

SB0779



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0779

Introduced 2/1/2017, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7 from Ch. 116, par. 207
40 ILCS 5/1-113.17 new
40 ILCS 5/1-113.17a new
40 ILCS 5/1-113.17b new

Amends the General Provisions Article of the Illinois Pension Code in relation to investment transparency. Defines terms. Provides that within 90 days after entering into a new agreement to invest in an alternative investment fund, a public retirement system must disclose certain specified provisions of the agreement. Provides that a public retirement system shall require its alternative investment fund external managers and general partners to make certain annual disclosures concerning certain fees and expenses, in regard to each alternative investment fund. Provides that supplying a public retirement system with a completed reporting template developed by the Institutional Limited Partners Association constitutes compliance with certain reporting requirements. Declares the disclosures to be public records and requires their publication on the public retirement system's website. Amends the Freedom of Information Act to make a conforming change. Effective immediately.

LRB100 06789 RPS 16837 b

FISCAL NOTE ACT
MAY APPLY

PENSION IMPACT
NOTE ACT MAY
APPLY

A BILL FOR

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 3. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7) (from Ch. 116, par. 207)

7 Sec. 7. Exemptions.

8 (1) When a request is made to inspect or copy a public
9 record that contains information that is exempt from disclosure
10 under this Section, but also contains information that is not
11 exempt from disclosure, the public body may elect to redact the
12 information that is exempt. The public body shall make the
13 remaining information available for inspection and copying.
14 Subject to this requirement, the following shall be exempt from
15 inspection and copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and regulations
18 implementing federal or State law.

19 (b) Private information, unless disclosure is required
20 by another provision of this Act, a State or federal law or
21 a court order.

22 (b-5) Files, documents, and other data or databases
23 maintained by one or more law enforcement agencies and

1 specifically designed to provide information to one or more
2 law enforcement agencies regarding the physical or mental
3 status of one or more individual subjects.

4 (c) Personal information contained within public
5 records, the disclosure of which would constitute a clearly
6 unwarranted invasion of personal privacy, unless the
7 disclosure is consented to in writing by the individual
8 subjects of the information. "Unwarranted invasion of
9 personal privacy" means the disclosure of information that
10 is highly personal or objectionable to a reasonable person
11 and in which the subject's right to privacy outweighs any
12 legitimate public interest in obtaining the information.
13 The disclosure of information that bears on the public
14 duties of public employees and officials shall not be
15 considered an invasion of personal privacy.

16 (d) Records in the possession of any public body
17 created in the course of administrative enforcement
18 proceedings, and any law enforcement or correctional
19 agency for law enforcement purposes, but only to the extent
20 that disclosure would:

21 (i) interfere with pending or actually and
22 reasonably contemplated law enforcement proceedings
23 conducted by any law enforcement or correctional
24 agency that is the recipient of the request;

25 (ii) interfere with active administrative
26 enforcement proceedings conducted by the public body

1 that is the recipient of the request;

2 (iii) create a substantial likelihood that a
3 person will be deprived of a fair trial or an impartial
4 hearing;

5 (iv) unavoidably disclose the identity of a
6 confidential source, confidential information
7 furnished only by the confidential source, or persons
8 who file complaints with or provide information to
9 administrative, investigative, law enforcement, or
10 penal agencies; except that the identities of
11 witnesses to traffic accidents, traffic accident
12 reports, and rescue reports shall be provided by
13 agencies of local government, except when disclosure
14 would interfere with an active criminal investigation
15 conducted by the agency that is the recipient of the
16 request;

17 (v) disclose unique or specialized investigative
18 techniques other than those generally used and known or
19 disclose internal documents of correctional agencies
20 related to detection, observation or investigation of
21 incidents of crime or misconduct, and disclosure would
22 result in demonstrable harm to the agency or public
23 body that is the recipient of the request;

24 (vi) endanger the life or physical safety of law
25 enforcement personnel or any other person; or

26 (vii) obstruct an ongoing criminal investigation

1 by the agency that is the recipient of the request.

2 (d-5) A law enforcement record created for law
3 enforcement purposes and contained in a shared electronic
4 record management system if the law enforcement agency that
5 is the recipient of the request did not create the record,
6 did not participate in or have a role in any of the events
7 which are the subject of the record, and only has access to
8 the record through the shared electronic record management
9 system.

