

By: Bonnen

H.B. No. 3495

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the investment authority of certain state agencies and  
3 the confidentiality of certain information related to those  
4 investments.

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

6 SECTION 1. Section 404.024, Government Code, is amended by  
7 amending Subsections (b) and (c) and adding Subsections (c-1) and  
8 (c-2) to read as follows:

9 (b) Subject to Chapter 2270, state funds not deposited in  
10 state depositories shall be invested by the comptroller in:

- 11 (1) direct security repurchase agreements;  
12 (2) reverse security repurchase agreements;  
13 (3) direct obligations of or obligations the principal  
14 and interest of which are guaranteed by the United States;  
15 (4) direct obligations of or obligations guaranteed by  
16 agencies or instrumentalities of the United States government;  
17 (5) bankers' acceptances that:

18 (A) are eligible for purchase by the Federal  
19 Reserve System;

20 (B) do not exceed 270 days to maturity; and

21 (C) are issued by a bank whose other comparable  
22 short-term obligations are rated in the highest short-term rating  
23 category, within which there may be subcategories or gradations  
24 indicating relative standing, including such subcategories or

1 gradations as "rating category" or "rated," by a nationally  
2 recognized statistical rating organization, as defined by 15 U.S.C.  
3 Section 78c;

4 (6) commercial paper that:

5 (A) does not exceed 365 [~~270~~] days to maturity;  
6 and

7 (B) except as provided by Subsection (i), is  
8 issued by an entity whose other comparable short-term obligations  
9 are rated in the highest short-term rating category by a nationally  
10 recognized statistical rating organization;

11 (7) contracts written by the treasury in which the  
12 treasury grants the purchaser the right to purchase securities in  
13 the treasury's marketable securities portfolio at a specified price  
14 over a specified period and for which the treasury is paid a fee and  
15 specifically prohibits naked-option or uncovered option trading;

16 (8) direct obligations of or obligations guaranteed by  
17 the Inter-American Development Bank, the International Bank for  
18 Reconstruction and Development (the World Bank), the African  
19 Development Bank, the Asian Development Bank, and the International  
20 Finance Corporation that have received the highest long-term rating  
21 categories for debt obligations by a nationally recognized  
22 statistical rating organization;

23 (9) bonds issued, assumed, or guaranteed by the State  
24 of Israel;

25 (10) obligations of a state or an agency, county,  
26 city, or other political subdivision of a state;

27 (11) mutual funds secured by obligations that are

1 described by Subdivisions (1) through (6) or by obligations  
2 consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated  
3 by the Securities and Exchange Commission, including pooled funds:

4 (A) established by the Texas Treasury  
5 Safekeeping Trust Company;

6 (B) operated like a mutual fund; and

7 (C) with portfolios consisting only of  
8 dollar-denominated securities;

9 (12) foreign currency for the sole purpose of  
10 facilitating investment by state agencies that have the authority  
11 to invest in foreign securities;

12 (13) asset-backed securities, as defined by the  
13 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section  
14 270.2a-7), that are rated at least A or its equivalent by a  
15 nationally recognized statistical rating organization and that  
16 have a weighted-average maturity of five years or less; and

17 (14) corporate debt obligations that are rated at  
18 least A or its equivalent by a nationally recognized statistical  
19 rating organization and mature in five years or less from the date  
20 on which the obligations were "acquired," as defined by the  
21 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section  
22 270.2a-7).

23 (c) Investments in direct security repurchase agreements  
24 and reverse security repurchase agreements may be:

25 (1) placed through ~~made with~~ state or national banks  
26 doing business in this state or with primary dealers as approved by  
27 the Federal Reserve System; or

1           (2) made directly with a state agency with the  
2 authority to invest in repurchase agreements.

3           (c-1) For purposes of Subsection (c), "state agency" means:

4           (1) an office, department, commission, board, or  
5 agency that is part of any branch of state government;

6           (2) an institution of higher education as defined by  
7 Section 61.003, Education Code; or

8           (3) a nonprofit corporation acting on behalf of an  
9 entity described by Subdivision (1) or (2).

10          (c-2) Notwithstanding any other law, the term of any reverse  
11 security repurchase agreement made by the comptroller may not  
12 exceed 90 days after the date the reverse security repurchase  
13 agreement is delivered. Money received by the comptroller under  
14 the terms of a reverse security repurchase agreement may be used to  
15 acquire additional authorized investments, but the term of the  
16 authorized investments acquired must mature not later than the  
17 expiration date stated in the reverse security repurchase  
18 agreement.

