

# S.B. NO. 1084

JAN 27 2021

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## 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. This Act is necessary to enable the Employees'  
2 Retirement System of the State of Hawaii (the "system") to  
3 efficiently maintain the confidentiality of information relating  
4 to alternative investments such as investments in private  
5 equity, private credit, and private real estate funds,  
6 consistent with competitive investment market best practices.  
7 This will help ensure that the system will not be disadvantaged  
8 as a competitive investor due to the public records disclosure  
9 requirements of chapter 92F, Hawaii Revised Statutes.

10           In order to address the system's unfunded liability and  
11 other financial needs, the system, as a prudent investor,  
12 engages in diversified investment, including high-yield private  
13 alternative investment funds. Due diligence into such  
14 investments requires that the system invest time and money for  
15 detailed proprietary and confidential information regarding the  
16 projected performance of each fund. If the system is required  
17 to disclose such confidential information, the system is  
18 disadvantaged as a competitive investor. Competing investors

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1 would be able to acquire, at no cost, the system's investment  
2 intelligence, resulting in oversubscription of the system's best  
3 investments, reducing the system's access. Further, to the  
4 extent that the system has disclosed or may be required to  
5 disclose information that the investment funds require to be  
6 kept confidential, some high-performing funds have been deterred  
7 from allowing the system to invest with them. In order to  
8 manage such risks, the system currently expends significant  
9 efforts in responding to requests for such confidential  
10 information.

11 To serve the public interest in monitoring the system's  
12 investment performance, the system already publishes non-  
13 confidential aggregate performance data for the entire system  
14 investment portfolio, in its "Hawaii ERS Quarterly Performance  
15 Report", which includes: (1) name of asset or strategy; (2)  
16 rate of return for the month, 3 months, fiscal year-to-date,  
17 calendar year-to-date, 1, 3, and 5 years, and inception to date;  
18 and (3) inception date. The system further publishes in its  
19 monthly Statement of Investments, private equity fund data on:  
20 (a) name of fund; (b) commitments; (c) contributions; (d) market  
21 value; (e) strategy; and (f) vintage year or year started.

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1           This Act identifies certain specific types of alternative  
2 investment fund information the disclosure of which would likely  
3 put the system at a competitive disadvantage and, therefore,  
4 categorically exempts such categories of information from  
5 disclosure under chapter 92F, consistent with market best  
6 practices.

7           SECTION 2. Section 88-103, Hawaii Revised Statutes, is  
8 amended to read as follows:

9           "**§88-103 Records.** (a) The board of trustees shall keep a  
10 record of all its proceedings which record shall be open to  
11 public inspection. It shall publish annually a report showing  
12 in detail: (1) the fiscal transactions of the system for the  
13 year ending the preceding June 30, (2) the amount of the  
14 accumulated cash and securities of the system, and (3) an  
15 actuarial valuation of the assets and liabilities of the  
16 system. The board shall submit the report to the governor and  
17 shall furnish copies thereof to the heads of the various  
18 departments of the State and county for their use and the use of  
19 the members employed therein.

20           (b) The board shall include in its annual report submitted  
21 prior to January 1 of each odd-numbered year: (1) a comparison  
22 of the investment performance of the system with the investment

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1 performances of the public employees' retirement systems of  
2 other jurisdictions [~~which~~] that have authority to make  
3 investments substantially similar to the investment authorized  
4 under section 88-119, and (2) a comparison of the funded ratio  
5 on June 30 of the preceding year with the funded ratios of the  
6 public employees' retirement systems of other jurisdictions.

7 (c) As used in this section:

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

13 "Alternative investment vehicle" means the limited  
14 partnership, limited liability company, collective investment  
15 trust, or other legal structure of the alternative investment.

16 "Investment management agreement" means a contract to  
17 manage assets of the system.

18 "Limited partner advisory committee" means any limited  
19 partner or other advisory committee of an alternative investment  
20 vehicle.

21 (d) In response to any public records request pursuant to  
22 chapter 92F, or other law, the following documents relating to

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1 alternative investments are categorically exempt from disclosure  
2 under chapter 92F:

3 (1) Private placement memoranda;

4 (2) Fund agreements and related documents (including,

5 without limitation, subscription agreements,

6 management agreements, side letters, guarantees,

7 credit facility agreements, participation agreements,

8 and trust documents);

9 (3) Confidential presentations or recommendations made to

10 the system;

11 (4) Due diligence memoranda and other due diligence

12 materials (including due diligence questionnaires);

13 (5) Documents containing information on any portfolio

14 company, real property, or any other assets held by

15 the alternative investment vehicle;

16 (6) Financial statements and other documents containing

17 financial information of a fund, or its general

18 partner or manager, whether audited or unaudited,

19 including but not limited to statements or information

20 related to:

21 (A) Income statements;

22 (B) Balance sheets;

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- 1            (C) Cash flows;
- 2            (D) Capital accounts;
- 3            (E) Investment rate-of-returns to include internal
- 4            rate of returns and time weighted rate of
- 5            returns;
- 6            (F) Cash or in-kind distributions;
- 7            (G) Carried interests;
- 8            (H) Management and other fees; and
- 9            (I) Return multiples;
- 10          (7) Confidential correspondence between an alternative
- 11          investment vehicle, or its general partner, manager,
- 12          advisor or limited partner advisory committee, and the
- 13          system;
- 14          (8) Capital call and distribution notices;
- 15          (9) Limited partner advisory committee and limited partner
- 16          meeting notices, minutes, and materials (including
- 17          without limitation any materials distributed at such
- 18          meetings);
- 19          (10) Investment management agreements; and
- 20          (11) Placement agent disclosures and similar documents.
- 21          (e) The foregoing categorical exemptions from chapter 92F
- 22          are in addition to any other records that may be exempt from

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1 disclosure as information or records related to the management  
2 or investing of the funds of the system, the release of which  
3 would create a likelihood of substantial competitive harm to the  
4 system or the provider of the information, or impair the ability  
5 of the system to obtain investment opportunities or similar  
6 information in the future, or information or records that are  
7 otherwise exempt from disclosure pursuant to chapter 92F or  
8 other law."

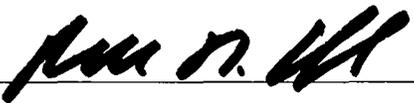
9 SECTION 3. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

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

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INTRODUCED BY:



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BY REQUEST

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**Report Title:**

Employees' Retirement System; Investment Records

**Description:**

Exempts certain specific types of alternative investment fund information from disclosure under chapter 92F, the disclosure of which would put the system at a competitive disadvantage and frustrate its legitimate government investment function.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Budget and Finance

TITLE: A BILL FOR AN ACT RELATING TO EMPLOYEES' RETIREMENT SYSTEM INVESTMENTS

PURPOSE: This bill 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 chapter 92F, Hawaii Revised Statutes (HRS), consistent with market best practices.

MEANS: Amend section 88-103, HRS.

JUSTIFICATION: This bill amends section 88-103 to exempt certain specific types of alternative investment fund information from disclosure under chapter 92F. This is in order to enable the ERS to efficiently maintain the confidentiality of information relating to alternative investments such as investments in private equity, private credit and private real estate funds, consistent with competitive investment market best practices. This 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 disadvantageded 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, because the system may be required to disclose confidential information that the investment funds require to be kept confidential, some high-performing funds have been 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 bill 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 time and attention on ERS high value investment activities as opposed to information gathering, segregation, and disclosure to commercial entities.

Impact on the public: None.

Impact on the department and other agencies: None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BUF-141/Retirement.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval.