

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 382**

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**Introduced by Assembly Member Mullin**

February 14, 2013

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An act to amend Sections 54956.81 and 54957.5 of the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 382, as amended, Mullin. State and local government: alternative investments: public access.

Existing law, the California Public Records Act, requires state agencies and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. Existing law excludes from disclosure records of public investment funds regarding alternative investments, as defined, unless the information has already been publicly released by the keeper of the information. Existing law defines an alternative investment to mean an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law authorizes the legislative body of a local agency that invests pension funds to hold a meeting in closed session to consider the purchase or sale of particular, specific pension fund investments.

This bill would further authorize the legislative body of a local agency that invests pension funds to hold a meeting in closed session to consider information related to alternative investments and alternative investment vehicles, as specified.

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: no. State-mandated local program: no.

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

1 SECTION 1. Section 54956.81 of the Government Code is  
2 amended to read:

3 54956.81. Notwithstanding any other provision of this chapter,  
4 a legislative body of a local agency that invests pension funds may  
5 hold a closed session to consider the purchase or sale of particular,  
6 specific pension fund investments or the information set forth in  
7 subdivision (a) of Section 6254.26. All investment transaction  
8 decisions made during the closed session shall be made by rollcall  
9 vote entered into the minutes of the closed session as provided in  
10 subdivision (a) of Section 54957.2.

11 SEC. 2. Section 54957.5 of the Government Code is amended  
12 to read:

13 54957.5. (a) Notwithstanding Section 6255 or any other law,  
14 agendas of public meetings and any other writings, when  
15 distributed to all, or a majority of all, of the members of a  
16 legislative body of a local agency by any person in connection  
17 with a matter subject to discussion or consideration at an open  
18 meeting of the body, are disclosable public records under the  
19 California Public Records Act (Chapter 3.5 (commencing with  
20 Section 6250) of Division 7 of Title 1), and shall be made available  
21 upon request without delay. However, this section shall not include  
22 any writing exempt from public disclosure under Section 6253.5,  
23 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

24 (b) (1) If a writing that is a public record under subdivision (a),  
25 and that relates to an agenda item for an open session of a regular

1 meeting of the legislative body of a local agency, is distributed  
2 less than 72 hours prior to that meeting, the writing shall be made  
3 available for public inspection pursuant to paragraph (2) at the  
4 time the writing is distributed to all, or a majority of all, of the  
5 members of the body.

6 (2) A local agency shall make any writing described in  
7 paragraph (1) available for public inspection at a public office or  
8 location that the agency shall designate for this purpose. Each local  
9 agency shall list the address of this office or location on the agendas  
10 for all meetings of the legislative body of that agency. The local  
11 agency also may post the writing on the local agency's Internet  
12 Web site in a position and manner that makes it clear that the  
13 writing relates to an agenda item for an upcoming meeting.

14 (3) This subdivision shall become operative on July 1, 2008.

15 (c) Writings that are public records under subdivision (a) and  
16 that are distributed during a public meeting shall be made available  
17 for public inspection at the meeting if prepared by the local agency  
18 or a member of its legislative body, or after the meeting if prepared  
19 by some other person. These writings shall be made available in  
20 appropriate alternative formats upon request by a person with a  
21 disability, as required by Section 202 of the Americans with  
22 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal  
23 rules and regulations adopted in implementation thereof.

24 (d) This chapter shall not be construed to prevent the legislative  
25 body of a local agency from charging a fee or deposit for a copy  
26 of a public record pursuant to Section 6253, except that a surcharge  
27 shall not be imposed on persons with disabilities in violation of  
28 Section 202 of the Americans with Disabilities Act of 1990 (42  
29 U.S.C. Sec. 12132), and the federal rules and regulations adopted  
30 in implementation thereof.

31 (e) This section shall not be construed to limit or delay the  
32 public's right to inspect or obtain a copy of any record required to  
33 be disclosed under the requirements of the California Public  
34 Records Act (Chapter 3.5 (commencing with Section 6250) of  
35 Division 7 of Title 1). This chapter shall not be construed to require  
36 a legislative body of a local agency to place any paid advertisement  
37 or any other paid notice in any publication.

