

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM.

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

1           SECTION 1. The legislature finds that there is increasing  
2 concern in Hawaii and worldwide about the risks from fossil fuel  
3 emissions and the climate crisis. At the 2015 United Nations  
4 Climate Change Conference in Paris, France, the nations of the  
5 world agreed that climate change presented a palpable danger  
6 that must be addressed and agreed to take all necessary actions  
7 to keep the increase in global average temperature within 3.6  
8 degrees Fahrenheit (two degrees Celsius) and if possible, the  
9 increase in pre-industrial average temperature within 2.7  
10 degrees Fahrenheit (1.5 degrees Celsius). Failure to do so  
11 would present grave, existential risks to humanity, agriculture,  
12 and biodiversity on a global scale.

13           The International Energy Agency projected that, given  
14 current rates of carbon emissions, the temperature rise by 2050  
15 will be approximately twice the agreed-upon 3.6 degree increase,  
16 resulting in catastrophic changes in the Earth's climate,  
17 weather patterns, marine and terrestrial ecosystems, and ability



1 to grow food. The failure of global agriculture within the next  
2 few decades is an especially significant and growing risk.

3 The legislature recognizes that the risks to Hawaii are  
4 perhaps even greater as the State is vulnerable to severe storms  
5 and is currently unprepared to grow food locally to support its  
6 population. Given the severely adverse impact that the climate  
7 crisis will have on the lives of people in Hawaii and around the  
8 planet, the State has a responsibility to take all available  
9 steps to avert and mitigate it.

10 The world's top climate scientists also estimate that there  
11 is only a ten-year window to take any action to rapidly reduce  
12 the carbon pollution that causes global warming. If the  
13 increase in global temperature is not kept under 3.6 degrees  
14 Fahrenheit, the global climate will severely destabilize,  
15 leading to extreme storms, droughts, floods, and sea level rise  
16 that will be increasingly hard for humans to manage. Therefore,  
17 maintaining the status quo in fossil fuel energy production will  
18 lead to catastrophic results.

19 The legislature further finds that even before the  
20 coronavirus disease 2019 pandemic, fossil fuel investments  
21 underperformed the broader market, especially over the last



1 decade. Experts estimate that the demand for fossil fuels is  
2 likely to peak within the next ten years. Despite this, the  
3 majority of fossil fuel producers have not adjusted their  
4 business models to account for the changing energy market,  
5 continuing to invest billions of dollars in exploring and  
6 extracting new reserves.

7 However, the tide is shifting. As the global energy system  
8 transforms to mitigate climate change, there will be a serious  
9 and negative financial impact on investors whose assets are not  
10 aligned with fossil fuel reduction strategies. Over the last  
11 decade, more than 1,300 institutions representing over  
12 \$14,000,000,000,000 in assets have pledged to fully or partially  
13 divest from companies that engage in fossil fuels. More  
14 recently, AP1, one of Sweden's five national pension funds, and  
15 the New York State Common Retirement Fund, one of the largest  
16 and most influential investors in the market, announced that  
17 they would divest from fossil fuels.

18 The legislature further recognizes that in 2020, all six  
19 major U.S. banks refused to finance Arctic drilling projects,  
20 prompting major oil and gas companies to refrain from even  
21 bidding on the leases for the oil and gas reserves in the Arctic



1 earlier this year. Continued investment in fossil fuel  
2 producers poses an unacceptable risk to the long-term  
3 sustainability of public funds.

4 The legislature notes that the University of California  
5 system pledged to remove fossil fuels from its endowment and  
6 pension portfolios last year. Major universities like  
7 Georgetown, Oxford, and Cambridge have divested from coal and  
8 tar sands. Dozens of other educational institutions, like the  
9 University of Hawaii, have divested from oil and gas as well.  
10 Given these trends, the State of Hawaii employees' retirement  
11 system should protect the public fund by reevaluating its  
12 existing investments in coal, oil, natural gas, oil and gas  
13 services, and pipeline companies, divesting when appropriate,  
14 and avoiding potential investments in fossil fuel companies.

15 The State is bound by a fiduciary duty to future as well as  
16 current beneficiaries of the pension fund. It is therefore  
17 incumbent upon the legislature to concern itself with how the  
18 public fund rebalances its investments to meet its financial  
19 performance targets and to favor the long-term sustainability of  
20 the fund over short-term gains. Attempting to profit from  
21 investments in companies whose business models, public relations



1 campaigns, and lobbying efforts not only fail to comply with  
2 Hawaii's statutory climate goals, but also puts the stability of  
3 our society and the safety of our citizens at risk. Even if  
4 fossil fuel investments were to produce acceptable returns in  
5 the near term, they present an undue long-term risk that compels  
6 trustee action on behalf of future beneficiaries. Attempting to  
7 beat the market by holding fossil fuel investments until the  
8 last possible moment is a high-risk strategy that could result  
9 in the loss of investment principal. Continuing to invest in  
10 fossil fuels is neither morally acceptable nor in compliance  
11 with the legislature's fiduciary responsibility to current and  
12 future pension beneficiaries.

