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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 on February 24,  
2 2022, the Russian Federation launched an unlawful and unprovoked  
3 full-scale invasion of Ukraine, resulting in the displacement of  
4 millions of Ukrainian citizens, allegations of war crimes and  
5 crimes against humanity, and other atrocities committed by  
6 members of Russia's forces. The unprovoked invasion of Ukraine  
7 follows three decades of Russian interference, including the  
8 illegal seizure of Ukrainian land in Crimea, armed Russian-  
9 backed separatists leading to thousands of deaths, election  
10 interference, cyberattacks and disinformation campaigns abroad,  
11 violations of international arms control agreements, and usage  
12 of chemical weapons to attempt assassinations. On March 2,  
13 2022, the United Nations General Assembly passed Resolution ES-  
14 11/1, condemning Russia's invasion of Ukraine, demanding a full  
15 withdrawal of Russian forces, and reversal of Russia's decision  
16 to recognize the self-declared People's Republics of Donetsk and  
17 Luhansk. Concurrently, the International Criminal Court



1 Prosecutor opened an investigation into allegations of war  
2 crimes in Ukraine, including crimes against humanity and  
3 genocide. According to the State Department's "Ukraine 2022  
4 Human Rights Report", observers have also documented reports of  
5 mass and unlawful killings, including extrajudicial killings;  
6 forced disappearances; torture and cruel, inhumane, or degrading  
7 treatment or punishment; arbitrary arrest or detention; forced  
8 separation of families; and forced deportation and adoptions of  
9 Ukraine's children to Russian families. The ongoing invasion  
10 has killed nearly ten thousand Ukrainian civilians as of  
11 September 2023. Additionally, nearly one-third of Ukraine's  
12 population has been displaced since the Russian invasion began,  
13 with 6.6 million refugees recorded across Europe and  
14 approximately the same number displaced internally.

15 On February 23, 2023, the United Nations General Assembly  
16 adopted a new resolution calling for an immediate end to the war  
17 in Ukraine. Resolution ES-11/L.7 urges member states to  
18 cooperate in solidarity to address the global impacts of the war  
19 on food security, energy, finance, environmental issues, and  
20 nuclear security as a result of the ongoing conflict. The  
21 resolution also affirmed the need for accountability for serious



1 crimes under international law committed in Ukraine through an  
2 independent national or international investigations and  
3 prosecutions. Despite domestic and international calls to end  
4 the invasion of Ukraine, the ongoing war continues to perpetuate  
5 widespread and systemic atrocities, including allegations of  
6 torture and sexual violence against civilians. As of May 2023,  
7 the progress of peace negotiations remains unclear.

8       The legislature further finds that since 2014, the federal  
9 government has imposed sanctions against the government of  
10 Russia relating to its illegal annexation of crimea. These  
11 actions are monitored through the United States Treasury  
12 Department's Office of Foreign Assets Control. On February 21,  
13 2022, President Joseph R. Biden issued Executive Order 14065,  
14 prohibiting certain new investments made by United States  
15 individuals, financial transactions by foreign individuals, and  
16 importation and exportation of goods between the United States  
17 and the Donetsk People's Republic and Luhansk People's Republic.  
18 Following the invasion of Ukraine, the United States imposed  
19 over two thousand five hundred sanctions, export controls, and  
20 other economic measures, including sanctions on senior Russian  
21 government officials, Russian banking assets, and Russian



1 military manufacturing firms. Economic action taken by the  
2 federal government has also impacted Belarus, which has  
3 supported and facilitated Russia's invasion of Ukraine. The  
4 Office of Foreign Assets Control has sanctioned nearly one-fifth  
5 of Belarus' financial sector. The Russia divestment movement  
6 encompasses nearly one thousand foreign companies who have  
7 reportedly ceased or curtailed operations in Russia since the  
8 start of the war, resulting in further material risk to  
9 remaining investors.

