

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO SUSTAINABLE INVESTING.

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

1           SECTION 1. The legislature finds that factors relevant to  
2 environmental, social, and governance (ESG) investing, also  
3 known as sustainable investing, are vital to maximize the safe  
4 viability and performance of public funds. These socially  
5 responsible factors are indicative of the overall performance of  
6 an investment and are also strong indicators of an investment's  
7 long-term value. Public agencies and governments have a duty to  
8 recognize and evaluate these materially relevant factors.

9           The legislature also finds that sustainable investment  
10 practices include factors that contribute to the long-term  
11 health and viability of public investment funds, Hawaii's local  
12 economy, and tax revenues. This calls for the disclosure of  
13 investment fees that are paid to outside managers and other  
14 third-party entities, as well as the net economic income,  
15 including tax dollars and tax deductions, of investments in  
16 Hawaii's economy.





1 "Alternative investment vehicle" means the limited  
2 partnership, limited liability company, or similar legal  
3 structure through which a public investment fund invests in an  
4 alternative investment.

5 "Carried interest" means any share of profits from an  
6 alternative investment vehicle that is distributed to a fund  
7 manager, general partner, or related parties, including  
8 allocations of alternative investment vehicle profits received  
9 by a fund manager in consideration of having waived fees that  
10 fund manager might otherwise have been entitled to receive.

11 "Fund manager" means the general partner, managing manager,  
12 adviser, or other person or entity with primary investment  
13 decision-making authority over an alternative investment vehicle  
14 and related parties of the fund manager.

15 "Operational person" means any operational partner, senior  
16 advisor, or other consultant or employee whose primary activity  
17 for a relevant entity is to provide operational or back office  
18 support to any portfolio company of any alternative investment  
19 vehicle, account, or fund managed by a related person.

20 "Portfolio companies" means individual portfolio  
21 investments made by the alternative investment vehicle.



1 "Principles for Responsible Investment" means a set of six  
2 investment principles supported by the United Nations that offer  
3 actions for incorporating environmental, social, and governance  
4 (ESG) factors into investment practice of which the employees'  
5 retirement system officially became a signatory of on May 13,  
6 2018.

7 "Private capital vehicle" means the limited partnership,  
8 limited liability company, or similar legal structure through  
9 which a public investment fund invests in a private capital and  
10 certain other alternative investments. "Private capital  
11 vehicle" includes private equity, venture capital,  
12 infrastructure and real estate funds, but does not include  
13 liquid assets such as hedge funds or real estate investment  
14 trusts.

15 "Public investment fund" means an entity with management  
16 and oversight or fiduciary responsibility over the endowment  
17 funds of the university of Hawaii, funds of the employees'  
18 retirement system, Hawaii employer-union health benefits trust  
19 fund, Hawaii tobacco prevention and control trust fund, Hawaii  
20 children's trust fund, State of Hawaii endowment fund, or any



1 other endowment, trust, or investment fund established by  
2 statute or maintained by state agencies or offices.

3 "Related party" means:

4 (1) Any related person;

5 (2) Any operational person;

6 (3) Any entity of which more than ten per cent of the  
7 ownership is held directly or indirectly, whether  
8 through other entities or trusts, by a related person  
9 or operational person regardless of whether the  
10 related person or operational person participates in  
11 the carried interest received by the general partner  
12 or the special limited partner; or

13 (4) Any consulting, legal, or other service provider  
14 regularly engaged by portfolio companies of an  
15 alternative investment vehicle, account, or fund  
16 managed by a related person and that also provides  
17 advice or services to any related person or relevant  
18 entity.

19 "Related person" means any current or former employee,  
20 manager, or partner of any relevant entity that is involved in  
21 the investment activities or accounting and valuation functions



1 of the relevant entity or any family member of a current or  
2 former employee, manager, or partner of the relevant entity.

3 "Relevant entity" means the general partner, any separate  
4 carry vehicle, the investor advisor, any of the investment  
5 advisor's parent or subsidiary entities, or any similar entity  
6 related to any other alternative investment vehicle, account, or  
7 fund advised or managed by any current or former related person.

