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BILL ANALYSIS

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Senate Bill 1032 (as introduced 3-2-04)
Sponsor: Senator Valde Garcia
Committee: Commerce and Labor

Date Completed: 3-8-04

CONTENT

This bill would amend the Confidential Research Information Act to protect certain confidential investment information received by a public university or college that had been provided by an investment fiduciary or portfolio company, from public disclosure under the Freedom of Information Act (FOIA); and rename the amended Act the "Confidential Research and Investment Information Act".

Under the bill, an exemption from FOIA would exist for a record received, prepared, used, or retained by an investment fiduciary in connection with an investment or a potential investment of a public university or college that related to investment information pertaining to a portfolio company in which the investment fiduciary had invested or had considered an investment that was considered by the portfolio company and acknowledged by the investment fiduciary as confidential. The bill also would make exempt from FOIA investment information, whether prepared by or for the investment fiduciary, regarding loans and assets directly owned by the investment fiduciary and acknowledged by the investment fiduciary as confidential.

The FOIA exemption would not cover those parts of agreements or instruments to which an investment fiduciary was a party that do not contain investment information.

The bill would define "investment" to mean the utilization of money or other assets in the expectation of future returns in the form of income or capital gain. It would define "investment fiduciary" as a person who exercises any discretionary authority or control over an investment of a public university or college or renders investment advice for a public university or college for a fee or other direct or indirect compensation.

"Investment information" would mean information that has not been publicly disseminated or that is unavailable from other sources, the release of which might cause a portfolio company or an investment fiduciary significant competitive harm. Such information would include financial performance data and projections, financial statements, lists of co-investors and their level of investment, product and market data, rent rolls, and leases.

"Portfolio company" would mean an entity in which an investment fiduciary has made or considered an investment on behalf of a public university or college. "Record" would mean all or part of a writing as that term is defined in Section 2 of FOIA, (i.e., handwriting, typewriting, printing, photostating, photographing, photocopying, and every other means of recording, including pictures, sounds, symbols, magnetic or paper tapes, microfilm, microfiche, magnetic or punched cards, discs, drums, or other means of recording or retaining meaningful content)

MCL 390.1551 & 390.1552

BACKGROUND

The Confidential Research Information Act was enacted in 1994 in response to reports that public universities and colleges were experiencing problems in maintaining the confidentiality of intellectual property acquired under agreements with private organizations, as well as intellectual property developed by the institutions themselves. Because much of this information was subject to the Freedom of Information Act, a university could not guarantee the privacy of sensitive information shared with it. As a result, some higher educational institutions evidently were finding it difficult to attract or retain research projects.

The Confidential Research Information Act exempts from FOIA trade secrets and commercial or financial information that is provided under certain circumstances to a public university or college, as well as intellectual property and original works of authorship created by a person employed by or under contract to a public university.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ellen Jeffries

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