

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 398

Introduced by Senator Hernandez

February 16, 2011

An act to amend Sections ~~7513.8 and 82025.3~~ 7513.8, 7513.87, 82025.3, and 82047.3 of the Government Code, relating to retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 398, as amended, Hernandez. Retirement: ~~external managers~~ *placement agents*.

Existing law regulates investments made by public pension and retirement systems and defines the term "external manager" to mean a person who is seeking to be, or is, retained by *the retirement board of a public pension or retirement system* to manage a portfolio of securities or other assets for compensation, or a person who is engaged, or proposes to be engaged, in the business of investing, reinvesting, owning, holding, or trading securities or other assets and who offers or sells, or has offered or sold, securities to a board. *Existing law also defines the term "placement agent" to mean a person hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a board or an investment vehicle, as defined. The Political Reform Act of 1974 defines those terms in a similar way for purposes of an individual acting as a placement agent in connection with a state public retirement system.*

~~This bill would make technical, nonsubstantive changes to those provisions~~ *instead define an external manager to mean a person who is seeking to be, or is, retained by a board or an investment vehicle to manage a portfolio of securities or other assets for compensation, or a person who manages an investment fund, as defined, and who offers or sells, or has offered or sold, an ownership interest in the investment fund to a board or an investment vehicle. In addition, the bill would define a placement agent to mean a person directly or indirectly hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager or an investment fund managed by an external manager and who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale to a board or investment vehicle either the investment management services of the external manager or an ownership interest in an investment fund managed by the external manager. The bill would make conforming changes in the definitions of external manager and placement agent for purposes of the Political Reform Act of 1974.*

Existing law requires a person acting as a placement agent in connection with any potential system investment made by a local public retirement system to file any applicable reports with a local government agency that requires lobbyists to register and file reports and to comply with any other applicable requirements imposed by a local government agency, unless the person is an employee, officer, director, equityholder, partner, member, or trustee of an external manager who spends $\frac{1}{3}$ or more of his or her time during a calendar year managing the securities or assets owned, controlled, invested, or held by the external manager.

This bill would also exempt a placement agent from any requirements imposed by a local government agency if the placement agent is an employee, officer, or director of an external manager, or of an affiliate of an external manager, and the external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or any appropriate state securities regulator; the external manager is participating in a competitive bidding process, such as a request for proposals, or has been selected through that process and is providing services pursuant to a contract executed as a result of that competitive bidding process; and the external manager, if selected through a competitive bidding process, has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set

forth in the California Constitution, when managing a portfolio of assets of a public retirement system.

Existing law makes a knowing or willful violation of the Political Reform Act of 1974 a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

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.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act’s purposes upon a ²/₃ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~²/₃. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

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

1 SECTION 1. Section 7513.8 of the Government Code is
2 amended to read:

3 7513.8. As used in *this section* and Sections 7513.85, 7513.86,
4 7513.87, 7513.9, and 7513.95:

5 (a) “Board” means the retirement board of a public pension or
6 retirement system, as defined in subdivision (h) of Section 17 of
7 Article XVI of the California Constitution.

8 (b) “External manager” means either of the following:

9 (1) A person who is seeking to be, or is, retained by a board *or*
10 *an investment vehicle* to manage a portfolio of securities or other
11 assets for compensation.

12 (2) A person who ~~is engaged, or proposes to be engaged, in the~~
13 ~~business of investing, reinvesting, owning, holding, or trading~~
14 ~~securities or other assets~~ *manages an investment fund* and who

1 offers or sells, or has offered or sold, ~~securities~~ *an ownership*
2 *interest in the investment fund to a board or an investment vehicle.*

3 (c) (1) *“Investment fund” means a private equity fund, public*
4 *equity fund, venture capital fund, hedge fund, fixed income fund,*
5 *real estate fund, infrastructure fund, or similar pooled investment*
6 *entity that is, or holds itself out as being, engaged primarily, or*
7 *proposes to engage primarily, in the business of investing,*
8 *reinvesting, owning, holding, or trading securities or other assets.*

