

ACT 71

H.B. NO. 930

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

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

SECTION 1. The legislature finds that this Act is necessary to enable the employees' retirement system of the State of Hawaii (the "system") 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 system will not be disadvantaged as a competitive investor due to the public records disclosure requirements of chapter 92F, Hawaii Revised Statutes.

To address the system's unfunded liability and other financial needs, the system, as a prudent investor, engages in diversified investment, including high-yield private alternative investment funds. Due diligence into such investments requires the system to invest time and money to acquire and analyze detailed proprietary and confidential information regarding the projected performance of each fund. If the system is required to disclose such confidential information, the system is disadvantaged as a competitive investor. Competing investors would be able to acquire, at no cost, the system's investment intelligence, resulting in oversubscription of the system's best investments, reducing the system's access. Further, to the extent that the system has disclosed or may be required to disclose information that the investment funds require to be kept confidential, some high-performing funds have been deterred from allowing the system to invest with them. To manage these risks, the system currently expends significant efforts in responding to requests for such confidential information.

To serve the public interest in monitoring the system's investment performance, the system already publishes non-confidential aggregate performance data for the entire system investment portfolio in its "Hawaii ERS Quarterly Performance Report", which includes: the name of asset or strategy; rate of return for the month, three months, fiscal year-to-date, calendar year-to-date, one year, three years, five years, and inception to date; and inception date. The system further publishes in its monthly statement of investments, private equity fund data on: the name of fund; commitments; contributions; market value; strategy; and vintage year or year started.

This Act identifies certain types of alternative investment fund information, the disclosure of which would likely put the system at a competitive disadvantage, and categorically exempts those categories of information from disclosure under chapter 92F, Hawaii Revised Statutes, consistent with market best practices.

SECTION 2. Section 88-103.5, Hawaii Revised Statutes, is amended to read as follows:

§88-103.5 Disclosure of information. (a) The employees' retirement system shall:

- (1) Disclose to the Hawaii employer-union health benefits trust fund and employee organizations information related to the administration of pension, annuity, or retirement allowance deductions, as follows: name, social security number, and amounts and dates of both voluntary and mandatory deductions remitted to the recipient; and

(2) Release the records of its retirants and beneficiaries to the Hawaii employer-union health benefits trust fund for the disbursement of payments authorized under section 87A-23.

(b) Any government agency or employee organization receiving government records pursuant to this section shall be subject to the same restrictions on disclosure of the records as the originating agency.

(c) The following documents relating to the system's alternative investments shall be exempt from disclosure under chapter 92F:

(1) Private placement memoranda;

(2) Fund agreements and related documents, including subscription agreements, management agreements, side letters, guarantees, credit facility agreements, participation agreements, and trust documents;

(3) Confidential presentations or recommendations made to the system;

(4) Due diligence memoranda and other due diligence materials, including due diligence questionnaires;

(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 a fund 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, advisor, or limited partner advisory committee, and the system;

(8) Capital call and distribution notices;

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

(10) Investment management agreements; and

(11) Placement agent disclosures and similar documents.

(d) The exemptions from disclosure under chapter 92F set forth in subsection (c) are in addition to any other records that may be exempt from disclosure pursuant to chapter 92F or any other law.

(e) As used in this section:

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

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

"Investment management agreement" means a contract to manage assets of the system.

“Limited partner advisory committee” means any limited partner or other advisory committee of an alternative investment vehicle.”

SECTION 3. New statutory material is underscored.

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

(Approved June 24, 2021.)