8 "Socially responsible investing" means an investment  
9 strategy that considers factors that may have a material and  
10 relevant financial impact on the safety or performance of an  
11 investment and are complementary to fiduciary duty, financial  
12 factors, and financial accounting, including environmental  
13 impact, social impact, and governance of investment.

14 "Sustainable investing" includes socially responsible  
15 investing but also includes a focus on long-term sustainable  
16 business, investment practices, a three hundred sixty  
17 perspective on economic gains, stakeholder capitalism, fees, and  
18 taxes.

19 § -2 **Socially responsible investing.** (a)

20 Notwithstanding any other law to the contrary, each public  
21 investment fund shall develop, publish, and implement socially



1 responsible investment policies applicable to the management of  
2 all public funds under the public investment fund's control.  
3 Socially responsible investment policies may be incorporated in  
4 existing investment policies developed, published, and  
5 implemented by the public investment fund.

6 (b) A socially responsible investment policy shall include  
7 material, relevant, and decision-useful sustainability factors  
8 to be considered when evaluating investment decisions,  
9 including:

10 (1) Corporate governance and leadership factors, including  
11 the independence of boards and auditors, the expertise  
12 and competence of corporate boards and executives,  
13 systemic risk management practices, executive  
14 compensation structures, transparency and reporting,  
15 leadership diversity, regulatory and legal compliance,  
16 shareholder rights, and ethical conduct;

17 (2) Environmental factors that may have an adverse or  
18 positive financial impact on investment performance,  
19 including greenhouse gas emissions, air quality,  
20 energy management, water and wastewater management,



1 waste and hazardous materials management, and  
2 ecological impacts;

3 (3) Social capital factors that impact relationships with  
4 key outside parties, such as local communities, the  
5 public, and government, and may impact investment  
6 performance, including human rights, customer welfare,  
7 customer privacy, data security, access and  
8 affordability, selling practices and product labeling,  
9 community reinvestment, and community relations;

10 (4) Human capital factors that recognize that the  
11 workforce is an important asset to delivering long-  
12 term value, including labor practices, responsible  
13 contractor and responsible bidder policies, employee  
14 health and safety, employee engagement, diversity and  
15 inclusion, and incentives and compensation; and

16 (5) Innovation factors that reflect an ability to plan for  
17 and forecast opportunities and risks, including  
18 physical impacts of climate change.

19 (c) Socially responsible factors may be analyzed in a  
20 variety of ways, including:

21 (1) Direct financial impacts and risks;



- 1 (2) Legal, regulatory, and policy impacts and risks;
- 2 (3) Assessment against industry norms, best practices, and
- 3 competitive drivers; and
- 4 (4) Stakeholder engagement.

5 (d) Socially responsible policies shall support and not  
6 supplant fiduciary responsibility to the members and  
7 beneficiaries of any retirement system or trust fund affected by  
8 this chapter.

9 (e) A public investment fund shall adopt and implement an  
10 investment policy based on nationally recognized or  
11 internationally recognized framework that addresses socially  
12 responsible factors, including but not limited to the Principles  
13 for Responsible Investment, to satisfy the requirements of this  
14 chapter. A public investment fund that has adopted a policy  
15 that meets the same or substantially similar criteria as  
16 provided in this chapter, such as the Principles for Responsible  
17 Investment framework, may utilize that policy to satisfy the  
18 requirements of this chapter.

19 (f) Nothing in this chapter shall prohibit a public  
20 investment fund from integrating additional factors into its  
21 investment decision-making, investment analysis, portfolio



1 construction, due diligence, and investment ownership of public  
2 funds.

3 (g) This chapter shall not apply to financial institution  
4 time deposits or financial institution processing services.

5 § -3 **Disclosure and reporting.** (a) It is the intent of  
6 the legislature to increase the transparency of investment  
7 portfolios, fees paid, and the net economic benefit or loss to  
8 the Hawaii economy by any investment made by private capital  
9 vehicles in which State public funds are invested.

