

ASSEMBLY BILL

No. 386

Introduced by Assembly Member Cooper

February 2, 2021

An act to add Section 6254.32 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as introduced, Cooper. Public Employees' Retirement Fund: investments: confidentiality.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Existing law excludes from the disclosure requirement certain records regarding alternative investments in which public investment funds invest.

This bill would exempt from disclosure under the act specified records regarding an internally managed private loan made directly by the Public Employees' Retirement Fund. Under the bill, these records would include quarterly and annual financial statements of the borrower or its constituent owners, unless the information has already been publicly released by the keeper of the information.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 6254.32 is added to the Government
2 Code, to read:

3 6254.32. (a) For purposes of this section, the following
4 definitions shall apply:

5 (1) “Business identifying information” means any information
6 about a legal entity that reveals a trade secret, commercial
7 information, or financial data that is proprietary or confidential,
8 including, but not limited to, information that may be used to
9 distinguish or trace the identity of a person or other legal entity
10 maintaining a constituent ownership interest in the borrower.

11 (2) “Constituent owner” means a person or legal entity that
12 maintains a direct or indirect ownership interest in the borrower
13 or one of its guarantors or sources of collateral for the loan,
14 including, among others, a stockholder, member, or partner.

15 (3) “Personal identifying information” has the same meaning
16 as defined in Section 530.55 of the Penal Code.

17 (4) “Private loan” means a loan made pursuant to or evidenced
18 by a loan agreement, debt instrument, or other evidence of
19 indebtedness, if that lending arrangement is exempt from
20 registration as a security under federal securities laws.

21 (5) “Public investment fund” means the Public Employees’
22 Retirement Fund described in Section 20170.

23 (b) Notwithstanding any provision of this chapter or other law,
24 the following records regarding an internally managed private loan
25 made directly by a public investment fund shall not be subject to
26 disclosure pursuant to this chapter unless the information has
27 already been publicly released by the keeper of the information:

28 (1) Due diligence materials that are proprietary to the public
29 investment fund, any participating underwriting syndicate, the
30 borrower, or any of the borrower’s constituent owners or
31 guarantors.

32 (2) Private loan agreements and all related documents.

33 (3) Personal or business identifying information contained in
34 records that would disclose the identities of any constituent owners
35 of the borrower, regardless of whether the constituent owner is a
36 person or legal entity.

37 (4) Quarterly and annual financial statements of the borrower
38 or its constituent owners.

1 (5) Materials relating to collateral pledged in support of the
2 private loan.

3 (6) Meeting materials of creditors’ committees.

4 (c) Notwithstanding subdivision (a), the following information
5 contained in records described in subdivision (a) shall be subject
6 to disclosure pursuant to this chapter and shall not be considered
7 a trade secret exempt from disclosure:

8 (1) The name and address of each borrower.

9 (2) The dollar amount of each private loan made to each
10 borrower by the public investment fund since inception.

11 (3) The annualized time-weighted return of each private loan.

12 (4) For each private loan, the aggregate amount of undrawn
13 loan commitments.

14 (5) The amount of principal and interest payments made to the
15 public investment fund by each borrower since the inception of
16 the loan.

17 (6) For each private loan, whether the loan has been in default
18 for six months or longer.

19 (d) Records related to a public investment fund’s indirect
20 funding of a private loan via a fund or other type of externally
21 managed investment vehicle shall remain subject to Sections
22 6254.26 and 7514.7.

23 SEC. 2. The Legislature finds and declares that Section 1 of
24 this act, which adds Section 6254.32 to the Government Code,
25 imposes a limitation on the public’s right of access to the meetings
26 of public bodies or the writings of public officials and agencies
27 within the meaning of Section 3 of Article I of the California
28 Constitution. Pursuant to that constitutional provision, the
29 Legislature makes the following findings to demonstrate the interest
30 protected by this limitation and the need for protecting that interest:

31 This act strikes a balance between preserving the right of the
32 public to access information about how public funds are invested
33 and protecting the privacy of loan recipients and proprietary
34 information provided to public investment funds.

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