19          SECTION 2. Section 825.103(d), Government Code, is amended  
20 to read as follows:

21          (d) Notwithstanding any other law, the retirement system  
22 has exclusive authority over the purchase of goods and services  
23 using money other than money appropriated from the general revenue  
24 fund, including specifically money from trusts under the  
25 administration of the retirement system, and Subtitles [~~Subtitle~~] D  
26 and F, Title 10, do [~~does~~] not apply to the retirement system with  
27 respect to that money. The retirement system shall acquire goods or

1 services by procurement methods approved by the board of trustees  
2 or the board's designee. For purposes of this subsection, goods and  
3 services include all professional and consulting services and  
4 utilities as well as supplies, materials, equipment, skilled or  
5 unskilled labor, and insurance. The comptroller shall procure  
6 goods or services for the retirement system at the request of the  
7 retirement system, and the retirement system may use the services  
8 of the comptroller in procuring goods or services.

9 SECTION 3. Section 825.301(a), Government Code, is amended  
10 to read as follows:

11 (a) The board of trustees shall invest and reinvest assets  
12 of the retirement system without distinction as to their source in  
13 accordance with Section 67, Article XVI, Texas Constitution. For  
14 purposes of the investment authority of the board of trustees under  
15 Section 67, Article XVI, Texas Constitution, "securities" includes  
16 any investment instrument within the meaning of the term as defined  
17 by Section 4001.068, 15 U.S.C. Section 77b(a)(1), or 15 U.S.C.  
18 Section 78c(a)(10), any derivative instrument, and any other  
19 instrument commonly used by institutional investors to manage  
20 institutional investment portfolios. An interest in a limited  
21 partnership or investment contract is considered a security without  
22 regard to the number of investors or the control, access to  
23 information, or rights granted to or retained by the retirement  
24 system. Any instrument or contract intended to manage transaction  
25 or currency exchange risk in purchasing, selling, or holding  
26 securities is considered to be a security. Subject to Section  
27 825.3013, an interest in a title-holding entity is considered a

1 security. Investment decisions are subject to the standard provided  
2 in the Texas Trust Code by Section 117.004(b), Property Code.

3 SECTION 4. Section 825.3012(b), Government Code, is amended  
4 to read as follows:

5 (b) Notwithstanding any provision of Section 825.301, the  
6 board of trustees shall determine the maximum percentage [~~not more~~  
7 ~~than 10 percent~~] of the value of the total investment portfolio of  
8 the retirement system that may be invested in hedge funds.

9 SECTION 5. Subchapter D, Chapter 825, Government Code, is  
10 amended by adding Sections 825.3013 and 825.3014 to read as  
11 follows:

12 Sec. 825.3013. TITLE-HOLDING ENTITIES; INVESTMENTS IN REAL  
13 PROPERTY. (a) The retirement system may form a title-holding  
14 entity for the purpose of investing the retirement system's assets  
15 in real property. The title-holding entity must be:

16 (1) wholly owned and controlled by the system; and  
17 (2) exempt from taxation under Section 501(a),  
18 Internal Revenue Code of 1986, as an organization described by  
19 Section 501(c) of that code.

20 (b) Subject to Subsection (a)(2), a title-holding entity  
21 formed under this section may hold title to real property jointly  
22 with another person.

23 (c) The board of trustees shall adopt policies for the  
24 governance, management, and reporting for a title-holding entity  
25 formed under this section.

26 (d) The following persons may not be employed by, receive  
27 compensation from, be a party to a contract with or a direct or

1 indirect financial beneficiary of a contract with, or hold a direct  
2 or indirect interest in a title-holding entity formed by the  
3 retirement system under this section:

4 (1) a trustee or employee of the system; or

5 (2) a relative of a trustee or employee of the system  
6 within the second degree of consanguinity or affinity, as  
7 determined under Chapter 573.

8 (e) Chapter 551 and Subtitles D and F, Title 10, do not apply  
9 to a title-holding entity formed under this section.

