itself with how the public fund rebalances its investments to meet its financial performance targets, favoring the long-term sustainability of the fund over short—term gains. Even if fossil fuel investments were to produce acceptable returns in the near term, they present undue long—term risk that compels employees' retirement system trustee action on behalf of future beneficiaries. Attempting to profit from investments in companies whose business models, public relations campaigns, and lobbying efforts fail to comply with Hawaii's statutory climate goals and put the stability of community and safety of citizens at risk, is neither morally acceptable nor in compliance with the legislature's fiduciary responsibility to current and future pension beneficiaries.

The legislature further finds that divesting fossil fuel investments is consistent with the State's movement to one hundred per cent renewable energy resources and the safety and economic prosperity of Hawaii. The world's top climate scientists indicate that Hawaii has about a ten-year window to make rapid reductions in carbon-pollution-causing global warming to keep the warming under three degrees Fahrenheit. Failure to do so will severely destabilize the global climate, leading to extreme storms, droughts, floods, and sea level rise. Gradual divestment over the next five years is financially prudent, morally imperative, and responsible policy.

The purpose of the Act is to protect the funds of the employees' retirement system fund from financial risks by requiring the employees' retirement system to reevaluate all of its existing, and any future, investments in coal, oil, natural gas, oil and natural gas services, and pipeline companies.

SECTION 2. Definitions. As used in this Act, the following definitions shall apply:

"Coal, oil, natural gas, oil or natural gas services, and pipeline companies" means companies identified by a Global Industry Classification Standard code in one or more of the following sub-industry sectors:

(1) Coal and consumable fuels;

(2) Oil and gas drilling;

(3) Oil and gas equipment and services;

(4) Integrated oil and gas;

(5) Oil and gas exploration and production;

(6) Oil and gas refining and marketing; and

(7) Oil and gas storage and transportation.

"Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly—owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of these entities or business associations, that exist for profit—making purposes.

"Direct holdings" means all securities of a company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

"Indirect holdings" means all securities of a company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to this Act.

"Public fund" means the employees' retirement system of the State or the board of trustees in charge of the employees' retirement system.

SECTION 3. Identification of companies. (a) By January 1, 2022, the public fund shall make its best efforts to prepare a list of all coal, oil, natural gas, oil or natural gas services, and pipeline companies in which the public fund has direct or indirect holdings. Those efforts shall include, as appropriate:

(1) Reviewing publicly available information regarding coal, oil, natural gas, oil or natural gas services, and pipeline companies. In conducting the review, the public fund may rely on information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the public fund that invest in coal, oil, natural gas, oil or natural gas services, and pipeline companies; and

(3) Contacting other institutional investors that have divested from coal, oil, natural gas, oil or natural gas services, and pipeline companies.

(b) The public fund shall determine by February 1, 2022, which of the identified coal, oil, natural gas, oil or natural gas services, and pipeline companies in which the public fund has direct holdings have not invested more in clean renewable energy sources, such as photovoltaics and wind power, than in coal, oil, natural gas, oil or natural gas services, and pipelines, or are not set up for favorable long-term investment returns by having clear plans to abandon coal, oil, natural gas, oil or natural gas services, and pipeline investments by 2030.

(c) The public fund shall update the list of all identified coal, oil, natural gas, oil or natural gas services, and pipeline companies and investment levels on a quarterly basis based on evolving information from, among other sources, those listed in subsection (a).

SECTION 4. Required actions. (a) The public fund shall take the following actions in relation to the companies on the list of all identified coal, oil, natural gas, oil or natural gas services, and pipeline companies in which the fund owns direct or indirect holdings:

(1) The public fund shall, at appropriate times over the next five years, sell, redeem, divest, or withdraw all publicly-traded securities of each company identified in section 3 that have a majority of its holdings invested in fossil fuels or are not set up for favorable long-term investment returns by having clear plans to abandon fossil fuels by 2030, as opposed to keeping publicly-traded securities that have a majority of holdings invested in clean renewable energy sources, such as photovoltaics and wind power;

(2) At no time shall the public fund acquire new assets or securities of companies on the list of all identified coal, oil, natural gas, oil or natural gas services, and pipeline companies ; and

(3) Notwithstanding anything in this Act to the contrary, sections 3(a) and 3(b) shall not apply to indirect

holdings in actively managed investment funds; provided that the public fund shall submit letters to the managers of these investment funds that contain coal, oil, natural gas, oil or natural gas services, and pipeline companies, informing the managers that the public fund intends to divest from coal, oil, natural gas, oil or natural gas services, and pipeline companies within five years and that the managers of these investment funds shall provide an alternative within that time period or the public fund shall divest from the actively managed investment funds.

(b) The public fund shall also conduct a search and evaluation of actively managed investment funds with indirect holdings devoid of coal, oil, natural gas, oil or natural gas services, and pipeline companies.

SECTION 5. Reporting. (a) The public fund shall file a publicly-available report to the legislature that includes the coal, oil, natural gas, oil or natural gas services, and pipeline companies list and investment levels within thirty days after the list is created, but no later than February 1, 2022.

(b) Annually thereafter, the public fund shall file a publicly-available report to the legislature that includes:

(1) All investments sold, redeemed, divested, or withdrawn in compliance with section 4;

(2) All prohibited investments under section 4, with levels of investments; and

(3) Any progress made under section 4.

SECTION 6. Other legal obligations. With respect to actions taken in compliance with this Act, including all good faith determinations regarding companies as required by this Act, the public fund shall be exempt from any conflicting statutory or common law obligations, including any obligations with respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

SECTION 7. This Act shall take effect on July 1, 2021.

INTRODUCED BY: Nicole E. Lowen

JAN 22 2021

# H.B. NO. 557

**Report Title:**
Employees' Retirement System; Investments; Divestment; Renewable Energy Sources

**Description:**
Requires the employees' retirement system to reevaluate its investments in coal, oil, natural gas, oil or natural gas services, and pipeline companies and over the next five years, divest of holdings in any companies that have a majority of its holdings invested in fossil fuels, rather than clean renewable energy sources.

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