



Sen. Daniel Biss

Filed: 5/3/2016

09900HB6292sam001

LRB099 19829 EFG 47770 a

1 AMENDMENT TO HOUSE BILL 6292

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 6292 by replacing  
3 everything after the enacting clause with the following:

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

6 (40 ILCS 5/1-113.17 new)

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

9 (a) "Affiliate" means any person directly or indirectly  
10 controlling or controlled by, or under direct or indirect  
11 common control with, another person.

12 (a-5) "Alternative investment fund" means a private equity  
13 fund, hedge fund, absolute return fund, total return fund, or  
14 any investment pool that is privately organized, actively  
15 managed by investment professionals, and pays performance or  
16 incentive fees to investment managers.

1       (b) "Board" or "public retirement system board" means the  
2 board of trustees of a public retirement system and includes  
3 the Illinois State Board of Investment established under  
4 Article 22A of this Code.

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

6           (1) A person who manages an alternative investment fund  
7 and who offers or sells, or has offered or sold, an  
8 ownership interest in the alternative investment fund to a  
9 board.

10          (2) A general partner, managing member entity, fund  
11 manager, fund adviser, or other similar person or entity  
12 with decision-making authority over an alternative  
13 investment fund.

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

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

8       (f) "New agreement" means an agreement that is proposed or  
9 executed after January 1, 2017, and includes any modification  
10 to or amendment of such an agreement that modifies or alters  
11 any of the provisions required to be disclosed under Section  
12 1-113.17a or 1-113.17b. "New agreement" also means any  
13 subsequent agreement that implements, memorializes, or  
14 provides detail about such an agreement.

15       (g) "Person" means an individual, corporation,  
16 partnership, limited partnership, limited liability company,  
17 or association, either domestic or foreign.

18       (h) "Portfolio holding" means any business, partnership,  
19 real property, or other business entity or asset in which an  
20 alternative investment fund has, at any time, held either an  
21 interest in the securities thereof or a real property interest  
22 in, or has acted as a lender to, the entity or asset.

23       (i) "Portfolio holding fee" means the total payment  
24 obligation of a portfolio holding, regardless of whether it is  
25 actually paid or accrued, and regardless of whether the payment  
26 obligation is satisfied in cash, securities, or other

1 consideration, and regardless of whether it is incurred as  
2 compensation for services provided or as reimbursement for  
3 expenses incurred.

4 (j) "Private equity fund" means a pooled investment entity  
5 that is, or holds itself out as being, engaged primarily, or  
6 proposes to engage primarily, in investment strategies  
7 involving equity or debt financings that are provided for  
8 purchasing or expanding private or public companies, or for  
9 related purposes such as financing for capital, research and  
10 development, introduction of a product or process into the  
11 marketplace, or similar needs requiring risk capital. This  
12 includes, but is not limited to, financing classified as  
13 venture capital, mezzanine, buyout, or growth funds.

14 (k) "Public retirement system" means a pension fund or  
15 retirement system subject to this Code and includes the  
16 Illinois State Board of Investment established under Article  
17 22A of this Code.

18 (40 ILCS 5/1-113.17a new)

19 Sec. 1-113.17a. Investment transparency; disclosure of  
20 alternative investment fund agreements.

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

23 (b) Within 90 days after entering into an agreement to  
24 invest in an alternative investment fund, a public retirement  
25 system must disclose, in the manner provided under this

1 Section, the existence of the agreement and all of the  
2 following parts and provisions of the agreement:

3 (1) All management fee waiver provisions, including,  
4 but not limited to, provisions that permit the external  
5 manager or general partner to waive fees, or that specify  
6 the mechanics of the fee waiver or its repayment, or that  
7 specify the magnitude of the fee waiver, or that are  
8 necessary to understand how the fee waiver works, and all  
9 defined terms related to or affecting the fee waiver.

10 (2) All indemnification provisions, including, but not  
11 limited to, provisions that require the alternative  
12 investment fund or its investors to indemnify the external  
13 manager or general partner, or any of its affiliates, for  
14 settlements or judgments paid, and including all  
15 provisions necessary to understand how the indemnification  
16 works and all defined terms related to or affecting  
17 indemnification.

18 (3) All clawback provisions, including, but not  
19 limited to, provisions that allow the external manager or  
20 general partner to pay back an amount less than the full  
21 cost of the overpayment received by the manager, and  
22 including all provisions necessary to understand how the  
23 clawback works and all defined terms related to or  
24 affecting clawbacks.

25 (4) The cover page and signature block of the  
26 agreement.

1       However, in the case of a new agreement that consists of a  
2 modification of or amendment to a previous new agreement for  
3 which the disclosures required under this subsection have  
4 already been made, it is sufficient for the public retirement  
5 system (i) to identify the previous disclosures and disclose  
6 only the parts and provisions of the modification of or  
7 amendment to the agreement that modify, alter, or affect any of  
8 the provisions previously disclosed under this subsection or  
9 (ii) to make and disclose a finding that the modification or  
10 amendment does not modify, alter, or affect any of the  
11 provisions previously disclosed under this subsection,  
12 whichever is applicable.

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

15           (1) filing a copy of the required material with the  
16 Public Pension Division of the Illinois Department of  
17 Insurance;

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

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

22       (d) A new agreement shall not be deemed to be violated or  
23 made invalid by the public retirement system's good faith  
24 effort to make the disclosures required under subsection (b) of  
25 this Section, nor due to harmless or inadvertent failure by the  
26 public retirement system to correctly include or identify a

1 component of a required disclosure.

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

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

6 (2) Any amounts paid in indemnification and any amounts  
7 deducted from payments owed by the general partner or  
8 external manager under an agreement establishing or  
9 providing for participation in an alternative investment  
10 fund by a public retirement system, and any documents  
11 submitted to a public retirement system justifying the  
12 demand for payment relating to the indemnification.

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

17 (40 ILCS 5/1-113.17b new)

18 Sec. 1-113.17b. Investment transparency; disclosure of  
19 certain investment fees.

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

25 (b) This Section applies to any new agreement that a public

1 retirement system enters into in order to establish or  
2 participate in an alternative investment fund. A public  
3 retirement system shall not enter into such new agreement  
4 without a written undertaking by the alternative investment  
5 fund external managers and general partners that they will  
6 comply with this Section and the requirements of the public  
7 retirement system pursuant to subsection (c).

8 (c) Every public retirement system shall require its  
9 alternative investment fund external managers and general  
10 partners to make the following disclosures annually, in a  
11 manner and form prescribed by the system, in regard to each  
12 alternative investment fund:

13 (1) The fees and expenses that the public retirement  
14 system pays directly to the alternative investment fund, or  
15 to the alternative investment fund external manager or  
16 general partner.

17 (2) The public retirement system's share of all fees  
18 and expenses not included in paragraph (1), including  
19 carried interest, that are paid or allocated from the  
20 alternative investment fund to the external manager or  
21 general partners, or that are deducted from payments owed  
22 from the external manager or general partners to the  
23 alternative investment fund.

24 (3) The amount of all management fee waivers made by  
25 the alternative investment fund external managers or  
26 general partners.

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

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

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

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

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