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## A BILL FOR AN ACT

RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND 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 Hawaii employer-union health benefits  
3 trust fund (the "trust fund") 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 trust fund 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 trust fund's unfunded liability, the trust  
12 fund, as a prudent investor, engages in diversified investment,  
13 including high-yield private alternative investments. Due  
14 diligence into such investments requires the trust fund to  
15 invest time and money to acquire and analyze detailed  
16 proprietary and confidential information regarding the projected

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1 performance of each fund. If the trust fund is required to  
2 disclose such confidential information, the trust fund is  
3 disadvantaged as a competitive investor. Competing investors  
4 would be able to acquire, at no cost, the trust fund's  
5 investment intelligence, resulting in oversubscription of the  
6 trust fund's best investments, reducing the trust fund's  
7 access. Further, to the extent that the trust fund may be  
8 required to disclose information that the investment funds  
9 require to be kept confidential, some high-performing funds are  
10 likely, based on their past practices, to be deterred from  
11 allowing the trust fund to invest with them.

12 To serve the public interest in monitoring the trust fund's  
13 investment performance, the trust fund already makes publicly  
14 available non-confidential aggregate performance data for the  
15 entire trust fund investment portfolio in its quarterly  
16 performance report, which includes: the name of asset or  
17 strategy and the rate of return for the quarter, fiscal year-to-  
18 date, one year, three years, five years, ten years, and  
19 inception to date.

20 This Act identifies certain types of alternative investment  
21 fund information, the disclosure of which would likely put the  
22 trust fund at a competitive disadvantage, and categorically

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1 exempts those categories of information from disclosure under  
2 chapter 92F, Hawaii Revised Statutes, consistent with market  
3 best practices. This Act mirrors Act 71, Session Laws of Hawaii  
4 2021, providing the employees' retirement system of the State of  
5 Hawaii the same exemptions.

6 SECTION 2. Chapter 87A, Hawaii Revised Statutes, is  
7 amended by adding to part IV a new section to be appropriately  
8 designated and to read as follows:

9 "§87A- Disclosure of alternative investment  
10 information. (a) The following documents relating to the  
11 fund's alternative investments shall be exempt from disclosure  
12 under chapter 92F:

- 13 (1) Private placement memoranda;
- 14 (2) Alternative investment vehicle agreements and related  
15 documents, including subscription agreements,  
16 management agreements, side letters, guarantees,  
17 credit facility agreements, participation agreements,  
18 and trust documents;
- 19 (3) Confidential presentations or recommendations made to  
20 the fund;
- 21 (4) Due diligence memoranda and other due diligence  
22 materials, including due diligence questionnaires;

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1        (5) Documents containing information on any portfolio  
2        company, real property, or any other assets held by an  
3        alternative investment vehicle;

4        (6) Financial statements and other documents containing  
5        financial information of an alternative investment  
6        vehicle or its general partner or manager, whether  
7        audited or unaudited, including but not limited to  
8        statements or information related to:

9            (A) Income statements;

10          (B) Balance sheets;

11          (C) Cash flows;

12          (D) Capital accounts;

13          (E) Investment rate-of-returns, including internal  
14          rate of returns and time-weighted rate of  
15          returns;

16          (F) Cash or in-kind distributions;

17          (G) Carried interests;

18          (H) Management and other fees; and

19          (I) Return multiples;

20        (7) Confidential correspondences between an alternative  
21        investment vehicle or its general partner, manager,

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1 advisor, or limited partner advisory committee, and  
2 the fund;

3 (8) Capital call and distribution notices;

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

8 (10) Investment management agreements; and

9 (11) Placement agent disclosures and similar documents.

10 (b) The exemptions from disclosure under chapter 92F set  
11 forth in this section are in addition to any other records that  
12 may be exempt from disclosure pursuant to chapter 92F or any  
13 other law.

14 (c) As used in this section:

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

20 "Alternative investment vehicle" means the limited  
21 partnership, limited liability company, collective investment  
22 trust, or other legal structure of the alternative investment.

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1 "Investment management agreement" means a contract to

2 manage assets of the fund.

3 "Limited partner advisory committee" means any limited

4 partner or other advisory committee of an alternative investment

5 vehicle."

6 SECTION 3. New statutory material is underscored.

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

8

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INTRODUCED BY: 

10

BY REQUEST

JAN 24 2022

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**Report Title:**

Hawaii Employer-Union Health Benefits Trust Fund

**Description:**

Exempts the Hawaii Employer-Union Health Benefits Trust Fund from disclosing under chapter 92F, Hawaii Revised Statutes, certain types of alternative investment fund information.

*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 THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND INVESTMENTS.

PURPOSE: To identify certain specific types of alternative investment information, the disclosure of which would likely put the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF") at a competitive disadvantage, and exempt such categories of information from disclosure under chapter 92F, Hawaii Revised Statutes (HRS), consistent with market best practices.

MEANS: Add a new section to chapter 87A, HRS.

JUSTIFICATION: This bill will exempt certain specific types of alternative investment information from disclosure under chapter 92F in order to enable the EUTF 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 EUTF will not be disadvantaged as a competitive investor due to the public records disclosure requirements of chapter 92F, HRS.

In order to address the EUTF's unfunded liability, the EUTF, as a prudent investor, engages in diversified investment, including high-yield private alternative investments. Due diligence into such investments requires that the EUTF invest time and money to acquire and analyze detailed proprietary and confidential information regarding the projected performance of each fund. If the EUTF is required to disclose such confidential information, the EUTF is disadvantaged as a competitive investor.



Competing investors would be able to acquire, at no cost, the EUTF's investment intelligence, resulting in oversubscription of the EUTF's best investments, reducing the EUTF's access. Further, because the EUTF may be required to disclose confidential information that the alternative investment vehicles require to be kept confidential, some high-performing alternative investment funds are likely to be deterred from allowing the EUTF to invest with them.

This bill identifies certain specific types of alternative investment information, the disclosure of which would likely put the EUTF 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 EUTF 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: None.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.