



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 2643

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2643 by replacing  
3 everything after the enacting clause with the following:

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

7 (40 ILCS 5/1-113.14)

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

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

15 (b) The selection and appointment of an investment adviser  
16 or consultant for investment services by the board of a

1 retirement system, pension fund, or investment board subject to  
2 this Code, except those whose investments are restricted by  
3 Section 1-113.2, shall be made and awarded in accordance with  
4 this Section. All contracts for investment services shall be  
5 awarded by the board using a competitive process that is  
6 substantially similar to the process required for the  
7 procurement of professional and artistic services under  
8 Article 35 of the Illinois Procurement Code. Each board of  
9 trustees shall adopt a policy in accordance with this  
10 subsection (b) within 60 days after the effective date of this  
11 amendatory Act of the 96th General Assembly. The policy shall  
12 be posted on its web site and filed with the Illinois  
13 Procurement Policy Board. Exceptions to this Section are  
14 allowed for (i) sole source procurements, (ii) emergency  
15 procurements, and (iii) at the discretion of the pension fund,  
16 retirement system, or board of investment, contracts that are  
17 nonrenewable and one year or less in duration, so long as the  
18 contract has a value of less than \$20,000. All exceptions  
19 granted under this Section must be published on the system's,  
20 fund's, or board's web site, shall name the person authorizing  
21 the procurement, and shall include a brief explanation of the  
22 reason for the exception.

23 A person, other than a trustee or an employee of a  
24 retirement system, pension fund, or investment board, may not  
25 act as a consultant or investment adviser under this Section  
26 unless that person is registered as an investment adviser under

1 the federal Investment Advisers Act of 1940 (15 U.S.C. 80b-1,  
2 et seq.) or a bank, as defined in the federal Investment  
3 Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.).

4 (c) Investment services provided by an investment adviser  
5 or a consultant appointed under this Section shall be rendered  
6 pursuant to a written contract between the investment adviser  
7 or consultant and the board.

8 The contract shall include all of the following:

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

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

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

22 (4) A requirement that the investment adviser or  
23 consultant, in conjunction with the board's staff, submit  
24 periodic written reports, on at least a quarterly basis,  
25 for the board's review at its regularly scheduled meetings.  
26 All returns on investment shall be reported as net returns

1 after payment of all fees, commissions, and any other  
2 compensation.

3 (5) Disclosure of the names and addresses of (i) the  
4 consultant or investment adviser; (ii) any entity that is a  
5 parent of, or owns a controlling interest in, the  
6 consultant or investment adviser; (iii) any entity that is  
7 a subsidiary of, or in which a controlling interest is  
8 owned by, the consultant or investment adviser; (iv) any  
9 persons who have an ownership or distributive income share  
10 in the consultant or investment adviser that is in excess  
11 of 7.5%; or (v) serves as an executive officer of the  
12 consultant or investment adviser.

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

1 partnerships.

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

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

4 (9) A description of the plan for post-performance  
5 review.

6 (10) A description of the qualifications necessary.

7 (11) The duration of the contract.

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

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

20 (e) Within 60 days after April 3, 2009 (the effective date  
21 of Public Act 96-6) ~~this amendatory Act of the 96th General~~  
22 ~~Assembly~~, each investment adviser or consultant currently  
23 providing services or subject to an existing contract for the  
24 provision of services must disclose to the board of trustees  
25 all ~~direct and indirect~~ fees, commissions, penalties, and other  
26 compensation that the investment adviser or consultant

1 directly pays to a third party on behalf of the board of  
2 trustees and specifically in connection with the provision of  
3 services to the board of trustees. The investment adviser or  
4 consultant must promptly disclose to the board of trustees any  
5 modification in the schedule of fees, commissions, penalties,  
6 and other compensation previously disclosed to the board of  
7 trustees, excluding general overhead costs and expenses  
8 incurred by a fund under management, where those expenses are  
9 reflected in the valuation of the assets within the portfolio  
10 ~~paid by or on behalf of the investment adviser or consultant in~~  
11 ~~connection with the provision of those services and shall~~  
12 ~~update that disclosure promptly after a modification of those~~  
13 ~~payments or an additional payment. The person shall update the~~  
14 ~~disclosure promptly after a modification of those payments or~~  
15 ~~an additional payment.~~ The disclosures required by this  
16 subsection (e) shall be in writing and shall include the date,  
17 the ~~and~~ amount of each cost directly paid by the investment  
18 adviser or consultant to a third party, ~~payment~~ and the name  
19 and address of each recipient of a payment.

20 (f) The retirement system, pension fund, or board of  
21 investment shall develop uniform documents that shall be used  
22 for the solicitation, review, and acceptance of all investment  
23 services. The form shall include the terms contained in  
24 subsection (c) of this Section. All such uniform documents  
25 shall be posted on the retirement system's, pension fund's, or  
26 investment board's web site.

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

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

10 (40 ILCS 5/1-113.15 new)

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

12 (a) As used in this Section:

13 "Qualified fund-of-fund management services" means either  
14 (i) the services of an investment adviser acting in its  
15 capacity as an investment manager of a fund-of-funds or (ii) an  
16 investment adviser acting in its capacity as an investment  
17 manager of a separate account that is invested on a  
18 side-by-side basis in a substantially identical manner to a  
19 fund-of-funds, in each case pursuant to qualified written  
20 agreements.

21 "Qualified written agreements" means one or more written  
22 contracts to which the investment adviser and the board are  
23 parties and includes all of the following: (i) the matters  
24 described in items (1), (4), (5), (7), (11) and (12) of  
25 subsection (c) of Section 1-113.14; (ii) a description of any

1 fees, commissions, penalties, and other compensation payable,  
2 if any, directly by the retirement system, pension fund, or  
3 investment board (which shall not include any fees,  
4 commissions, penalties, and other compensation payable from  
5 the assets of the fund-of-funds or separate account); (iii) a  
6 description (or method of calculation) of the fees and expenses  
7 payable by the Fund to the investment adviser, and the timing  
8 of the payment of the fees or expenses; and (iv) a description  
9 (or method of calculation) of any carried interest or other  
10 performance based interests, fees or payments allocable by the  
11 Fund to the investment adviser or an affiliate of the  
12 investment adviser, and the priority of distributions with  
13 respect to such interest.

14 (b) A description of every contract for qualified  
15 fund-of-fund management services must be posted in a  
16 conspicuous manner on the web site of the retirement system,  
17 pension fund, or investment board. The description must include  
18 the name of the fund-of-funds, the name of its investment  
19 adviser, the total investment commitment of the retirement  
20 system, pension fund, or investment board to invest in such  
21 fund-of-funds, and a disclosure approved by the board  
22 describing the factors that contributed to the investment in  
23 such fund-of-funds. No information that is exempt from  
24 inspection pursuant to Section 7 of the Freedom of Information  
25 Act shall be disclosed under this Section.



1           Section 99. Effective date. This Act takes effect upon  
2    becoming law.".