

BILL ANALYSIS

Senate Research Center
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H.B. 2460
By: Truitt (Wentworth)
Open Government
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that local pension systems throughout the state are supported by public funds and must be accountable to taxpayers. However, observers note that the enabling statutes for many of these public retirement systems contain restrictive provisions preserving the confidentiality of information held by their governing boards, which limits access to information of legitimate public interest, including certain investment information.

This legislation seeks to provide for transparency and accountability on the part of local public retirement systems by extending the application of the state's open records law to the governing body of such a public retirement system in the same way it applies to any governing body, with certain exceptions.

H.B. 2460 amends current law relating to confidentiality of information held by a public retirement system.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 552, Government Code, by adding Section 552.0038, as follows:

Sec. PUBLIC RETIREMENT SYSTEMS SUBJECT TO LAW. (a) Defines, in this section, "governing body of a public retirement system" and "public retirement system."

(b) Provides that, except as provided by Subsections (c) through (i), the governing body of a public retirement system is subject to this chapter in the same manner as a governmental body.

(c) Provides that records of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from a retirement system under a retirement plan or program administered by the retirement system that are in the custody of the system or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller of public accounts, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure. Provides that the retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general because the records are exempt from the provisions of this chapter, except as otherwise provided by this section.

(d) Authorizes records to be released to a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system or to an authorized attorney, family member, or representative

acting on behalf of the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits. Authorizes the retirement system to release the records to:

- (1) an administering firm, carrier, or agent or attorney acting on behalf of the retirement system;
- (2) another governmental entity having a legitimate need for the information to perform the purposes of the retirement system; or
- (3) a party in response to a subpoena issued under applicable law.

(e) Authorizes a record released or received by the retirement system under this section to be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. Provides that an unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

(f) Provides that the records of an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system remain confidential after release to a person as authorized by this section. Authorizes the records to become part of the public record of an administrative or judicial proceeding related to a contested case, and the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits waives the confidentiality of the records, including medical records, unless the records are closed to public access by a protective order issued under applicable law.

(g) Authorizes the retirement system to require a person to provide the person's social security number as the system considers necessary to ensure the proper administration of all services, benefits, plans, and programs under the retirement system's administration, oversight, or participation or as otherwise required by state or federal law.

(h) Provides that the retirement system has sole discretion in determining whether a record is subject to this section. Provides that for purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system under any retirement plan or program administered by the retirement system.

(i) Provides that to the extent of a conflict between this section and any other law with respect to the confidential information held by a public retirement system or other entity described by Subsection (c) concerning an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system, the prevailing provision is the provision that provides the greater substantive and procedural protection for the privacy of information concerning that individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits.

SECTION 2. Effective date: upon passage or September 1, 2011.