

By: Huffman

S.B. No. 1246

A BILL TO BE ENTITLED

1 AN ACT
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.