13 Divesting fossil fuel investments would be consistent with  
14 the State's movement to one hundred per cent renewable energy  
15 resources and the safety and economic prosperity of our island  
16 state in the face of impending intense storms, food insecurity,  
17 and sea level rise. Gradual divestment over the next five years  
18 would be financially prudent, morally imperative, and  
19 responsible policymaking. The time for careful evaluation of  
20 assets and appropriate divestment is now.



1           Accordingly, the purpose of this Act to protect the State's  
2 employees' retirement system fund from financial risks by  
3 requiring its trustees to:

4           (1) Reevaluate its existing future investments in coal,  
5           oil, natural gas, oil and natural gas services, and  
6           pipeline companies;

7           (2) Divest, at appropriate times over the next five years,  
8           the public fund's holdings in any such companies that  
9           have not invested more in clean renewable energy  
10          sources, such as photovoltaics and wind power, than in  
11          fossil fuels or are not set up for favorable long term  
12          investment returns by having clear plans to abandon  
13          fossil fuels by 2030;

14          (3) Search and evaluate potential future investment funds  
15          with indirect holdings devoid of coal, oil, natural  
16          gas, oil or natural gas services, and pipeline  
17          companies; and

18          (4) Submit annual reports to the legislature.

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



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

- 5 (1) Coal and consumable fuels;
- 6 (2) Oil and gas drilling;
- 7 (3) Oil and gas equipment and services;
- 8 (4) Integrated oil and gas;
- 9 (5) Oil and gas exploration and production;
- 10 (6) Oil and gas refining and marketing; and
- 11 (7) Oil and gas storage and transportation.

12 "Company" means any sole proprietorship, organization,  
13 association, corporation, partnership, joint venture, limited  
14 partnership, limited liability partnership, limited liability  
15 company, or other entity or business association, including all  
16 wholly-owned subsidiaries, majority-owned subsidiaries, parent  
17 companies, or affiliates of such entities or business  
18 associations, that exists for profit-making purposes.

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



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

6 "Public fund" means the employees' retirement system of the  
7 State of Hawaii or the board of trustees of the employees'  
8 retirement system.

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

15 (1) Reviewing publicly available information regarding  
16 coal, oil, natural gas, oil or natural gas services,  
17 and pipeline companies;

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



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

4    In conducting the review, the public fund may rely on  
5    information provided by nonprofit organizations, research firms,  
6    international organizations, and government entities.

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

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



1           SECTION 4. Required actions. (a) The public fund shall,  
2 at appropriate times over the next five years, sell, redeem,  
3 divest, or withdraw all publicly-traded securities of each  
4 company identified in section 3 that have not invested more in  
5 clean renewable energy sources, such as photovoltaics and wind  
6 power, than in fossil fuels or are not set up for favorable long  
7 term investment returns by having clear plans to abandon fossil  
8 fuels by 2030. At no time shall the public fund acquire new  
9 assets or securities of companies on the list. Notwithstanding  
10 anything in this Act to the contrary, subsections 3(a) and 3(b)  
11 shall not apply to indirect holdings in actively managed  
12 investment funds; provided that the public fund shall submit  
13 letters to the managers of such investment funds that contain  
14 coal, oil, natural gas, oil or natural gas services, and  
15 pipeline companies, informing the managers that the public fund  
16 intends to divest from coal, oil, natural gas, oil or natural  
17 gas services, and pipeline companies within five years and  
18 requesting that the managers of such investment funds provide an  
19 alternative within that time period or the public fund shall  
20 divest from said actively managed investment funds.



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

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

10           (b) Annually thereafter, the public fund shall submit a  
11 publicly available report that includes:

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

14           (2) All prohibited investments under section 4 with its  
15           current levels of investments; and

16           (3) Any progress made under section 4,  
17 to the legislature no later than twenty days prior to the  
18 convening of each regular session.

19           SECTION 6. Other legal obligations. With respect to  
20 actions taken in compliance with this Act, including all good  
21 faith determinations regarding companies as required by this



# S.B. NO. 488

1 Act, the public fund shall be exempt from any conflicting  
2 statutory or common law obligations, including any obligations  
3 with respect to choice of asset managers, investment funds, or  
4 investments for the public fund's securities portfolios.

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

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INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Mike Gettman", is written over a horizontal line. The signature is cursive and stylized.



# S.B. NO. 488

**Report Title:**

Company Divestment; Coal; Oil; Gas; Fossil Fuels; Employees' Retirement System

**Description:**

Requires the board of trustees of the Employees' Retirement System to reevaluate its existing future investments in coal, oil, natural gas, oil and natural gas services, and pipeline companies; divest, at appropriate times over the next five years, the public fund's holdings in any such companies that have not invested more in clean renewable energy sources, such as photovoltaics and wind power, than in fossil fuels or are not set up for favorable long term investment returns by having clear plans to abandon fossil fuels by 2030; search and evaluate potential future investment funds with indirect holdings devoid of coal, oil, natural gas, oil or natural gas services, and pipeline companies; and submit annual reports to the legislature.

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