10 (e) Records that relate to or affect the security of
11 correctional institutions and detention facilities.

12 (e-5) Records requested by persons committed to the
13 Department of Corrections if those materials are available
14 in the library of the correctional facility where the
15 inmate is confined.

16 (e-6) Records requested by persons committed to the
17 Department of Corrections if those materials include
18 records from staff members' personnel files, staff
19 rosters, or other staffing assignment information.

20 (e-7) Records requested by persons committed to the
21 Department of Corrections if those materials are available
22 through an administrative request to the Department of
23 Corrections.

24 (f) Preliminary drafts, notes, recommendations,
25 memoranda and other records in which opinions are
26 expressed, or policies or actions are formulated, except

1 that a specific record or relevant portion of a record
2 shall not be exempt when the record is publicly cited and
3 identified by the head of the public body. The exemption
4 provided in this paragraph (f) extends to all those records
5 of officers and agencies of the General Assembly that
6 pertain to the preparation of legislative documents.

7 (g) Trade secrets and commercial or financial
8 information obtained from a person or business where the
9 trade secrets or commercial or financial information are
10 furnished under a claim that they are proprietary,
11 privileged or confidential, and that disclosure of the
12 trade secrets or commercial or financial information would
13 cause competitive harm to the person or business, and only
14 insofar as the claim directly applies to the records
15 requested.

16 The information included under this exemption includes
17 all trade secrets and commercial or financial information
18 obtained by a public body, including a public pension fund,
19 from a private equity fund or a privately held company
20 within the investment portfolio of a private equity fund as
21 a result of either investing or evaluating a potential
22 investment of public funds in a private equity fund. The
23 exemption contained in this item does not apply to the
24 aggregate financial performance information of a private
25 equity fund, nor to the identity of the fund's managers or
26 general partners. The exemption contained in this item does

1 not apply to the identity of a privately held company
2 within the investment portfolio of a private equity fund,
3 unless the disclosure of the identity of a privately held
4 company may cause competitive harm. Neither the exemption
5 contained in this item, nor any other exemption under this
6 Act, applies to information that is required to be
7 disclosed under Section 1-113.17a of the Illinois Pension
8 Code or is declared in that Section to be a public record.

9 Nothing contained in this paragraph (g) shall be
10 construed to prevent a person or business from consenting
11 to disclosure.

12 (h) Proposals and bids for any contract, grant, or
13 agreement, including information which if it were
14 disclosed would frustrate procurement or give an advantage
15 to any person proposing to enter into a contractor
16 agreement with the body, until an award or final selection
17 is made. Information prepared by or for the body in
18 preparation of a bid solicitation shall be exempt until an
19 award or final selection is made.

20 (i) Valuable formulae, computer geographic systems,
21 designs, drawings and research data obtained or produced by
22 any public body when disclosure could reasonably be
23 expected to produce private gain or public loss. The
24 exemption for "computer geographic systems" provided in
25 this paragraph (i) does not extend to requests made by news
26 media as defined in Section 2 of this Act when the

1 requested information is not otherwise exempt and the only
2 purpose of the request is to access and disseminate
3 information regarding the health, safety, welfare, or
4 legal rights of the general public.

5 (j) The following information pertaining to
6 educational matters:

7 (i) test questions, scoring keys and other
8 examination data used to administer an academic
9 examination;

10 (ii) information received by a primary or
11 secondary school, college, or university under its
12 procedures for the evaluation of faculty members by
13 their academic peers;

14 (iii) information concerning a school or
15 university's adjudication of student disciplinary
16 cases, but only to the extent that disclosure would
17 unavoidably reveal the identity of the student; and

18 (iv) course materials or research materials used
19 by faculty members.

20 (k) Architects' plans, engineers' technical
21 submissions, and other construction related technical
22 documents for projects not constructed or developed in
23 whole or in part with public funds and the same for
24 projects constructed or developed with public funds,
25 including but not limited to power generating and
26 distribution stations and other transmission and

1 distribution facilities, water treatment facilities,
2 airport facilities, sport stadiums, convention centers,
3 and all government owned, operated, or occupied buildings,
4 but only to the extent that disclosure would compromise
5 security.

