

SUBJECT: Applying public information statutes to certain public retirement systems

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 6 ayes — Truitt, Anchia, Creighton, Legler, Nash, Orr

0 nays

3 absent — C. Anderson, Hernandez Luna, Veasey

WITNESSES: (*On introduced bill:*)

For — Craig Mason, City of Houston; (*Registered, but did not testify:* Keith Elkins, Freedom of Information Foundation of Texas; T.J. Patterson, City of Fort Worth; Matthew Simpson, ACLU of Texas; Ed Sterling, Texas Press Association, Texas Daily Newspaper Association)

Against — (*Registered, but did not testify:* Bill Elkin, Houston Police Retired Officers Association)

(*On committee substitute:*)

For — William Tom Atkins

Against — None

On — Ann Fuelberg, Employees Retirement System of Texas; (*Registered, but did not testify:* David Gavia, Texas Municipal Retirement System)

BACKGROUND: Government Code, ch. 552 addresses public information in the context of open government, including open records requests.

Government Code, sec. 802.001 provides definitions of “public retirement system” and “governing body of a public retirement system.” The “governing body of a public retirement system” is the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for the system’s assets and has the duties of overseeing the investment and expenditure of the system’s funds and the

administration of the system's benefits. A public retirement system may serve the officers or employees of the state or a political subdivision.

Government Code, sec. 815.503 regulates the confidentiality of the records of individual participants in the Employees Retirement System (ERS). Similar provisions exist in ch. 825 for the Teacher Retirement System and in ch. 845 for the Texas County and District Retirement System.

DIGEST: CSHB 2460 would add a new sec. 552.0038 to the Government Code to apply ch. 552's public information provisions regarding a governmental body to the governing body of a public retirement system, except as otherwise provided in the section. The new section would contain the language of sec. 815.503, slightly modified, to regulate the confidentiality of records of individual participants in the applicable public retirement systems.

The bill would specify that, where conflicts existed between the new section and any other law with respect to confidential information held by a public retirement system, the provision that provided greater substantive and procedural protection for the privacy of the information would prevail.

The bill would take immediate effect if it finally passed by a two-thirds record vote of the membership of each house. Otherwise it would take effect September 1, 2011.

NOTES: The committee substitute differs from the bill as filed by adding the slightly modified language from Government Code, sec. 815.503, which regulates the confidentiality of the records of individual ERS participants. The substitute also changed the handling of conflicts between the added section and other law, so that the provision providing greater privacy protections would prevail, rather than only the provision added by this bill.