

AMENDED IN SENATE JUNE 21, 2016

AMENDED IN ASSEMBLY APRIL 12, 2016

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AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2833

Introduced by Assembly Member Cooley
(Principal coauthor: Assembly Member Gatto)

February 19, 2016

An act to add Section 7514.7 to the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2833, as amended, Cooley. ~~Public retirement systems:~~ *investment funds: disclosures.*

The California Constitution commits to the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system. Existing law requires a retirement board to develop and implement a policy requiring disclosure of payments to placement agents, as defined, in connection with system investments in or through external managers that includes prescribed elements. Existing law requires disclosure of campaign contributions or gifts made by a placement agent to any member of a public pension retirement board, as specified. Existing law requires a public retirement system to obtain an actuarial valuation of the system not less than triennially and submit

audited financial statements to the State Controller who then publishes a report on the financial condition of public retirement systems.

This bill, for *new* contracts entered into on and after January 1, 2017, and for *existing* contracts for which a new capital commitment is made on or after January 1, 2017, would require a public pension or retirement system, including that of the University of California, investment fund, as defined, to require alternative investment vehicles, as defined, to make specified disclosures regarding fees, expenses, and the gross and net rate of return carried interest in connection with these vehicles and the underlying investments, as well as other specified information, on a form prescribed by the system. *information*. Consistent with requirements relating to public records, the bill would require a public pension or retirement system, including that of the University of California, investment fund to disclose the information received in connection with alternative investment vehicles, vehicles and the gross and net rate of return of each alternative investment vehicle, as specified, at least once annually at a meeting open to the public. The bill would require a public investment fund to undertake reasonable efforts to obtain the above-mentioned information for any existing contract for which the public investment fund has not made a new capital commitment on or after January 1, 2017. The bill would make a statement of legislative intent. Because this bill would impose new requirements on local entities relating to the collection of information and its presentation at an open meeting, it would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
 2 section to increase the transparency of fees paid by public pension
 3 ~~investment~~ funds to alternative investment vehicles. ~~Pension Public~~
 4 ~~investment~~ funds pay significant fees to alternative investment
 5 vehicles and do not have sufficient information regarding the
 6 character and amount of those fees. As fiduciaries, public
 7 ~~investment~~ fund trustees have a duty to maximize investment
 8 returns in order to ensure promised benefits are adequately funded
 9 and to minimize taxpayer costs. Because fees paid to alternative
 10 investment vehicles reduce returns, public ~~investment~~ fund trustees
 11 need to be able to see and understand all of the fees they are
 12 charged.

13 SEC. 2. Section 7514.7 is added to the Government Code, to
 14 read:

15 7514.7. (a) Every ~~public pension or retirement system,~~
 16 ~~including that of the University of California,~~ *investment fund* shall
 17 require each alternative investment vehicle in which it invests to
 18 make the following ~~disclosures, at least annually, and on a form~~
 19 ~~prescribed by the system:~~ *disclosures at least annually:*

20 (1) The fees and expenses that the ~~retirement system~~ *public*
 21 *investment fund* pays directly to the alternative investment vehicle,
 22 the fund manager, or related parties.

23 (2) The *public investment fund's pro rata share of* fees and
 24 expenses not included in paragraph (1) that are paid from the
 25 alternative investment ~~vehicle, including carried interest,~~ *vehicle*
 26 to the fund manager or related parties. *The public investment fund*
 27 *may independently calculate this information based on information*
 28 *contractually required to be provided by the alternative investment*
 29 *vehicle to the public investment fund. If the public investment fund*
 30 *independently calculates this information, then the alternative*
 31 *investment vehicle shall not be required to provide the information*
 32 *identified in this paragraph.*

33 (3) *The public investment fund's pro rata share of carried*
 34 *interest distributed to the fund manager or related parties.*

35 ~~(3)~~

36 (4) *The public investment fund's pro rata share of aggregate*
 37 *fees and expenses paid by all of the portfolio positions companies*

1 held within the alternative investment vehicle to the fund manager
2 or related parties.

3 ~~(4) The gross and net rate of return of each alternative
4 investment vehicle since inception.~~

5 (5) Any additional information described in subdivision (b) of
6 Section 6254.26.

