

Assembly Bill No. 2833

CHAPTER 361

An act to add Section 7514.7 to the Government Code, relating to retirement.

[Approved by Governor September 14, 2016.
Filed with Secretary of State September 14, 2016.]

legislative counsel's digest

AB 2833, Cooley. Public investment funds: disclosures.

The California Constitution commits to the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system. Existing law requires a retirement board to develop and implement a policy requiring disclosure of payments to placement agents, as defined, in connection with system investments in or through external managers that includes prescribed elements. Existing law requires disclosure of campaign contributions or gifts made by a placement agent to any member of a public pension retirement board, as specified. Existing law requires a public retirement system to obtain an actuarial valuation of the system not less than triennially and submit audited financial statements to the State Controller who then publishes a report on the financial condition of public retirement systems.

This bill, for new contracts entered into on and after January 1, 2017, and for existing contracts for which a new capital commitment is made on or after January 1, 2017, would require a public investment fund, as defined, to require alternative investment vehicles, as defined, to make specified disclosures regarding fees, expenses, and carried interest in connection with these vehicles and the underlying investments, as well as other specified information. Consistent with requirements relating to public records, the bill would require a public investment fund to disclose the information received in connection with alternative investment vehicles and the gross and net rate of return of each alternative investment vehicle, as specified, at least once annually at a meeting open to the public. The bill would require a public investment fund to undertake reasonable efforts to obtain the above-mentioned information for any existing contract for which the public investment fund has not made a new capital commitment on or after January 1, 2017. The bill would make a statement of legislative intent. Because this bill would impose new requirements on local entities relating to the collection of information and its presentation at an open meeting, it would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in enacting this section to increase the transparency of fees paid by public investment funds to alternative investment vehicles. Public investment funds pay significant fees to alternative investment vehicles and do not have sufficient information regarding the character and amount of those fees. As fiduciaries, public investment fund trustees have a duty to maximize investment returns in order to ensure promised benefits are adequately funded and to minimize taxpayer costs. Because fees paid to alternative investment vehicles reduce returns, public investment fund trustees need to be able to see and understand all of the fees they are charged.

SEC. 2. Section 7514.7 is added to the Government Code, to read:

7514.7. (a) Every public investment fund shall require each alternative investment vehicle in which it invests to make the following disclosures at least annually:

(1) The fees and expenses that the public investment fund pays directly to the alternative investment vehicle, the fund manager, or related parties.

(2) The public investment fund's pro rata share of fees and expenses not included in paragraph (1) that are paid from the alternative investment vehicle to the fund manager or related parties. The public investment fund may independently calculate this information based on information contractually required to be provided by the alternative investment vehicle to the public investment fund. If the public investment fund independently calculates this information, then the alternative investment vehicle shall not be required to provide the information identified in this paragraph.

(3) The public investment fund's pro rata share of carried interest distributed to the fund manager or related parties.

(4) The public investment fund's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.

(5) Any additional information described in subdivision (b) of Section 6254.26.

(b) Every public investment fund shall disclose the information provided pursuant to subdivision (a) at least once annually in a report presented at a meeting open to the public. The public investment fund's report required pursuant to this subdivision shall also include the gross and net rate of return of each alternative investment vehicle, since inception, in which the public investment fund participates. The public investment fund may report the gross and net rate of return and information required by subdivision (a) based on its own calculations or based on calculations provided by the alternative investment vehicle.

(c) For purposes of this section:

(6) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

(7) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which a public investment fund invests in an alternative investment.

(8) "Fund manager" means the general partner, managing manager, adviser, or other person or entity with primary investment decision making authority over an alternative investment vehicle and related parties of the fund manager.

(9) "Carried interest" means any share of profits from an alternative investment vehicle that is distributed to a fund manager, general partner, or related parties, including allocations of alternative investment vehicle

profits received by a fund manager in consideration of having waived fees that it might otherwise have been entitled to receive.

(10) “Portfolio companies” means individual portfolio investments made by the alternative investment vehicle.

(11) “Gross rate of return” means the internal rate of return for the alternative investment vehicle prior to the reduction of fees and expenses described in subdivision (a).

(12) “Public investment fund” means any fund of any public pension or retirement system, including that of the University of California.

(13) “Operational person” means any operational partner, senior advisor, or other consultant or employee whose primary activity for a relevant entity is to provide operational or back office support to any portfolio company of any alternative investment vehicle, account, or fund managed by a related person.

(14) “Related person” means any current or former employee, manager, or partner of any related entity that is involved in the investment activities or accounting and valuation functions of the relevant entity or any of their respective family members.

(15) “Related party” means:

- Any related person.
- Any operational person.
- Any entity more than 10 percent of the ownership of which is held directly or indirectly, whether through other entities or trusts, by a related person or operational person regardless if the related person or operational person participates in the carried interest received by the general partner or the special limited partner.

