About ILPERS

State Sen. Jeffrey Schoenberg (D-9th) introduced SB1734 in the General Assembly in February 2009 to create ILPERS. To understand the many components in this proposed legislation, please review the information below.

Consolidation

The legislation:

- Consolidates the investment functions of the five state-funded pension boards and creates exclusive investment functions under the Illinois Public Employees Retirement System (ILPERS).

- Allows other retirement systems (such as the Illinois Municipal Retirement Fund) to opt into ILPERS investment function to realize economies of scale.

- Consolidates the staff performing investment functions for the five major systems.

- Creates a board of trustees consisting of:
    - Chairperson of the General Assembly Retirement System
    - Chairperson of the Judges Retirement System
    - Chairperson of the State Employees' Retirement System
    - Chairperson of the Teachers' Retirement System
    - Chairperson of the State Universities Retirement System
    - Four appointees of the Executive Ethics Commission, that must be Senate confirmed (see requirements below for all "Appointees")
    - State Comptroller
    - State Treasurer
    - Two members of a newly created ILPERS oversight board that are not otherwise members of the ILPERS board. (The two oversight board members will serve a two-year term on the ILPERS board of trustees, and shall not serve two consecutive terms).

- Creates an oversight board consisting of:
    - ILPERS board Chairman
    - Six elected current system participants or annuitants
    - Six appointees of the Executive Ethics Commission, which must be confirmed by the Senate, which must be broken down as follows: three investment professionals, two members of organized labor, and one taxpayer advocate. The oversight board shall provide advice, consultation, and analysis to the board of Trustees pertaining to investment and management of pension funds.

- Provides that all appointed members of the ILPERS board and oversight board must have at least five years of investment experience in the direct management, analysis, supervision, or investment of assets;

experience in government oversight; or experience acting in a fiduciary capacity. The appointees cannot hold or run for any public office during their term on the ILPERS board and/or oversight board.

- Establishes a board member education program requiring instruction in the areas of board member duties and responsibilities including: fiduciary duties, ethics, governance processes and procedures, pension plan design and administration of benefits, actuarial principles and methods, the role of staff and consultants in plan administration, legal liability and risk associated with administration of the plan, retirement system member benefits and health care management, investment strategy and management, and any other subject matter the board believes is reasonably related to the duties of a board member.

- Requires all board and oversight board members to complete an orientation consisting of the curriculum listed above after their appointment or election, and to complete eight hours of continuing education on those topics every year thereafter.

Ethics

The legislation:

- Adds the board and the oversight board to the list of persons required to file a statement of economic interest under the Illinois Governmental Ethics Act.

- As persons requiring to file statements of economic interest, the board and oversight board members will need to disclose any professional organization or individual professional practice in which the board and/or oversight board member was an officer, director, associate, partner or proprietor, or served in any advisory capacity, from which income over $1,200 was received in the previous year; the nature of professional services and the nature of the entity to which they were rendered if fees exceeding $5,000 were received during the prior year from the entity for professional services rendered by the person making the statement; the identity of any capital asset from which a capital gain of $5,000 or more was realized in the prior year; the name of any unit of government which has employed the person making the statement during the preceding calendar year other than the unit or units of government in relation to which the person is required to file; the name of any entity from which a gift or gifts, or honorarium or honoraria, valued singly or in the aggregate in excess of $500, was received during the prior calendar year.

- In addition, board and oversight board members, along with their spouses, will be required to disclose any ownership interest in any entity doing business in the State of Illinois that exceeds $5,000 fair market value or $1,200 in dividends during the preceding calendar year or any position with that entity from which income in excess of $1,200 was derived during the preceding calendar year (excluding professional service entities). Board members will also be required to disclose the identity of any compensated lobbyist with whom the board member maintains a close economic association. Any board member who willfully files a false or incomplete statement of economic interests shall be guilty of a Class A misdemeanor.

- Prohibits board members, their spouses and any employees of ILPERS from having any direct interest in the income, gains, or profits of any investments made on behalf of ILPERS. Board members, their spouses, and ILPERS employees may not receive any compensation in connection with any investment. Violators will be guilty of a Class 3 felony.

- Prohibits a board member or ILPERS employee from knowingly causing or advising a pension fund to engage in an investment transaction with an investment advisor with whom the board member or employee has any financial interest or business relationship that would result in a pecuniary benefit to the fiduciary. The bill makes this action a Class 3 felony.

- Prohibits board members, spouses and ILPERS employees from accepting or soliciting gifts from "prohibited sources." "Prohibited source" is defined as a person who is seeking official action by the board of trustees of the pension fund or has interests that may be substantially affected by the performance or non-performance of the official duties of the board member or employee. Violators of the aforementioned provisions will be guilty of a Class A misdemeanor.

- Creates a code of ethics for board members and requires ethics training on an annual basis. The code of ethics establishes standards of behavior for board members and incorporates the State Ethics Act into board policy. Among other things, the ethics code establishes a protocol for the memoralization and disclosure of ex parte communications. The code of ethics is given to every board member upon his/her appointment to the board.

- Creates a code of ethics for staff and requires ethics training on an annual basis.

