

SB3638



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3638

Introduced 11/7/2018, by Sen. Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

40 ILCS 5/1-109.1
40 ILCS 5/1-113.14

from Ch. 108 1/2, par. 1-109.1

Amends the General Provisions Article of the Illinois Pension Code. Provides that "emerging investment manager" means a qualified investment adviser that manages an investment portfolio of at least \$10,000,000 but less than \$10,000,000,000 at the time of the initial contract with the retirement system, pension fund, or investment board (rather than at least \$10,000,000 but less than \$10,000,000,000) and is a minority-owned business, women-owned business, or business owned by a person with a disability. In a provision requiring a competitive process for awarding investment contracts, adds an exclusion for contracts for investment services with an emerging investment manager. Effective immediately.

LRB100 23895 RPS 42964 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 Sections 1-109.1 and 1-113.14 as follows:

6 (40 ILCS 5/1-109.1) (from Ch. 108 1/2, par. 1-109.1)

7 Sec. 1-109.1. Allocation and delegation of fiduciary
8 duties.

9 (1) Subject to the provisions of Section 22A-113 of this
10 Code and subsections (2) and (3) of this Section, the board of
11 trustees of a retirement system or pension fund established
12 under this Code may:

13 (a) Appoint one or more investment managers as
14 fiduciaries to manage (including the power to acquire and
15 dispose of) any assets of the retirement system or pension
16 fund; and

17 (b) Allocate duties among themselves and designate
18 others as fiduciaries to carry out specific fiduciary
19 activities other than the management of the assets of the
20 retirement system or pension fund.

21 (2) The board of trustees of a pension fund established
22 under Article 5, 6, 8, 9, 10, 11, 12 or 17 of this Code may not
23 transfer its investment authority, nor transfer the assets of

1 the fund to any other person or entity for the purpose of
2 consolidating or merging its assets and management with any
3 other pension fund or public investment authority, unless the
4 board resolution authorizing such transfer is submitted for
5 approval to the contributors and pensioners of the fund at
6 elections held not less than 30 days after the adoption of such
7 resolution by the board, and such resolution is approved by a
8 majority of the votes cast on the question in both the
9 contributors election and the pensioners election. The
10 election procedures and qualifications governing the election
11 of trustees shall govern the submission of resolutions for
12 approval under this paragraph, insofar as they may be made
13 applicable.

14 (3) Pursuant to subsections (h) and (i) of Section 6 of
15 Article VII of the Illinois Constitution, the investment
16 authority of boards of trustees of retirement systems and
17 pension funds established under this Code is declared to be a
18 subject of exclusive State jurisdiction, and the concurrent
19 exercise by a home rule unit of any power affecting such
20 investment authority is hereby specifically denied and
21 preempted.

22 (4) For the purposes of this Code, "emerging investment
23 manager" means a qualified investment adviser that manages an
24 investment portfolio of at least \$10,000,000 but less than
25 \$10,000,000,000 at the time of the initial contract with the
26 retirement system, pension fund, or investment board and is a

1 "minority-owned business", "women-owned business" or "business
2 owned by a person with a disability" as those terms are defined
3 in the Business Enterprise for Minorities, Women, and Persons
4 with Disabilities Act.

5 It is hereby declared to be the public policy of the State
6 of Illinois to encourage the trustees of public employee
7 retirement systems, pension funds, and investment boards to use
8 emerging investment managers in managing their system's
9 assets, encompassing all asset classes, and increase the
10 racial, ethnic, and gender diversity of its fiduciaries, to the
11 greatest extent feasible within the bounds of financial and
12 fiduciary prudence, and to take affirmative steps to remove any
13 barriers to the full participation in investment opportunities
14 afforded by those retirement systems, pension funds, and
15 investment boards.

16 On or before January 1, 2010, a retirement system, pension
17 fund, or investment board subject to this Code, except those
18 whose investments are restricted by Section 1-113.2 of this
19 Code, shall adopt a policy that sets forth goals for
20 utilization of emerging investment managers. This policy shall
21 include quantifiable goals for the management of assets in
22 specific asset classes by emerging investment managers. The
23 retirement system, pension fund, or investment board shall
24 establish 3 separate goals for: (i) emerging investment
25 managers that are minority-owned businesses; (ii) emerging
26 investment managers that are women-owned businesses; and (iii)

1 emerging investment managers that are businesses owned by a
2 person with a disability. The goals established shall be based
3 on the percentage of total dollar amount of investment service
4 contracts let to minority-owned businesses, women-owned
5 businesses, and businesses owned by a person with a disability,
6 as those terms are defined in the Business Enterprise for
7 Minorities, Women, and Persons with Disabilities Act. The
8 retirement system, pension fund, or investment board shall
9 annually review the goals established under this subsection.