10 Therefore, it is a fundamental responsibility of the State  
11 to decide where, how, and by whom financial resources in its  
12 control should be invested, taking into account numerous  
13 pertinent factors. In respect to investment resources in its  
14 control and to the extent reasonable, it is the prerogative and  
15 desire of the State not to participate in an ownership or  
16 capital-providing capacity with entities that provide  
17 significant practical support for the unlawful and unprovoked  
18 invasion of Ukraine, including certain non-United States  
19 companies presently doing business in Russia and Belarus. It is  
20 the judgment of the legislature that this Act should remain in  
21 effect as it continues to be consistent with, and does not



1 unduly interfere with, the foreign policy of the United States  
2 as determined by the federal government. Additionally, it is  
3 the judgment of the legislature that mandatory divestment of  
4 public funds from certain companies is a measure that should be  
5 employed sparingly and judiciously.

6 Accordingly, the purpose of this Act is to prohibit the  
7 employees' retirement system from acquiring securities of  
8 companies that have active business operations with Russia and  
9 Belarus.

10 SECTION 2. Definitions. As used in this Act:

11 "Active business operations" means all business operations  
12 that are not inactive business operations.

13 "Business operations" means engaging in commerce in any  
14 form in Russia or Belarus, including by acquiring, developing,  
15 maintaining, owning, selling, possessing, leasing, or operating  
16 equipment, facilities, personnel, products, services, personal  
17 property, real property, or any other apparatus of business or  
18 commerce.

19 "Company" means any sole proprietorship, organization,  
20 association, corporation, partnership, joint venture, limited  
21 partnership, limited liability partnership, limited liability



1 company, or other entity or business association, including all  
2 wholly-owned subsidiaries, majority-owned subsidiaries, parent  
3 companies, or affiliates of entities or business associations,  
4 that exists for profit-making purposes.

5 "Complicit" means taking actions during any preceding  
6 twenty-month period that have directly supported or promoted  
7 Russia's or Belarus' actions in the Russo-Ukrainian War,  
8 including but not limited to preventing Ukraine's victimized  
9 population from communicating with each other; encouraging  
10 Ukrainian citizens to speak out against an internationally-  
11 approved security force for Ukraine; actively working to deny,  
12 cover up, or alter the record on human rights abuses in Ukraine;  
13 or other similar actions.

14 "Direct holdings" means all securities of a company held  
15 directly by the public fund or in an account or fund where the  
16 public fund owns all shares or interests.

17 "Government of Belarus" means the government in Minsk,  
18 Belarus, or any successor government formed on or after  
19 February 24, 2022.



1 "Government of Russia" means the government in Moscow,  
2 Russia, or any successor government formed on or after  
3 February 24, 2022.

4 "Inactive business operations" means the continued holding  
5 or renewal of rights to property previously operated for the  
6 purpose of generating revenues but not presently deployed.

7 "Indirect holdings" means all securities of a company held  
8 in an account or fund, such as a mutual fund, managed by one or  
9 more persons not employed by the public fund, where the public  
10 fund owns shares or interests together with other investors not  
11 subject to this Act.

12 "Marginalized populations of Ukraine" means the portion of  
13 the population in the Donetsk People's Republic and Luhansk  
14 People's Republic; the portion of the population of Kherson and  
15 Zaporizhzhia oblasts illegally annexed by Russia; the portion of  
16 the population internally displaced as a result of the ongoing  
17 Russo-Ukrainian War; and other similarly underserved groups of  
18 Ukraine.

19 "Military equipment" means weapons, arms, military  
20 supplies, and equipment that readily may be used for military  
21 purposes, including but not limited to radar systems or



1 military-grade transport vehicles; or supplies or services sold  
2 or provided directly or indirectly to any force actively  
3 participating in armed conflict in the Russo-Ukrainian War.

4 "Mineral extraction activities" means exploring,  
5 extracting, processing, transporting, or wholesale selling or  
6 trading of elemental minerals or associated metal alloys or  
7 oxides (ore), including gold, copper, chromium, chromite,  
8 diamonds, iron, iron ore, silver, tungsten, uranium, and zinc,  
9 as well as facilitating activities, including by providing  
10 supplies or services in support of mineral extraction  
11 activities.

