

By: Paul

H.B. No. 2068

A BILL TO BE ENTITLED

AN ACT

relating to the fiduciary responsibility of governmental entities and the investment agents, plan administrators, or qualified vendors acting on behalf of those entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.0015 to read as follows:

Sec. 609.0015. INVESTMENT AND VOTING STANDARDS FOR GOVERNMENTAL ENTITIES, PLAN ADMINISTRATORS, AND QUALIFIED VENDORS; DUTY TO REPORT VOTES; INVESTIGATION. (a) Sections 802.203(a) and 802.2031 through 802.2036 apply to any governmental entity, plan administrator, or qualified vendor who administers or offers a qualified investment product in a deferred compensation plan under this chapter in the same manner as those sections apply to an investment agent or the governing body of a public retirement system.

(b) Notwithstanding any other provision of this chapter, a plan administrator may approve a vendor to be a qualified vendor only if the vendor has a practice of following, and agrees in writing to follow, guidelines that are consistent with the plan administrator's duty under Subsection (a) to act solely in the pecuniary interests of the plan's participants and beneficiaries.

SECTION 2. Section 802.001, Government Code, is amended by adding Subdivisions (2-a), (2-b), and (2-c) to read as follows:

1 (2-a) "Investment agent" means any person with respect
2 to a public retirement system, other than the governing body, who:

3 (A) exercises any discretionary authority over
4 or control in or has any responsibility in the administration of the
5 public retirement system, including:

6 (i) controlling or disposing of the
7 system's assets; or

8 (ii) advising on or exercising the right to
9 vote any shares of the system, including proxy votes; or

10 (B) provides, for compensation, directly or
11 indirectly, investment advice regarding the assets of the system.

12 (2-b) "Material factor," with respect to a risk,
13 return, or investment:

14 (A) means a factor for which there is a
15 substantial likelihood that a reasonable investor would find
16 important when evaluating the potential financial returns and risks
17 of an investment or whether to exercise any right in connection with
18 a security; and

19 (B) does not include any portion of the factor
20 that:

21 (i) primarily relates to events that
22 involve a high degree of uncertainty regarding what may occur in the
23 distant future; and

24 (ii) is systemic, general, or not
25 investment-specific in nature.

26 (2-c) "Pecuniary factor" means a material factor that
27 has an effect on the financial returns and risks of an investment

1 based on appropriate investment horizons.

2 SECTION 3. Section 802.002(a), Government Code, is amended
3 to read as follows:

4 (a) Except as provided by Subsection (b), the Employees
5 Retirement System of Texas, the Teacher Retirement System of Texas,
6 the Texas County and District Retirement System, the Texas
7 Municipal Retirement System, and the Judicial Retirement System of
8 Texas Plan Two are exempt from Sections 802.101(a), 802.101(b),
9 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016,
10 802.202, [~~802.203,~~] 802.204, 802.205, 802.206, and 802.207. The
11 Judicial Retirement System of Texas Plan One is exempt from all of
12 Subchapters B and C except Sections 802.104 and 802.105. The
13 optional retirement program governed by Chapter 830 is exempt from
14 all of Subchapters B and C except Section 802.106.

15 SECTION 4. Section 802.203(a), Government Code, is amended
16 to read as follows:

17 (a) In making and supervising investments of the reserve
18 fund of a public retirement system, an investment agent [~~manager~~]
19 or the governing body of a public retirement system shall discharge
20 its duties solely in the pecuniary interest of the participants and
21 beneficiaries:

22 (1) for the exclusive purposes of:

23 (A) providing pecuniary benefits to participants
24 and their beneficiaries; and

25 (B) defraying reasonable expenses of
26 administering the system;

27 (2) with the care, skill, prudence, and diligence

1 under the prevailing circumstances that a prudent person acting in
2 a like capacity and familiar with matters of the type would use in
3 the conduct of an enterprise with a like character and like aims;

4 (3) by diversifying the investments of the system to
5 minimize the risk of large losses, unless under the circumstances
6 it is clearly prudent not to do so; and

7 (4) in accordance with the documents and instruments
8 governing the system to the extent that the documents and
9 instruments are consistent with this subchapter.

