

By: Huffman

S.B. No. 1246

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to authorized investments of public money by certain  
3 governmental entities and the confidentiality of certain  
4 information related to those 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),  
8 (c-2), and (c-3) 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 financial institutions [~~made with~~  
26 ~~state or national banks~~] doing business in this state or through  
27 [~~with~~] primary dealers as approved by the Federal Reserve System;

1 or

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

4 (c-1) For purposes of this section, "agency of the state" or  
5 "state agency" means:

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

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

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

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

21 (c-3) A direct security repurchase agreement or reverse  
22 security repurchase agreement made by the comptroller under this  
23 section may be submitted for clearing and settlement to a covered  
24 clearing agency, as defined by the Securities and Exchange  
25 Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

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

1           (d) Notwithstanding any other law, the retirement system  
2 has exclusive authority over the purchase of goods and services  
3 using money other than money appropriated from the general revenue  
4 fund, including specifically money from trusts under the  
5 administration of the retirement system, and Subtitles [~~Subtitle~~] D  
6 and F, Title 10, do [~~does~~] not apply to the retirement system with  
7 respect to that money. The retirement system shall acquire goods or  
8 services by procurement methods approved by the board of trustees  
9 or the board's designee. For purposes of this subsection, goods and  
10 services include all professional and consulting services and  
11 utilities as well as supplies, materials, equipment, skilled or  
12 unskilled labor, and insurance. The comptroller shall procure  
13 goods or services for the retirement system at the request of the  
14 retirement system, and the retirement system may use the services  
15 of the comptroller in procuring goods or services.

16           SECTION 3. Section [825.301\(a\)](#), Government Code, is amended  
17 to read as follows:

18           (a) The board of trustees shall invest and reinvest assets  
19 of the retirement system without distinction as to their source in  
20 accordance with Section [67](#), Article XVI, Texas Constitution. For  
21 purposes of the investment authority of the board of trustees under  
22 Section [67](#), Article XVI, Texas Constitution, "securities" includes  
23 any investment instrument within the meaning of the term as defined  
24 by Section [4001.068](#), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C.  
25 Section 78c(a)(10), any derivative instrument, and any other  
26 instrument commonly used by institutional investors to manage  
27 institutional investment portfolios. An interest in a limited

1 partnership or investment contract is considered a security without  
2 regard to the number of investors or the control, access to  
3 information, or rights granted to or retained by the retirement  
4 system. Any instrument or contract intended to manage transaction  
5 or currency exchange risk in purchasing, selling, or holding  
6 securities is considered to be a security. Subject to Section  
7 825.3013, an interest in a title-holding entity that is wholly  
8 owned, organized, and controlled by the retirement system is  
9 considered a security. Investment decisions are subject to the  
10 standard provided in the Texas Trust Code by Section 117.004(b),  
11 Property Code.

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

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

18 SECTION 5. Subchapter D, Chapter 825, Government Code, is  
19 amended by adding Sections 825.3013 and 825.3014 to read as  
20 follows:

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

25 (1) wholly owned, organized, and controlled by the  
26 system; and

27 (2) exempt from taxation under Section 501(a),

1 Internal Revenue Code of 1986, as an organization described by  
2 Section 501(c) of that code.

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

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

9 (d) The following persons may not be employed by, receive  
10 compensation from, be a party to a contract with or a direct or  
11 indirect financial beneficiary of a contract with, or hold a direct  
12 or indirect interest in a title-holding entity formed by the  
13 retirement system under this section:

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

15 (2) a relative of a trustee or employee of the system  
16 within the second degree of consanguinity or affinity, as  
17 determined under Chapter 573.