12 "Oil-related activities" means owning rights to oil blocks;  
13 exporting, extracting, producing, refining, processing,  
14 exploring for, transporting, selling, or trading of oil;  
15 constructing, maintaining, or operating a pipeline, refinery, or  
16 other oil-field infrastructure; and facilitating oil-related  
17 activities, including by providing supplies or services in  
18 support of oil-related activities; provided that the mere retail  
19 sale of gasoline and related consumer products shall not be  
20 considered oil-related activities.





1 "Power production activities" means any business operation  
2 that involves a project commissioned whose purpose is to  
3 facilitate power generation and delivery, including but not  
4 limited to establishing power-generating plants or hydroelectric  
5 dams, selling or installing components for the project,  
6 providing service contracts related to the installation or  
7 maintenance of the project, as well as facilitating power  
8 production activities, including by providing supplies or  
9 services in support of power production activities.

10 "Public fund" means the employees' retirement system of the  
11 State or the board of trustees in charge of the employees'  
12 retirement system.

13 "Scrutinized company" means any company that meets any of  
14 the following criteria:

15 (1) The company has business operations that involve  
16 contracts with or provision of supplies or services to  
17 the governments of Russia or Belarus; companies in  
18 which the governments of Russia or Belarus have any  
19 direct or indirect equity share; governments of  
20 Russia- or Belarus-commissioned consortiums or  
21 projects; or companies involved in government of



1 Russia- or Belarus-commissioned consortiums or  
2 projects:

3 (A) A material portion of the company's revenues or  
4 assets linked to Russia or Belarus involve oil-  
5 related activities or mineral extraction  
6 activities; the company does not contract  
7 directly with governments of Russia or Belarus or  
8 a project or consortium created exclusively by  
9 that government; and the company has failed to  
10 take substantial action; or

11 (B) A material portion of the company's revenues or  
12 assets linked to Russia or Belarus involve power  
13 production activities; most of the activities do  
14 not include projects whose intent is to provide  
15 power or electricity to the marginalized  
16 populations of Ukraine; and the company has  
17 failed to take substantial action;

18 (2) The company is complicit in the Russo-Ukrainian War;  
19 or

20 (3) The company supplies military equipment within Russia  
21 or Belarus, unless it clearly shows that the military



1 equipment cannot be used to facilitate offensive  
2 military actions in Ukraine or the company implements  
3 rigorous and verifiable safeguards to prevent use of  
4 that equipment by forces actively participating in  
5 armed conflict, for example, through post-sale  
6 tracking of the equipment by the company,  
7 certification from a reputable and objective third  
8 party that the equipment is not being used by a party  
9 participating in armed conflict in Ukraine, or sale of  
10 the equipment solely to any internationally-recognized  
11 peacekeeping force or humanitarian organization.

12 Notwithstanding anything in this Act to the contrary, a social  
13 development company that is not complicit in the Russo-Ukrainian  
14 War shall not be considered a scrutinized company.

15 "Social development company" means a company whose primary  
16 purpose in Ukraine is to provide humanitarian goods or services,  
17 including medicine or medical equipment, agricultural supplies  
18 or infrastructure, educational opportunities, journalism-related  
19 activities, information or information materials, spiritual-  
20 related activities, services of a purely clerical or reporting  
21 nature, food, clothing, or general consumer goods that are



1 unrelated to oil-related activities, mineral extraction  
2 activities, or power production activities.

3 "Substantial action" means adopting, publicizing, and  
4 implementing a formal plan to cease scrutinized business  
5 operations within one year and to refrain from any new business  
6 operations; undertaking significant humanitarian efforts on  
7 behalf of one or more marginalized populations of Ukraine; or  
8 through engagement with the government of Ukraine, materially  
9 improving conditions for the genocidally victimized population  
10 in Ukraine.

11 SECTION 3. Identification of companies. (a) By  
12 January 1, 2025, the public fund shall make its best efforts to  
13 identify all scrutinized companies where the public fund has  
14 direct holdings. Those efforts shall include, as appropriate:

15 (1) Reviewing publicly available information regarding  
16 companies with business operations in Russia or  
17 Belarus. In conducting the review, the public fund  
18 may rely on information provided by nonprofit  
19 organizations, research firms, international  
20 organizations, and government entities;



1           (2)   Contacting asset managers contracted by the public  
2                   fund that invest in companies with business operations  
3                   in Russia and Belarus; and

4           (3)   Contacting other institutional investors that have  
5                   divested from or engaged with companies that have  
6                   business operations in Russia or Belarus.

