

SB1899



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1899

Introduced 2/15/2013, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-113.14

Amends the General Provisions Article of the Illinois Pension Code. In a Section requiring the use of a competitive selection process for obtaining investment services, creates an additional exception for "contracts for follow-on funds with the same fund sponsor through closed-end funds". Effective immediately.

LRB098 07976 EFG 38065 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 5. The Illinois Pension Code is amended by changing
5 Section 1-113.14 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, and (iv) in the
11 discretion of the pension fund, retirement system, or
12 investment board, contracts for follow-on funds with the same
13 fund sponsor through closed-end funds. All exceptions granted
14 under this Section must be published on the system's, fund's,
15 or board's web site, shall name the person authorizing the
16 procurement, and shall include a brief explanation of the
17 reason for the exception.

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

25 (c) Investment services provided by an investment adviser
26 or a consultant appointed under this Section shall be rendered

1 pursuant to a written contract between the investment adviser
2 or consultant and the board.

3 The contract shall include all of the following:

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

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

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

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

24 (5) Disclosure of the names and addresses of (i) the
25 consultant or investment adviser; (ii) any entity that is a
26 parent of, or owns a controlling interest in, the

1 consultant or investment adviser; (iii) any entity that is
2 a subsidiary of, or in which a controlling interest is
3 owned by, the consultant or investment adviser; (iv) any
4 persons who have an ownership or distributive income share
5 in the consultant or investment adviser that is in excess
6 of 7.5%; or (v) serves as an executive officer of the
7 consultant or investment adviser.

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

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

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

25 (9) A description of the plan for post-performance
26 review.

1 (10) A description of the qualifications necessary.

2 (11) The duration of the contract.

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

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

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

1 subsection (e) shall be in writing and shall include the date
2 and amount of each payment and the name and address of each
3 recipient of a payment.

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

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

19 (Source: P.A. 96-6, eff. 4-3-09; 96-1554, eff. 3-18-11.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.