6 (l) Minutes of meetings of public bodies closed to the
7 public as provided in the Open Meetings Act until the
8 public body makes the minutes available to the public under
9 Section 2.06 of the Open Meetings Act.

10 (m) Communications between a public body and an
11 attorney or auditor representing the public body that would
12 not be subject to discovery in litigation, and materials
13 prepared or compiled by or for a public body in
14 anticipation of a criminal, civil or administrative
15 proceeding upon the request of an attorney advising the
16 public body, and materials prepared or compiled with
17 respect to internal audits of public bodies.

18 (n) Records relating to a public body's adjudication of
19 employee grievances or disciplinary cases; however, this
20 exemption shall not extend to the final outcome of cases in
21 which discipline is imposed.

22 (o) Administrative or technical information associated
23 with automated data processing operations, including but
24 not limited to software, operating protocols, computer
25 program abstracts, file layouts, source listings, object
26 modules, load modules, user guides, documentation

1 pertaining to all logical and physical design of
2 computerized systems, employee manuals, and any other
3 information that, if disclosed, would jeopardize the
4 security of the system or its data or the security of
5 materials exempt under this Section.

6 (p) Records relating to collective negotiating matters
7 between public bodies and their employees or
8 representatives, except that any final contract or
9 agreement shall be subject to inspection and copying.

10 (q) Test questions, scoring keys, and other
11 examination data used to determine the qualifications of an
12 applicant for a license or employment.

13 (r) The records, documents, and information relating
14 to real estate purchase negotiations until those
15 negotiations have been completed or otherwise terminated.
16 With regard to a parcel involved in a pending or actually
17 and reasonably contemplated eminent domain proceeding
18 under the Eminent Domain Act, records, documents and
19 information relating to that parcel shall be exempt except
20 as may be allowed under discovery rules adopted by the
21 Illinois Supreme Court. The records, documents and
22 information relating to a real estate sale shall be exempt
23 until a sale is consummated.

24 (s) Any and all proprietary information and records
25 related to the operation of an intergovernmental risk
26 management association or self-insurance pool or jointly

1 self-administered health and accident cooperative or pool.
2 Insurance or self insurance (including any
3 intergovernmental risk management association or self
4 insurance pool) claims, loss or risk management
5 information, records, data, advice or communications.

6 (t) Information contained in or related to
7 examination, operating, or condition reports prepared by,
8 on behalf of, or for the use of a public body responsible
9 for the regulation or supervision of financial
10 institutions or insurance companies, unless disclosure is
11 otherwise required by State law.

12 (u) Information that would disclose or might lead to
13 the disclosure of secret or confidential information,
14 codes, algorithms, programs, or private keys intended to be
15 used to create electronic or digital signatures under the
16 Electronic Commerce Security Act.

17 (v) Vulnerability assessments, security measures, and
18 response policies or plans that are designed to identify,
19 prevent, or respond to potential attacks upon a community's
20 population or systems, facilities, or installations, the
21 destruction or contamination of which would constitute a
22 clear and present danger to the health or safety of the
23 community, but only to the extent that disclosure could
24 reasonably be expected to jeopardize the effectiveness of
25 the measures or the safety of the personnel who implement
26 them or the public. Information exempt under this item may

1 include such things as details pertaining to the
2 mobilization or deployment of personnel or equipment, to
3 the operation of communication systems or protocols, or to
4 tactical operations.

5 (w) (Blank).

6 (x) Maps and other records regarding the location or
7 security of generation, transmission, distribution,
8 storage, gathering, treatment, or switching facilities
9 owned by a utility, by a power generator, or by the
10 Illinois Power Agency.

11 (y) Information contained in or related to proposals,
12 bids, or negotiations related to electric power
13 procurement under Section 1-75 of the Illinois Power Agency
14 Act and Section 16-111.5 of the Public Utilities Act that
15 is determined to be confidential and proprietary by the
16 Illinois Power Agency or by the Illinois Commerce
17 Commission.

18 (z) Information about students exempted from
19 disclosure under Sections 10-20.38 or 34-18.29 of the
20 School Code, and information about undergraduate students
21 enrolled at an institution of higher education exempted
22 from disclosure under Section 25 of the Illinois Credit
23 Card Marketing Act of 2009.

