

Date of Hearing: July 7, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 574 (Pan) – As Amended April 22, 2015

**SENATE VOTE:** 37-0

**SUBJECT:** University of California: alternative investment information.

**SUMMARY:** Requires the University of California (UC) to obtain the information required in Government Code Section 6254.26(b) from each private equity fund, venture fund, hedge fund, or absolute return fund in which the UC provides or has provided funds for investment.

**EXISTING LAW:**

- 1) Pursuant to Government Code Section 6254.26(b), the following information regarding alternative investments in which public investment funds invest are subject to disclosure:
  - a) The name, address, and vintage year of each alternative investment vehicle;
  - b) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception;
  - c) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception;
  - d) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle;
  - e) The dollar amount, on a fiscal yearend 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;
  - f) The net internal rate of return of each alternative investment vehicle since inception;
  - g) The investment multiple of each alternative investment vehicle since inception;
  - h) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle; and,
  - i) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.
- 2) Pursuant to Government Code Section 6254.26(a), the following records regarding alternative investments in which public investment funds invest are not subject to disclosure, unless the information has already been publicly released by the keeper of the information:
  - a) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle;

- b) Quarterly and annual financial statements of alternative investment vehicles;
- c) Meeting materials of alternative investment vehicles;
- d) Records containing information regarding the portfolio positions in which alternative investment funds invest;
- e) Capital call and distribution notices; and,
- f) Alternative investment agreements and all related documents.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, UC indicates that this bill would require it to obtain the required information from the investment firms through litigation. UC anticipates such costs to be at least \$500,000.

**COMMENTS:** *Background.* In June 2003, the Alameda County Superior Court, citing the California Public Records Act (CPRA), required UC to reveal information regarding individual venture-capital partnerships. In 2005, in response to concerns that this disclosure would lead to some funds discontinuing partnership with UC, SB 439, Simitian, Chapter 258, established Government Code 6254.26 to require the public disclosure of some information regarding investment performance, but to protect the confidentiality of some proprietary information.

According to the Fact Sheet of SB 439 created by UC, concern that "trade secrets" would be obtained by competitors led a number of venture-capital firms to no longer offer UC partnership opportunities, specifically "new funds offered by the top two performing funds: Sequoia and Kleiner Perkins". In 2005, UC asserted that SB 439 achieved an "appropriate balance" to enable the UC and other public investment systems to maintain access to high-performing alternative investments, to reduce legal challenges, and to ensure consistent disclosure.

*Purpose of this bill.* 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.

*Arguments in support.* This bill is sponsored by the California Newspaper Publishers Association (CNPA). According to CNPA, this bill would overrule a portion of the Court of Appeal's decision in *Regents of the University of California v. Superior Court* (2013) 222 Cal. App. 4<sup>th</sup> 383, which allowed the UC to refuse to obtain investment reports from its two largest venture capital partners: Kleiner Perkins and Sequoia. The CNPA argues that this ruling allows the UC to violate the agreement negotiated as part of SB 439; this bill simply requires UC to comply with the disclosure requirements of the law it sponsored in 2005.

*Arguments in opposition.* The California Chamber of Commerce (CalChamber) opposes this bill and argues that the CPRA only applies to writings that are "prepared, owned, used, or retained by any state or local agency," and therefore does not require UC to obtain documents that were never in its possession merely because they might contain information the public would find

valuable. According to CalChamber, this bill would set a troubling precedent by expanding the reach of the CPRA to include private entity documents. UC opposes this bill and argues that forcing UC to obtain information that is not critical to its investment decisions is "illogical and could result in the University being prohibited from participating in certain types of investments." UC argues that it "makes every effort to be transparent and accountable, and to ensure that investments it makes add significant value to the University."

*UC Constitutional autonomy.* The California Constitution (Article IX, Section 9) establishes UC as a public trust and confers the full powers of the UC upon the UC Regents. The Constitution establishes that the UC is subject to legislative control only to the degree necessary to ensure the security of its funds and compliance with the terms of its endowments. Judicial decisions have held that there are three additional areas in which there may be limited legislative intrusion into university operations: authority over the appropriation of state moneys; exercise of the general police power to provide for the public health, safety and welfare; and, legislation on matters of general statewide concern not involving internal university affairs. *While the provisions of this bill are not binding on UC, the sponsor points to prior legislation and past practice of the UC Regents to voluntarily adopt legislative mandates.*

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

California Newspaper Publishers Association (Sponsor)  
American Federation of State, County and Municipal Employees  
One Individual

##### **Opposition**

California Chamber of Commerce  
University of California

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