9 (2) *Notwithstanding paragraph (1), an investment company that*
10 *is registered with the Securities and Exchange Commission*
11 *pursuant to the Investment Company Act of 1940 (15 U.S.C. Sec.*
12 *80a-1 et seq.) and that makes a public offering of its securities is*
13 *not an investment fund.*

14 (d) *“Investment vehicle” means a corporation, partnership,*
15 *limited partnership, limited liability company, association, or other*
16 *entity, either domestic or foreign, managed by an external manager*
17 *in which a board is the majority investor and that is organized in*
18 *order to invest with, or retain the investment management services*
19 *of, other external managers.*

20 (e)

21 (e) *“Person” means an individual, corporation, partnership,*
22 *limited partnership, limited liability company, or association, either*
23 *domestic or foreign.*

24 (f)

25 (f) (1) *“Placement agent” means any person directly or*
26 *indirectly hired, engaged, or retained by, or serving for the benefit*
27 *of or on behalf of, an external manager, ~~or on behalf of another~~*
28 *~~placement agent,~~ or an investment fund managed by an external*
29 *manager, and who acts or has acted for compensation as a finder,*
30 *solicitor, marketer, consultant, broker, or other intermediary in*
31 *connection with the offer or sale of the securities, assets, or services*
32 *of an external manager to a board or an investment vehicle, ~~either~~*
33 *~~directly or indirectly.~~ either of the following:*

34 (A) *In the case of an external manager within the meaning of*
35 *paragraph (1) of subdivision (b), the investment management*
36 *services of the external manager.*

37 (B) *In the case of an external manager within the meaning of*
38 *paragraph (2) of subdivision (b), an ownership interest in an*
39 *investment fund managed by the external manager.*

1 (2) Notwithstanding paragraph (1), an individual who is an
2 employee, officer, director, equityholder, partner, member, or
3 trustee of an external manager and who spends one-third or more
4 of his or her time, during a calendar year, managing the securities
5 or assets owned, controlled, invested, or held by the external
6 manager is not a placement agent.

7 ~~(3) For purposes of this subdivision, “investment vehicle” means~~
8 ~~a corporation, partnership, limited partnership, limited liability~~
9 ~~company, association, or other entity, either domestic or foreign,~~
10 ~~constituting or managed by an external manager in which a board~~
11 ~~is the majority investor and that is organized in order to invest~~
12 ~~with, or retain the investment management services of, other~~
13 ~~external managers.~~

14 *SEC. 2. Section 7513.87 of the Government Code is amended*
15 *to read:*

16 7513.87. (a) A person acting as a placement agent in
17 connection with any potential system investment made by a local
18 public retirement system shall file any applicable reports with a
19 local government agency that requires lobbyists to register and
20 file reports and shall comply with any applicable requirements
21 imposed by a local government agency pursuant to Section 81013.

22 (b) This section does not apply to ~~an~~ *either of the following:*

23 (1) *An individual who is an employee, officer, director,*
24 *equityholder, partner, member, or trustee of an external manager*
25 *who spends one-third or more of his or her time, during a calendar*
26 *year, managing the securities or assets owned, controlled, invested,*
27 *or held by the external manager.*

28 (2) *An employee, officer, or director of an external manager,*
29 *or of an affiliate of an external manager, if all of the following*
30 *apply:*

31 (A) *The external manager is registered as an investment adviser*
32 *or a broker-dealer with the Securities and Exchange Commission*
33 *or, if exempt from or not subject to registration with the Securities*
34 *and Exchange Commission, any appropriate state securities*
35 *regulator.*

36 (B) *The external manager is participating in a competitive*
37 *bidding process, such as a request for proposals, or has been*
38 *selected through that process and is providing services pursuant*
39 *to a contract executed as a result of that competitive bidding*
40 *process.*

1 (C) *The external manager, if selected through a competitive*
 2 *bidding process described in subparagraph (B), has agreed to a*
 3 *fiduciary standard of care, as defined by the standards of conduct*
 4 *applicable to the retirement board of a public pension or retirement*
 5 *system and set forth in Section 17 of Article XVI of the California*
 6 *Constitution, when managing a portfolio of assets of a public*
 7 *retirement system in California.*

8 *SEC. 3. Section 82025.3 of the Government Code is amended*
 9 *to read:*

10 82025.3. (a) “External manager” means either of the following:

