

JAN 26 2022

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

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

(A) Income statements;

(B) Balance sheets;

(C) Cash flows;

(D) Capital accounts;

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

(F) Cash or in-kind distributions;

(G) Carried interests;

(H) Management and other fees; and

(I) Return multiples;

(7) Confidential correspondences between an alternative 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."

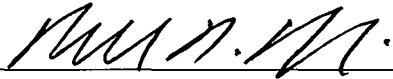
6 SECTION 3. New statutory material is underscored.

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

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INTRODUCED BY:



10

BY REQUEST

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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

SB. NO 3072

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.