

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1261 Session of 2023

INTRODUCED BY B. MILLER, BONNER, COOK, SCHLEGEL CULVER, D'ORSIE, DIAMOND, ECKER, EMRICK, FEE, FREEMAN, FRITZ, GAYDOS, GILLEN, GLEIM, GREINER, HAMM, IRVIN, JAMES, M. JONES, T. JONES, JOZWIAK, KAUFFMAN, KEEFER, KLUNK, LEADBETER, R. MACKENZIE, MENTZER, MOUL, OWLETT, PICKETT, RADER, RAPP, ROAE, ROWE, SCHEMEL, SCHLEGEL, SCHMITT, SCIALABBA, SMITH, SOLOMON, STAATS, STAMBAUGH, TWARDZIK, WARNER AND ZIMMERMAN, MAY 31, 2023

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MAY 31, 2023

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:

17 (i) The board shall [keep a] livestream all public

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

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

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

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

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

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

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

12 (3) The following apply:

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

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

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

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

29 whichever is later.

30 (iii) The sensitive investment or financial

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

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

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

12 whichever is later.

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

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

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

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

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

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

1 since inception.

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

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

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

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

30 \* \* \*

1 (s) Additional reporting requirements.--

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

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

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

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

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

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

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

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

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

22 § 5902. Administrative duties of the board.

23           \* \* \*

24           (e) Records.--

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

28           The following shall apply:

29           (i) The board shall livestream all public board and  
30           committee meetings and post an unedited video and written

1 record of all such public proceedings, which shall be  
2 accessible on its publicly accessible Internet website,  
3 including nonconfidential materials presented to the  
4 board, except as otherwise provided in this part or by  
5 other law. Video and records shall remain online for a  
6 period of at least three years and shall be maintained  
7 for a period of at least seven years and thereafter shall  
8 be maintained in accordance with applicable records  
9 retention schedules.

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

30           (1) In addition to the requirements under this section,

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

6 (i) The net of fees performance of all investments  
7 over the most recent 1-, 3-, 5-, 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, costs and  
19 expenses paid to or retained by all investment managers  
20 for the applicable reporting years, separated by base  
21 management fee, profit share, performance fees, carried  
22 interest and incentive fees, and informed by the best  
23 practices as recommended by recognized industry  
24 standards, including, but not limited to, the  
25 Institutional Limited Partners Association Fee  
26 Transparency Initiative. The board shall disclose in the  
27 report which industry standards were used and whether any  
28 changes to industry standards have been made.

29 (iv) All travel or other expenses incurred by staff  
30 of the system or plan and paid for by an external

1 investment manager, fund or consultant.

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

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

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

17 Section 3. This act shall apply as follows:

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

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

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

30 (4) The amendment or addition of 71 Pa.C.S. § 5902(e)

1 (4.1) (vi), (vii) and (viii) and (s) (1) (iii) shall apply to  
2 contracts and agreements entered into after the effective  
3 date of this section.

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