11 (1) A person who is seeking to be, or is, retained by a state
 12 public retirement system in California *or an investment vehicle to*
 13 *manage a portfolio of securities or other assets for compensation.*

14 (2) A person who ~~is engaged, or proposes to be engaged, in the~~
 15 ~~business of investing, reinvesting, owning, holding, or trading~~
 16 ~~securities or other assets~~ *manages an investment fund* and who
 17 offers or sells, or has offered or sold, ~~securities an ownership~~
 18 ~~interest in the investment fund~~ to a state public retirement system
 19 in California *or an investment vehicle.*

20 (b) *For purposes of this section, “investment fund” has the same*
 21 *meaning as set forth in Section 7513.8.*

22 (c) *For purposes of this section, “investment vehicle” has the*
 23 *same meaning as set forth in Section 82047.3.*

24 *SEC. 4. Section 82047.3 of the Government Code is amended*
 25 *to read:*

26 82047.3. (a) “Placement agent” means an individual *directly*
 27 *or indirectly* hired, engaged, or retained by, or serving for the
 28 benefit of or on behalf of, an external manager, ~~or on behalf of~~
 29 ~~another placement agent, or an investment fund managed by an~~
 30 *external manager, and* who acts or has acted for compensation as
 31 a finder, solicitor, marketer, consultant, broker, or other
 32 intermediary in connection with the offer or sale ~~of the securities,~~
 33 ~~assets, or services of an external manager~~ to a state public
 34 retirement system in California or an investment vehicle, ~~either~~
 35 ~~directly or indirectly.~~ *either of the following:*

36 (1) *In the case of an external manager within the meaning of*
 37 *paragraph (1) of subdivision (a) of Section 82025.3, the investment*
 38 *management services of the external manager.*

1 (2) *In the case of an external manager within the meaning of*
2 *paragraph (2) of subdivision (a) of Section 82025.3, an ownership*
3 *interest in an investment fund managed by the external manager.*

4 (b) Notwithstanding subdivision (a), an individual who is an
5 employee, officer, director, equityholder, partner, member, or
6 trustee of an external manager and who spends one-third or more
7 of his or her time, during a calendar year, managing the securities
8 or assets owned, controlled, invested, or held by the external
9 manager is not a placement agent.

10 (c) Notwithstanding subdivision (a), an employee, officer, or
11 director of an external manager, or of an affiliate of an external
12 manager, is not a placement agent *with respect to an offer or sale*
13 *of investment management services described in subdivision (a)*
14 *if all of the following apply:*

15 (1) The external manager is registered as an investment adviser
16 or a broker-dealer with the Securities and Exchange Commission
17 or, if exempt from or not subject to registration with the Securities
18 and Exchange Commission, any appropriate state securities
19 regulator.

20 (2) The external manager ~~has been selected through~~ *is*
21 *participating in a competitive bidding process, such as a request*
22 *for proposals, subject to subdivision (a) of Section 22364 of the*
23 *Education Code or subdivision (a) of Section 20153 of this code,*
24 *as applicable, or has been selected through that process, and is*
25 *providing services pursuant to a contract executed as a result of*
26 *that competitive bidding process.*

27 (3) The external manager, *if selected through a competitive*
28 *bidding process described in paragraph (2), has agreed to a*
29 *fiduciary standard of care, as defined by the standards of conduct*
30 *applicable to the retirement board of a public pension or retirement*
31 *system and set forth in Section 17 of Article XVI of the California*
32 *Constitution, when managing a portfolio of assets of a state public*
33 *retirement system in California.*

34 (d) *For purposes of this section, “investment fund” has the same*
35 *meaning as set forth in Section 7513.8.*

36 ~~(d)~~

37 (e) For purposes of this section, “investment vehicle” means a
38 corporation, partnership, limited partnership, limited liability
39 company, association, or other entity, either domestic or foreign,
40 ~~constituting or~~ managed by an external manager in which a state

1 public retirement system in California is the majority investor and
2 that is organized in order to invest with, or retain the investment
3 management services of, other external managers.