10 If in any case an emerging investment manager meets the
11 criteria established by a board for a specific search and meets
12 the criteria established by a consultant for that search, then
13 that emerging investment manager shall receive an invitation by
14 the board of trustees, or an investment committee of the board
15 of trustees, to present his or her firm for final consideration
16 of a contract. In the case where multiple emerging investment
17 managers meet the criteria of this Section, the staff may
18 choose the most qualified firm or firms to present to the
19 board.

20 The use of an emerging investment manager does not
21 constitute a transfer of investment authority for the purposes
22 of subsection (2) of this Section.

23 (5) Each retirement system, pension fund, or investment
24 board subject to this Code, except those whose investments are
25 restricted by Section 1-113.2 of this Code, shall establish a
26 policy that sets forth goals for increasing the racial, ethnic,

1 and gender diversity of its fiduciaries, including its
2 consultants and senior staff. Each retirement system, pension
3 fund, or investment board shall make its best efforts to ensure
4 that the racial and ethnic makeup of its senior administrative
5 staff represents the racial and ethnic makeup of its
6 membership. Each system, fund, and investment board shall
7 annually review the goals established under this subsection.

8 (6) On or before January 1, 2010, a retirement system,
9 pension fund, or investment board subject to this Code, except
10 those whose investments are restricted by Section 1-113.2 of
11 this Code, shall adopt a policy that sets forth goals for
12 utilization of businesses owned by minorities, women, and
13 persons with disabilities for all contracts and services. The
14 goals established shall be based on the percentage of total
15 dollar amount of all contracts let to minority-owned
16 businesses, women-owned businesses, and businesses owned by a
17 person with a disability, as those terms are defined in the
18 Business Enterprise for Minorities, Women, and Persons with
19 Disabilities Act. The retirement system, pension fund, or
20 investment board shall annually review the goals established
21 under this subsection.

22 (7) On or before January 1, 2010, a retirement system,
23 pension fund, or investment board subject to this Code, except
24 those whose investments are restricted by Section 1-113.2 of
25 this Code, shall adopt a policy that sets forth goals for
26 increasing the utilization of minority broker-dealers. For the

1 purposes of this Code, "minority broker-dealer" means a
2 qualified broker-dealer who meets the definition of
3 "minority-owned business", "women-owned business", or
4 "business owned by a person with a disability", as those terms
5 are defined in the Business Enterprise for Minorities, Women,
6 and Persons with Disabilities Act. The retirement system,
7 pension fund, or investment board shall annually review the
8 goals established under this Section.

9 (8) Each retirement system, pension fund, and investment
10 board subject to this Code, except those whose investments are
11 restricted by Section 1-113.2 of this Code, shall submit a
12 report to the Governor and the General Assembly by January 1 of
13 each year that includes the following: (i) the policy adopted
14 under subsection (4) of this Section, including the names and
15 addresses of the emerging investment managers used, percentage
16 of the assets under the investment control of emerging
17 investment managers for the 3 separate goals, and the actions
18 it has undertaken to increase the use of emerging investment
19 managers, including encouraging other investment managers to
20 use emerging investment managers as subcontractors when the
21 opportunity arises; (ii) the policy adopted under subsection
22 (5) of this Section; (iii) the policy adopted under subsection
23 (6) of this Section; (iv) the policy adopted under subsection
24 (7) of this Section, including specific actions undertaken to
25 increase the use of minority broker-dealers; and (v) the policy
26 adopted under subsection (9) of this Section.

1 (9) On or before February 1, 2015, a retirement system,
2 pension fund, or investment board subject to this Code, except
3 those whose investments are restricted by Section 1-113.2 of
4 this Code, shall adopt a policy that sets forth goals for
5 increasing the utilization of minority investment managers.
6 For the purposes of this Code, "minority investment manager"
7 means a qualified investment manager that manages an investment
8 portfolio and meets the definition of "minority-owned
9 business", "women-owned business", or "business owned by a
10 person with a disability", as those terms are defined in the
11 Business Enterprise for Minorities, Women, and Persons with
12 Disabilities Act.

13 It is hereby declared to be the public policy of the State
14 of Illinois to encourage the trustees of public employee
15 retirement systems, pension funds, and investment boards to use
16 minority investment managers in managing their systems'
17 assets, encompassing all asset classes, and to increase the
18 racial, ethnic, and gender diversity of their fiduciaries, to
19 the greatest extent feasible within the bounds of financial and
20 fiduciary prudence, and to take affirmative steps to remove any
21 barriers to the full participation in investment opportunities
22 afforded by those retirement systems, pension funds, and
23 investment boards.

