

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 592 Session of  
2005INTRODUCED BY ARMSTRONG, LEMMOND, COSTA AND MADIGAN,  
APRIL 4, 2005SENATOR WENGER, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
SEPTEMBER 19, 2006

## AN ACT

1 Amending Title 24 (Education) of the Pennsylvania Consolidated  
2 Statutes, defining "alternative investment" and "alternative  
3 investment vehicle"; and further providing for administrative  
4 duties 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 definitions 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." An investment in a private equity  
15 fund, private debt fund, venture fund, real estate fund, hedge  
16 fund or absolute return fund.

17 "Alternative investment vehicle." A limited partnership,  
18 limited liability company or any other legal vehicle for

1 authorized investments under section 8521(i) (relating to  
2 management of fund and accounts) through which the system makes  
3 an alternative investment.

4 \* \* \*

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

6 § 8502. Administrative duties of board.

7 \* \* \*

8 (e) Records.--

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

12 (2) Any record, material or data received, prepared,  
13 used or retained by the board or its employees, investment  
14 professionals or agents relating to an investment shall not  
15 constitute a public record subject to public inspection under  
16 the act of June 21, 1957 (P.L.390, No.212), referred to as  
17 the Right-to-Know Law, if, in the reasonable judgment of the  
18 board, the disclosure INSPECTION would:

<—

19 (i) in the case of an alternative investment or  
20 alternative investment vehicle involve the release of  
21 sensitive investment or financial information relating to  
22 the investment ALTERNATIVE INVESTMENT OR ALTERNATIVE <—  
23 INVESTMENT VEHICLE which the fund was able to obtain only  
24 upon agreeing to maintain its confidentiality; subject, <—  
25 however, to the condition that such information, to the  
26 extent not otherwise exempt, shall constitute a public  
27 record subject to public inspection under the Right to  
28 Know Law, once the board is no longer required by its  
29 agreement to maintain confidentiality;

30 (ii) cause substantial competitive harm to the

1 person from whom sensitive investment or financial  
2 information relating to the investment was received; OR <—  
3 subject, however, to the condition that such information, <—  
4 to the extent not otherwise exempt, shall constitute a  
5 public record subject to public inspection under the  
6 Right to Know Law, once its release no longer causes  
7 substantial competitive harm to the person from whom the  
8 information was received, which in the case of  
9 information regarding an investment, shall be no later  
10 than the liquidation of the entity in which the  
11 investment was made; or

12 (iii) have a substantial detrimental impact on the  
13 value of an investment to be acquired, held or disposed  
14 of by the fund, or would cause a breach of the standard  
15 of care or fiduciary duty set forth in this part. <—

16 ,subject, however, to the condition that sensitive <—  
17 investment or financial information relating to the  
18 investment, to the extent not otherwise exempt, shall  
19 constitute a public record subject to public inspection  
20 under the Right to Know Law, once its release no longer  
21 has a substantial detrimental impact on the value of an  
22 investment of the fund and its release would not cause a  
23 breach of the standard of care or fiduciary duty set  
24 forth in this part, which, in the case of information  
25 regarding an investment, shall be no later than the  
26 liquidation of the entity in which the investment was  
27 made.

28 (3) (I) THE SENSITIVE INVESTMENT OR FINANCIAL <—  
29 INFORMATION EXCLUDED FROM INSPECTION UNDER PARAGRAPH  
30 (2)(I), TO THE EXTENT NOT OTHERWISE EXCLUDED FROM

1       INSPECTION, SHALL CONSTITUTE A PUBLIC RECORD SUBJECT TO  
2       PUBLIC INSPECTION UNDER THE RIGHT-TO-KNOW LAW, ONCE THE  
3       BOARD IS NO LONGER REQUIRED BY ITS AGREEMENT TO MAINTAIN  
4       CONFIDENTIALITY.

5               (II) THE SENSITIVE INVESTMENT OR FINANCIAL  
6       INFORMATION EXCLUDED FROM INSPECTION UNDER PARAGRAPH  
7       (2)(II), TO THE EXTENT NOT OTHERWISE EXCLUDED FROM  
8       INSPECTION, SHALL CONSTITUTE A PUBLIC RECORD SUBJECT TO  
9       PUBLIC INSPECTION UNDER THE RIGHT-TO-KNOW LAW ONCE:

10               (A) THE INSPECTION NO LONGER CAUSES SUBSTANTIAL  
11       COMPETITIVE HARM TO THE PERSON FROM WHOM THE  
12       INFORMATION WAS RECEIVED; OR

13               (B) THE ENTITY IN WHICH THE INVESTMENT WAS MADE  
14       IS LIQUIDATED;  
15       WHICHEVER IS LATER.

16               (III) THE SENSITIVE INVESTMENT OR FINANCIAL  
17       INFORMATION EXCLUDED FROM INSPECTION UNDER PARAGRAPH  
18       (2)(III), TO THE EXTENT NOT OTHERWISE EXCLUDED FROM  
19       INSPECTION, SHALL CONSTITUTE A PUBLIC RECORD SUBJECT TO  
20       PUBLIC INSPECTION UNDER THE RIGHT-TO-KNOW LAW, ONCE:

21               (A) THE INSPECTION NO LONGER HAS A SUBSTANTIAL  
22       DETRIMENTAL IMPACT ON THE VALUE OF AN INVESTMENT OF  
23       THE FUND AND WOULD NOT CAUSE A BREACH OF THE STANDARD  
24       OF CARE OR FIDUCIARY DUTY SET FORTH IN THIS PART; OR

25               (B) THE ENTITY IN WHICH THE INVESTMENT WAS MADE  
26       IS LIQUIDATED;  
27       WHICHEVER IS LATER.

