

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1671 Session of 2021

INTRODUCED BY B. MILLER, RYAN, SCHMITT, FEE, STAMBAUGH, HAMM, JONES, PICKETT, METCALFE, GLEIM, GROVE, MILLARD, ZIMMERMAN, ROTHMAN, JAMES, KAUFFMAN, DRISCOLL, HERSHEY, MOUL, JOZWIAK, WHEELAND, ECKER, RADER, GREINER, O'NEAL, FREEMAN, R. MACKENZIE, HICKERNELL, STAATS, KNOWLES, DIAMOND, GAYDOS, DAY, KEEFER, FRITZ, LEWIS, COX, SCHEMEL, OWLETT, ROWE, KLUNK, SOLOMON, GILLEN, MENTZER, ROAE, COOK, E. NELSON, RAPP, EMRICK, WARNER, KAUFER, DOWLING, SCHLEGEL CULVER, IRVIN, SMITH, THOMAS AND BONNER, JUNE 22, 2021

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 27, 2022

AN ACT

1 Amending Titles 24 (Education) and 71 (State Government) of the
2 Pennsylvania Consolidated Statutes, in administration and
3 miscellaneous provisions, further providing for
4 administrative duties of the Public School Employees'
5 Retirement Board; and, in administration, funds, accounts and
6 general provisions, further providing for administrative
7 duties of the State Employees' Retirement Board.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 8502(e)(1), (2), (3), (4) and (5) of
11 Title 24 of the Pennsylvania Consolidated Statutes are amended
12 and the section is amended by adding a subsection to read:

13 § 8502. Administrative duties of board.

14 * * *

15 (e) Records.--

16 (1) The following shall apply:

1 (i) The board shall [keep a] livestream ~~its~~ ALL <--
2 public board AND COMMITTEE meetings and post an unedited <--
3 video and written record of all [its] such public
4 proceedings which shall be accessible [to the public] on
5 its publicly accessible Internet website, including
6 nonconfidential materials presented to the board, except
7 as otherwise provided in this part or by other law. Video
8 and records shall remain online for a period of at least
9 three years and shall be maintained for a period of at
10 least seven years and thereafter shall be maintained in
11 accordance with applicable records retention schedules.

12 (ii) The Office of Administration shall promptly
13 revise its management directives relating to record
14 management policies to conform with the requirements of
15 this paragraph and shall provide public notice of the
16 requirements of this subsection by publishing the
17 requirements on its publicly accessible Internet website
18 and shall transmit the requirements to the Legislative
19 Reference Bureau for publication in the Pennsylvania
20 Bulletin.

21 (2) Any record[, material or data] received, prepared,
22 used or retained by the board or its employees, investment
23 professionals or agents relating to an investment, to the
24 extent not otherwise excluded from access, shall [not]
25 constitute a [public] record subject to public access under
26 the act of February 14, 2008 (P.L.6, No.3), known as the
27 Right-to-Know Law, [if] unless, in the reasonable judgment of
28 the board, [the] it is found that access would:

29 (i) in the case of an alternative investment or
30 alternative investment vehicle involve the release of

1 sensitive investment or financial information relating to
2 the alternative investment or alternative investment
3 vehicle which the fund or trust was able to obtain only
4 upon agreeing to maintain its confidentiality;

5 (ii) cause substantial competitive harm to the
6 person from whom sensitive investment or financial
7 information relating to the investment was received; or

8 (iii) have a substantial detrimental impact on the
9 value of an investment to be acquired, held or disposed
10 of by the fund or trust, or would cause a breach of the
11 standard of care or fiduciary duty set forth in this
12 part.

13 (3) The following apply:

14 (i) The sensitive investment or financial
15 information excluded from access under paragraph (2) (i),
16 to the extent not otherwise excluded from access, shall
17 constitute a [public] record subject to public access
18 under the Right-to-Know Law once the board is no longer
19 required by its agreement to maintain confidentiality.

20 (ii) The sensitive investment or financial
21 information excluded from access under paragraph (2) (ii),
22 to the extent not otherwise excluded from access, shall
23 constitute a [public] record subject to public access
24 under the Right-to-Know Law once:

25 (A) the access no longer causes substantial
26 competitive harm to the person from whom the
27 information was received; or

28 (B) the entity in which the investment was made
29 is liquidated;

30 whichever is later.