24 (aa) Information the disclosure of which is exempted
25 under the Viatical Settlements Act of 2009.

26 (bb) Records and information provided to a mortality

1 review team and records maintained by a mortality review
2 team appointed under the Department of Juvenile Justice
3 Mortality Review Team Act.

4 (cc) Information regarding interments, entombments, or
5 inurnments of human remains that are submitted to the
6 Cemetery Oversight Database under the Cemetery Care Act or
7 the Cemetery Oversight Act, whichever is applicable.

8 (dd) Correspondence and records (i) that may not be
9 disclosed under Section 11-9 of the Illinois Public Aid
10 Code or (ii) that pertain to appeals under Section 11-8 of
11 the Illinois Public Aid Code.

12 (ee) The names, addresses, or other personal
13 information of persons who are minors and are also
14 participants and registrants in programs of park
15 districts, forest preserve districts, conservation
16 districts, recreation agencies, and special recreation
17 associations.

18 (ff) The names, addresses, or other personal
19 information of participants and registrants in programs of
20 park districts, forest preserve districts, conservation
21 districts, recreation agencies, and special recreation
22 associations where such programs are targeted primarily to
23 minors.

24 (gg) Confidential information described in Section
25 1-100 of the Illinois Independent Tax Tribunal Act of 2012.

26 (hh) The report submitted to the State Board of

1 Education by the School Security and Standards Task Force
2 under item (8) of subsection (d) of Section 2-3.160 of the
3 School Code and any information contained in that report.

4 (ii) Records requested by persons committed to or
5 detained by the Department of Human Services under the
6 Sexually Violent Persons Commitment Act or committed to the
7 Department of Corrections under the Sexually Dangerous
8 Persons Act if those materials: (i) are available in the
9 library of the facility where the individual is confined;
10 (ii) include records from staff members' personnel files,
11 staff rosters, or other staffing assignment information;
12 or (iii) are available through an administrative request to
13 the Department of Human Services or the Department of
14 Corrections.

15 (jj) Confidential information described in Section
16 5-535 of the Civil Administrative Code of Illinois.

17 (1.5) Any information exempt from disclosure under the
18 Judicial Privacy Act shall be redacted from public records
19 prior to disclosure under this Act.

20 (2) A public record that is not in the possession of a
21 public body but is in the possession of a party with whom the
22 agency has contracted to perform a governmental function on
23 behalf of the public body, and that directly relates to the
24 governmental function and is not otherwise exempt under this
25 Act, shall be considered a public record of the public body,
26 for purposes of this Act.

1 (3) This Section does not authorize withholding of
2 information or limit the availability of records to the public,
3 except as stated in this Section or otherwise provided in this
4 Act.

5 (Source: P.A. 98-463, eff. 8-16-13; 98-578, eff. 8-27-13;
6 98-695, eff. 7-3-14; 99-298, eff. 8-6-15; 99-346, eff. 1-1-16;
7 99-642, eff. 7-28-16; revised 10-25-16.)

8 Section 5. The Illinois Pension Code is amended by adding
9 Sections 1-113.17, 1-113.17a, and 1-113.17b as follows:

10 (40 ILCS 5/1-113.17 new)

11 Sec. 1-113.17. Investment transparency; definitions. As
12 used in this Section and Sections 1-113.17a and 1-113.17b:

13 (a) "Affiliate" means any person directly or indirectly
14 controlling or controlled by, or under direct or indirect
15 common control with, another person.

16 (a-5) "Alternative investment fund" means a private equity
17 fund, hedge fund, or absolute return fund.

18 (b) "Board" or "public retirement system board" means the
19 board of trustees of a public retirement system and includes
20 the Illinois State Board of Investment established under
21 Article 22A of this Code.

22 (c) "External manager" means either of the following:

23 (1) A person who manages an alternative investment fund
24 and who offers or sells, or has offered or sold, an

1 ownership interest in the alternative investment fund to a
2 board.

3 (2) A general partner, managing member entity, fund
4 manager, fund adviser, or other similar person or entity
5 with decision-making authority over an alternative
6 investment fund.

