
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: SB 574
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Version: April 22, 2015
Urgency: No
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Hearing Date: April 29, 2015
Fiscal: Yes

Subject: University of California: alternative investment information

SUMMARY

This bill requires the University of California (UC) to obtain specified information from each private equity fund, venture fund, hedge fund, or absolute return fund in which the UC provides or has provided funds for investment.

BACKGROUND

Existing law defines “alternative investment” as an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

Existing law exempts specified records regarding alternative investments in which public investment funds are invested from disclosure, unless the information has already been publicly released by the keeper of the information. Information exempted from disclosure includes due diligence materials that are proprietary, quarterly and annual financial statements, meeting materials, records containing information regarding the portfolio positions in which alternative investment funds invest, capital call and distribution notices, and alternative investment agreements and all related documents.

Existing law requires disclosure of specified information regarding alternative investments. These required disclosures include the following:

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 year-end basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
5. The dollar amount, on a fiscal year-end 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 year-end 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 year-end basis.
(Government Code § 6254.26)

Existing law, the California Public Records Act (CPRA) governs the disclosure of information collected and maintained by public agencies. Generally, all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. There are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information. Unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency that has custody of the information.

Existing law defines state agency, for purposes of the CPRA, to include every state officer, department, division, bureau, board, and commission or other state body or agency, except for the Legislature and the Judiciary. The California State University, the University of California, and the California Community Colleges are considered to be state agencies for this purpose. (Government Code § 6250, et. al.)

ANALYSIS

This bill requires the University of California to obtain the information required to be disclosed under specified Government Code provisions (§ 6254.26) from each private equity fund, venture fund, hedge fund, or absolute return fund in which the UC provides, or has provided, funds for investment.

STAFF COMMENTS

1. ***Need for the bill.*** Under the California Public Records Act, specified information about alternative investments must be disclosed if public funds are used for investment. According to the author, the courts recently ruled that the UC Regents are allowed to refrain from obtaining this information from the two largest venture capital partners with whom the UC invests. As a result, the UC Regents can avoid the disclosure requirements which would otherwise apply since they cannot disclose information which they do not possess.

According to the author, the UC has invested over \$239 million in 10 venture capital funds. This bill would require the UC to obtain the specified information and allow Californians and UC employees to track the performance of investments on which their pensions rely. This bill is sponsored by the California Newspaper Publishers Association.

2. ***Related Court Cases.*** This bill is intended to respond to a ruling by the California Court of Appeals in *Regents of the University of California v. Superior*

Court (2013) 222 Cal. App. 4th 383, appealing the decision of the Superior Court for Alameda County in regards to a request by Reuters America LLC for specific financial information from the UC Regents pertaining to their investments in specified funds.

The court noted that the primary issue in the case was whether a public agency can be required under the California Public Records Act (Government Code § 6250, et. seq.) to seek records it does not prepare, own, use or retain in the conduct of its business.

The Superior Court found that the Regents were required to use "objectively reasonable efforts" to obtain individual fund information for the Regent's current investments from Kleiner Perkins Caulfield & Byers (Kleiner Perkins) and Sequoia Capital (Sequoia) even though the Regents had not prepared, owned, used, or retained this fund information. However, this ruling was overturned by the appeals court which found that, because the information was not prepared, owned, used, or retained by the Regents, records reflecting such information in the hands of Kleiner Perkins and Sequoia were not "public records" within the meaning of the California Public Records Act.

3. **History.** Court documents noted that as of October 2012, the Regents owned investment assets of about \$71.6 billion which help pay for employee pensions, student scholarships, research, and other university operations. Since 1979, about 2 percent of the Regent's multi-billion dollar investment portfolio has been invested in "private equity;" limited partnerships formed and managed by private parties to invest in private companies.

Until 2003, the Regents did receive information from the private equity firms that allowed it to monitor its private equity investments. In 2003, however, in response to a claim by the Coalition of University Employees, the Alameda County Superior Court ruled that this information was subject to disclosure under the California Public Records Act. A UC Regents petition to seek review of that decision by an appeals court was denied. Following this decision, the two private equity firms that were the subject of the 2013 court case, Kleiner Perkins and Sequoia, stopped providing fund specific information and stopped inviting the Regents to participate in new funds. It appears that Sequoia did allow the Regents to invest in private equity funds again beginning in 2010.

SUPPORT

American Federation of State, County and Municipal Employees, AFL-CIO
California Newspaper Publishers Association, CNPA Services, Inc.

OPPOSITION

University of California