1 (iii) The sensitive investment or financial
2 information excluded from access under paragraph (2)
3 (iii), to the extent not otherwise excluded from access,
4 shall constitute a [public] record subject to public
5 access under the Right-to-Know Law once:

6 (A) the access no longer has a substantial
7 detrimental impact on the value of an investment of
8 the fund or trust and would not cause a breach of the
9 standard of care or fiduciary duty set forth in this
10 part; or

11 (B) the entity in which the investment was made
12 is liquidated;

13 whichever is later.

14 (4) [Except for the provisions of paragraph (3), nothing
15 in this subsection shall be construed to designate any
16 record, material or data received, prepared, used or retained
17 by the board or its employees, investment professionals or
18 agents relating to an investment as a public record subject
19 to public access under the Right-to-Know Law.] (Reserved).

20 (5) Notwithstanding the provisions of this subsection,
21 the following information regarding an alternative investment
22 vehicle shall be subject to public access under the Right-to-
23 Know Law:

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

26 (ii) The identity of the manager of the alternative
27 investment vehicle.

28 (iii) The dollar amount of the commitment made by
29 the system or plan to the alternative investment vehicle.

30 (iv) The dollar amount of cash contributions made by

1 the system or plan to the alternative investment vehicle
2 since inception.

3 (v) The dollar amount of cash distributions received
4 by the system or plan from the alternative investment
5 vehicle since inception.

6 (vi) The gross and net internal rate of return of
7 the alternative investment vehicle since inception,
8 provided that the system or plan shall not be required to
9 disclose the gross or net internal rate of return under
10 circumstances in which, because of the limited number of
11 portfolio assets remaining in the alternative investment
12 vehicle, the disclosure could reveal the values of
13 specifically identifiable remaining portfolio assets to
14 the detriment of the alternative investment.

15 (vii) The aggregate value of the remaining portfolio
16 assets attributable to the system's or plan's investment
17 in the alternative investment vehicle, provided that the
18 system or plan shall not be required to disclose the
19 value under circumstances in which, because of the
20 limited number of portfolio assets remaining in the
21 alternative investment vehicle, the disclosure could
22 reveal the values of specifically identifiable remaining
23 portfolio assets to the detriment of the alternative
24 investment.

25 (viii) The dollar [amount] amounts of total
26 management fees [and], costs and expenses paid to [the]
27 or retained by an alternative investment vehicle [by the
28 system or plan] on an annual fiscal year-end basis[.],
29 itemized by gross management, carried interest and other
30 expenses.

1 * * *

2 (s) Additional reporting requirements.--The following shall
3 apply:

4 (1) In addition to the requirements under this section,
5 the board shall prepare and have published on its publicly
6 accessible Internet website and electronically submit copies
7 to all members of the General Assembly of the following
8 information within six months after the end of the system's
9 fiscal year:

10 (i) The net of fees performance of all investments
11 over the most recent 1-, 3-, 5-, 10-, 15- and 20-year
12 periods.

13 (ii) The performance of all investments by asset
14 class and manager over each time horizon, both gross and
15 net of fees compared to benchmarks being reported for all
16 investments made commencing prospectively from the
17 effective date of this subsection and with the gross
18 returns for all investments made retroactively for the
19 five-year period from the effective date of this
20 subsection using best efforts, unless the records are no
21 longer available.

22 (iii) An itemized listing of the fees and expenses
23 paid to or retained by all investment managers for the
24 applicable reporting years, separated by base management
25 fee, profit share, performance fees, carried interest and
26 incentive fees, and informed by the best practices as
27 recommended by recognized industry standards, including,
28 but not limited to, the Institutional Limited Partners
29 Association Fee Transparency Initiative. The board shall
30 disclose in the report which industry standards were used

1 and whether any changes to industry standards have been
2 made.

3 (iv) All travel or other expenses incurred by staff
4 of the system or plan and paid for by an external
5 investment manager, fund or consultant.

6 (2) As used in this subsection, the following words and
7 phrases shall have the meanings given to them in this
8 paragraph unless the context clearly indicates otherwise:

9 "Carried interest." Any share of profits from an
10 alternative investment vehicle that is distributed to a fund
11 manager, general partner or related party, including
12 allocations of alternative investment vehicle profits
13 received by a fund manager in consideration of having waived
14 fees that the fund manager might otherwise have been entitled
15 to receive.