Any consulting, legal, or other service provider regularly engaged by portfolio companies of an alternative investment vehicle, account, or fund managed by a related person and that also provides advice or services to any related person or relevant entity.

(11) “Relevant entity” means the general partner, any separate carry vehicle, the investor advisor, any of the investment advisor’s parent or subsidiary entities, or any similar entity related to any other alternative investment vehicle, account, or fund advised or managed by any current or former related person.

(d) (1) This section shall apply to all new contracts the public investment fund enters into on or after January 1, 2017, and to all existing contracts pursuant to which the public investment fund makes a new capital commitment on or after January 1, 2017.

(2) With respect to existing contracts not covered by paragraph (1), the public investment fund shall undertake reasonable efforts to obtain the information described in subdivision (a) and comply with the reporting requirements contained in subdivision (b) with respect to any information obtained after January 1, 2017.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 7514.7 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

The information in the disclosures required under subdivisions (a) and (b) of Section 7514.7 of the Government Code is necessary to ensure public confidence in the integrity of investments made by retirement boards pursuant to alternative investment vehicles.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district under this act would result from a legislative mandate that is within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution.

Senate Bill No. 439

CHAPTER 258

An act to add Section 6254.26 to the Government Code, relating to public records.

[Approved by Governor September 22, 2005. Filed
with Secretary of State September 22, 2005.]

legislative counsel's digest

SB 439, Simitian. Public records: disclosure: public investment funds.

The California Public Records Act provides that, except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs.

This bill would provide that, notwithstanding these provisions, specified records regarding alternative investments, as defined, in which public investment funds invest are not subject to disclosure under these provisions, unless the information is already publicly released by the keeper of the information. The bill would subject specified information contained in these records regarding alternative investments in which public investment funds invest to public disclosure and would provide that the information is not to be considered a trade secret exempt from disclosure.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that Section 2 of this act, which adds Section 6254.26 of the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state pursuant to subdivision (b) of Section 3 of Article I of the California Constitution and Section 6250 of the Government Code. The public has a paramount interest in knowing how public money is spent and invested.

(b) Public pension and retirement systems and public endowments and foundations have a fiduciary duty to invest the assets of these funds with care, skill, prudence, and diligence. This fiduciary duty includes diversifying the investment of assets in a manner so as to minimize the risk of loss and maximize the rate of return. Investment in high performing

alternative investments is a component of diversifying the pension assets and maximizing the rate of return.

- (c) At the same time, a certain narrow class of public investments, alternative investments, involves some information that historically has been kept confidential because confidentiality is essential to their success. The disclosure of certain information pertaining to alternative investments could be harmful to generating sustainable and profitable rates of return for the investments of the pension or retirement system and of the public endowment or foundation. Public pension systems desire to invest a portion of their portfolio in alternative investments to boost return.

(d) Following recent litigation seeking to require public pension funds and retirement systems and public endowments or foundations to disclose certain information about alternative investments, the funds risk being excluded from participation in certain alternative investments. Exclusion from investing pension or retirement system assets in alternative investments may impose substantial costs on state public pension funds and the public employees who are their beneficiaries.

(e) It is the intent of this legislation to balance the public's right of access to information and the ability of public pension funds to continue to invest in alternative investment funds. It is also the intent of this legislation to allow the public to monitor the performance of public investments; for public bodies to avoid payment of excessive fees to private individuals or companies; and for the public to be able to know the principals involved in management of alternative investment funds in which public investment funds have invested so that conflicts of interest on the part of public officials can be avoided. This legislation is not intended to reverse the general presumption of access and openness of the California Public Records Act and subdivision (b) of Section 3 of Article I of the California Constitution.

(f) It is not the intent of this legislation to overrule or invalidate any court orders in or stipulated resolutions of prior litigation relating to any public entity's obligation to disclose information about its alternative investments to narrow the information disclosed as a result of those decisions, or in any other way to apply retroactively. It is, rather, the intent of this legislation to establish predictability about what should and should not be disclosed regarding private equity funds so that public pension funds will be able to continue to invest in private equity funds.

SEC. 2. Section 6254.26 is added to the Government Code, to read:

6254.26. (a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- 1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- 2) Quarterly and annual financial statements of alternative investment vehicles.

- 3) Meeting materials of alternative investment vehicles.
- 4) Records containing information regarding the portfolio positions in which alternative investment funds invest.
- 5) Capital call and distribution notices.
- 6) Alternative investment agreements and all related documents.
- b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:
 - (1) The name, address, and vintage year of each alternative investment vehicle.
 - (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
 - (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
 - (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
 - (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.
 - (6) The net internal rate of return of each alternative investment vehicle since inception.
 - (7) The investment multiple of each alternative investment vehicle since inception.
 - (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.
 - (9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal yearend basis.
- (c) For purposes of this section, the following definitions shall apply:
 - (1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.
 - (2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.
 - (3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.
 - (4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.