<u>Transparency</u>

The legislation:

- Provides for increased investment transparency, by requiring the reporting of full and complete information regarding the investment of moneys by ILPERS on the ILPERS web site, which will be updated monthly and will contain:
    - Total amount of funds held by ILPERS
    - Asset allocation for the investments made by ILPERS
    - Current and historic return information
    - Detailed listing of the investment managers for all asset classes
    - Performance of the investments compared with established benchmarks.

<u>Legal Standards</u>

The legislation:

- Broadens the definition of "fiduciary duties." Currently, the Pension Code defines a fiduciary as one who exercises discretionary authority or discretionary control over management of the pension fund, renders investment advice, or has any discretionary authority in the administration of the pension fund. Legislation would broaden the definition of a fiduciary to include any person who renders advice with respect to the selection of other fiduciaries. The bill also confers fiduciary status upon investment consultants.

<u>Procurement</u>

The legislation:

- Requires the ILPERS board to designate a pension chief procurement officer to oversee the selection and appointment of consultants made pursuant to their fiduciary duties.

- Requires the board to follow guidelines substantially similar to those found in the Illinois Procurement Code. Specifically, in selecting investment advisors and consultants, they will be subject to the procurement code's requirements with respect to prequalification, evaluation, ranking, and selection of competitive bids for investment services.

- Requires the board to contract for investment services from consultants in a manner substantially similar to the Illinois Procurement Code (30 ILCS 50/35). It will require all bidders to disclose the names and addresses of entities that have a controlling interest in the entity making the offer, and also the names and addresses of persons who have ownership in the offering entity greater than five percent, or an amount that exceeds 60 percent of the Governor's annual salary ("key persons").

- Prohibits the board from awarding a contract for consulting services for longer than five years without rebidding the contract.

- Requires a consultant who is neither a pension fund board member nor employee to be one of the following on or after July 1, 2009: a registered investment advisor under the federal Investment Advisers Act of 1940; a registered investment advisor under the Illinois Securities Law of 1953; a bank; or, an insurance company.

- Requires all contracts entered into between the ILPERS board and investment advisors or consultants to fully disclose all direct and indirect fees, commissions, penalties, and other forms of compensation, including reimbursement for expenses that may be paid by or on behalf of the investment advisor or consultant in connection with the provision of investment services. It would also require that all investment advisors and consultants who currently provide investment services on a contractual basis must disclose to the board of trustees of the pension fund all direct and indirect fees, commissions, penalties, and other compensation paid by or on behalf of the investment advisor or consultant within 30 days after the effective date of this Amendatory Act. In addition, it will require the board of trustees to submit copies of its contracts with advisors and consultants to the Division of Insurance of the Department of Financial and Professional Regulation within 30 days of the appointment of the advisor or consultant.

- Institutes a Vendor Disclosure Policy. This policy requires current and potential vendors to disclosure political activity and contributions on the part of the firm, its principles and family members, and of any solicitations received by or on behalf of any board members. It requires disclosures of public employment or service on the part of the firm's principles and their families.

- Institutes an Investment Disclosure Policy. This policy sets certain requirements for investment professionals, including standards for the utilization of placement agents and solicitors, disclosure of information related to investment advisors to the board (transmittal of forms ADV parts I and II), and disclosure by investment advisors of any ex parte communication with board members. Besides the policies described above, the board has adopted policies related to ethics prior to the Illinois Teachers' Retirement System (TRS) scandals.

- Prohibits retaining or employing a solicitor or placement agent solely for the purpose of influencing the outcome of the procurement of investment advice or services by ILPERS.
    - Specifically, that no person shall accept any commission or employment that is contingent upon a pension fund board's procurement decision unless:
        - The solicitor is in compliance with 1-101.4 (which states that an investment advisor (1) is a fiduciary appointed by the board of trustees of the pension fund or retirement system in accordance with Section 1-109.1; (2) has the power to manage, acquire, or dispose of any asset of the retirement system or pension fund; (3) has acknowledged in writing that he or she is a fiduciary with respect to the pension fund or retirement system; and (4) is at least one of the following: (i) registered as an investment adviser under the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.); (ii) registered as an investment adviser under the Illinois Securities Law of 1953; (iii) a bank, as defined in the Investment Advisers Act of 1940; or (iv) an insurance company authorized to transact business in this State;
        - and is in compliance with Rule 206.4-3 of the Investment Advisors Act of 1940, or registered as a broker/dealer under the Securities and Exchange Act.
    - Violators will be guilty of a business offense and will be fined up to $10,000 and prohibited from conducting such activities for a period of three years.

Business Enterprise for Minorities, Females, and Persons with Disabilities Act

The legislation:

- Requires compliance with the Business Enterprise for Minorities, Females, and Persons with Disabilities Act with respect to selecting investment advisors and investment services. Sets a minimum requirement of awarding not less than 12 percent of the total dollar amount of State contracts to businesses owned by minorities, females, and persons with disabilities. The bill also requires ILPERS to post on its web site the percentage of current investment contracts and those contracts awarded during the preceding five fiscal years to minority owned businesses, female owned businesses, and businesses owned by a person with a disability

Fraud

- Any person who knowingly makes false statements or falsifies any records of ILPERS board in an attempt to defraud the retirement system or pension fund is guilty of a Class 3 felony.