16 "Institutional Limited Partners Association Fee
17 Transparency Initiative." An initiative created by the
18 Institutional Limited Partners Association to establish
19 guidelines for reporting fees, expenses and compliance
20 disclosures regarding investments.

21 Section 2. Section 5902(e)(1), (2), (3) and (4) of Title 71
22 are amended, subsection (e) is amended by adding a paragraph and
23 the section is amended by adding a subsection to read:

24 § 5902. Administrative duties of the board.

25 * * *

26 (e) Records.--

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

30 The following shall apply:

1 (i) The board shall livestream ~~its~~ ALL public board AND <--
2 COMMITTEE meetings and post an unedited video and written
3 record of all such public proceedings, which shall be
4 accessible on its publicly accessible Internet website,
5 including nonconfidential materials presented to the board,
6 except as otherwise provided in this part or by other law.
7 Video and records shall remain online for a period of at
8 least three years and shall be maintained for a period of at
9 least seven years and thereafter shall be maintained in
10 accordance with applicable records retention schedules.

11 (ii) The Office of Administration shall promptly revise
12 its management directives relating to record management
13 policies to conform with the requirements of this paragraph
14 and shall provide public notice of the requirements of this
15 subsection by publishing the requirements on its publicly
16 accessible Internet website and shall transmit the
17 requirements to the Legislative Reference Bureau for
18 publication in the Pennsylvania Bulletin.

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, to the
22 extent not otherwise excluded from access, shall [not]
23 constitute a [public] record subject to public access under
24 the act of February 14, 2008 (P.L.6, No.3), known as the
25 Right-to-Know Law, [if] unless, in the reasonable judgment of
26 the board, [the] it is found that access would:

27 (i) in the case of an alternative investment or
28 alternative investment vehicle, involve the release of
29 sensitive investment or financial information relating to
30 the alternative investment or alternative investment

1 vehicle which the fund or trust was able to obtain only
2 upon agreeing to maintain its confidentiality;

3 (ii) cause substantial competitive harm to the
4 person from whom sensitive investment or financial
5 information relating to the investment was received; or

6 (iii) have a substantial detrimental impact on the
7 value of an investment to be acquired, held or disposed
8 of by the fund or trust or would cause a breach of the
9 standard of care or fiduciary duty set forth in this
10 part.

11 (3) The following apply:

12 (i) The sensitive investment or financial
13 information excluded from access under paragraph (2) (i),
14 to the extent not otherwise excluded from access, shall
15 constitute a [public] record subject to public access
16 under the Right-to-Know Law once the board is no longer
17 required by its agreement to maintain confidentiality.

18 (ii) The sensitive investment or financial
19 information excluded from access under paragraph (2) (ii),
20 to the extent not otherwise excluded from access, shall
21 constitute a [public] record subject to public access
22 under the Right-to-Know Law once:

23 (A) the access no longer causes substantial
24 competitive harm to the person from whom the
25 information was received; or

26 (B) the entity in which the investment was made
27 is liquidated;
28 whichever is later.

29 (iii) The sensitive investment or financial
30 information excluded from access under paragraph (2)

1 (iii), to the extent not otherwise excluded from access,
2 shall constitute a [public] record subject to public
3 access under the Right-to-Know Law once:

4 (A) the access no longer has a substantial
5 detrimental impact on the value of an investment of
6 the fund or trust and would not cause a breach of the
7 standard of care or fiduciary duty set forth in this
8 part; or

9 (B) the entity in which the investment was made
10 is liquidated;
11 whichever is later.

12 (4) [Except for the provisions of paragraph (3), nothing
13 in this subsection shall be construed to designate any
14 record, material or data received, prepared, used or retained
15 by the board or its employees, investment professionals or
16 agents relating to an investment as a public record subject
17 to public access under the Right-to-Know Law.] (Reserved).

18 (4.1) Notwithstanding the provisions of this subsection,
19 the following information regarding an alternative investment
20 vehicle shall be subject to public access under the Right-to-
21 Know Law:

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

24 (ii) The identity of the manager of the alternative
25 investment vehicle.

26 (iii) The dollar amount of the commitment made by
27 the system or plan to the alternative investment vehicle.

