

No. 2006-120

AN ACT

HB 126

Amending Title 71 (State Government) of the Pennsylvania Consolidated Statutes, defining "alternative investment" and "alternative investment vehicle"; and further providing for administrative duties of the State Employees' Retirement Board.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 5102 of Title 71 of the Pennsylvania Consolidated Statutes is amended by adding definitions to read:

§ 5102. Definitions.

The following words and phrases as used in this part, unless a different meaning is plainly required by the context, shall have the following meanings:

* * *

"Alternative investment." *An investment in a private equity fund, private debt fund, venture fund, real estate fund, hedge fund or absolute return fund.*

"Alternative investment vehicle." *A limited partnership, limited liability company or any other legal vehicle for authorized investments under section 5931(i) (relating to management of fund and accounts) through which the system makes an alternative investment.*

* * *

Section 2. Section 5902(e) of Title 71 is amended to read:

§ 5902. Administrative duties of the board.

* * *

(e) Records.—

(1) *The board shall keep a record of all its proceedings which shall be open to inspection by the public[.], except as otherwise provided in this part or by other law.*

(2) *Any record, material or data received, prepared, used or retained by the board or its employees, investment professionals or agents relating to an investment shall not constitute a public record subject to public inspection under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, if, in the reasonable judgment of the board, the inspection would:*

(i) *in the case of an alternative investment or alternative investment vehicle, involve the release of sensitive investment or financial information relating to the alternative investment or alternative investment vehicle which the fund was able to obtain only upon agreeing to maintain its confidentiality;*

(ii) cause substantial competitive harm to the person from whom sensitive investment or financial information relating to the investment was received; or

(iii) have a substantial detrimental impact on the value of an investment to be acquired, held or disposed of by the fund or would cause a breach of the standard of care or fiduciary duty set forth in this part.

(3) (i) The sensitive investment or financial information excluded from inspection under paragraph (2)(i), to the extent not otherwise excluded from inspection, shall constitute a public record subject to public inspection under the Right-to-Know Law once the board is no longer required by its agreement to maintain confidentiality.

(ii) The sensitive investment or financial information excluded from inspection under paragraph (2)(ii), to the extent not otherwise excluded from inspection, shall constitute a public record subject to public inspection under the Right-to-Know Law once:

(A) the inspection no longer causes substantial competitive harm to the person from whom the information was received; or

(B) the entity in which the investment was made is liquidated; whichever is later.

(iii) The sensitive investment or financial information excluded from inspection under paragraph (2)(iii), to the extent not otherwise excluded from inspection, shall constitute a public record subject to public inspection under the Right-to-Know Law once:

(A) the inspection no longer has a substantial detrimental impact on the value of an investment of the fund and would not cause a breach of the standard of care or fiduciary duty set forth in this part; or

(B) the entity in which the investment was made is liquidated; whichever is later.

(4) Except for the provisions of paragraph (3), nothing in this subsection shall be construed to designate any record, material or data received, prepared, used or retained by the board or its employees, investment professionals or agents relating to an investment as a public record subject to public inspection under the Right-to-Know Law.

* * *

Section 3. Nothing in this act shall be construed or deemed to affect the authority of the Auditor General to obtain copies of any record, material or data described in 71 Pa.C.S. § 5902(e)(2) in connection with a lawfully conducted audit.

Section 4. Nothing in this act shall be construed or deemed to imply that the release or making public of any record, material or data described in 71 Pa.C.S. § 5902(e)(2) as not being a public record is a violation of the State Employees' Retirement Board's fiduciary duties.

Section 5. This act shall apply to any record, material or data described in 71 Pa.C.S. § 5902(e)(2), without regard to whether the record, material or data was created, generated or stored before the effective date of this section, without regard to whether the record, material or data was previously released or made public and without regard to whether a request for the record, material or data was made or is pending final response under the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law.

Section 6. In the event that the State Employees' Retirement System has collected a fee or other monetary charge for the preparation, duplication, production, redaction or other expenses associated with the inspection or provision of a record, material or data that as a result of the amendment of 71 Pa.C.S. § 5902(e) will not be made available for inspection by and will not be provided to the requester who made the payment, the State Employees' Retirement System shall return the fee or money to the requester.

Section 7. This act shall take effect immediately.

APPROVED—The 27th day of October, A.D. 2006.

EDWARD G. RENDELL