7           (b)   By April 1, 2025, the public fund shall assemble all  
8                   scrutinized companies identified where the public fund has  
9                   direct holdings into a "scrutinized companies list".

10          (c)   The public fund shall update the scrutinized companies  
11                   list on a quarterly basis based on evolving information from  
12                   sources listed in subsection (a), as deemed necessary.

13          SECTION 4. Required actions. (a) The public fund shall  
14                   adhere to the following procedures for companies on the  
15                   scrutinized companies list:

16          (1)   The public fund shall determine the companies on the  
17                   scrutinized companies list where the public fund owns  
18                   direct holdings;

19          (2)   For each company newly identified with active business  
20                   operations where the public fund owns direct holdings,  
21                   the public fund shall send a written notice informing



1 the company of its scrutinized company status and that  
2 it may become subject to divestment by the public  
3 fund. The notice shall offer the company the  
4 opportunity to clarify its Russia- or Belarus-related  
5 activities and shall encourage the company, within  
6 ninety days, to either cease its scrutinized business  
7 operations or convert their operations to inactive  
8 business operations to avoid qualifying for divestment  
9 by the public fund;

10 (3) If, within ninety days following the public fund's  
11 first engagement with a company, that company ceases  
12 scrutinized business operations, the company shall be  
13 removed from the scrutinized companies list and this  
14 section shall cease to apply to it unless it resumes  
15 scrutinized business operations. If, within ninety  
16 days following the public fund's first engagement, the  
17 company converts its scrutinized active business  
18 operations to inactive business operations, the  
19 company shall be subject to all provisions pursuant to  
20 this section; and



1 (4) If, after ninety days following the public fund's  
2 first engagement with a company following the  
3 effective date of this Act, that company continues to  
4 have scrutinized active business operations, the  
5 company shall be subject to subsection (b), unless the  
6 board of trustees of the public fund determines that  
7 the company has made sufficient progress towards  
8 ceasing its scrutinized business operations or  
9 converting their operations to inactive business  
10 operations. The public fund shall continue to monitor  
11 and review the progress of the company on a quarterly  
12 basis until that company has ceased its scrutinized  
13 business operations or converted their operations to  
14 inactive business operations. A company that fails to  
15 cease its scrutinized business operations, to convert  
16 their operations to inactive business operations, or  
17 to continue to make sufficient progress towards  
18 cessation or conversion by the next time interval  
19 shall be subject to subsection (b).

20 (b) If a company on the scrutinized companies list fails  
21 to cease scrutinized active business operations in the time



1 described in subsection (a)(4), the public fund shall sell,  
2 redeem, divest, or withdraw all publicly-traded securities of  
3 the company, except as provided below, within eighteen months  
4 after the company becomes subject to this subsection. The  
5 public fund may relax the divestment schedule if the public fund  
6 determines divestment from particular companies or funds will  
7 likely, in the good faith judgment of the board of trustees of  
8 the public fund, result in public fund losses exceeding the  
9 99.50 per cent mark as defined in section 7. If a circumstance  
10 arises, the public fund shall submit a report to the legislature  
11 setting forth the reasons and justification, accompanied by  
12 supporting documentation that includes objective numerical  
13 estimates, for its decision to relax the divestment schedule.  
14 The report shall be updated annually as applicable.

15 (c) At no time shall the public fund acquire securities of  
16 companies on the scrutinized companies list that have active  
17 business operations, except as provided in subsections (d) and  
18 (e).

19 (d) No company that the United States affirmatively  
20 declares to be excluded from its present or any future federal  
21 sanctions regime relating to Russia or Belarus shall be subject





1 to divestment or investment prohibition pursuant to subsections  
2 (b) and (c).

3 (e) Notwithstanding any provision of this Act to the  
4 contrary, subsections (b) and (c) shall not apply to indirect  
5 holdings in actively managed investment funds.

