

SUBJECT: Public disclosure of investment information by governmental bodies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 6 ayes — Swinford, B. Cook, Farrar, Gattis, J. Keffer, Martinez Fischer
0 nays
3 absent — Miller, Villarreal, Wong

SENATE VOTE: On final passage, April 29 — 29-0

WITNESSES: (*On House companion bill, HB 223:*)
For — Mary E. Mayes, Travis County, Government Treasurers Organization of Texas; Kathy Mitchell, Consumers Union; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association

Against — None

On — Greg Abbott, Missy Cary, Office of the Attorney General; Joe Aragona, Austin Ventures, National Venture Capital Association; Bob Boldt, UTIMCO - University of Texas Investment Management Company; Clinton Bybee, Texas Venture Capital Association; Ronnie Jung, Teacher Retirement System

BACKGROUND: Government Code, ch. 552, known as the Public Information Act, provides for public access to records maintained by state and local governments. Confidential information, trade secrets, and commercial information that would cause substantial competitive harm are excepted from disclosure under secs. 552.101 and 552.110.

Certain public pension funds and permanent education funds are authorized to make private equity investments through a trust established under Art. 16, sec. 70 of the Texas Constitution. In July 2004, the attorney general issued an open records decision (OR2004-6227) declaring that information about investments by governmental bodies was subject to open records requests.

DIGEST:

SB 121 would amend the Public Information Act to require governmental entities to disclose 16 specific categories of information about their investments. Any information prepared or provided by a private investment fund beyond those 16 items, including pre- and post-investment diligence information not publicly released, would be confidential and excepted from open records disclosure requirements.

For each fund or investment entity a governmental body invested in, the governmental body would have to disclose:

- the name of the fund;
- the date that the fund was created;
- the date the investment was made;
- the amount of money committed to the fund;
- the amount of money invested in the fund;
- the amount of money received from the fund;
- the internal rate of return and the date it was calculated;
- the remaining value of the fund;
- the total amount of fees;
- the name of the principals responsible for managing the fund;
- each recusal filed by a member of the governing board in connection with an investment;
- a description of the types of businesses in the fund;
- the minutes and recordings of each open portion of a meeting in which these items were discussed;
- the governmental body's percentage ownership interest in the fund;
- any annual ethics disclosure report submitted to the governmental body by the fund; and
- the cash-on-cash return realized by the governmental body for the fund.

The bill would not apply to the Texas Mutual Insurance Company.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

SB 121 would provide citizens with access to vital information about the investments of public funds to ensure that taxpayer funds were invested properly. These funds – which include public pension funds like the Employees Retirement System and Teachers Retirement System, as well as the Permanent School Fund and the University of Texas Investment Management Company (UTIMCO) – invest billions of dollars on behalf of Texas citizens, and Texans have a right to know how their money is being invested. SB 121 would increase the accountability of these funds by guaranteeing citizens the right to information necessary to assess how well these funds were performing and whether taxpayer monies were being invested ethically.

The bill would strike an appropriate balance between the public's need for access to investment information and the need to protect confidential or proprietary business information. By creating a bright line between public and nonpublic information, SB 121 would restore certainty for the financial community since the 2004 attorney general's opinion. Since then, several venture capital funds have refused participation by Texas governmental entities, citing concerns that the opinion could require them to release confidential information about the operations of their funds that would place them and the companies they invest in at a competitive disadvantage. These funds historically have provided the state with exceptional returns on its investment significantly above those of traditional stocks and bonds. By clarifying that any information not listed would be excepted from disclosure, SB 121 would enable public investment entities to reinvest in these successful funds at a time when the state has a particular need for strong investment returns to make actuarially sound several underfunded funds.

**OPPONENTS
SAY:**

By making all investment information not explicitly listed confidential, SB 121 would be a reversal of the usual presumption in the state's open records laws, which generally require that everything be open unless specifically excepted. This unprecedented blanket exception could keep confidential important information that the public may later decide it needs. The public should have full and open access to investment information on taxpayer funds to best monitor the use of those monies.

NOTES: The companion bill, HB 223 by Gattis, was left pending in the House State Affairs Committee.