

BILL ANALYSIS

C.S.H.B. 2460
By: Truitt
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that local pension systems throughout the state are supported by public funds and must be accountable to taxpayers. However, observers note that the enabling statutes for many of these public retirement systems contain restrictive provisions preserving the confidentiality of information held by their governing boards, which limits access to information of legitimate public interest, including certain investment information.

C.S.H.B. 2460 seeks to provide for transparency and accountability on the part of local public retirement systems by extending the application of the state's open records law to the governing body of such a public retirement system in the same way it applies to any other governmental body, with certain exceptions.

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

C.S.H.B. 2460 amends the Government Code to establish that, except as otherwise provided, the governing body of a public retirement system is subject to the state's open records law in the same manner as a governmental body.

C.S.H.B. 2460 establishes that records of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from a retirement system under a retirement plan or program administered by the retirement system that are in the system's custody or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller of public accounts, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure. The bill establishes that the retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general because the records are exempt from provisions of the state's open records law, except as otherwise provided.

C.S.H.B. 2460 authorizes the release of records to a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system or to an authorized attorney, family member, or representative acting on behalf of such an individual. The bill authorizes the retirement system to release the records to an administering firm, carrier, or agent or attorney acting on behalf of the retirement system; another governmental entity having a legitimate need for the information to perform the purposes of the retirement system; or a party in response to a subpoena issued under applicable law.

C.S.H.B. 2460 authorizes such a record released or received by the retirement system to be transmitted electronically, including through the use of an electronic signature or certification in

a form acceptable to the retirement system. The bill establishes that an unintentional disclosure to, or unauthorized access by, a third party related to such a transmission or receipt of information is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

C.S.H.B. 2460 establishes that the records of an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system remain confidential after an authorized release. The bill authorizes the records to become part of the public record of an administrative or judicial proceeding related to a contested case and establishes that the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits waives the confidentiality of the records, including medical records, unless the records are closed to public access by a protective order issued under applicable law.

C.S.H.B. 2460 authorizes the retirement system to require a person to provide the person's social security number as the system considers necessary to ensure the proper administration of all services, benefits, plans, and programs under the retirement system's administration, oversight, or participation or as otherwise required by state or federal law.

C.S.H.B. 2460 establishes that the retirement system has sole discretion in determining whether a record is subject to the bill's provisions, and establishes that, for purposes of the bill's provisions, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system under any retirement plan or program administered by the retirement system.

C.S.H.B. 2460 establishes that, to the extent of a conflict between the bill's provisions and any other law with respect to the confidential information held by a public retirement system or administering firm, carrier, or governmental agency concerning an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system, the prevailing provision is the provision that provides the greater substantive and procedural protection for the privacy of information concerning that individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits.

C.S.H.B. 2460 provides for the meanings of "governing body of a public retirement system" and "public retirement system" by reference.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2460 omits a provision included in the original establishing that, to the extent that the bill's provisions conflict with another law of this state with respect to confidential information held by a public retirement system, the bill's provisions control.

C.S.H.B. 2460 contains provisions not included in the original establishing that records of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from a retirement system under a retirement plan or program administered by the retirement system that are in the system's custody or in the custody of an administering firm, a carrier, or another governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and establishing that the entity having custody of such information is not required to accept or comply with an open records request regarding a request for such information or to seek an

attorney general opinion.

C.S.H.B. 2460 contains provisions not included in the original authorizing the release of records to certain individuals; to an entity acting on the retirement system's behalf; to a governmental entity having a legitimate need for the information; or to a party in response to a subpoena.

C.S.H.B. 2460 contains provisions not included in the original authorizing the electronic transmission of a record released or received by the retirement system; establishing that an unintentional disclosure to, or unauthorized access by, a third party related to such a transmission or receipt of information is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information; and establishing that the records of certain individuals remain confidential after an authorized release.

C.S.H.B. 2460 contains a provision not included in the original authorizing the records to become part of the public record of an administrative or judicial proceeding related to a contested case and establishing that the individual waives the records' confidentiality unless the records are closed to public access by a protective order issued under applicable law.

C.S.H.B. 2460 contains a provision not included in the original authorizing the retirement system to require a person to provide the person's social security number as the system considers necessary.

C.S.H.B. 2460 contains a provision not included in the original establishing that the retirement system has sole discretion in determining whether a record is subject to the bill's provisions and that a record includes any personal identifying information.

C.S.H.B. 2460 contains a provision not included in the original establishing that, to the extent of a conflict between the bill's provisions and any other law with respect to the confidential information held by a public retirement system or administering firm, carrier, or governmental agency concerning an individual, the prevailing provision is the provision that provides the greater protection for the privacy of information concerning that individual.