10 SECTION 5. Subchapter C, Chapter 802, Government Code, is
11 amended by adding Sections 802.2031 through 802.2036 to read as
12 follows:

13 Sec. 802.2031. INVESTMENT STANDARDS: OBLIGATION TO ACT
14 BASED SOLELY ON PECUNIARY INTERESTS. (a) Except as provided by
15 this section and for purposes of Section 802.203(a), the governing
16 body of a public retirement system or an investment agent:

17 (1) may not take any action or consider any factor,
18 including when determining whether a factor is a material factor,
19 with a purpose of furthering an environmental, social, or political
20 goal or any other similar goal; and

21 (2) shall take into account only pecuniary factors
22 when evaluating the potential financial returns and risks of an
23 investment or whether to exercise any right in connection with a
24 security.

25 (b) The governing body of a public retirement system or an
26 investment agent may take into account under Subsection (a) an
27 environmental, social, or political factor or any other similar

1 factor only to the extent that:

2 (1) the factor presents a financial risk or
3 opportunity that an experienced investment professional would
4 treat as a material financial factor under generally accepted
5 investment theories; and

6 (2) the weight given to the factor is limited to the
7 impact of the factor on the financial risk or opportunity that a
8 similarly situated prudent investor would give.

9 (c) In taking into account a factor as provided by
10 Subsection (b) regarding a potential investment, the governing body
11 or investment agent must compare the investment with other
12 available alternative investments that would serve a similar
13 purpose as the original investment being evaluated, including:

14 (1) how the original investment and the alternative
15 investments each impact the level of diversification of the
16 system's portfolio;

17 (2) the degree of liquidity of each investment;

18 (3) the potential financial returns and risks of each
19 investment; and

20 (4) whether greater returns can be achieved through
21 the alternative investments that have little impact on
22 environmental, social, political, or similar factors.

23 (d) To the extent of a conflict between this section and any
24 other law, this section prevails.

25 Sec. 802.2032. DUTY TO VOTE SHARES BASED SOLELY ON
26 PECUNIARY INTERESTS. (a) In accordance with Section 802.203(a),
27 all shares held directly or indirectly by or on behalf of a public

1 retirement system or the system's participants and beneficiaries,
2 as applicable, shall be voted solely in the pecuniary interest of
3 the system's participants and beneficiaries and may not be voted
4 with a purpose of furthering an environmental, social, or political
5 goal or any other similar goal.

6 (b) The governing body of a public retirement system may
7 delegate proxy voting authority to an investment agent only if the
8 agent has a practice of following, and commits in writing to follow,
9 guidelines that are consistent with the governing body's duty to
10 act solely in the pecuniary interests of the system's participants
11 and beneficiaries.

12 Sec. 802.2033. EVIDENCE OF VIOLATION OF INVESTMENT
13 STANDARDS. Evidence of a violation of Section 802.203(a) may
14 include a statement of a governing body of a public retirement
15 system or an investment agent indicating the governing body's or
16 agent's purpose in selecting investments, engaging with portfolio
17 companies, or voting shares or proxy votes, or a similar statement
18 by any coalition, initiative, or organization that the governing
19 body or agent is a member of or otherwise participates in, at the
20 time the statement was made.

21 Sec. 802.2034. COMMITMENT IN WRITING. Unless an
22 economically practicable alternative is not available:

23 (1) the assets of a public retirement system may not be
24 entrusted to an investment agent unless that agent has a practice of
25 following, and commits in writing to follow, guidelines when
26 engaging with portfolio companies that are consistent with the
27 governing body's duty to act solely in the pecuniary interest of the

1 system's participants and beneficiaries; and
2 (2) the governing body of a public retirement system
3 or an investment agent that manages the assets of a public
4 retirement system may not adopt a practice of following the
5 recommendations of a proxy advisor or other similar service
6 provider unless the advisor or provider has a practice of
7 following, and commits in writing to follow, proxy voting
8 guidelines that are consistent with the duty of the governing body
9 or investment agent to act solely in the pecuniary interest of the
10 system's participants and beneficiaries.

11 Sec. 802.2035. REPORT ON PROXY VOTES. The governing body of
12 a public retirement system shall tabulate all proxy votes made on
13 behalf of the system and report the votes annually to the State
14 Pension Review Board. For each vote, the report must contain a vote
15 caption, the system's vote, and, as applicable, the recommendation
16 of the investment agent or any proxy advisor. The State Pension
17 Review Board shall post reports submitted under this section to the
18 board's publicly accessible Internet website.