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

20 Sec. 825.3014. CONFIDENTIALITY OF RECORDS RELATED TO  
21 TITLE-HOLDING ENTITIES. (a) Notwithstanding any other law other  
22 than this section, information that relates to a title-holding  
23 entity formed under Section 825.3013 is confidential and excepted  
24 from disclosure under Section 552.021, including information  
25 relating to:

26 (1) a pre-due diligence or post-due diligence review,  
27 audit, or investigation;

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

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

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

9           (1) the title-holding entity's certificate of  
10 formation or comparable instrument;

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

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

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

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

24           (6) the name of each business entity or employer owned  
25 wholly or partly by the relative of a member of the board of  
26 trustees or a retirement system employee, within the second degree  
27 of consanguinity or affinity under Chapter 573, that is a



1 prospective party to a transaction or contract with the  
2 title-holding entity, including a contract that is:

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

4 (B) for goods or services; or

5 (C) a lease agreement, including a ground lease  
6 agreement;

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

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

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

16 (A) the name of that tenant;

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

18 (C) the financial returns to the system from  
19 investing in the property; and

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

23 (c) This section applies to information regardless of  
24 whether the title-holding entity disposes of the entity's interest  
25 in real property or an asset if the information is inextricably  
26 intertwined with another interest in real property or other assets  
27 owned by the title-holding entity.

1        (d) This section does not prohibit the retirement system or  
2 any person from asserting that any information described by this  
3 section is confidential or exempt from disclosure under Section  
4 552.021 or other law. Notwithstanding any other law, if the  
5 retirement system discloses information described by Subsection  
6 (a) to a person, the disclosure does not:

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

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

11        SECTION 6. Section 2256.011, Government Code, is amended by  
12 amending Subsections (a) and (b) and adding Subsections (a-1), (f),  
13 and (g) to read as follows:

14        (a) A fully collateralized repurchase agreement is an  
15 authorized investment under this subchapter if the repurchase  
16 agreement:

17            (1) has a defined termination date;

18            (2) is secured by a combination of cash and  
19 obligations described by Section 2256.009(a)(1) or 2256.013 or, if  
20 applicable, Section 2256.0204;

21            (3) requires the securities being purchased by the  
22 entity or cash held by the entity to be pledged to the entity either  
23 directly or through a joint account approved by the entity, held in  
24 the entity's name either directly or through a joint account  
25 approved by the entity, and deposited at the time the investment is  
26 made with the entity or with a third party selected and approved by  
27 the entity; and

1           (4) is placed through a primary government securities  
2 dealer, as defined by the Federal Reserve, or a financial  
3 institution doing business in this state.

4           (a-1) A repurchase agreement made by an investing entity  
5 under this section may be submitted for clearing and settlement to a  
6 covered clearing agency, as defined by the Securities and Exchange  
7 Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

8           (b) In this section:

9           (1) "Joint account" means an account maintained by a  
10 custodian bank and established on behalf of two or more parties to  
11 engage in aggregate repurchase agreement transactions.

12           (2) "Repurchase [~~, "repurchase]~~ agreement" means a  
13 simultaneous agreement to buy, hold for a specified time, and sell  
14 back at a future date obligations described by Section  
15 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204, at  
16 a market value at the time the funds are disbursed of not less than  
17 the principal amount of the funds disbursed. The term includes a  
18 direct security repurchase agreement and a reverse security  
19 repurchase agreement.

20           (f) An investing entity that contracts with an investment  
21 management firm under Section 2256.003(b) may authorize the firm to  
22 invest the entity's public funds or other funds under the entity's  
23 control in repurchase agreements as provided by this section using  
24 a joint account.

25           (g) An investment management firm responsible for managing  
26 a repurchase agreement transaction using a joint account on behalf  
27 of an investing entity as authorized under Subsection (f) must

1 ensure that:

2 (1) accounting and control procedures are implemented  
3 to document the investing entity's aggregate daily investment and  
4 pro rata share in the joint account;

5 (2) each party participating in the joint account  
6 retains the sole rights of ownership to the party's pro rata share  
7 of assets invested in the joint account, including investment  
8 earnings on those assets; and

9 (3) policies and procedures are implemented to prevent  
10 a party participating in the joint account from using any part of a  
11 balance of the joint account that is credited to another party.

12 SECTION 7. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2023.