7 (d) "External manager group" means (1) the external
8 manager, (2) its affiliates, (3) any other parties described in
9 the external manager's marketing materials for the relevant
10 alternative investment fund as providing services to or on
11 behalf of portfolio holdings, and (4) any other parties
12 described in the external manager's affiliated adviser's SEC
13 Form ADV filing as receiving portfolio holding fees or
14 portfolio holding other compensation. "External manager group"
15 does not include the affiliated alternative investment fund in
16 which the public retirement system is an investor, nor does it
17 include an alternative investment fund used to effectuate
18 investments of the affiliated fund in which the public
19 retirement system is an investor.

20 (e) "Marketing materials" means (1) a prospectus, (2) a
21 private placement memorandum, (3) a prospective investor
22 presentation, (4) a due diligence questionnaire, but only if
23 the questions are authored by an external manager, or (5) any
24 other written material provided by an external manager for the
25 purpose of soliciting a commitment to an alternative investment
26 fund.

1 (f) "New agreement" means an agreement that is proposed or
2 executed after January 1, 2018, and includes any modification
3 to or amendment of such an agreement that modifies or alters
4 any of the provisions required to be disclosed under Section
5 1-113.17a or 1-113.17b. "New agreement" also means any
6 subsequent agreement that implements, memorializes, or
7 provides detail about such an agreement.

8 (g) "Person" means an individual, corporation,
9 partnership, limited partnership, limited liability company,
10 or association, either domestic or foreign.

11 (h) "Portfolio holding" means any business, partnership,
12 real property, or other business entity or asset in which an
13 alternative investment fund has, at any time, held either an
14 interest in the securities thereof or a real property interest
15 in, or has acted as a lender to, the entity or asset.

16 (i) "Portfolio holding fee" means the total payment
17 obligation of a portfolio holding, regardless of whether it is
18 actually paid or accrued, and regardless of whether the payment
19 obligation is satisfied in cash, securities, or other
20 consideration, and regardless of whether it is incurred as
21 compensation for services provided or as reimbursement for
22 expenses incurred.

23 (j) "Private equity fund" means a pooled investment entity
24 that is, or holds itself out as being, engaged primarily, or
25 proposes to engage primarily, in investment strategies
26 involving equity or debt financings that are provided for

1 purchasing or expanding private or public companies, or for
2 related purposes such as financing for capital, research and
3 development, introduction of a product or process into the
4 marketplace, or similar needs requiring risk capital. This
5 includes, but is not limited to, financing classified as
6 venture capital, mezzanine, buyout, or growth funds.

7 (k) "Public retirement system" means a pension fund or
8 retirement system subject to this Code, and includes the
9 Illinois State Board of Investment established under Article
10 22A of this Code.

11 (40 ILCS 5/1-113.17a new)

12 Sec. 1-113.17a. Investment transparency; disclosure of
13 alternative investment fund agreements.

14 (a) The definitions in Section 1-113.17 of this Code apply
15 to this Section.

16 (b) Within 90 days after entering into a new agreement to
17 invest in an alternative investment fund, a public retirement
18 system must disclose, in the manner provided under this
19 Section, the existence of the agreement and all of the
20 following parts and provisions of the agreement:

21 (1) All management fee waiver provisions, including,
22 but not limited to, provisions that permit the external
23 manager or general partner to waive fees, or that specify
24 the mechanics of the fee waiver or its repayment, or that
25 specify the magnitude of the fee waiver, or that are

1 necessary to understand how the fee waiver works, and all
2 defined terms related to or affecting the fee waiver.

3 (2) All indemnification provisions, including, but not
4 limited to, provisions that require the alternative
5 investment fund or its investors to indemnify the external
6 manager or general partner, or any of its affiliates, for
7 settlements or judgments paid, and including all
8 provisions necessary to understand how the indemnification
9 works and all defined terms related to or affecting
10 indemnification.

11 (3) All clawback provisions, including, but not
12 limited to, provisions that allow the external manager or
13 general partner to pay back an amount less than the full
14 cost of the overpayment received by the manager, and
15 including all provisions necessary to understand how the
16 clawback works and all defined terms related to or
17 affecting clawbacks.