38 SEC. 3. The Legislature finds and declares that Sections 1 and  
39 2 of this act, which amend Sections 54956.81 and 54957.5 of the  
40 Government Code, impose a limitation on the public's right of

1 access to the meetings of public bodies or the writings of public  
2 officials and agencies within the meaning of Section 3 of Article  
3 I of the California Constitution. Pursuant to that constitutional  
4 provision, the Legislature makes the following findings to  
5 demonstrate the interest protected by this limitation and the need  
6 for protecting that interest:

7 ~~The public interest in nondisclosure pursuant to this act~~  
8 ~~outweighs the public interest in disclosure, since disclosure of the~~  
9 ~~information under the act puts public pension funds at a competitive~~  
10 ~~disadvantage in the marketplace, likely reducing a pension fund's~~  
11 ~~return on investment and thereby necessitating greater contribution~~  
12 ~~from the public for the support of public pensions.~~

13 *It is in the public interest to ensure that disclosure requirements*  
14 *in the Ralph M. Brown Act are consistent with those in the Public*  
15 *Records Act. When Section 6254.26 was added to the Government*  
16 *Code, the following findings were made, which are applicable*  
17 *with equal force to this measure:*

18 (a) *Access to information concerning the conduct of the people's*  
19 *business is a fundamental and necessary right of every person in*  
20 *this state pursuant to subdivision (b) of Section 3 of Article I of*  
21 *the California Constitution and Section 6250 of the Government*  
22 *Code. The public has a paramount interest in knowing how public*  
23 *money is spent and invested.*

24 (b) *Public pension and retirement systems and public*  
25 *endowments and foundations have a fiduciary duty to invest the*  
26 *assets of these funds with care, skill, prudence, and diligence. This*  
27 *fiduciary duty includes diversifying the investment of assets in a*  
28 *manner so as to minimize the risk of loss and maximize the rate*  
29 *of return. Investment in high performing alternative investments*  
30 *is a component of diversifying the pension assets and maximizing*  
31 *the rate of return.*

32 (c) *At the same time, a certain narrow class of public*  
33 *investments, alternative investments, involves some information*  
34 *that historically has been kept confidential because confidentiality*  
35 *is essential to their success. The disclosure of certain information*  
36 *pertaining to alternative investments could be harmful to*  
37 *generating sustainable and profitable rates of return for the*  
38 *investments of the pension or retirement system and of the public*  
39 *endowment or foundation. Public pension systems desire to invest*

1 *a portion of their portfolio in alternative investments to boost*  
2 *return.*

3 *(d) Following recent litigation seeking to require public pension*  
4 *funds and retirement systems and public endowments or*  
5 *foundations to disclose certain information about alternative*  
6 *investments, the funds risk being excluded from participation in*  
7 *certain alternative investments. Exclusion from investing pension*  
8 *or retirement system assets in alternative investments may impose*  
9 *substantial costs on state public pension funds and the public*  
10 *employees who are their beneficiaries.*

11 *(e) It is the intent of this legislation to balance the public's right*  
12 *of access to information and the ability of public pension funds to*  
13 *continue to invest in alternative investment funds. It is also the*  
14 *intent of this legislation to allow the public to monitor the*  
15 *performance of public investments; for public bodies to avoid*  
16 *payment of excessive fees to private individuals or companies; and*  
17 *for the public to be able to know the principals involved in*  
18 *management of alternative investment funds in which public*  
19 *investment funds have invested so that conflicts of interest on the*  
20 *part of public officials can be avoided. This legislation is not*  
21 *intended to reverse the general presumption of access and openness*  
22 *of the California Public Records Act and subdivision (b) of Section*  
23 *3 of Article I of the California Constitution.*

24 *(f) It is not the intent of this legislation to overrule or invalidate*  
25 *any court orders in or stipulated resolutions of prior litigation*  
26 *relating to any public entity's obligation to disclose information*  
27 *about its alternative investments to narrow the information*  
28 *disclosed as a result of those decisions, or in any other way to*  
29 *apply retroactively. It is, rather, the intent of this legislation to*  
30 *establish predictability about what should and should not be*  
31 *disclosed regarding private equity funds so that public pension*  
32 *funds will be able to continue to invest in private equity funds.*

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