28 (iv) The dollar amount of cash contributions made by
29 the system or plan to the alternative investment vehicle
30 since inception.

1 (v) The dollar amount of cash distributions received
2 by the system or plan from the alternative investment
3 vehicle since inception.

4 (vi) The gross and net internal rate of return of
5 the alternative investment vehicle since inception,
6 provided that the system or plan shall not be required to
7 disclose the gross or net internal rate of return under
8 circumstances in which, because of the limited number of
9 portfolio assets remaining in the alternative investment
10 vehicle, the disclosure could reveal the values of
11 specifically identifiable remaining portfolio assets to
12 the detriment of the alternative investment.

13 (vii) The aggregate value of the remaining portfolio
14 assets attributable to the system's or plan's investment
15 in the alternative investment vehicle, provided that the
16 system or plan shall not be required to disclose the
17 value under circumstances in which, because of the
18 limited number of portfolio assets remaining in the
19 alternative investment vehicle, the disclosure could
20 reveal the values of specifically identifiable remaining
21 portfolio assets to the detriment of the alternative
22 investment.

23 (viii) The dollar amounts of total management fees,
24 costs and expenses paid to or retained by an alternative
25 investment vehicle on an annual fiscal year-end basis,
26 itemized by gross management, carried interest and other
27 expenses.

28 * * *

29 (s) Additional reporting requirements.--The following shall
30 apply:

1 (1) In addition to the requirements under this section,
2 the board shall prepare and have published on its publicly
3 accessible Internet website and electronically submit copies
4 to all members of the General Assembly of the following
5 information within six months after the end of the system's
6 calendar year:

7 (i) The net of fees performance of all investments
8 over the most recent 1-, 3-, 5-, 10-, 15- and 20-year
9 periods.

10 (ii) The performance of all investments by asset
11 class and manager over each time horizon, both gross and
12 net of fees compared to benchmarks being reported for all
13 investments made commencing prospectively from the
14 effective date of this subsection and with the gross
15 returns for all investments made retroactively for the
16 five-year period from the effective date of this
17 subsection using best efforts, unless the records are no
18 longer available.

19 (iii) An itemized listing of the fees, costs and
20 expenses paid to or retained by all investment managers
21 for the applicable reporting years, separated by base
22 management fee, profit share, performance fees, carried
23 interest and incentive fees, and informed by the best
24 practices as recommended by recognized industry
25 standards, including, but not limited to, the
26 Institutional Limited Partners Association Fee
27 Transparency Initiative. The board shall disclose in the
28 report which industry standards were used and whether any
29 changes to industry standards have been made.

30 (iv) All travel or other expenses incurred by staff

1 of the system or plan and paid for by an external
2 investment manager, fund or consultant.

3 (2) As used in this subsection, the following words and
4 phrases shall have the meanings given to them in this
5 paragraph unless the context clearly indicates otherwise:

6 "Carried interest." Any share of profits from an
7 alternative investment vehicle that is distributed to a fund
8 manager, general partner or related party, including
9 allocations of alternative investment vehicle profits
10 received by a fund manager in consideration of having waived
11 fees that the fund manager might otherwise have been entitled
12 to receive.

13 "Institutional Limited Partners Association Fee
14 Transparency Initiative." An initiative created by the
15 Institutional Limited Partners Association to establish
16 guidelines for reporting fees, expenses and compliance
17 disclosures regarding investments.

18 Section 3. This act shall apply as follows:

19 (1) The amendment of 24 Pa.C.S. § 8502(e)(1) shall apply
20 to board meetings that occur and video, written records and
21 materials created more than 30 days after the effective date
22 of this section.

23 (2) The amendment or addition of 24 Pa.C.S. § 8502(e)(5)
24 (vi), (vii) and (viii) and (s)(1)(iii) shall apply to
25 contracts and agreements entered into after the effective
26 date of this section.

27 (3) The amendment of 71 Pa.C.S. § 5902(e)(1) shall apply
28 to board meetings that occur and video, written records and
29 materials created more than 30 days after the effective date
30 of this section.

1 (4) The amendment or addition of 71 Pa.C.S. § 5902(e)
2 (4.1)(vi), (vii), (viii) and (s)(1)(iii) shall apply to
3 contracts and agreements entered into after the effective
4 date of this section.

5 Section 4. This act shall take effect in 60 days.