

ACT 17

S.B. NO. 1239

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

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

SECTION 1. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

“§88-119 Investments. Investments may be made in:

- (1) Real estate loans and mortgages. Obligations (as defined in section 431:6-101) of any of the following classes:
 - (A) Obligations secured by mortgages of nonprofit corporations desiring to build multirental units (ten units or more) subject to control of the government for occupancy by families displaced as a result of government action[.];
 - (B) Obligations secured by mortgages insured by the federal housing administration[.];
 - (C) Obligations for the repayment of home loans made under the Servicemen's Readjustment Act of 1944 or under Title II of the National Housing Act[.];
 - (D) Other obligations secured by first mortgages on unencumbered improved real estate owned in fee simple; provided that the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the real estate and improvements mortgaged to secure it, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the real estate and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the real estate and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the real estate and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees. Real estate shall not be deemed to be encumbered within the meaning of this subparagraph by reason of the existence of any of the restrictions, charges, or claims described in section 431:6-308[.];
 - (E) Other obligations secured by first mortgages of leasehold interests in improved real estate; provided that (i) each such leasehold interest at such time shall have a current term extending at least two years beyond the stated maturity of the obligation it secures, and (ii) the amount of the obligation shall not at the time investment is made therein exceed eighty per cent of the value of the respective leasehold interest and improvements, and except that the amount of the obligation, at

the time investment is made therein, may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it; provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer should be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. Such insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees[.];

- (F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920[.]; and
- (G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions which might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

The board of trustees may retain such real estate, including leasehold interests therein, as it may acquire by foreclosure of mortgages or in enforcement of security, or as may be conveyed to it in satisfaction of debts previously contracted; provided that all such real estate, other than leasehold interests, shall be sold within five years after acquiring the same, subject to extension by the governor for additional periods not exceeding five years each, and that all such leasehold interests shall be sold within one year after acquiring the same, subject to extension by the governor for additional periods not exceeding one year each[.];

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof, or by the Dominion of Canada or by any province thereof, or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States[.];
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State[.]; and
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration[.];

- (3) Corporate obligations. Obligations of any corporation created or existing under the laws of the United States or of any state or district thereof, and qualified under any of the following:
- (A) Fixed interest-bearing obligations, if the average annual net earnings of the obligor or guarantor available for its fixed charges for a period of five fiscal years next preceding the date of the investment have equalled at least one hundred fifty per cent of its average annual fixed charges applicable to the period and if its net earnings for the last year of the period have equalled at least one hundred fifty per cent of its fixed charges for such year[.];
 - (B) Fixed interest-bearing obligations secured by assignment of a lease or leases, or the rentals payable thereunder, of real or personal property (including, without limitation, charters of vessels) to a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the fixed rentals assigned shall be sufficient to repay the principal of and interest on the obligation within the unexpired term of the lease, exclusive of the term which may be provided by any option of renewal, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A)[.]; and
 - (C) Fixed interest-bearing obligations secured by rights or assignment of rights under a contract (including, without limitation, a contract for the sale of products, materials, supplies, or other property, or for the furnishing of transportation or services) with a corporation created or existing under the laws of the United States or of any state or district thereof; provided that (i) the rights securing such obligations shall include the right to receive payments sufficient to repay the principal of and interest on the obligations within the unexpired term of the contract, and (ii) the net earnings of the corporation shall meet the requirements described in subparagraph (A).

As used in this paragraph, the terms "fixed charges" and "net earnings available for fixed charges" shall have the meanings and applications ascribed thereto in sections 431:6-101 and 431:6-102[.];

- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country in the Pacific Basin or [Western] Europe[; provided that the book value of the total investment in such stocks shall at no time exceed forty per cent of the total book value of all investments of the system.];
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks[.];
- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank[.];
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth, at the time the investment is made, at least fifteen per cent more than the amount of the respective obligations[.];
- (8) Insurance company obligations. Contracts and agreements supple-

- mental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein[.];
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system[; provided that the total book value of these investments at no time shall exceed five per cent of the total book value of all investments in the system]. For purposes of this paragraph, “real property” includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies[;], group or unit trusts, limited partnerships, investment trusts, and other pooled funds invested on behalf of the system by investment managers retained by the system[.]; and
- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts [within the meaning of the Commodity Exchange Act and traded on an exchange or board of trade regulated under that Act only] to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system’s securities portfolios; covered put and call options on securities [traded on one or more of the exchanges]; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitations of any of the foregoing paragraphs (including paragraph (4))[; provided that the total book value of investments under this paragraph shall at no time exceed ten per cent of the total book value of all investments of the system].”

SECTION 2. Section 88-119.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-119.5 Investment guidelines. Notwithstanding any other law to the contrary, real estate loans and mortgages made pursuant to section 88-119(1)(D) and (E) shall be in accordance with conditions and restrictions set forth by the board of trustees; provided that the board shall review its policy on the conditions and restrictions from time to time and formulate, amend, or repeal the conditions and restrictions giving full consideration to the prevailing economic conditions in the real estate industry; provided further that for good cause shown, the board of trustees shall duly consider a member’s application for waiver of any condition or restriction imposed by the board of trustees[.]; and provided further that the board may establish the minimum and maximum loan amounts and interest rates for these real estate loans and mortgages by motion, at any duly noticed meeting of the board. The board of trustees shall liberally construe this section; provided that no exception shall be made which may substantially impair the fiscal integrity of the system’s funds. The board of trustees [shall], subject to chapter 91, shall

adopt, amend, and repeal rules having the force of and effect of law to implement all provisions of this section[.] other than those relating to loan amounts and interest rates for its real estate loans and mortgages.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved April 16, 1991.)