

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2979 Session of  
2004

INTRODUCED BY NICKOL, NOVEMBER 10, 2004

REFERRED TO COMMITTEE ON EDUCATION, NOVEMBER 10, 2004

AN ACT

1 Amending Titles 24 (Education) and 71 (State Government) of the  
2 Pennsylvania Consolidated Statutes, defining "alternative  
3 investment"; and further providing for administrative duties  
4 of the board.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 8102 of Title 24 of the Pennsylvania  
8 Consolidated Statutes is amended by adding a definition to read:

9 § 8102. Definitions.

10 The following words and phrases when used in this part shall  
11 have, unless the context clearly indicates otherwise, the  
12 meanings given to them in this section:

13 \* \* \*

14 "Alternative investment." A private equity or venture  
15 capital investment.

16 \* \* \*

17 Section 2. Section 8502(e) of Title 24 is amended to read:

18 § 8502. Administrative duties of board.

1       \* \* \*

2       (e) Records.--

3           (1) The board shall keep a record of all its proceedings  
4       which shall be open to inspection by the public[.], except as  
5       otherwise provided in this part or by other law.

6           (2) Any record, material or data received, prepared,  
7       used or retained by the board or its employees, investment  
8       professionals or agents relating to an investment shall not  
9       be required to be open to inspection by the public and shall  
10       not constitute a public record under the act of June 21, 1957  
11       (P.L.390, No.212), referred to as the Right-to-Know Law, if,  
12       in the reasonable judgment of the board, the disclosure  
13       would:

14           (i) in the case of an alternative investment,  
15       involve the release of sensitive investment or financial  
16       information which the fund was able to obtain only upon  
17       the condition of maintaining its confidentiality;

18           (ii) cause substantial competitive harm to the  
19       person from whom the record, material or data was  
20       received, subject, however, to the condition that the  
21       record, material or data shall be subject to public  
22       inspection once its release would no longer cause  
23       substantial competitive harm to the person from whom the  
24       record, material or data was received; or

25           (iii) have an adverse impact on the value of an  
26       investment to be acquired, held or disposed of by the  
27       fund, subject, however, to the condition that the record,  
28       material or data shall be subject to public inspection  
29       once its release would no longer have a detrimental  
30       impact on the value of the investment.

1       \* \* \*

2       Section 3. Section 5102 of Title 71 is amended by adding a  
3 definition to read:

4       § 5102. Definitions.

5       The following words and phrases when used in this part shall  
6 have, unless the context clearly indicates otherwise, the  
7 meanings given to them in this section:

8       \* \* \*

9       "Alternative investment." A private equity or venture  
10 capital investment.

11       \* \* \*

12       Section 4. Section 5902(e) of Title 71 is amended to read:

13       § 5902. Administrative duties of the board.

14       \* \* \*

15       (e) Records.--

16           (1) The board shall keep a record of all its proceedings  
17 which shall be open to inspection by the public[.], except as  
18 otherwise provided in this part or by other law.

19           (2) Any record, material or data received, prepared,  
20 used or retained by the board or its employees, investment  
21 professionals or agents relating to an investment shall not  
22 be required to be open to inspection by the public and shall  
23 not constitute a public record under the act of June 21, 1957  
24 (P.L.390, No.212), referred to as the Right-to-Know Law, if,  
25 in the reasonable judgment of the board, the disclosure  
26 would:

27           (i) in the case of an alternative investment,  
28 involve the release of sensitive investment or financial  
29 information which the fund was able to obtain only upon  
30 the condition of maintaining its confidentiality;

1           (ii) cause substantial competitive harm to the  
2           person from whom the record, material or data was  
3           received, subject, however, to the condition that the  
4           record, material or data shall be subject to public  
5           inspection once its release would no longer cause  
6           substantial competitive harm to the person from whom the  
7           record, material or data was received; or

8           (iii) have an adverse impact on the value of an  
9           investment to be acquired, held or disposed of by the  
10          fund, subject, however, to the condition that the record,  
11          material or data shall be subject to public inspection  
12          once its release would no longer have a detrimental  
13          impact on the value of the investment.

