



RETIRED PUBLIC EMPLOYEES' ASSOCIATION OF CALIFORNIA

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April 11, 2021

The Honorable Jim Cooper, Chair
Assembly PERS Committee
1020 North Street, Room 153
Sacramento, CA 95814

Re: AB 386 - Oppose

Dear Assembly Member Cooper,

RETIREES OPPOSE LENDING CALPERS TRUST FUNDS IN SECRET

- **AB 386 as drafted proposes SECRECY for a NEW category of HIGH-RISK investing proposed by CALPERS staff**
- **There IS NO LEGITIMATE PUBLIC INTEREST IN SECRECY of the terms, parties, collateral, and performance of investments held in PUBLIC TRUST**
- **This SECRECY is a virtual license to DEFRAUD the PUBLIC**
- **CALPERS has a recent history of MALFEASANCE by members of its Board and Staff which demands GREATER TRANSPARENCY, not less**
- **We find ourselves at the onset of a PUBLIC FUNDING CRISIS due to the Global Pandemic which demands that money held in public trust not be placed at GREATER RISK in order to chase unrealistic return targets**

It has become evident to the Retired Public Employees' Association (RPEA) that there may be a significant degree of misunderstanding in the Legislature about the impact of AB 386, a bill proposed by CalPERS staff **to exempt a new category "private loan" from the California Public Records Act (CPRA, G.C. 6250 and following)**. While RPEA applauds CalPERS staff for seeking-out innovative investment strategies through which they might safely boost returns in order to protect the members from contribution increases and the beneficiaries from benefit cuts, we are strongly opposed to the current language.

AB 386 as currently written, goes far beyond merely exempting from CPRA the private business records necessary for negotiations and the deliberative process, and over-broadly exempts the “private loan” agreement itself from CPRA, including the parties, terms, collateral, and performance of any such “private loan,” after it has been funded and becomes an asset held in public trust.

RPEA agrees with the author that negotiations of “private loan” investments by CalPERS staff and the decision-making process should remain private, as current law already provides. Although the “private loans” proposed by CalPERS are a new high-risk/high-return investment strategy which should be carefully scrutinized by the CalPERS Board, the wisdom of such a strategy is a matter within the Board’s discretion — subject to their constitutionally-mandated fiduciary duty to the members and beneficiaries. The negotiation of such agreements, including the underwriting and due diligence materials, are appropriate for exemption from CPRA for a variety of purposes which are in the public interest, particularly to assure that potential borrowers do not suffer business disadvantages related to disclosure of their financial condition, and in order to prevent “front-running” of plan strategies by outside parties.

However, the terms and parties to any loan of funds held in public trust, once executed, are matters necessary for members of the public to access in order to assess whether CalPERS staff and the CalPERS Board are acting in the best interests of the taxpayers, the members, and the beneficiaries. Any entity seeking investment of funds held in trust for the public must be willing to subject themselves to a certain level of scrutiny that they would not necessarily face in the private market.

The current exemption for “alternative investments” in Government Code 6254.26 is intended to protect the privacy of *partners* (who are often family offices and other private entities), not the *counter-parties* (who are required to make public disclosures under federal law). No such privacy and regulation issues exist with the proposed “private loan” investments — *they are simply unregulated lending on a par with loan-sharking*. A public pension trust fund is not in a position to gamble in hopes of “hitting it big” on a long-shot loan with poor odds of repayment. **A secret investment of public trust funds is never in the public’s interest.**

Because it is necessary for the public to understand whether the terms of the proposed private loans are prudent risks, **the loan agreements and documents, the personal or business identifying information disclosing the identities and the constituent owners of the borrower, and materials relating to collateral pledged must not be exempt from the Public Records Act — once negotiations are concluded and the agreement is executed.** Only then may the public, and the members and beneficiaries, independently determine whether CalPERS staff have negotiated a good deal and whether the CalPERS Board are acting as sound fiduciaries.

It was evident from the Legislative Counsel’s Bill Summary from the version of this bill that had to be withdrawn in the last session that the danger inherent in granting the sweeping post-negotiation secrecy contained in this bill as written is poorly understood. As recently as May of 2016, the former Chief Executive Officer of CalPERS was sentenced to 54 months in federal prison for malfeasance during his tenure at the fund; in February of 2015 a former CalPERS Board member implicated in the case committed suicide rather than face trial. *In August of 2020* the Chief Investment Officer of

CalPERS suddenly resigned when his numerous conflicts of interest were publicly exposed — *and he has not yet been replaced*. **CalPERS can only win-back public trust through greater transparency, not less.**

It is the sincere hope of RPEA that all stakeholders will agree that the terms, parties, collateral, and performance of any private loan made by CalPERS, once negotiated and executed, must remain subject to public scrutiny under the CPRA.

A handwritten signature in black ink that reads "Rosemary Knox". The signature is written in a cursive style with a large, looping initial "R".

Rosemary Knox
President, RPEA