

SB3162



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3162

Introduced 2/9/2010, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-113.14
40 ILCS 5/1-113.15 new

Amends the Illinois Pension Code. Requires that a description of every contract for qualified fund-of-fund management services must be posted in a conspicuous manner on the web site of the retirement system, pension fund, or investment board and must include the name of the fund-of-funds, the name of its investment adviser, the total investment commitment of the retirement system, pension fund, or investment board to invest in such fund-of-funds, and a disclosure approved by the board describing the factors that contributed to the investment in such fund-of-funds. Effective immediately.

LRB096 19909 AMC 35373 b

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 5. The Illinois Pension Code is amended by changing
5 Section 1-113.14 and by adding Section 1-113.15 as follows:

6 (40 ILCS 5/1-113.14)

7 Sec. 1-113.14. Investment services for retirement systems,
8 pension funds, and investment boards, except those funds
9 established under Articles 3 and 4.

10 (a) For the purposes of this Section, "investment services"
11 means services provided by an investment adviser or a
12 consultant other than qualified fund-of-fund management
13 services as defined in Section 1-113.15.

14 (b) The selection and appointment of an investment adviser
15 or consultant for investment services by the board of a
16 retirement system, pension fund, or investment board subject to
17 this Code, except those whose investments are restricted by
18 Section 1-113.2, shall be made and awarded in accordance with
19 this Section. All contracts for investment services shall be
20 awarded by the board using a competitive process that is
21 substantially similar to the process required for the
22 procurement of professional and artistic services under
23 Article 35 of the Illinois Procurement Code. Each board of

1 trustees shall adopt a policy in accordance with this
2 subsection (b) within 60 days after the effective date of this
3 amendatory Act of the 96th General Assembly. The policy shall
4 be posted on its web site and filed with the Illinois
5 Procurement Policy Board. Exceptions to this Section are
6 allowed for (i) sole source procurements, (ii) emergency
7 procurements, and (iii) at the discretion of the pension fund,
8 retirement system, or board of investment, contracts that are
9 nonrenewable and one year or less in duration, so long as the
10 contract has a value of less than \$20,000. All exceptions
11 granted under this Section must be published on the system's,
12 fund's, or board's web site, shall name the person authorizing
13 the procurement, and shall include a brief explanation of the
14 reason for the exception.

15 A person, other than a trustee or an employee of a
16 retirement system, pension fund, or investment board, may not
17 act as a consultant or investment adviser under this Section
18 unless that person is registered as an investment adviser under
19 the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1,
20 et seq.) or a bank, as defined in the federal Investment
21 Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.).

22 (c) Investment services provided by an investment adviser
23 or a consultant appointed under this Section shall be rendered
24 pursuant to a written contract between the investment adviser
25 or consultant and the board.

26 The contract shall include all of the following:

1 (1) Acknowledgement in writing by the investment
2 adviser or consultant that he or she is a fiduciary with
3 respect to the pension fund or retirement system.

4 (2) The description of the board's investment policy
5 and notice that the policy is subject to change.

6 (3) (i) Full disclosure of direct and indirect fees,
7 commissions, penalties, and other compensation, including
8 reimbursement for expenses, that may be paid by or on
9 behalf of the consultant in connection with the provision
10 of services to the pension fund or retirement system and
11 (ii) a requirement that the consultant update the
12 disclosure promptly after a modification of those payments
13 or an additional payment.

14 (4) A requirement that the investment adviser or
15 consultant, in conjunction with the board's staff, submit
16 periodic written reports, on at least a quarterly basis,
17 for the board's review at its regularly scheduled meetings.
18 All returns on investment shall be reported as net returns
19 after payment of all fees, commissions, and any other
20 compensation.

21 (5) Disclosure of the names and addresses of (i) the
22 consultant or investment adviser; (ii) any entity that is a
23 parent of, or owns a controlling interest in, the
24 consultant or investment adviser; (iii) any entity that is
25 a subsidiary of, or in which a controlling interest is
26 owned by, the consultant or investment adviser; (iv) any

1 persons who have an ownership or distributive income share
2 in the consultant or investment adviser that is in excess
3 of 7.5%; or (v) serves as an executive officer of the
4 consultant or investment adviser.

5 (6) A disclosure of the names and addresses of all
6 subcontractors, if applicable, and the expected amount of
7 money each will receive under the contract, including an
8 acknowledgment that the contractor must promptly make
9 notification, in writing, if at any time during the term of
10 the contract a contractor adds or changes any
11 subcontractors. For purposes of this subparagraph (6),
12 "subcontractor" does not include non-investment related
13 professionals or professionals offering services that are
14 not directly related to the investment of assets, such as
15 legal counsel, actuary, proxy-voting services, services
16 used to track compliance with legal standards, and
17 investment fund of funds where the board has no direct
18 contractual relationship with the investment advisers or
19 partnerships.

