

# HOUSE BILL REPORT

## HB 1640

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### As Passed House:

March 5, 2009

**Title:** An act relating to private financial and commercial investment information received by the University of Washington for purposes of the consolidated endowment fund.

**Brief Description:** Modifying disclosure requirements for private investment information received by the University of Washington consolidated endowment fund.

**Sponsors:** Representatives Kessler, Armstrong, Hunt, Sells, Alexander, Appleton and Kenney; by request of University of Washington.

### Brief History:

#### Committee Activity:

State Government & Tribal Affairs: 2/10/09, 2/20/09 [DP].

#### Floor Activity

Passed House: 3/5/09, 95-1.

### Brief Summary of Bill

- Exempts from disclosure under the Public Records Act certain financial and commercial information relating to investments in private funds by the University of Washington.

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## HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL AFFAIRS

**Majority Report:** Do pass. Signed by 7 members: Representatives Hunt, Chair; Appleton, Vice Chair; Armstrong, Ranking Minority Member; Alexander, Flannigan, Hurst and Miloscia.

**Staff:** Tracey O'Brien (786-7196)

### Background:

The Public Records Act (PRA) requires that all state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted

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liberally and the exemptions narrowly in order to effectuate a general policy favoring disclosure.

Statutory exemptions are provided for certain financial, commercial, and proprietary information. For example, the PRA exempts from disclosure financial and commercial information supplied to the State Investment Board when the information relates to the investment of public trust or retirement funds and when the disclosure would result in loss to such funds or in a private loss to the providers of the information.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request when the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. For practical purposes, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

Any person who is denied the opportunity to inspect or copy a public record may file a motion to show cause in superior court why the agency has refused access to the record. The burden of proof rests with the agency to establish that the refusal is consistent with the statute that exempts or prohibits disclosure. Judicial review of the agency decision is de novo and the court may examine the record in camera. Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record shall be awarded all costs, including reasonable attorney fees. In addition, the court has the discretion to award such person no less than \$5 but not to exceed \$100 for each day he or she was denied the right to inspect or copy the public record. The court's discretion lies in the amount per day, but the court may not adjust the number of days for which the agency is fined.

An agency or its representative, or a person who is named in the record or to whom the record specifically pertains, may file a motion or affidavit asking superior court to enjoin disclosure of the public record. The court may issue an injunction if it finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital government functions.

### **Summary of Bill:**

It is the intent of this act to clarify the provisions governing disclosure of information related to the University of Washington's (University) endowment fund.

The University must disclose the names and commitment amounts of private funds in which it is invested. In addition, the University must disclose the aggregate quarterly performance results for its portfolio of investments in such funds.

An exemption to the PRA is added for financial and commercial information submitted to or obtained by the University when the information relates to investment in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the

University's consolidated endowment fund or to result in private loss to the providers of this information.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a narrow and limited exemption to cover the University of Washington's (University) endowment which is funded by private donations. The endowment goes to support scholarships and professorships. The lack of a clear exemption to the PRA has made the best private investment funds reject investments by the University due to disclosure fears. As a result, the University is losing the opportunity to make better returns on its investments. It is estimated the University could make \$15 to \$20 million more in the next 10 years by investing in these private funds. This bill will clarify the exemption of these investment documents and is modeled after the exemptions for the State Investment Board (SIB) and the Life Sciences Discovery Fund. In addition, the bill improves upon the current disclosure by allowing reporting of the investments in private funds in the aggregate.

(In support with concerns) This information should be protected under the current law. This bill gives an exemption to private groups. In addition, if this exemption is necessary, it should apply to all universities.

(Neutral with concerns) Although this is consistent with other exemptions, this does not apply to the endowment funds of other public universities.

(Opposed) This bill does not match the SIB exemption. The SIB exemption has a more definite standard. In addition, the SIB has a large staff and a governing board to provide oversight. The SIB is governed by conflict of interest laws and regulations. In contrast, the University is governed by a Board of Regents with general powers and no conflict of interest protections. The University lacks the check that is needed especially if the public does not have access to records.

**Persons Testifying:** (In support) Representative Kessler, prime sponsor; and Randy Hodgins, Scott Davies, and Keith Ferguson, University of Washington.

(In support with concerns) Arthur West.

(Neutral with concerns) Toby Nixon, Washington Coalition for Open Government.

(Opposed) Rowland Thompson, Allied Daily Newspaper.

**Persons Signed In To Testify But Not Testifying:** None.