

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1964 Session of 2019

INTRODUCED BY B. MILLER, RYAN, GREINER, GROVE, SCHEMEL, TOBASH, HICKERNELL, OWLETT, IRVIN, BERNSTINE, DUSH, KAUFFMAN, MOUL, FEE, MILLARD, GILLEN, KEEFER, COX, ZIMMERMAN, MENTZER, NELSON, GLEIM, LAWRENCE, ROAE, DIAMOND, BENNINGHOFF, RADER, WENTLING, COOK, GREGORY, SCHMITT, WHEELAND, EMRICK, KLUNK, ECKER, METCALFE, FRITZ, SOLOMON, SCHLEGEL CULVER, O'NEAL, SAYLOR, HERSHEY, ROTHMAN, FREEMAN, RAPP, STAATS, LEWIS, SANCHEZ, TOPPER, EVERETT, GAYDOS, DUNBAR, MALONEY, KORTZ, DAY, REESE, JAMES, GABLER, JONES, CALTAGIRONE, MACKENZIE, DOWLING, KAUFER, WARNER AND KNOWLES, OCTOBER 18, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, NOVEMBER 18, 2019

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 board shall [keep a] livestream its board

1 meetings and post an unedited video and written record of all
2 its proceedings which shall be accessible [to the public] on
3 its publicly accessible Internet website, including materials
4 presented to the board, except as otherwise provided in this
5 part or by other law. Video, written records and materials
6 shall remain online for a period of seven years.

7 (2) Any record, material or data received, prepared,
8 used or retained by the board or its employees, investment
9 professionals or agents relating to an investment, to the
10 extent not otherwise excluded from access, shall [not]
11 constitute a public record subject to public access under the
12 act of February 14, 2008 (P.L.6, No.3), known as the Right-
13 to-Know Law, [if] unless, in the reasonable judgment and
14 majority vote of the board, [the] it is found that access
15 would:

16 [(i) in the case of an alternative investment or
17 alternative investment vehicle involve the release of
18 sensitive investment or financial information relating to
19 the alternative investment or alternative investment
20 vehicle which the fund or trust was able to obtain only
21 upon agreeing to maintain its confidentiality;]

22 (ii) cause substantial competitive harm to the
23 person from whom sensitive investment or financial
24 information relating to the investment was received; or

25 (iii) have a substantial detrimental impact on the
26 value of an investment to be acquired, held or disposed
27 of by the fund or trust, or would cause a breach of the
28 standard of care or fiduciary duty set forth in this
29 part.

30 (3) The following apply:

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

7 (ii) The sensitive investment or financial
8 information excluded from access under paragraph (2)(ii),
9 to the extent not otherwise excluded from access, shall
10 constitute a public record subject to public access under
11 the Right-to-Know Law once:

12 (A) the access no longer causes substantial
13 competitive harm to the person from whom the
14 information was received; or

15 (B) the entity in which the investment was made
16 is liquidated;

17 whichever is later.

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

23 (A) the access no longer has a substantial
24 detrimental impact on the value of an investment of
25 the fund or trust and would not cause a breach of the
26 standard of care or fiduciary duty set forth in this
27 part; or

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

30 whichever is later.

1 (4) [Except for the provisions of paragraph (3), nothing
2 in this subsection shall be construed to designate any
3 record, material or data received, prepared, used or retained
4 by the board or its employees, investment professionals or
5 agents relating to an investment as a public record subject
6 to public access under the Right-to-Know Law.] The board
7 shall be prohibited from entering into any investment
8 management contract or agreement that contains any term or
9 provision that is contrary to this section.

10 (5) Notwithstanding the provisions of this subsection,
11 the following information regarding an alternative investment
12 vehicle shall [be subject to public access] constitute a
13 public record under the Right-to-Know Law:

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

16 (ii) The identity of the manager of the alternative
17 investment vehicle.

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

20 (iv) The dollar amount of cash contributions made by
21 the system or plan to the alternative investment vehicle
22 since inception.

23 (v) The dollar amount of cash distributions received
24 by the system or plan from the alternative investment
25 vehicle since inception.

26 (vi) The gross and net internal rate of return of
27 the alternative investment vehicle since inception,
28 provided that the system or plan shall not be required to
29 disclose the gross or net internal rate of return under
30 circumstances in which, because of the limited number of

1 portfolio assets remaining in the alternative investment
2 vehicle, the disclosure could reveal the values of
3 specifically identifiable remaining portfolio assets to
4 the detriment of the alternative investment.

5 (vii) The aggregate value of the remaining portfolio
6 assets attributable to the system's or plan's investment
7 in the alternative investment vehicle, provided that the
8 system or plan shall not be required to disclose the
9 value under circumstances in which, because of the
10 limited number of portfolio assets remaining in the
11 alternative investment vehicle, the disclosure could
12 reveal the values of specifically identifiable remaining
13 portfolio assets to the detriment of the alternative
14 investment.

15 (viii) The dollar [amount] amounts of total
16 management fees [and], costs and expenses paid to or
17 retained from the alternative investment vehicle by the
18 system or plan on an annual fiscal year-end basis[.],
19 itemized by gross management, carried interest and other
20 expenses.

21 ~~(ix) Unredacted marketing materials, including,~~ <--
22 ~~without limitation, proposed fee terms, prospectuses,~~
23 ~~staff and consultant investment memorandum, subscription~~
24 ~~agreements, investment management agreements, contracts,~~
25 ~~side letters and annual investor reports of the~~
26 ~~alternative investment vehicle.~~

27 * * *

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

30 (1) In addition to the requirements set forth in this

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

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

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

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

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

1 and paid for by an external investment manager, fund or
2 consultant.

