

SENATE BILL REPORT

SB 5256

As Reported By Senate Committee On:
Commerce, Trade, Housing & Financial Institutions, February 18, 1999

Title: An act relating to the state investment board.

Brief Description: Expanding the exemption to public disclosure laws for the state investment board.

Sponsors: Senators Snyder, Sellar, Prentice and Winsley; by request of State Investment Board.

Brief History:

Committee Activity: Commerce, Trade, Housing & Financial Institutions: 2/4/99, 2/18/99 [DP, DNP].

SENATE COMMITTEE ON COMMERCE, TRADE, HOUSING & FINANCIAL INSTITUTIONS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Shin, Vice Chair; Deccio, Gardner, Rasmussen, West, Winsley.

Minority Report: Do not pass.

Signed by Senators Benton, Hale, Heavey, T. Sheldon.

Staff: Susan Jones (786-7784)

Background: The Legislature created the Washington State Investment Board (SIB) in 1981. The SIB is responsible for safeguarding and investing public trust funds and retirement funds. State and local agencies are generally required to allow public inspection and copying of public records except for exempt records. Financial and commercial information supplied to the SIB is exempt when the information relates to investment of public trust funds or retirement funds and when disclosure would result in loss to such funds or in private loss to the information providers.

The SIB is a major investor in private equities and real estate limited partnerships, which may own majority or controlling interests in privately held companies and properties around the world. To properly oversee investments, the SIB receives highly confidential information about the operations and strategic plans of companies or partnerships. Disclosing this information to the public could place the companies or partnerships in jeopardy by allowing competitors, suppliers and customers access to sensitive information. Many disclosure requests come from out-of-state competitors or information sellers seeking a competitive advantage, rather than citizens or groups in Washington.

In addition, the public disclosure requirements may cause sponsors of private equities and real estate limited partnerships to decline investment by the SIB entirely to avoid the

disclosure. This may result in loss of lucrative investment opportunities. Alternatively, the sponsors may restrict the information provided to the SIB. This may restrict the oversight of the SIB's investments. Both situations may impair the SIB's ability to act in the best interest of its plan members.

Summary of Bill: The SIB's public disclosure exemption is expanded to include financial, commercial, or other information about a private entity's business operation when the information relates to the investment of public trust funds or retirement funds or to the provisions of investment management or consulting services and when the disclosure could result in loss to the funds, loss of an investment opportunity or private loss to the information providers.

The SIB may hold executive sessions to consider the exempt information.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The standard of "would result in a loss" is very difficult to show. The change makes a more reasonable and practical standard and protects the investments, which are for the sole benefit of the beneficiaries of the funds. The SIB has experienced a change in disclosure requests; there were 15 in 1992, all from within the state. In the last year and a half, 52 requests were made and only eight were from citizens and stakeholder organizations. Most requests came from firms that resell the information. If SIB discloses information related to private companies, the likely results are the limitation of investment opportunities or losses to companies in which SIB invests, both hurting the SIB's return. Other states' public funds have even more protective language than that proposed. Several stakeholders' organizations stated that the change makes the exemption more reasonable and protects and enhances their returns.

Testimony Against: Although more than half of the requests in the last three years were from companies that are out-of-state competitors or information sellers, they are the ones who can really analyze the information because it has gotten more complicated. This keeps things honest. The largest single award to the state until recently related to a real estate investment where the investigation started with three newspaper articles.

Testified: PRO: James Parker, State Investment Board; Bob Maier, Washington Education Association; Joe Beck, Retired Public Employees Council; Pat McGulgott, Tacoma Firefighters and State Investment Board Member; Neutral, Brian Sonntag, State Auditor; CON: Rowland Thompson, Allied Daily Newspapers; Joe Daniels, Puget Sound District Council.