10 (b) Each public investment fund shall submit a report to  
11 the legislature no later than twenty days prior to the convening  
12 of the regular session of 2022, and each regular session  
13 thereafter, on the following:

14 (1) The gross rate of return and net rate of return of  
15 each alternative investment vehicle, since inception,  
16 in which the public investment fund participates. The  
17 public investment fund shall report the gross rate of  
18 return and net rate of return; provided that for  
19 purposes of this paragraph, "gross rate of return"  
20 means the internal rate of return for the alternative



1 investment vehicle prior to the reduction of fees and  
2 expenses described in this subsection;

3 (2) The gross economic benefit and net economic benefit of  
4 each private capital vehicle on the local economy,  
5 including taxes and jobs, subsidies, and lobbying.  
6 The public investment fund shall report the  
7 information required by section -2;

8 (3) A summary of the proportion of its investments in  
9 accordance with socially responsible investment  
10 policies pursuant to this Act. If an entity has an  
11 existing annual investment report that includes a  
12 summary of the proportion of its investments in  
13 accordance with the socially responsible investment  
14 policies pursuant to this Act, it may publish that  
15 report to meet the requirements of this section;

16 (4) The fees and expenses that the public investment fund  
17 pays directly to the alternative investment vehicle,  
18 fund manager, or related parties;

19 (5) The public investment fund's pro rata shares of fees  
20 and expenses not included in paragraph (1) that are  
21 paid from the alternative investment vehicle to the



1 fund manager or related parties. The public  
2 investment fund may independently calculate this  
3 information based on information contractually  
4 required to be provided by the alternative investment  
5 vehicle to the public investment fund, in which case  
6 the alternative investment vehicle shall not be  
7 required to provide the information identified in this  
8 paragraph;

9 (6) The public investment fund's pro rata share of carried  
10 interest distributed to the fund manager or related  
11 parties;

12 (7) The public investment fund's pro rata shares of  
13 aggregate fees and expenses paid by all the portfolio  
14 companies held within the alternative investment  
15 vehicle to the fund manager or related parties;

16 (8) Each private capital vehicle in which the public  
17 investment fund invests shall disclose:

18 (A) Any investments that the fund has made, directly  
19 or indirectly, in the State;

20 (B) Jobs created or lost by those investments,  
21 whether or not those jobs come with union



1 representation, and tax revenues generated from  
2 those jobs;

3 (C) All tax revenues generated by those investments;

4 (D) All tax benefits, deductions, or subsidies,  
5 received by, or applied for on the part of, those  
6 investments;

7 (E) Any additional subsidiaries that these  
8 investments have received from the state or  
9 municipalities;

10 (F) Any and all lobbying fees paid in association  
11 with these investments or by any related party or  
12 entity; and

13 (G) An assessment of the environmental and social  
14 impact of those investments, including, where  
15 appropriate, any environmental impact study or  
16 draft environmental impact study that has been  
17 filed in association with these investments.

18 (b) The department or agency with oversight over the  
19 respective public investment fund shall publish an annual list  
20 of public investment funds that fail to submit a report as  
21 required pursuant to this Act."

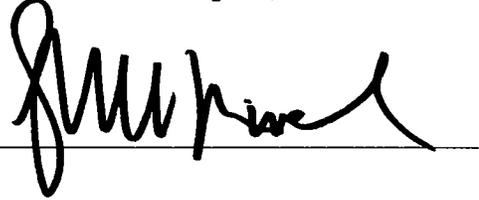


# S.B. NO. 801

1 SECTION 3. This Act shall take effect on July 1, 2021.

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INTRODUCED BY:



A handwritten signature in black ink is written over a horizontal line. The signature is cursive and appears to read 'J. M. ...'.



# S.B. NO. 801

**Report Title:**

Sustainable Investing; Environmental, Social, And Governance Investing; Socially Responsible Investing; Public Investment Funds

**Description:**

Requires a public investment fund to develop, publish, and implement socially responsible investment policies applicable to the management of all public funds under the public investment fund's control and submit an annual report to the legislature on disclosing its investments in accord with environmental, social, and governance investing and socially responsible investment policies.

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

