

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 RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 21, 2020

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 PUBLIC board<--

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

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

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

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

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

1 (3) The following apply:

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

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

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

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

18 whichever is later.

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

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

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

1 whichever is later.

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

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

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

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

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

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

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

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

1 circumstances in which, because of the limited number of
2 portfolio assets remaining in the alternative investment
3 vehicle, the disclosure could reveal the values of
4 specifically identifiable remaining portfolio assets to
5 the detriment of the alternative investment.

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

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

22 * * *

23 (s) Additional reporting requirements.--The following shall
24 apply:

25 (1) In addition to the requirements set forth in this
26 section, the board shall prepare and have published on its
27 publicly accessible Internet website, and electronically
28 submit copies to NOTIFY all members of the General Assembly, <--
29 OF the following information within six months after the end <--
30 of the system's fiscal year+, UNLESS PUBLICATION IS DELAYED <--

1 BY LATE RECEIPT OF INFORMATION REQUIRED FOR PREPARATION, IN
2 WHICH CASE THE INFORMATION MUST BE PUBLISHED NO LATER THAN 12
3 MONTHS AFTER THE END OF THE SYSTEM'S FISCAL YEAR:

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

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

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

28 (iv) ~~All~~ IN A MANNER DETERMINED BY THE BOARD, ALL <--
29 travel or other expenses incurred by staff OF THE PUBLIC <--
30 SCHOOL EMPLOYEES' RETIREMENT SYSTEM and paid for by an

1 external investment manager, fund or consultant.

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

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

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

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

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

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

30 Section 2. Section 5902(e)(1), (2), (3) and (4) of Title 71

1 are amended, subsection (e) is amended by adding a paragraph and
2 the section is amended by adding a subsection to read:

3 § 5902. Administrative duties of the board.

4 * * *

5 (e) Records.--

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

9 The board shall livestream its PUBLIC board meetings and post <--
10 an unedited video and written record of all ~~its~~ SUCH PUBLIC <--
11 proceedings, which shall be accessible on its publicly
12 accessible Internet website, including NONCONFIDENTIAL <--
13 materials presented to the board, except as otherwise
14 provided in this part or by other law. Video, written records <--
15 and materials AND RECORDS shall remain online for a period of <--
16 seven years AT LEAST ONE YEAR. <--

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 <--
22 the act of February 14, 2008 (P.L.6, No.3), known as the
23 Right-to-Know Law, [if] unless, in the reasonable judgment
24 and 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 <--
15 under 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 <--
21 under 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 <--
2 access 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. (RESERVED).~~ <--

20 (4.1) Notwithstanding the provisions of this subsection,
21 the following information regarding an alternative investment
22 vehicle shall constitute a public record BE 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 BY AN~~ <--
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 * * *

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

3 (1) In addition to the requirements set forth in this
4 section, the board shall prepare and have published on its
5 publicly accessible Internet website, and electronically
6 ~~submit copies to~~ NOTIFY all members of the General Assembly, <--
7 OF the following information within six months after the end <--
8 of the system's calendar year~~+~~, UNLESS PUBLICATION IS DELAYED <--
9 BY LATE RECEIPT OF INFORMATION REQUIRED FOR PREPARATION, IN
10 WHICH CASE THE INFORMATION MUST BE PUBLISHED NO LATER THAN 12
11 MONTHS AFTER THE END OF THE SYSTEM'S FISCAL YEAR:

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

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

24 (iii) An itemized listing of the fees, costs and
25 expenses paid to or retained by all investment managers
26 for the applicable reporting years, separated by base
27 management fee and, profit share, ~~including performance <--~~
28 fees, carried interest and incentive fees, ~~including the <--~~
29 net asset value, and informed by the best practices as
30 recommended by recognized industry standards, including,

1 but not limited to, the Institutional Limited Partners
2 Association Fee Transparency Initiative. The board shall
3 disclose in the report which industry standards were used
4 and whether any changes to industry standards have been
5 made.

6 (iv) ~~All~~ IN A MANNER DETERMINED BY THE BOARD, ALL <--
7 travel or other expenses incurred by staff and paid for
8 by an external investment manager, fund or consultant.

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

17 ~~(A) auditors hired by the board and referenced~~
18 ~~in the board's financial statements filed in~~
19 ~~accordance with subsection (m); and~~

20 ~~(B) an independent certified public accounting~~
21 ~~firm specified in subsection (n).~~

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

25 "Carried interest." Any share of profits from an
26 alternative investment vehicle that is distributed to a fund
27 manager, general partner or related party, including
28 allocations of alternative investment vehicle profits
29 received by a fund manager in consideration of having waived
30 fees that the fund manager might otherwise have been entitled

1 to receive.

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

7 Section 3. This act shall apply as follows:

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

12 (2) The amendment OR ADDITION of 24 Pa.C.S. § ~~8502(e)(4)~~ <--
13 8502(E)(5)(VI), (VII) AND (VIII) AND (S)(1)(III) shall apply <--
14 to contracts and agreements entered into, ~~renewed, amended or~~ <--
15 ~~extended~~ after the effective date of this section.

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

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

23 (4) THE AMENDMENT OR ADDITION OF 71 PA.C.S. § 5902(E) <--
24 (4.1)(VI), (VII), (VIII) AND (R)(1)(III) SHALL APPLY TO
25 CONTRACTS AND AGREEMENTS ENTERED INTO AFTER THE EFFECTIVE
26 DATE OF THIS SECTION.

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