4 *SEC. 5. No reimbursement is required by this act pursuant to*
5 *Section 6 of Article XIII B of the California Constitution because*
6 *the only costs that may be incurred by a local agency or school*
7 *district will be incurred because this act creates a new crime or*
8 *infraction, eliminates a crime or infraction, or changes the penalty*
9 *for a crime or infraction, within the meaning of Section 17556 of*
10 *the Government Code, or changes the definition of a crime within*
11 *the meaning of Section 6 of Article XIII B of the California*
12 *Constitution.*

13 *SEC. 6. The Legislature finds and declares that this bill furthers*
14 *the purposes of the Political Reform Act of 1974 within the meaning*
15 *of subdivision (a) of Section 81012 of the Government Code.*

16 *SEC. 7. This act is an urgency statute necessary for the*
17 *immediate preservation of the public peace, health, or safety within*
18 *the meaning of Article IV of the Constitution and shall go into*
19 *immediate effect. The facts constituting the necessity are:*

20 *In order to ensure that public pension and retirement systems*
21 *do not suffer disruptions in their investment transactions that would*
22 *result in immediate and significant economic losses to the state*
23 *and local government agencies, it is necessary that this act take*
24 *effect immediately.*

25 ~~SECTION 1. Section 7513.8 of the Government Code is~~
26 ~~amended to read:~~

27 ~~7513.8. As used in Sections 7513.85, 7513.86, 7513.87, 7513.9,~~
28 ~~and 7513.95:~~

29 ~~(a) "Board" means the retirement board of a public pension or~~
30 ~~retirement system, as defined in subdivision (h) of Section 17 of~~
31 ~~Article XVI of the California Constitution.~~

32 ~~(b) "External manager" means either of the following:~~

33 ~~(1) A person who is seeking to be, or is, retained by a board to~~
34 ~~manage a portfolio of securities or other assets for compensation.~~

35 ~~(2) A person who is engaged, or proposes to be engaged, in the~~
36 ~~business of investing, reinvesting, owning, holding, or trading~~
37 ~~securities or other assets, and who offers or sells, or has offered~~
38 ~~or sold, securities to a board.~~

1 (e) ~~“Person” means an individual, corporation, partnership,~~
2 ~~limited partnership, limited liability company, or association, either~~
3 ~~domestic or foreign.~~

4 (d) (1) ~~“Placement agent” means any person hired, engaged,~~
5 ~~or retained by, or serving for the benefit of or on behalf of, an~~
6 ~~external manager, or on behalf of another placement agent, who~~
7 ~~acts or has acted for compensation as a finder, solicitor, marketer,~~
8 ~~consultant, broker, or other intermediary in connection with the~~
9 ~~offer or sale of the securities, assets, or services of an external~~
10 ~~manager to a board or an investment vehicle, either directly or~~
11 ~~indirectly.~~

12 (2) ~~Notwithstanding paragraph (1), an individual who is an~~
13 ~~employee, officer, director, equityholder, partner, member, or~~
14 ~~trustee of an external manager and who spends one-third or more~~
15 ~~of his or her time, during a calendar year, managing the securities~~
16 ~~or assets owned, controlled, invested, or held by the external~~
17 ~~manager is not a placement agent.~~

18 (3) ~~For purposes of this subdivision, “investment vehicle” means~~
19 ~~a corporation, partnership, limited partnership, limited liability~~
20 ~~company, association, or other entity, either domestic or foreign,~~
21 ~~constituting or managed by an external manager in which a board~~
22 ~~is the majority investor and that is organized in order to invest~~
23 ~~with, or retain the investment management services of, other~~
24 ~~external managers.~~

25 ~~SEC. 2. Section 82025.3 of the Government Code is amended~~
26 ~~to read:~~

27 82025.3. ~~“External manager” means either of the following:~~

28 (1) ~~A person who is seeking to be, or is, retained by a state~~
29 ~~public retirement system in California to manage a portfolio of~~
30 ~~securities or other assets for compensation.~~

31 (2) ~~A person who is engaged, or proposes to be engaged, in the~~
32 ~~business of investing, reinvesting, owning, holding, or trading~~
33 ~~securities or other assets, and who offers or sells, or has offered~~
34 ~~or sold, securities to a state public retirement system in California.~~