

ACT 75

S.B. NO. 3072

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:

SECTION 1. The legislature finds that this Act is necessary to enable the Hawaii employer-union health benefits trust fund (trust fund) 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 trust fund will not be disadvantaged as a competitive investor due to the public records disclosure requirements of chapter 92F, Hawaii Revised Statutes.

To address the trust fund's unfunded liability, the trust fund, as a prudent investor, engages in diversified investment, including high-yield private alterna-

tive investments. Due diligence into these investments requires the trust fund to invest time and money to acquire and analyze detailed proprietary and confidential information regarding the projected performance of each fund. If the trust fund is required to disclose this confidential information, the trust fund is disadvantaged as a competitive investor. Competing investors would be able to acquire, at no cost, the trust fund's investment intelligence, resulting in oversubscription of the trust fund's best investments, reducing the trust fund's access. Further, to the extent that the trust fund may be required to disclose information that the investment funds require to be kept confidential, some high-performing funds are likely, based on their past practices, to be deterred from allowing the trust fund to invest with them.

To serve the public interest in monitoring the trust fund's investment performance, the trust fund already makes publicly available non-confidential aggregate performance data for the entire trust fund investment portfolio in its quarterly performance report, which includes: the name of asset or strategy and the rate of return for the quarter, fiscal year-to-date, one year, three years, five years, ten years, and inception to date.

The purpose of this Act is to identify certain types of alternative investment fund information, the disclosure of which would likely put the trust fund at a competitive disadvantage, and categorically exempt those categories of information from disclosure under chapter 92F, Hawaii Revised Statutes, consistent with market best practices. This Act mirrors Act 71, Session Laws of Hawaii 2021, providing the employees' retirement system of the State of Hawaii the same exemptions.

SECTION 2. Section 87A-31, Hawaii Revised Statutes, is amended to read as follows:

“§87A-31 Trust fund; purpose[-]; disclosure of information. (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32 and 87A-37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under [Title] title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and section 78-30.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund's future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each separate fund shall be subject to all [of the] provisions of this chapter.

(f) If after commencing the reimbursement of medicare part B premiums in section 87A-23, or any other debt payable under this chapter, the fund

cannot locate the employee-beneficiary or other person or entity entitled to payment, further payment shall be forfeited to the fund if the total amount is less than \$500 and shall not escheat under the laws of any state; provided that the forfeited payment shall be restored if the employee-beneficiary, or other person or entity entitled to the forfeited payment makes a proper application to the fund for restoration of the benefit no later than ten years following the last valid reimbursement or payment. All applications for restoration of a forfeited benefit or payment shall be in a form satisfactory to the fund. For forfeited benefits or payments in existence on June 30, 2017, the ten-year time limitation on claiming the benefits or payments shall commence on July 1, 2017.

(g) The exemptions from disclosure of information pursuant to chapter 92F set forth in section 88-103.5(c) through (e) shall apply to the disclosure of information relating to the fund's alternative investments; provided that references to the "system" in section 88-103.5(c) and (e) shall be replaced with the "fund" for purposes of the fund's alternative investments."

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

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

(Approved June 17, 2022.)