14          \* \* \*

15          Section 5. Nothing in the amendment of 24 Pa.C.S. §§ 8102  
16 and 8502(e) shall be construed:

17           (1) To imply that, but for the exclusions provided in 24  
18 Pa.C.S. § 8502(e), any of the types of record, material or  
19 data described in 24 Pa.C.S. § 8502(e) are required to be  
20 open to inspection by the public or constitute a public  
21 record, or that any record not excluded under 24 Pa.C.S. §  
22 8502(e) is a public record under the act of June 21, 1957  
23 (P.L.390, No.212), referred to as the Right-to-Know Law.

24           (2) To limit the authority of the Auditor General to  
25 obtain copies of any record, material or data described in 24  
26 Pa.C.S. § 8502(e) in connection with a lawfully conducted  
27 audit.

28           (3) To imply that the release or making public of any  
29 record, material or data described in 24 Pa.C.S. § 8502(e) as  
30 not constituting a public record is a violation of the Public

1 School Employees' Retirement Board's fiduciary duties.

2 Section 6. Nothing in the amendment of 71 Pa.C.S. §§ 5102  
3 and 5902(e) shall be construed:

4 (1) To imply that, but for the exclusions provided in 71  
5 Pa.C.S. § 5902(e) any of the types of record, material or  
6 data described in 71 Pa.C.S. § 5902(e) are required to be  
7 open to inspection by the public or constitute a public  
8 record, or that any record not excluded in 71 Pa.C.S. §  
9 5902(e) is a public record under the act of June 21, 1957  
10 (P.L.390, No.212), referred to as the Right-to-Know Law.

11 (2) To limit the authority of the Auditor General to  
12 obtain copies of any record, material or data described in 71  
13 Pa.C.S. § 5902(e) in connection with a lawfully conducted  
14 audit.

15 (3) To imply that the release or making public of any  
16 record, material or data described in 71 Pa.C.S. § 5902(e) as  
17 not constituting a public record is a violation of the State  
18 Employees' Retirement Board's fiduciary duties.

19 Section 7. The amendment of 24 Pa.C.S. §§ 8102 and 8502(e)  
20 shall apply to any record, material or data described in 24  
21 Pa.C.S. § 8502(e) regardless of whether:

22 (1) the record, material or data was created, generated  
23 or stored;

24 (2) the record, material or data was released or made  
25 public; or

26 (3) a request for the record, material or data was  
27 received by or is pending final response from the Public  
28 School Employees' Retirement System under the act of June 21,  
29 1957 (P.L.390, No.212), referred to as the Right-to-Know Law;  
30 prior to the effective date of this act.

1       Section 8. The amendment of 71 Pa.C.S. §§ 5102 and 5902(e)  
2 shall apply to any record, material or data described in 71  
3 Pa.C.S. § 5902(e) regardless of whether:

4           (1) the record, material or data was created, generated  
5 or stored;

6           (2) the record, material or data was released or made  
7 public; or

8           (3) a request for the record, material or data was  
9 received by or is pending final response from the State  
10 Employees' Retirement System under the act of June 21, 1957  
11 (P.L.390, No.212), referred to as the Right-to-Know Law;  
12 prior to the effective date of this act.

13       Section 9. In the event that the Public School Employees'  
14 Retirement System has collected a fee or other monetary charge  
15 from a requester for the preparation, duplication, production,  
16 redaction or other expenses associated with the inspection or  
17 provision of a record, material or data that, as a result of  
18 this act, will not be made available for inspection by and will  
19 not be provided to the requester, the Public School Employees'  
20 Retirement System shall return the fee or other monetary charge  
21 to the requester.

22       Section 10. In the event that the State Employees'  
23 Retirement System has collected a fee or other monetary charge  
24 from a requester for the preparation, duplication, production,  
25 redaction or other expenses associated with the inspection or  
26 provision of a record, material or data that, as a result of  
27 this act, will not be made available for inspection by and will  
28 not be provided to the requester, the State Employees'  
29 Retirement System shall return the fee or other monetary charge  
30 to the requester.

1       Section 11.   This act shall take effect immediately.