

BILL ANALYSIS

S.B. 121
By: Duncan
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Numerous public pension plans, including the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS), and state universities, through private investment companies such as The University of Texas Investment Management Company, invest millions of dollars of public money in the private equity marketplace. The investment of certain public pension funds and permanent education funds is authorized pursuant to a state constitutional amendment approved in 1988. These private investments are often made via venture capital funds. The return on the taxpayer monies invested in the private equity marketplace has, in the past few years, been greater than the return on investments in traditional funds, such as publicly-traded stocks. Information concerning the nature of investments is a public concern because it directly involves public money and public pension plans and state university funds.

A request for public information was made concerning the Texas Growth Fund (TGF). This particular fund invests funds contributed to it by its grantors, TRS and ERS. In response to the public information request, the attorney general of Texas, in July 2004, issued an open records ruling providing that certain information requested was subject to public disclosure. In August 2004, TGF filed an original petition seeking certain legal relief including, among other things, a declaratory judgment that the information not be made public.

S.B. 121 requires governmental bodies to disclose information relating to investments of public monies, including the name of any fund which the governmental entity is invested in, the year the fund was created, the dollar amount invested in the fund, and the return on the investment. The bill also requires the disclosure of board members' possible conflicts of interest and the disclosure of the fee expenses assessed.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Amends the Government Code by adding Section 552.0225, as follows:

Provides that it is the policy of this state that investments of the government are investments of and for the people and the people are entitled to information regarding those investments; requires the provisions of Section 552.0225 to be liberally construed to implement this policy. Provides that certain categories of information held by a governmental body relating to its investments are public information and not excepted from disclosure under Chapter 552. Provides that Section 552.0225 does not apply to the Texas Mutual Insurance Company or a successor to the company. Provides that this section does not apply to a private investment fund's investment in restricted securities.

Amends the Government Code by adding Section 552.143, as follows:

Provides that all information prepared or provided by a private investment fund and held by a governmental body that is not listed in Section 552.0225(b) is confidential and excepted from the requirements of Section 552.021. Provides that unless the information has been publicly released, pre- and post-investment diligence information, including reviews and analyses, prepared or maintained by a governmental body or a private investment fund is confidential and excepted from the requirements of Section 552.021, except to the extent it is subject to disclosure

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under Subsection (c). Provides that all information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in certain sections is confidential and excepted from the requirements of Section 552.021. Provides that Section 552.143(c) does not apply to a governmental body's purchase, holding, or disposal of, restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. Provides that Section 552.143(c) applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund. Defines "private investment fund," "reinvestment," and "restricted securities." Prohibits Section 552.143 from being construed as affecting the authority of the comptroller under Section 403.030 of the Government Code. Provides that Section 552.143 does not apply to the Texas Mutual Insurance Company or a successor to the company.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2005.