20 (7) A description of service to be performed.

21 (8) A description of the need for the service.

22 (9) A description of the plan for post-performance
23 review.

24 (10) A description of the qualifications necessary.

25 (11) The duration of the contract.

26 (12) The method for charging and measuring cost.

1 (d) Notwithstanding any other provision of law, a
2 retirement system, pension fund, or investment board subject to
3 this Code, except those whose investments are restricted by
4 Section 1-113.2 of this Code, shall not enter into a contract
5 with a consultant that exceeds 5 years in duration. No contract
6 to provide consulting services may be renewed or extended. At
7 the end of the term of a contract, however, the consultant is
8 eligible to compete for a new contract as provided in this
9 Section. No retirement system, pension fund, or investment
10 board shall attempt to avoid or contravene the restrictions of
11 this subsection (d) by any means.

12 (e) Within 60 days after the effective date of this
13 amendatory Act of the 96th General Assembly, each investment
14 adviser or consultant currently providing services or subject
15 to an existing contract for the provision of services must
16 disclose to the board of trustees all direct and indirect fees,
17 commissions, penalties, and other compensation paid by or on
18 behalf of the investment adviser or consultant in connection
19 with the provision of those services and shall update that
20 disclosure promptly after a modification of those payments or
21 an additional payment. The person shall update the disclosure
22 promptly after a modification of those payments or an
23 additional payment. The disclosures required by this
24 subsection (e) shall be in writing and shall include the date
25 and amount of each payment and the name and address of each
26 recipient of a payment.

1 (f) The retirement system, pension fund, or board of
2 investment shall develop uniform documents that shall be used
3 for the solicitation, review, and acceptance of all investment
4 services. The form shall include the terms contained in
5 subsection (c) of this Section. All such uniform documents
6 shall be posted on the retirement system's, pension fund's, or
7 investment board's web site.

8 (g) A description of every contract for investment services
9 shall be posted in a conspicuous manner on the web site of the
10 retirement system, pension fund, or investment board. The
11 description must include the name of the person or entity
12 awarded a contract, the total amount applicable to the
13 contract, the total fees paid or to be paid, and a disclosure
14 approved by the board describing the factors that contributed
15 to the selection of an investment adviser or consultant.

16 (Source: P.A. 96-6, eff. 4-3-09.)

17 (40 ILCS 5/1-113.15 new)

18 Sec. 1-113.15. Qualified fund-of-fund management services.

19 (a) As used in this Section:

20 "Qualified fund-of-fund management services" means either
21 (i) the services of an investment adviser acting in its
22 capacity as an investment manager of a fund-of-funds or (ii) an
23 investment adviser acting in its capacity as an investment
24 manager of a separate account that is invested on a
25 side-by-side basis in a substantially identical manner to a

1 fund-of-funds, in each case pursuant to qualified written
2 agreements.

3 "Qualified written agreements" means one or more written
4 contracts to which the investment adviser and the board are
5 parties and includes all of the following: (i) the matters
6 described in items (1), (4), (5), (7), (11) and (12) of
7 subsection (c) of Section 1-113.14; (ii) a description of any
8 fees, commissions, penalties, and other compensation payable,
9 if any, directly by the retirement system, pension fund, or
10 investment board (which shall not include any fees,
11 commissions, penalties, and other compensation payable from
12 the assets of the fund-of-funds or separate account); (iii) a
13 description (or method of calculation) of the fees and expenses
14 payable by the Fund to the investment adviser, and the timing
15 of the payment of the fees or expenses; and (iv) a description
16 (or method of calculation) of any carried interest or other
17 performance based interests, fees or payments allocable by the
18 Fund to the investment adviser or an affiliate of the
19 investment adviser, and the priority of distributions with
20 respect to such interest.

21 (b) A description of every contract for qualified
22 fund-of-fund management services must be posted in a
23 conspicuous manner on the web site of the retirement system,
24 pension fund, or investment board. The description must include
25 the name of the fund-of-funds, the name of its investment
26 adviser, the total investment commitment of the retirement

1 system, pension fund, or investment board to invest in such
2 fund-of-funds, and a disclosure approved by the board
3 describing the factors that contributed to the investment in
4 such fund-of-funds. No information that is exempt from
5 inspection pursuant to Section 7 of the Freedom of Information
6 Act shall be disclosed under this Section.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.