

AN ACT

relating to authorized investments of public money by certain governmental entities and the confidentiality of certain information related to those investments.

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

SECTION 1. Section 404.024, Government Code, is amended by amending Subsections (b) and (c) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

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

- (1) direct security repurchase agreements;
- (2) reverse security repurchase agreements;
- (3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;
- (4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;
- (5) bankers' acceptances that:
 - (A) are eligible for purchase by the Federal Reserve System;
 - (B) do not exceed 270 days to maturity; and
 - (C) are issued by a bank whose other comparable short-term obligations are rated in the highest short-term rating category, within which there may be subcategories or gradations 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. Sections 404.0241(b) and (d), Government Code,
27 are amended to read as follows:

1 (b) At least 10 percent [~~one-quarter~~] of the economic
2 stabilization fund balance must be invested in a manner that
3 ensures the liquidity of that amount.

4 (d) The comptroller shall adjust the investment of economic
5 stabilization fund money periodically as necessary to ensure that:

6 (1) at all times at least 10 percent [~~one-quarter~~] of
7 the balance of the economic stabilization fund is invested in a
8 manner that ensures the liquidity of that amount; and

9 (2) the balance of the economic stabilization fund is
10 sufficient to meet the cash flow requirements of the fund.

11 SECTION 3. Section 825.103(d), Government Code, is amended
12 to read as follows:

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

1 SECTION 4. Section 825.301(a), Government Code, is amended
2 to read as follows:

3 (a) The board of trustees shall invest and reinvest assets
4 of the retirement system without distinction as to their source in
5 accordance with Section 67, Article XVI, Texas Constitution. For
6 purposes of the investment authority of the board of trustees under
7 Section 67, Article XVI, Texas Constitution, "securities" includes
8 any investment instrument within the meaning of the term as defined
9 by Section 4001.068, 15 U.S.C. Section 77b(a)(1), or 15 U.S.C.
10 Section 78c(a)(10), any derivative instrument, and any other
11 instrument commonly used by institutional investors to manage
12 institutional investment portfolios. An interest in a limited
13 partnership or investment contract is considered a security without
14 regard to the number of investors or the control, access to
15 information, or rights granted to or retained by the retirement
16 system. Any instrument or contract intended to manage transaction
17 or currency exchange risk in purchasing, selling, or holding
18 securities is considered to be a security. Subject to Section
19 825.3013, an interest in a title-holding entity that is wholly
20 owned, organized, and controlled by the retirement system is
21 considered a security. Investment decisions are subject to the
22 standard provided in the Texas Trust Code by Section 117.004(b),
23 Property Code.

24 SECTION 5. Section 825.3012(b), Government Code, is amended
25 to read as follows:

26 (b) Notwithstanding any provision of Section 825.301, the
27 board of trustees shall determine the maximum percentage [~~not more~~

1 ~~than 10 percent]~~ of the value of the total investment portfolio of
2 the retirement system that may be invested in hedge funds.

3 SECTION 6. Subchapter D, Chapter 825, Government Code, is
4 amended by adding Sections 825.3013 and 825.3014 to read as
5 follows:

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

10 (1) wholly owned, organized, and controlled by the
11 system; and

12 (2) exempt from taxation under Section 501(a),
13 Internal Revenue Code of 1986, as an organization described by
14 Section 501(c) of that code.

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

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

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

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

27 (2) a relative of a trustee or employee of the system

1 within the second degree of consanguinity or affinity, as
2 determined under Chapter 573.

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

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

11 (1) a pre-due diligence or post-due diligence review,
12 audit, or investigation;

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

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

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

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

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

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

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

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

9 (6) the name of each business entity or employer owned
10 wholly or partly by the relative of a member of the board of
11 trustees or a retirement system employee, within the second degree
12 of consanguinity or affinity under Chapter 573, that is a
13 prospective party to a transaction or contract with the
14 title-holding entity, including a contract that is:

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

16 (B) for goods or services; or

17 (C) a lease agreement, including a ground lease
18 agreement;

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

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

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

1 (A) the name of that tenant;

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

3 (C) the financial returns to the system from
4 investing in the property; and

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

8 (c) This section applies to information regardless of
9 whether the title-holding entity disposes of the entity's interest
10 in real property or an asset if the information is inextricably
11 intertwined with another interest in real property or other assets
12 owned by the title-holding entity.

13 (d) This section does not prohibit the retirement system or
14 any person from asserting that any information described by this
15 section is confidential or exempt from disclosure under Section
16 552.021 or other law. Notwithstanding any other law, if the
17 retirement system discloses information described by Subsection
18 (a) to a person, the disclosure does not:

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

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

23 SECTION 7. Section 2256.011, Government Code, is amended by
24 amending Subsections (a) and (b) and adding Subsections (a-1), (f),
25 and (g) to read as follows:

26 (a) A fully collateralized repurchase agreement is an
27 authorized investment under this subchapter if the repurchase

1 agreement:

2 (1) has a defined termination date;

3 (2) is secured by a combination of cash and
4 obligations described by Section 2256.009(a)(1) or 2256.013 or, if
5 applicable, Section 2256.0204;

6 (3) requires the securities being purchased by the
7 entity or cash held by the entity to be pledged to the entity either
8 directly or through a joint account approved by the entity, held in
9 the entity's name either directly or through a joint account
10 approved by the entity, and deposited at the time the investment is
11 made with the entity or with a third party selected and approved by
12 the entity; and

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

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

20 (b) In this section:

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

24 (2) "Repurchase [~~,"~~ "repurchase] agreement" means a
25 simultaneous agreement to buy, hold for a specified time, and sell
26 back at a future date obligations described by Section
27 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204, at

1 a market value at the time the funds are disbursed of not less than
2 the principal amount of the funds disbursed. The term includes a
3 direct security repurchase agreement and a reverse security
4 repurchase agreement.

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

10 (g) An investment management firm responsible for managing
11 a repurchase agreement transaction using a joint account on behalf
12 of an investing entity as authorized under Subsection (f) must
13 ensure that:

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

17 (2) each party participating in the joint account
18 retains the sole rights of ownership to the party's pro rata share
19 of assets invested in the joint account, including investment
20 earnings on those assets; and

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

24 SECTION 8. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

1 Act takes effect September 1, 2023.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1246 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 19, 2023, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1246 passed the House, with amendment, on May 16, 2023, by the following vote: Yeas 129, Nays 11, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor