

## **BILL ANALYSIS**

C.S.H.B. 2444  
By: Callegari  
Pensions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that because the state's public retirement systems are supported in part by public funds, those systems must be accountable to taxpayers. Current law gives a retirement system sole discretion in determining whether a record it holds is subject to the state's public information law. The parties contend that this authority is not in the public's best interest with regard to ensuring that pension systems are adequately transparent and accountable. C.S.H.B. 2444 seeks to clarify provisions of the state's public information law regarding the confidentiality of information held by a public retirement system and which records are subject to disclosure under that law.

### **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. 2444 amends the Government Code to expand the information in the custody of a public retirement system or certain other specified entities that is considered confidential and not subject to public disclosure to include any information, including individual records as defined by the bill, that could reasonably be expected to identify a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or other person eligible for benefits from a public retirement system under a retirement plan or program administered by the system and any information identifying by name, address, age, date of birth, employer, dates of employment, or dates of participation the amount of a monthly allowance or benefit paid to such an individual, subject to written authorization for release by the individual or the individual's authorized representative.

C.S.H.B. 2444 specifies that statutory provisions of the state public information law applicable to public retirement systems should not be interpreted as preventing disclosure of aggregate information that could not reasonably be expected to identify an individual and specifies that an entity that receives a request for the disclosure of information should consider the request in context with other publicly available information in making the determination as to whether a record could reasonably be expected to identify an individual.

C.S.H.B. 2444 specifies that a public retirement system is authorized to release individual records to certain entities and must release the records in accordance with the statutory provisions or ordinance establishing the system and the rules or policies of the system. The bill distinguishes between substantive and procedural provisions of the state public information law applicable to public retirement systems for purposes of determining which provisions prevail to the extent of a conflict.

C.S.H.B. 2444 repeals Section 552.0038(h), Government Code, that grants a public retirement system sole discretion in determining whether a record that includes any identifying information

about a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible to receive system benefits is subject to provisions of the state's public information law applicable to public retirement systems.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2444 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

No equivalent provision.

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 552.0038, Government Code, is amended by adding Subsections (a-1) and (c-1) and amending Subsections (c), (d), (f), and (i) to read as follows:

(a-1) For the purposes of this section, "individual record" includes any information that could reasonably be expected to identify an individual, including the individual's name, address, telephone number, e-mail address, social security number, record of membership in the public retirement system, record of contributions or distributions, account balance, status of any application for benefits, medical records, financial records, beneficiary information, and communications with the retirement system.

(c) Except as provided by this section, unless written authorization for release is provided to the public retirement system by the individual or the individual's authorized representative, the following information is confidential and is not subject to public disclosure:

(1) an individual record, as defined by Subsection (a-1), of any person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or other person eligible for benefits from a public retirement system under a retirement plan or program administered by the public retirement system that is in the custody of the retirement system or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system; and

(2) any information identifying by name, address, age, date of birth, employer, dates of

(See amended Section 552.0038(h),  
Government Code, in SECTION 1 below.)

employment, or dates of participation the amount of a monthly allowance or benefit paid to the individual ~~[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 custody of the system or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure].~~

(c-1) Except as otherwise provided by this section, the public ~~[The]~~ retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for [a record or] information determined to be confidential under Subsection (c). This section should not be interpreted as preventing disclosure of aggregate information that could not reasonably be expected to identify an individual. An entity that receives a request for the disclosure of information under this section should consider the request in context with other publicly available information in making the determination as to whether a record could reasonably be expected to identify an individual ~~[about a record or to seek an opinion from the attorney general because the records are exempt from the provisions of this chapter, except as otherwise provided by this section].~~

(d) A public retirement system may release individual records, in accordance with the provisions of the statute or ordinance establishing the system and the rules or policies of the system, to the following entities:

(1) [Records may be released to] a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system;

(2) [or to] an authorized attorney, family member, or representative acting on behalf of the member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits;

(3) [- The retirement system may release the records to:

[(1)] an administering firm, carrier, or agent or attorney acting on behalf of the retirement

system;

(4) [(2)] another governmental entity having a legitimate need for the information to perform the purposes of the retirement system; or

(5) [(3)] a party in response to a subpoena issued under applicable law.

(f) 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 release to an individual or entity ~~[a person]~~ as authorized by this section. The records may become part of the public record of an administrative or judicial proceeding related to a contested case, and 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.

(i) To the extent of a substantive or procedural conflict between this section and any other law with respect to the confidential information held by a public retirement system or other entity described by Subsection (c) concerning an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system:

(1) [.] the substantive ~~[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 prevails; and

(2) the procedural provision of this chapter prevails.

SECTION 1. Section 552.0038(h), Government Code, is amended to read as follows:

(h) ~~[The retirement system has sole discretion in determining whether a record is subject to this section.]~~ For purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary,

SECTION 2. Section 552.0038(h), Government Code, is repealed.

alternate payee, program participant, or person eligible for benefits from the retirement system under any retirement plan or program administered by the retirement system.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 3. Section 552.0038, Government Code, as amended by this Act, applies only to a request for information received by a public retirement system or other entity described by Subsection (c) of that section that is received on or after the effective date of this Act. A request for information that is received before the effective date of this Act is governed by the law in effect on the date the request is received, and that law is continued in effect for that purpose.

SECTION 4. Same as introduced version.