28       (4) EXCEPT FOR THE PROVISIONS OF PARAGRAPH (3), NOTHING  
29       IN THIS SUBSECTION SHALL BE CONSTRUED TO DESIGNATE ANY  
30       RECORD, MATERIAL OR DATA RECEIVED, PREPARED, USED OR RETAINED

1 BY THE BOARD OR ITS EMPLOYEES, INVESTMENT PROFESSIONALS OR  
2 AGENTS RELATING TO AN INVESTMENT AS A PUBLIC RECORD SUBJECT  
3 TO PUBLIC INSPECTION UNDER THE RIGHT-TO-KNOW LAW.

4 ~~(3)~~ (5) Notwithstanding the provisions of this <—  
5 subsection, the following information regarding an  
6 alternative investment VEHICLE shall be subject to public <—  
7 inspection under the Right-to-Know Law:

8 (i) The name, address and vintage year of the  
9 alternative investment vehicle.

10 (ii) The identity of the manager of the alternative  
11 investment vehicle.

12 (iii) The dollar amount of the commitment made by  
13 the system to the alternative investment vehicle.

14 (iv) The dollar amount of cash contributions made by  
15 the system to the alternative investment vehicle since  
16 inception.

17 (v) The dollar amount of cash distributions received  
18 by the system from the alternative investment vehicle  
19 since inception.

20 (vi) The net internal rate of return of the  
21 alternative investment vehicle since inception, provided  
22 that the system shall not be required to disclose the net  
23 internal rate of return under circumstances in which,  
24 because of the limited number of portfolio assets  
25 remaining in the alternative investment vehicle, the  
26 disclosure could reveal the values of specifically  
27 identifiable remaining portfolio assets to the detriment  
28 of the alternative investment.

29 (vii) The aggregate value of the remaining portfolio  
30 assets attributable to the system's investment in the

1 alternative investment vehicle, provided that the system  
2 shall not be required to disclose the value under  
3 circumstances in which, because of the limited number of  
4 portfolio assets remaining in the alternative investment  
5 vehicle, the disclosure could reveal the values of  
6 specifically identifiable remaining portfolio assets to  
7 the detriment of the alternative investment.

8 (viii) The dollar amount of total management fees  
9 and costs paid to the alternative investment vehicle by  
10 the system on an annual fiscal year-end basis.

11 \* \* \*

12 ~~Section 3. Nothing in this act shall be construed or deemed~~ <—  
13 ~~to imply that:~~

14 ~~(1) but for the exclusions provided in 24 Pa.C.S. §~~  
15 ~~8502(e)(2), any of the types of records, materials or data~~  
16 ~~described in that paragraph are required to be open to~~  
17 ~~inspection by the public or constitute a public record under~~  
18 ~~the act of June 21, 1957 (P.L.390, No.212), referred to as~~  
19 ~~the Right to Know Law; or~~

20 ~~(2) any record not excluded in 24 Pa.C.S. § 8502(e)(2) is~~  
21 ~~a public record under the Right to Know Law.~~

22 ~~Section 4 3. Nothing in this act shall be construed or~~ <—  
23 ~~deemed to affect the authority of the Auditor General to obtain~~  
24 ~~copies of any record, material or data described in 24 Pa.C.S. §~~  
25 ~~8502(e)(2) in connection with a lawfully conducted audit.~~

26 ~~Section 5 4. Nothing in this act shall be construed or~~ <—  
27 ~~deemed to imply that the release or making public of any record,~~  
28 ~~material or data described in 24 Pa.C.S. § 8502(e)(2) as not~~  
29 ~~being a public record is a violation of the Public School~~  
30 ~~Employees' Retirement Board's fiduciary duties.~~

1       Section ~~6~~ 5. This act shall apply to any record, material or <—  
2 data described in 24 Pa.C.S. § 8502(e)(2), without regard to  
3 whether the record, material or data was created, generated or  
4 stored before the effective date of this section, without regard  
5 to whether the record, material or data was previously released  
6 or made public and without regard to whether a request for the  
7 record, material or data was made or is pending final response  
8 under the act of June 21, 1957 (P.L.390, No.212), referred to as  
9 the Right-to-Know Law.

10       Section ~~7~~ 6. In the event that the Public School Employees' <—  
11 Retirement System has collected a fee or other monetary charge  
12 for the preparation, duplication, production, redaction or other  
13 expenses associated with the inspection or provision of a  
14 record, material or data that as a result of the amendment of 24  
15 Pa.C.S. § 8502(e) will not be made available for inspection by  
16 and will not be provided to the requester who made the payment,  
17 the Public School Employees' Retirement System shall return the  
18 fee or money to the requester.

19       Section ~~8~~ 7. This act shall take effect immediately. <—