

ACT 212

S.B. NO. 1286

A Bill for an Act Relating to the Employees' Retirement System of the State of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Part II of Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

~~§88-~~ Power to enter into security loan agreements. Anything in this part to the contrary notwithstanding, the board of trustees may enter into an agreement or agreements with a financially responsible stock or bond brokerage firm, bank, or similar financial institution ("borrower") authorized to do business under the laws of any state or the United States, for the purpose of lending to the borrower securities

held by the system, subject to the following conditions:

- (1) The securities shall be loaned to the borrower for a period not to exceed one year;
- (2) At the termination of the loan period, the borrower shall deliver to the board of trustees certificates for identical securities which are of the same class and issue as the loaned securities;
- (3) For the protection of the system, the borrower shall deliver to the board of trustees or its agent, collateral in the form of cash, letters of credit, bonds, or other interest-bearing notes and obligations of the United States or federal instrumentalities which are eligible for investment by the board of trustees, in an amount not less than one hundred two per cent of the market value of the loaned securities, as determined by the board of trustees. The system shall have a security interest in the collateral to secure borrower's obligations under the agreement. The board of trustees shall not be obligated to return the collateral or any part thereof to the borrower, except upon borrower's delivery to the board or its agent of securities identical to the loaned securities, as provided in paragraph (2). The board of trustees or its designated agent shall monitor the market value of the loaned securities daily, and if, on any business day, the amount of the collateral deposited by the borrower is less than one hundred two per cent of the market value of the loaned securities on that day, the borrower shall immediately deposit with the board or its agent additional collateral in the form of cash, letters of credit, bonds, or other interest-bearing notes and obligations of the United States or federal instrumentalities which are eligible for investment by the board of trustees. Such additional collateral, together with the collateral previously on deposit, shall be in an amount not less than one hundred two percent of the market value of the loaned securities at the time of such deposit;
- (4) The board of trustees, at its election, may use or invest any collateral delivered by a borrower to the board or its agent pursuant to the agreement, and any income and profits earned on the collateral shall be retained for the benefit of the system. Any investment of the collateral shall be subject to section 88-119;
- (5) Until the termination of the loan, the borrower may exercise all the incidents of ownership of loaned securities, including the right to transfer the loaned securities to others and vote or otherwise consent as a holder of such securities; provided that the borrower shall be obligated to the board of trustees for all dividends and distributions made with respect to the loaned securities during the period of the agreement, including, without limitation, cash, stock or property dividends or distributions, interest payments, and subscription rights;
- (6) In the event that the borrower, at the termination of the loan period, fails to deliver to the board of trustees certificates for identical securities which are of the same class and issue as the loaned securities, the borrowers shall forfeit to the system the collateral deposited."

SECTION 2. New statutory material is underscored.*

SECTION 3. This Act shall take effect upon its approval.

(Approved June 19, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.