18 (4) The cover page and signature block of the
19 agreement.

20 However, in the case of a new agreement that consists of a
21 modification of or amendment to a previous new agreement for
22 which the disclosures required under this subsection have
23 already been made, it is sufficient for the public retirement
24 system (i) to identify the previous disclosures and disclose
25 only the parts and provisions of the modification of or
26 amendment to the agreement that modify, alter, or affect any of

1 the provisions previously disclosed under this subsection or
2 (ii) to make and disclose a finding that the modification or
3 amendment does not modify, alter, or affect any of the
4 provisions previously disclosed under this subsection,
5 whichever is applicable.

6 (c) The public retirement system shall make the disclosures
7 required under subsection (b) by doing all of the following:

8 (1) filing a copy of the required material with the
9 Public Pension Division of the Illinois Department of
10 Insurance;

11 (2) filing a copy of the required material with the
12 Illinois Secretary of State; and

13 (3) posting and maintaining the required material on
14 the public retirement system's website.

15 (d) A new agreement shall not be deemed to be violated or
16 made invalid by the public retirement system's good faith
17 effort to make the disclosures required under subsection (b) of
18 this Section, nor due to harmless or inadvertent failure by the
19 public retirement system to correctly include or identify a
20 component of a required disclosure.

21 (e) The following are public records and are subject to
22 disclosure under the Freedom of Information Act:

23 (1) All of the material required to be disclosed under
24 subsection (b) of this Section.

25 (2) Any amounts paid in indemnification and any amounts
26 deducted from payments owed by the general partner or

1 external manager under an agreement establishing or
2 providing for participation in an alternative investment
3 fund by a public retirement system, and any documents
4 submitted to a public retirement system justifying the
5 demand for payment relating to the indemnification.

6 (3) The cover page and a legible copy of the executed
7 signature block of any new agreement to establish or
8 participate in an alternative investment fund by a public
9 retirement system.

10 (40 ILCS 5/1-113.17b new)

11 Sec. 1-113.17b. Investment transparency; disclosure of
12 certain investment fees.

13 (a) The definitions in Section 1-113.17 of this Code apply
14 to this Section. For the purposes of this Section, "carried
15 interest" means a share of the profits of an alternative
16 investment fund that is paid, accrued, or due to the general
17 partner or the external manager or their affiliates.

18 (b) This Section applies to any new agreement that a public
19 retirement system enters into in order to establish or
20 participate in an alternative investment fund. A public
21 retirement system shall not enter into such new agreement
22 without a written undertaking by the alternative investment
23 fund external managers and general partners that they will
24 comply with this Section and the requirements of the public
25 retirement system under subsection (c).

1 (c) Every public retirement system shall require its
2 alternative investment fund external managers and general
3 partners to make the following disclosures annually, in a
4 manner and form prescribed by the system, in regard to each
5 alternative investment fund:

6 (1) The fees and expenses that the public retirement
7 system pays directly to the alternative investment fund, or
8 to the alternative investment fund external manager or
9 general partner.

10 (2) The public retirement system's share of all fees
11 and expenses not included in paragraph (1), including
12 carried interest, that are paid or allocated from the
13 alternative investment fund to the external manager or
14 general partners, or that are deducted from payments owed
15 from the external manager or general partners to the
16 alternative investment fund.

17 (3) The amount of all management fee waivers made by
18 the alternative investment fund external managers or
19 general partners.

20 (4) The total amount of portfolio holding fees incurred
21 by each portfolio holding of the alternative investment
22 fund as payment to any person who is a member of the
23 external manager group.

24 An alternative investment fund external manager or general
25 partner may provide the public retirement system with a
26 completed reporting template developed by the Institutional

1 Limited Partners Association for the relevant category of
2 investment; doing so constitutes compliance with that external
3 manager or general partner's annual disclosure requirements
4 under this subsection for the year covered in the completed
5 template.

6 (d) A public retirement system shall make the information
7 received under subsection (c) available by:

8 (1) filing a copy of the received material with the
9 Public Pension Division of the Illinois Department of
10 Insurance; and

11 (2) posting and maintaining the received information
12 on the public retirement system's website, together with
13 sufficient identifying and explanatory material to
14 facilitate access and understanding by the public.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law.