

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY MAY 16, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2823

Introduced by Assembly Member Gatto

February 19, 2016

An act to amend and repeal Sections 82033, 82034, 87103, 87206, and 87207 of, and to add Section 87206.5 to, the Government Code, relating to the Political Reform Act of 1974. *Section 6254.26 of the Government Code, relating to public records.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2823, as amended, Gatto. ~~Political Reform Act of 1974: economic interest disclosure.~~ *Public records.*

The California Public Records Act requires that public records, as defined, be open to inspection at all times during the office hours of a state or local agency and that every person has a right to inspect any public record, with specified exceptions. The act exempts the disclosure of specific records regarding alternative investments in which public investment funds invest, unless the information has already been publicly released by the keeper of the information, including alternative investment agreements and all related documents.

This bill would require a state agency to disclose the cover page and signature block of a proposed alternative investment agreement and certain provisions in the alternative investment agreement or related

documents that govern the reclaiming of money or benefits under stated conditions.

~~The Political Reform Act of 1974 prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which the public official knows or has reason to know that he or she has a financial interest. A public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on a business entity in which the public official has a direct or indirect investment worth \$2,000 or more, real property in which the public official has a direct or indirect interest worth \$2,000 or more, or a source of income aggregating \$500 or more in value within 12 months before the time when the decision is made.~~

~~The Political Reform Act of 1974 requires persons holding specified public offices to file disclosures of investments, real property interests, and income within specified periods of assuming or leaving office, and annually while holding the office. The act requires the disclosures to include a statement indicating, within a specified value range, the fair market value of investments or interests in real property and the aggregate value of income received from a source.~~

~~This bill would increase the thresholds at which a public official has a disqualifying financial interest in a source of income from \$500 to \$1,000, in investments in business entities from \$2,000 to \$5,000, and in interests in real property from \$2,000 to \$10,000.~~

~~This bill would make conforming adjustments to the thresholds at which income, investments, and interests in real property must be disclosed on a public official's statement of economic interests. The bill would also revise the dollar amounts associated with the value ranges for reporting the value of economic interests.~~

~~This bill would delay the operation of these provisions to January 1, 2018.~~

~~Existing law makes a knowing or willful violation of the act a misdemeanor and subjects offenders to criminal penalties.~~

~~By creating additional crimes, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a 2/3 vote of each house and compliance with specified procedural requirements.~~

~~This bill would declare that it furthers the purposes of the act.~~

Vote: 2/3-majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6254.26 of the Government Code is
2 amended to read:

3 6254.26. (a) Notwithstanding any provision of this chapter or
4 other law, the following records regarding alternative investments
5 in which public investment funds invest shall not be subject to
6 disclosure pursuant to this chapter, unless the information has
7 already been publicly released by the keeper of the information:

8 (1) Due diligence materials that are proprietary to the public
9 investment fund or the alternative investment vehicle.

10 (2) Quarterly and annual financial statements of alternative
11 investment vehicles.

12 (3) Meeting materials of alternative investment vehicles.

13 (4) Records containing information regarding the portfolio
14 positions in which alternative investment funds invest.

15 (5) Capital call and distribution notices.

16 (6) Alternative investment agreements and all related documents.
17 documents, except that the following records shall be subject to
18 disclosure by a state agency pursuant to this chapter:

19 (A) The cover page and signature block of the proposed
20 alternative investment agreement.

21 (B) All provisions in an alternative investment agreement or
22 related documents that govern the reclaiming of money or benefits
23 under stated conditions, including, but not limited to, provisions
24 that have the effect of allowing the external manager or general
25 partner to pay back an amount less than the full cost of the initial
26 payment being reimbursed, including, but not limited to, provisions
27 necessary to understand how recovery is to operate and all defined
28 terms related to or affecting recovery.

1 (b) Notwithstanding subdivision (a), the following information
2 contained in records described in subdivision (a) regarding
3 alternative investments in which public investment funds invest
4 shall be subject to disclosure pursuant to this chapter and shall not
5 be considered a trade secret exempt from disclosure:

6 (1) The name, address, and vintage year of each alternative
7 investment vehicle.

8 (2) The dollar amount of the commitment made to each
9 alternative investment vehicle by the public investment fund since
10 inception.

11 (3) The dollar amount of cash contributions made by the public
12 investment fund to each alternative investment vehicle since
13 inception.

14 (4) The dollar amount, on a fiscal yearend basis, of cash
15 distributions received by the public investment fund from each
16 alternative investment vehicle.

17 (5) The dollar amount, on a fiscal yearend basis, of cash
18 distributions received by the public investment fund plus remaining
19 value of partnership assets attributable to the public investment
20 fund's investment in each alternative investment vehicle.

21 (6) The net internal rate of return of each alternative investment
22 vehicle since inception.

23 (7) The investment multiple of each alternative investment
24 vehicle since inception.

25 (8) The dollar amount of the total management fees and costs
26 paid on an annual fiscal yearend basis, by the public investment
27 fund to each alternative investment vehicle.

28 (9) The dollar amount of cash profit received by public
29 investment funds from each alternative investment vehicle on a
30 fiscal year-end basis.

31 (c) For purposes of this section, the following definitions shall
32 apply:

33 (1) "Alternative investment" means an investment in a private
34 equity fund, venture fund, hedge fund, or absolute return fund.

35 (2) "Alternative investment vehicle" means the limited
36 partnership, limited liability company, or similar legal structure
37 through which the public investment fund invests in portfolio
38 companies.

39 (3) "Portfolio positions" means individual portfolio investments
40 made by the alternative investment vehicles.

1 (4) “Public investment fund” means any public pension or
2 retirement system, and any public endowment or foundation.

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, May 16, 2016. (JR11)**

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