

AMENDED IN ASSEMBLY MARCH 18, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

**ASSEMBLY BILL**

**No. 386**

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**Introduced by Assembly Member Cooper**

February 2, 2021

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An act to add Section 6254.32 to the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Cooper. Public Employees' Retirement Fund: investments: confidentiality.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Existing law excludes from the disclosure requirement certain records regarding alternative investments in which public investment funds invest.

This bill would exempt from disclosure under the act specified records regarding an internally managed private loan made directly by the Public Employees' Retirement Fund. Under the bill, these records would include quarterly and annual financial statements of the borrower or its constituent owners, unless the information has already been publicly released by the keeper of the information.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

AB 386

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Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

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

- 1 SECTION 1. Section 6254.32 is added to the Government  
 2 Code, to read:  
 3 6254.32. (a) For purposes of this section, the following  
 4 definitions shall apply:  
 5 (1) “Business identifying information” means any information  
 6 about a legal entity that reveals a trade secret, commercial  
 7 information, or financial data that is proprietary or confidential,  
 8 including, but not limited to, information that may be used to  
 9 distinguish or trace the identity of a person or other legal entity  
 10 maintaining a constituent ownership interest in the borrower.  
 11 (2) “Constituent owner” means a person or legal entity that  
 12 maintains a direct or indirect ownership interest in the borrower  
 13 or one of its guarantors or sources of collateral for the loan,  
 14 including, among others, a stockholder, member, or partner.  
 15 (3) “Personal identifying information” has the same meaning  
 16 as defined in Section 530.55 of the Penal Code.  
 17 (4) “Private loan” means a loan made pursuant to or evidenced  
 18 by a loan agreement, debt instrument, or other evidence of  
 19 indebtedness, if that lending arrangement is exempt from  
 20 registration as a security under federal securities laws.  
 21 (5) “Public investment fund” means the Public Employees’  
 22 Retirement Fund described in Section 20170.  
 23 (b) Notwithstanding any provision of this chapter or other law,  
 24 the following records regarding an internally managed private loan  
 25 made directly by a public investment fund shall not be subject to  
 26 disclosure pursuant to this chapter unless the information has  
 27 already been publicly released by the keeper of the information:  
 28 (1) Due diligence materials that are proprietary to the public  
 29 investment fund, any participating underwriting syndicate, the  
 30 borrower, or any of the borrower’s constituent owners or  
 31 guarantors.  
 32 (2) Private loan agreements and all related documents.  
 33 (3) Personal or business identifying information contained in  
 34 records that would disclose the identities of any constituent owners

1 of the borrower, regardless of whether the constituent owner is a  
 2 person or legal entity.

3 (4) Quarterly and annual financial statements of the borrower  
 4 or its constituent owners.

5 (5) Materials relating to collateral pledged in support of the  
 6 private loan.

7 (6) Meeting materials of creditors' committees.

8 (c) Notwithstanding subdivision—~~(a)~~; *(b)*, the following  
 9 information contained in records described in subdivision—~~(a)~~ *(b)*  
 10 shall be subject to disclosure pursuant to this chapter and shall not  
 11 be considered a trade secret exempt from disclosure:

12 (1) The name and address of each borrower.

13 (2) The dollar amount of each private loan made to each  
 14 borrower by the public investment fund since inception.

15 (3) The annualized time-weighted return of each private loan.

16 (4) For each private loan, the aggregate amount of undrawn  
 17 loan commitments.

18 (5) The amount of principal and interest payments made to the  
 19 public investment fund by each borrower since the inception of  
 20 the loan.

21 (6) For each private loan, whether the loan has been in default  
 22 for six months or longer.

23 (d) Records related to a public investment fund's indirect  
 24 funding of a private loan via a fund or other type of externally  
 25 managed investment vehicle shall remain subject to Sections  
 26 6254.26 and 7514.7.

27 SEC. 2. The Legislature finds and declares that Section 1 of  
 28 this act, which adds Section 6254.32 to the Government Code,  
 29 imposes a limitation on the public's right of access to the meetings  
 30 of public bodies or the writings of public officials and agencies  
 31 within the meaning of Section 3 of Article I of the California  
 32 Constitution. Pursuant to that constitutional provision, the  
 33 Legislature makes the following findings to demonstrate the interest  
 34 protected by this limitation and the need for protecting that interest:

35 This act strikes a balance between preserving the right of the  
 36 public to access information about how public funds are invested  
 37 and protecting the privacy of loan recipients and proprietary  
 38 information provided to public investment funds.

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