6 SECTION 5. Reporting. (a) The public fund shall submit a  
7 publicly-available report to the legislature that includes the  
8 scrutinized companies list within ninety days after the list is  
9 created.

10 (b) The public fund shall submit a publicly-available  
11 report annually to the legislature that includes:

12 (1) A summary of correspondence with companies engaged by  
13 the public fund under section 4;

14 (2) All investments sold, redeemed, divested, or withdrawn  
15 in compliance with section 4;

16 (3) All prohibited investments under section 4; and

17 (4) Any progress made under section 4.

18 SECTION 6. Other legal obligations. With respect to  
19 actions taken in compliance with this Act, including all good  
20 faith determinations regarding companies as required by this  
21 Act, the public fund shall be exempt from any conflicting



1 statutory or common law obligations, including any obligations  
2 in respect to choice of asset managers, investment funds, or  
3 investments for the public fund's securities portfolios.  
4 Nothing in this Act shall require the public fund to take action  
5 as described in this Act unless the board of trustees of the  
6 public fund determines, in good faith, that the action is  
7 consistent with the responsibilities of the board as described  
8 in section 88-22.5(a)(1), Hawaii Revised Statutes.

9 SECTION 7. Reinvestment in certain companies with  
10 scrutinized active business operations. Notwithstanding any  
11 provision of this Act to the contrary, the public fund shall be  
12 permitted to cease divesting from certain scrutinized companies  
13 pursuant to section 4 and reinvest in certain scrutinized  
14 companies from which it previously divested pursuant to  
15 section 4 if, in the good faith judgment of the board of  
16 trustees of the public fund, the value for all assets under  
17 management by the public fund becomes equal to or less than  
18 99.50 per cent (50 basis points) of the hypothetical value of  
19 all assets under management by the public fund assuming no  
20 divestment for any company had occurred under section 4.  
21 Cessation of divestment, reinvestment, or any subsequent ongoing



1 investment authorized by this section shall be strictly limited  
2 to the minimum steps necessary to avoid the contingency set  
3 forth in the preceding sentence. For any cessation of  
4 divestment, reinvestment, or subsequent ongoing investment  
5 authorized by this section, the public fund shall provide a  
6 written report to the legislature, accompanied by supporting  
7 documentation that includes objective numerical estimates, for  
8 its decisions to cease divestment, reinvest, or remain invested  
9 in companies with scrutinized active business operations. The  
10 report shall be updated annually thereafter as applicable. This  
11 section shall not apply to reinvestment in companies that have  
12 ceased scrutinized active business operations.

13 SECTION 8. Provisions for expiration of this Act. This  
14 Act shall be repealed upon the occurrence of any of the  
15 following:

- 16 (1) The Congress or President of the United States  
17 declares that the Russo-Ukrainian war has been halted  
18 for at least twelve months;
- 19 (2) The United States revokes all sanctions imposed  
20 against the governments of Russia and Belarus;



1           (3) The Congress or President of the United States  
2           declares that the governments of Russia and Belarus  
3           have honored commitments to cease attacks on  
4           civilians, demobilize and demilitarize associated  
5           militias, grant free and unfettered access for  
6           deliveries of humanitarian assistance, and allow for  
7           the safe and voluntary return of refugees and  
8           internally displaced persons; or

9           (4) The Congress or President of the United States,  
10          through legislation or executive order, declares that  
11          mandatory divestment of the type provided for in this  
12          chapter interferes with the conduct of United States  
13          foreign policy.

14          SECTION 9. If any one or more provisions, sections,  
15          subsections, sentences, clauses, phrases, or words of this Act or  
16          the application to any person or circumstance is found to be  
17          invalid, illegal, unenforceable, or unconstitutional, the same is  
18          declared to be severable and the balance of this Act shall remain  
19          effective and functional notwithstanding the invalidity,  
20          illegality, unenforceability, or unconstitutionality.





# S.B. NO. 2388

**Report Title:**

ERS; Russia Divestment; Belarus Divestment; Russo-Ukrainian War

**Description:**

Prohibits the Employees' Retirement System from acquiring securities of companies that have active business operations with Russia or Belarus.

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