3 (v) Internal control representations relative to
4 significant deficiencies or material weaknesses in the
5 systems of internal control, including the number of
6 significant deficiencies or material weaknesses and the
7 significant deficiencies or material weaknesses that have
8 continued from one reporting period to the next or that
9 have been recurring in nature for the past three
10 reporting periods made by:

11 (A) auditors hired by the board and referenced
12 in the board's financial statements filed in
13 accordance with subsection (n); and

14 (B) an independent certified public accounting
15 firm specified in subsection (o).

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

19 "Carried interest." Any share of profits from an
20 alternative investment vehicle that is distributed to a fund
21 manager, general partner or related party, including
22 allocations of alternative investment vehicle profits
23 received by a fund manager in consideration of having waived
24 fees that the fund manager might otherwise have been entitled
25 to receive.

26 "Institutional Limited Partners Association Fee
27 Transparency Initiative." An initiative created by the
28 Institutional Limited Partners Association to establish
29 guidelines for reporting fees, expenses and compliance
30 disclosures regarding investments.

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

4 § 5902. Administrative duties of the board.

5 * * *

6 (e) Records.--

7 (1) [The board shall keep a record of all its
8 proceedings which shall be open to access by the public,
9 except as otherwise provided in this part or by other law.]
10 The board shall livestream its board meetings and post an
11 unedited video and written record of all its proceedings,
12 which shall be accessible on its publicly accessible Internet
13 website, including materials presented to the board, except
14 as otherwise provided in this part or by other law. Video,
15 written records and materials shall remain online for a
16 period of seven years.

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

26 [(i) in the case of an alternative investment or
27 alternative investment vehicle, involve the release of
28 sensitive investment or financial information relating to
29 the alternative investment or alternative investment
30 vehicle which the fund or trust was able to obtain only

1 upon agreeing to maintain its confidentiality;]

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

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

10 (3) The following apply:

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

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

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

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

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

30 (iii), to the extent not otherwise excluded from access,

1 shall constitute a public record subject to public access
2 under the Right-to-Know Law once:

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

8 (B) the entity in which the investment was made
9 is liquidated;

10 whichever is later.

11 (4) [Except for the provisions of paragraph (3), nothing
12 in this subsection shall be construed to designate any
13 record, material or data received, prepared, used or retained
14 by the board or its employees, investment professionals or
15 agents relating to an investment as a public record subject
16 to public access under the Right-to-Know Law.] The board
17 shall be prohibited from entering into any investment
18 management contract or agreement that contains any term or
19 provision that is contrary to this section.

20 (4.1) Notwithstanding the provisions of this subsection,
21 the following information regarding an alternative investment
22 vehicle shall constitute a public record subject to public
23 access under the Right-to-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 amounts of total management fees,
26 costs and expenses paid to or retained from the
27 alternative investment vehicle by the system or plan on
28 an annual fiscal year-end basis, itemized by gross
29 management, carried interest and other expenses.

30 ~~(ix) Unredacted marketing materials, including,~~

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~~without limitation, proposed fee terms, prospectuses,
staff and consultant investment memorandum, subscription
agreements, investment management agreements, contracts,
side letters and annual investor reports of the
alternative investment vehicle.~~

* * *

(r) Additional reporting requirements.--The following shall
apply:

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

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

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

(iii) An itemized listing of the fees, costs and
expenses paid to or retained by all investment managers
for the applicable reporting years, separated by base
management fee and profit share, including performance

1 fees, carried interest and incentive fees, including the
2 net asset value, and informed by the best practices as
3 recommended by recognized industry standards, including,
4 but not limited to, the Institutional Limited Partners
5 Association Fee Transparency Initiative. The board shall
6 disclose in the report which industry standards were used
7 and whether any changes to industry standards have been
8 made.

9 (iv) All travel or other expenses incurred by staff
10 and paid for by an external investment manager, fund or
11 consultant.

12 (v) Internal control representations relative to
13 significant deficiencies or material weaknesses in the
14 systems of internal control, including the number of
15 significant deficiencies or material weaknesses and the
16 significant deficiencies or material weaknesses that have
17 continued from one reporting period to the next or that
18 have been recurring in nature for the past three
19 reporting periods made by:

20 (A) auditors hired by the board and referenced
21 in the board's financial statements filed in
22 accordance with subsection (m); and

23 (B) an independent certified public accounting
24 firm specified in subsection (n).

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

28 "Carried interest." Any share of profits from an
29 alternative investment vehicle that is distributed to a fund
30 manager, general partner or related party, including

1 allocations of alternative investment vehicle profits
2 received by a fund manager in consideration of having waived
3 fees that the fund manager might otherwise have been entitled
4 to receive.

5 "Institutional Limited Partners Association Fee
6 Transparency Initiative." An initiative created by the
7 Institutional Limited Partners Association to establish
8 guidelines for reporting fees, expenses and compliance
9 disclosures regarding investments.

10 Section 3. This act shall apply as follows:

11 (1) The amendment of 24 Pa.C.S. § 8502(e)(1) shall apply
12 to board meetings that occur and video, written records and
13 materials created more than 120 days after the effective date
14 of this section.

15 (2) The amendment of 24 Pa.C.S. § 8502(e)(4) shall apply
16 to contracts and agreements entered into, renewed, amended or
17 extended after the effective date of this section.

18 (3) The amendment of 71 Pa.C.S. § 5902(e)(1) shall apply
19 to board meetings that occur and video, written records and
20 materials created more than 120 days after the effective date
21 of this section.

22 (4) The amendment of 71 Pa.C.S. § 5902(e)(4) shall apply
23 to contracts and agreements entered into, renewed, amended or
24 extended after the effective date of this section.

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