

# Will California Public Pension Systems Go Underground In Implementing New Disclosure Law?

Article By:

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Writing in the [Harvard Law School Forum on Corporate Governance and Financial Regulation](#), Catherine Skulan and Raj Marphatia provide an interesting [overview](#) of California's recently enacted alternative investment vehicle fee disclosure law, [AB 2833](#). This law requires public pension and retirement systems to require alternative investment vehicles, as defined, to make specified disclosures regarding fees, expenses, and carried interest. Because the bill does not specify a format for these disclosures, I expect that these systems will be tempted to adopt forms for making the mandated disclosures. This raises at least two questions.

First, must the public pension and retirement systems comply with the rulemaking provisions of California's Administrative Procedure Act? The APA excepts forms only if a form's contents consist only of existing, specific legal requirements. Government Code Section 11340.9(c). This means that the systems will be required to comply with the APA if their forms include instructions or requirements not found in the statute.

Second, do the public pension and retirement systems even have the authority to adopt forms? As Ms. Skulan and Mr. Marphatia point out in their article, an earlier version of AB 2833 referred specifically to "a form prescribed by the system". The legislature deleted this language from the final version of the legislation. This suggests that the legislature intended to withhold authority to prescribe forms from the agencies.

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