7 ~~(b) Every public pension or retirement system, including that
8 of the University of California, investment fund~~ shall disclose the
9 information provided pursuant to subdivision (a) at least once
10 annually in a report presented at a meeting open to the public. *The
11 public investment fund's report required pursuant to this
12 subdivision shall also include the gross and net rate of return of
13 each alternative investment vehicle, since inception, in which the
14 public investment fund participates. The public investment fund
15 may report the gross and net rate of return and information
16 required by subdivision (a) based on its own calculations or based
17 on calculations provided by the alternative investment vehicle.*

18 (c) For purposes of this section:

19 (1) "Alternative investment" means an investment in a private
20 equity fund, venture fund, hedge fund, or absolute return fund.

21 (2) "Alternative investment vehicle" means the limited
22 partnership, limited liability company, or similar legal structure
23 through which a ~~public pension or retirement system, including
24 the University of California, investment fund~~ invests in an
25 alternative investment.

26 (3) "Fund manager" means the general partner, managing
27 manager, adviser, or other person or entity with primary investment
28 decisionmaking authority over an alternative investment vehicle
29 and related parties of the fund manager.

30 (4) "Carried interest" means any share of profits from an
31 alternative investment vehicle that is ~~allocated~~ *distributed* to a fund
32 ~~manager or manager, general partner, or related parties,~~ including
33 allocations of alternative investment vehicle profits received by a
34 fund manager in consideration of having waived fees that ~~the fund
35 manager~~ *it* might otherwise have been entitled to receive.

36 (5) "~~Portfolio positions~~" *companies*" means individual portfolio
37 investments made by the alternative investment vehicle.

38 (6) "*Gross rate of return*" means *the internal rate of return for
39 the alternative investment vehicle prior to the reduction of fees
40 and expenses described in subdivision (a).*

1 (7) “Public investment fund” means any fund of any public
2 pension or retirement system, including that of the University of
3 California.

4 (8) “Operational person” means any operational partner, senior
5 advisor, or other consultant or employee whose primary activity
6 for a relevant entity is to provide operational or back office support
7 to any portfolio company of any alternative investment vehicle,
8 account, or fund managed by a related person.

9 (9) “Related person” means any current or former employee,
10 manager, or partner of any related entity that is involved in the
11 investment activities or accounting and valuation functions of the
12 relevant entity or any of their respective family members.

13 (10) “Related party” means:

14 (A) Any related person.

15 (B) Any operational person.

16 (C) Any entity more than 10 percent of the ownership of which
17 is held directly or indirectly, whether through other entities or
18 trusts, by a related person or operational person regardless if the
19 related person or operational person participates in the carried
20 interest received by the general partner or the special limited
21 partner.

22 (D) Any consulting, legal, or other service provider regularly
23 engaged by portfolio companies of an alternative investment
24 vehicle, account, or fund managed by a related person and that
25 also provides advice or services to any related person or relevant
26 entity.

27 (11) “Relevant entity” means the general partner, any separate
28 carry vehicle, the investor advisor, any of the investment advisor’s
29 parent or subsidiary entities, or any similar entity related to any
30 other alternative investment vehicle, account, or fund advised or
31 managed by any current or former related person.

32 (d) (1) This section shall apply to all new contracts the system
33 entered into, extended, renewed, or amended public investment
34 fund enters into on or after January 1, 2017, and to all
35 existing contracts pursuant to which the public investment fund
36 makes a new capital commitment on or after January 1, 2017.

37 (2) With respect to existing contracts not covered by paragraph
38 (1), the public investment fund shall undertake reasonable efforts
39 to obtain the information described in subdivision (a) and comply

1 *with the reporting requirements contained in subdivision (b) with*
2 *respect to any information obtained after January 1, 2017.*

3 SEC. 3. The Legislature finds and declares that Section 2 of
4 this act, which adds Section 7514.7 to the Government Code,
5 furthers, within the meaning of paragraph (7) of subdivision (b)
6 of Section 3 of Article I of the California Constitution, the purposes
7 of that constitutional section as it relates to the right of public
8 access to the meetings of local public bodies or the writings of
9 local public officials and local agencies. Pursuant to paragraph (7)
10 of subdivision (b) of Section 3 of Article I of the California
11 Constitution, the Legislature makes the following findings:

12 The information in the disclosures required under subdivisions
13 (a) and (b) of Section 7514.7 of the Government Code is necessary
14 to ensure public confidence in the integrity of investments made
15 by retirement boards pursuant to alternative investment vehicles.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district under this act would result from a legislative mandate that
20 is within the scope of paragraph (7) of subdivision (b) of Section
21 3 of Article I of the California Constitution.