19 Sec. 802.2036. INVESTIGATION BY ATTORNEY GENERAL. If the
20 attorney general has reasonable cause to believe that a person
21 engaged in, is engaging in, or is likely to engage in an act that
22 violates Section 802.203(a), 802.2034, or 802.2035, the attorney
23 general may:

24 (1) require the person to file, in a form and manner
25 prescribed by the attorney general, a statement or report in
26 writing, under oath, as to:

27 (A) all the facts and circumstances concerning

1 the violation; or

2 (B) any other relevant information the attorney
3 general considers necessary;

4 (2) examine any person under oath in connection with
5 the violation;

6 (3) examine any record, book, document, account,
7 paper, sample, or other material in connection with the violation;
8 or

9 (4) apply to a district court to issue a subpoena for
10 any record, book, document, account, paper, sample, or other
11 material in connection with the violation and retain the material
12 until the completion of all related proceedings taken under this
13 section.

14 SECTION 6. Section 815.307, Government Code, is amended to
15 read as follows:

16 Sec. 815.307. DUTY OF CARE. The assets of the retirement
17 system shall be invested and reinvested without distinction as to
18 their source in accordance with Section 67, Article XVI, Texas
19 Constitution. [~~A determination of whether the board of trustees~~
20 ~~has exercised prudence with respect to an investment decision must~~
21 ~~be made taking into consideration the investment of all assets of~~
22 ~~the trust or all assets of the collective investment vehicle, as~~
23 ~~applicable, over which the board has management and control, rather~~
24 ~~than considering the prudence of a single investment of the trust or~~
25 ~~the collective investment vehicle, as applicable.]~~

26 SECTION 7. Section 840.303, Government Code, is amended to
27 read as follows:

1 Sec. 840.303. DUTY OF CARE. The assets of the retirement
2 system shall be invested and reinvested without distinction as to
3 their source in accordance with Section 67, Article XVI, Texas
4 Constitution. [~~A determination of whether the board of trustees
5 has exercised prudence with respect to an investment decision must
6 be made taking into consideration the investment of all assets of
7 the trust or all assets of the collective investment vehicle, as
8 applicable, over which the board has management and control, rather
9 than considering the prudence of a single investment of the trust or
10 the collective investment vehicle, as applicable.~~]

11 SECTION 8. Section 855.303, Government Code, is amended to
12 read as follows:

13 Sec. 855.303. PRUDENCE REGARDING INVESTMENTS. [A
14 ~~determination of whether the board of trustees has exercised
15 prudence in an investment decision must be made by considering the
16 investment of all of the assets of the trust over which the board
17 has management and control, rather than by considering the prudence
18 of a single investment.~~] In making investments for the retirement
19 system, the board of trustees shall exercise the judgment and care,
20 under the circumstances, that persons of prudence, discretion, and
21 intelligence exercise in the management of their own affairs,
22 considering the probable income from the securities and probable
23 safety of their capital.

24 SECTION 9. Section 865.008(b), Government Code, is amended
25 to read as follows:

26 (b) The assets of the pension system shall be invested and
27 reinvested in accordance with Section 67, Article XVI, Texas

1 Constitution. [~~A determination of whether the state board has~~
2 ~~exercised prudence with respect to an investment decision must be~~
3 ~~made, taking into consideration the investment of all assets of the~~
4 ~~trust over which the state board has management and control rather~~
5 ~~than considering the prudence of a single investment.]~~

6 SECTION 10. Section 7.04(b), Chapter 824 (S.B. 817), Acts
7 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
8 Vernon's Texas Civil Statutes), is amended to read as follows:

9 (b) The board shall diversify the investment of the fund to
10 minimize the risk of large losses unless under the circumstances it
11 is clearly prudent not to do so. [~~In determining whether the board~~
12 ~~has exercised prudence concerning an investment decision, the~~
13 ~~investment of all assets of the fund, rather than the prudence of a~~
14 ~~single investment of the fund, shall be considered.]~~

15 SECTION 11. Section 6.04(b), Chapter 1332 (S.B. 1568), Acts
16 of the 75th Legislature, Regular Session, 1997 (Article 6243q,
17 Vernon's Texas Civil Statutes), is amended to read as follows:

18 (b) The board shall diversify the investment of the reserve
19 funds to minimize the risk of large losses unless under the
20 circumstances it is clearly prudent not to do so. [~~In determining~~
21 ~~whether the board has exercised prudence concerning an investment~~
22 ~~decision, the investment of all assets of the funds, rather than the~~
23 ~~prudence of a single investment of the funds, shall be considered.]~~

24 SECTION 12. Section 802.2032, Government Code, as added by
25 this Act, applies to the authority to vote shares and proxy votes
26 granted before, on, or after the effective date of this Act.

27 SECTION 13. This Act takes effect September 1, 2023.