STATE OF CALIFORNIA
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ELECTRONIC LEGAL MATERIAL

Assembly Bill No. 2833

CHAPTER 361

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

Approved by Governor September 14, 2016. Filed w th
Secretary of State September 14, 2016.]

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AB 2833, Cooley. Public 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 m 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 investment fund, as defined, to require alternative investment vehicles, as defined, to make specified disclosures regarding fees, expenses, and carried interest in connection with these vehicles and the underlying investments, as well as other specified information. Consistent with requirements relating to public records, the bill would require a public investment fund to disclose the information received in connection with alternative investment 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.

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

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

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

7514.7. (a) Every public investment fund shall require each alternative investment vehicle in which it invests to make the following disclosures at least annually:

(1) The fees and expenses that the public investment fund pays directly to the alternative investment vehicle, the fund manager, or related parties.

(2) The public investment fund's pro rata share of fees and expenses not included in paragraph (1) that are paid from the alternative investment vehicle to the fund manager or related parties. The public investment fund may independently calculate this information based on information contractually required to be provided by the alternative investment vehicle to the public investment fund. If the public investment fund independently calculates this information, then the alternative investment vehicle shall not be required to provide the information identified in this paragraph.

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

(4) The public investment fund's pro rata share of aggregate fees and expenses paid by all of the portfolio companies held within the alternative investment vehicle to the fund manager or related parties.

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

(b) Every public investment fund shall disclose the information provided pursuant to subdivision (a) at least once annually in a report presented at a meeting open to the public. The public investment fund's report required

pursuant to this subdivision shall also include the gross and net rate of return of each alternative investment vehicle, since inception, in which the public investment fund participates. The public investment fund may report the gross and net rate of return and information required by subdivision (a) based on its own calculations or based on calculations provided by the alternative investment vehicle.

(c) For purposes of this section:

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

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which a public investment fund invests in an alternative investment.

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

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

(5) "Portfolio companies" means individual portfolio investments made by the alternative investment vehicle.

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

(7) "Public investment fund" means any fund of any public pension or retirement system, including that of the University of California.

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

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

(10) "Related party" means:

(A) Any related person.

(B) Any operational person.

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

(D) Any consulting, legal, or other service provider regularly engaged by portfolio companies of an alternative investment vehicle, account, or

fund managed by a related person and that also provides advice or services to any related person or relevant entity.

(11) "Relevant entity" means the general partner, any separate carry vehicle, the investor advisor, any of the investment advisor's parent or subsidiary entities, or any similar entity related to any other alternative investment vehicle, account, or fund advised or managed by any current or former related person.

(d) (1) This section shall apply to all new contracts the public investment fund enters into on or after January 1, 2017, and to all existing contracts pursuant to which the public investment fund makes a new capital commitment on or after January 1, 2017.

(2) With respect to existing contracts not covered by paragraph (1), the public investment fund shall undertake reasonable efforts to obtain the information described in subdivision (a) and comply with the reporting requirements contained in subdivision (b) with respect to any information obtained after January 1, 2017.

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

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

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