10 Sec. 825.3014. CONFIDENTIALITY OF RECORDS RELATED TO  
11 TITLE-HOLDING ENTITIES. (a) Notwithstanding any other law other  
12 than this section, all information that relates to a title-holding  
13 entity formed under Section 825.3013 is confidential and excepted  
14 from disclosure under Section 552.021, including information  
15 relating to:

16 (1) a pre-due diligence or post-due diligence review,  
17 audit, or investigation;

18 (2) the formation of a title-holding entity under  
19 Section 825.3013; or

20 (3) a potential purchase of real property by a  
21 title-holding entity, regardless of whether the purchase is  
22 completed.

23 (b) The following information as it relates to a  
24 title-holding entity formed under Section 825.3013 is public  
25 information under Chapter 552:

26 (1) the title-holding entity's certificate of  
27 formation or comparable instrument issued by a foreign

1 jurisdiction;

2 (2) the date or dates on which the title-holding  
3 entity purchased or sold an interest in real property;

4 (3) information relating to the title-holding entity's  
5 qualification for the federal income tax exemption required under  
6 Section 825.3013(a)(2);

7 (4) the name and location, including the physical  
8 address, city, state, and country, of any real property in which the  
9 title-holding entity has an interest;

10 (5) as shown in the meeting minutes of the board of  
11 trustees, each recusal by a member of the board in connection with a  
12 deliberation or action relating to the title-holding entity, any  
13 real property in which the entity has an ownership interest, or a  
14 lease or contract with the title-holding entity;

15 (6) the name of each employer or business entity owned  
16 wholly or partly by the relative of a member of the board of  
17 trustees or a retirement system employee, within the second degree  
18 of consanguinity or affinity under Chapter 573, that is a  
19 prospective party to a transaction or contract with the  
20 title-holding entity, including a contract that is:

21 (A) a real property purchase and sale agreement;

22 (B) for goods or services; or

23 (C) a lease agreement, including a ground lease  
24 agreement;

25 (7) the name of the business entity or employer  
26 described by Subdivision (6) as stated in the business entity's or  
27 employer's certificate of formation or comparable instrument;

1           (8) copies of income tax returns filed by the  
2 title-holding entity, except information in the returns relating to  
3 indebtedness, tax basis, and gains or losses realized on the sale or  
4 other disposition of real property by the title-holding entity;

5           (9) if the system or a state agency is a tenant of real  
6 property owned by the title-holding entity:

7                   (A) the name of that tenant;

8                   (B) the name and address of the property; and

9                   (C) the financial returns to the system from  
10 investing in the property; and

11           (10) if applicable, the name of any joint owner of real  
12 property a title-holding entity has an ownership interest in and  
13 the percentage of the property owned by a joint owner.

14           (c) Except as provided by this subsection, this section  
15 applies to information regardless of whether the title-holding  
16 entity disposes of the entity's interest in real property or an  
17 asset if the information is inextricably intertwined with another  
18 interest in real property or other assets owned by the  
19 title-holding entity. The final sale documentation of the disposed  
20 real property or other asset is public information under Chapter  
21 552.

22           (d) This section does not prohibit the retirement system or  
23 any person from asserting that any information described by this  
24 section is confidential or exempt from disclosure under Section  
25 552.021 or other law. Notwithstanding any other law, if the  
26 retirement system discloses information described by Subsection  
27 (a) to a person, the disclosure does not:

1           (1) waive or affect the confidentiality of information  
2 relating to any other title-holding entity; or

3           (2) waive the retirement system's right to assert  
4 exceptions to disclosure of the information in the future.

5           SECTION 6. Section [2270.0004](#), Government Code, is amended  
6 to read as follows:

7           Sec. 2270.0004. INAPPLICABILITY OF CERTAIN REQUIREMENTS  
8 INCONSISTENT WITH OTHER LAW OR FIDUCIARY RESPONSIBILITIES AND  
9 RELATED DUTIES. An investing entity described by Section  
10 [2270.0001](#)(7)(B) or (C) is not subject to a requirement of this  
11 chapter:

12           (1) if applicable, to the extent prescribed by Section  
13 [825.103](#)(d); or

14           (2) if the entity determines that the requirement  
15 would be inconsistent with the entity's fiduciary responsibility  
16 with respect to the investment of entity assets or other duties  
17 imposed by law relating to the investment of entity assets,  
18 including the duty of care established under Section [67](#), Article  
19 XVI, Texas Constitution.

20           SECTION 7. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section [39](#), Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2023.