24 The retirement system, pension fund, or investment board
25 shall establish 3 separate goals for: (i) minority investment
26 managers that are minority-owned businesses; (ii) minority

1 investment managers that are women-owned businesses; and (iii)
2 minority investment managers that are businesses owned by a
3 person with a disability. The retirement system, pension fund,
4 or investment board shall annually review the goals established
5 under this Section.

6 If in any case a minority investment manager meets the
7 criteria established by a board for a specific search and meets
8 the criteria established by a consultant for that search, then
9 that minority investment manager shall receive an invitation by
10 the board of trustees, or an investment committee of the board
11 of trustees, to present his or her firm for final consideration
12 of a contract. In the case where multiple minority investment
13 managers meet the criteria of this Section, the staff may
14 choose the most qualified firm or firms to present to the
15 board.

16 The use of a minority investment manager does not
17 constitute a transfer of investment authority for the purposes
18 of subsection (2) of this Section.

19 (10) Beginning January 1, 2016, it shall be the
20 aspirational goal for a retirement system, pension fund, or
21 investment board subject to this Code to use emerging
22 investment managers for not less than 20% of the total funds
23 under management. Furthermore, it shall be the aspirational
24 goal that not less than 20% of investment advisors be
25 minorities, women, and persons with disabilities as those terms
26 are defined in the Business Enterprise for Minorities, Women,

1 and Persons with Disabilities Act. It shall be the aspirational
2 goal to utilize businesses owned by minorities, women, and
3 persons with disabilities for not less than 20% of contracts
4 awarded for "information technology services", "accounting
5 services", "insurance brokers", "architectural and engineering
6 services", and "legal services" as those terms are defined in
7 the Act.

8 (Source: P.A. 99-462, eff. 8-25-15; 100-391, eff. 8-25-17;
9 100-902, eff. 8-17-18.)

10 (40 ILCS 5/1-113.14)

11 Sec. 1-113.14. Investment services for retirement systems,
12 pension funds, and investment boards, except those funds
13 established under Articles 3 and 4.

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

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

1 procurement of professional and artistic services under
2 Article 35 of the Illinois Procurement Code. Each board of
3 trustees shall adopt a policy in accordance with this
4 subsection (b) within 60 days after the effective date of this
5 amendatory Act of the 96th General Assembly. The policy shall
6 be posted on its web site and filed with the Illinois
7 Procurement Policy Board. Exceptions to this Section are
8 allowed for (i) sole source procurements, (ii) emergency
9 procurements, (iii) at the discretion of the pension fund,
10 retirement system, or board of investment, contracts that are
11 nonrenewable and one year or less in duration, so long as the
12 contract has a value of less than \$20,000, ~~and~~ (iv) in the
13 discretion of the pension fund, retirement system, or
14 investment board, contracts for follow-on funds with the same
15 fund sponsor through closed-end funds, and (v) contracts for
16 investment services with an emerging investment manager. All
17 exceptions granted under this Section must be published on the
18 system's, fund's, or board's web site, shall name the person
19 authorizing the procurement, and shall include a brief
20 explanation of the reason for the exception.

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

1 Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.).

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

6 The contract shall include all of the following:

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

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

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

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

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

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

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

- 1 (8) A description of the need for the service.
- 2 (9) A description of the plan for post-performance
3 review.
- 4 (10) A description of the qualifications necessary.
- 5 (11) The duration of the contract.
- 6 (12) The method for charging and measuring cost.
- 7 (d) Notwithstanding any other provision of law, a
8 retirement system, pension fund, or investment board subject to
9 this Code, except those whose investments are restricted by
10 Section 1-113.2 of this Code, shall not enter into a contract
11 with a consultant that exceeds 5 years in duration. No contract
12 to provide consulting services may be renewed or extended. At
13 the end of the term of a contract, however, the consultant is
14 eligible to compete for a new contract as provided in this
15 Section. No retirement system, pension fund, or investment
16 board shall attempt to avoid or contravene the restrictions of
17 this subsection (d) by any means.
- 18 (e) Within 60 days after the effective date of this
19 amendatory Act of the 96th General Assembly, each investment
20 adviser or consultant currently providing services or subject
21 to an existing contract for the provision of services must
22 disclose to the board of trustees all direct and indirect fees,
23 commissions, penalties, and other compensation paid by or on
24 behalf of the investment adviser or consultant in connection
25 with the provision of those services and shall update that
26 disclosure promptly after a modification of those payments or

1 an additional payment. The person shall update the disclosure
2 promptly after a modification of those payments or an
3 additional payment. The disclosures required by this
4 subsection (e) shall be in writing and shall include the date
5 and amount of each payment and the name and address of each
6 recipient of a payment.

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

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

22 (Source: P.A. 98-433, eff. 8-16-13.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.