

By: Hughes

S.B. No. 1446

A BILL TO BE ENTITLED

AN ACT

relating to the fiduciary responsibility of the governing body of the public retirement systems in this state and the investment managers and proxy advisors acting on behalf of those systems.

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

SECTION 1. Section 802.001, Government Code, is amended by adding Subdivisions (1-b), (2-a), and (2-b) to read as follows:

(1-b) "Financial factor" means a factor taken into consideration when making investment decisions that a prudent investor would expect to have a material effect on controlling risk and achieving a rate of return for an investment based on appropriate investment horizons and consistent with the objectives of any controlling investment plan.

(2-a) "Investment manager" means a person who for compensation provides professional investment management services and may include a person eligible for appointment as an investment manager under Section 802.204. The term does not include:

(A) an employee or member of an advisory committee of a public retirement system; or

(B) a seller of security interests.

(2-b) "Proxy advisor" means a person who for compensation provides corporate governance ratings, proxy research and analyses, proxy voting, or other similar services to the shareholders of a publicly traded entity, or other interested

1 parties, for the purpose of advising a shareholder on how to vote on
2 measures under consideration by shareholders or proxy voting on
3 behalf of a shareholder.

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

6 (a) Except as provided by Subsection (b), the Employees
7 Retirement System of Texas, the Teacher Retirement System of Texas,
8 the Texas County and District Retirement System, the Texas
9 Municipal Retirement System, and the Judicial Retirement System of
10 Texas Plan Two are exempt from Sections 802.101(a), 802.101(b),
11 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016,
12 802.202, 802.203(c), (d), and (e) [~~802.203~~], 802.204, 802.205,
13 802.206, and 802.207. The Judicial Retirement System of Texas Plan
14 One is exempt from all of Subchapters B and C except Sections
15 802.104 and 802.105. The optional retirement program governed by
16 Chapter 830 is exempt from all of Subchapters B and C except Section
17 802.106.

18 SECTION 3. Section 802.203(a), Government Code, is amended
19 to read as follows:

20 (a) In making and supervising investments of the reserve
21 fund of a public retirement system, an investment manager or the
22 governing body of a public retirement system shall discharge its
23 duties solely in the financial interest of the participants and
24 beneficiaries:

25 (1) for the exclusive purposes of:

26 (A) managing risk and providing financial
27 benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the system;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

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

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

SECTION 4. Subchapter C, Chapter 802, Government Code, is amended by adding Sections 802.2031 through 802.2038 to read as follows:

Sec. 802.2031. INVESTMENT STANDARDS: OBLIGATION TO DISCHARGE DUTY BASED SOLELY ON CERTAIN FINANCIAL INTERESTS. (a) For purposes of discharging its duties solely in the financial interest of participants and beneficiaries under Section 802.203(a) and except as provided by Chapters 808, 809, and 2270 and Chapter 2274, as added by Chapters 529 (S.B. 13), 530 (S.B. 19), 833 (S.B. 4), and 975 (S.B. 2116), Acts of the 87th Legislature, Regular Session, 2021, the governing body of the public retirement system or an investment manager:

(1) shall:

(A) make all investments prudently and in accordance with applicable fiduciary and ethical standards; and

1 (B) take into account only financial factors when
2 discharging its duties with respect to a plan administered by the
3 system; and

4 (2) may not use the system's assets to take any action
5 with a purpose of furthering social, political, or ideological
6 interests.

7 (b) In accordance with this section and Section 802.203(a),
8 all shares held by or on behalf of a public retirement system or the
9 system's participants and beneficiaries, as applicable, if voted,
10 shall be voted solely based on financial factors.

11 Sec. 802.2032. REQUIRED INVESTMENT CONTRACT PROVISIONS.
12 The governing body of a public retirement system may not enter into
13 a contract with an investment manager or a proxy advisor relating to
14 investing the system's assets or voting, or advising on voting,
15 shares held by the system unless the contract contains a
16 requirement that the manager or advisor, as applicable:

17 (1) take into account only financial factors when
18 discharging the manager's or advisor's duties under the contract,
19 with respect to investing the system's assets and voting, or
20 advising on voting, shares held by the system; and

21 (2) not take any action under the contract with a
22 purpose of furthering social, political, or ideological interests,
23 including an action with respect to investing the system's assets
24 or voting, or advising on voting, shares held by the system.

25 Sec. 802.2033. PROXY VOTING AUTHORITY. (a) The governing
26 body of a public retirement system may not grant proxy voting
27 authority to a proxy advisor unless:

1 (1) the proxy advisor offers a policy for proxy voting
2 advice:

3 (A) that is consistent with the requirements for
4 voting shares imposed on the system under Section 802.2031(b); and

5 (B) the sole goal of which is to maximize
6 financial return and control associated levels of risk; and

7 (2) the grant of proxy voting authority requires the
8 proxy advisor to follow that policy.

9 (b) The policy may include additions or customizations only
10 if those additions or customizations are consistent with the sole
11 goal of the policy as described by Subsection (a).

12 Sec. 802.2034. PROXY VOTING: PUBLIC NOTICE AND ANNUAL
13 REPORT. (a) This section applies only to a public retirement
14 system that holds shares that the system is entitled to vote by
15 proxy.

16 (b) Subject to Subsection (c), the governing body of a
17 public retirement system shall post on the system's publicly
18 accessible Internet website how a proxy advisor will cast a proxy
19 vote made on behalf of the system or the system's participants and
20 beneficiaries, if possible, not later than the earlier of:

21 (1) the seventh day before the date a proxy vote is to
22 be cast; or

23 (2) 48 hours after receiving a vote recommendation
24 from the proxy advisor on the proxy vote.

25 (c) A public retirement system shall post on the system's
26 publicly accessible Internet website how a proxy advisor will cast
27 a proxy vote made on behalf of the system or the system's

1 participants and beneficiaries not later than 24 hours before the
2 proxy vote is to be cast.

3 (d) Except as provided by Subsection (e), not later than the
4 180th day after the last day of a public retirement system's fiscal
5 year, the governing body of the system shall tabulate all proxy
6 votes made on behalf of the system by proxy advisors during the
7 preceding fiscal year of the system and report the votes to the
8 State Pension Review Board. For each vote, the report must contain a
9 vote caption, the system's vote, the recommendation, if any, of the
10 company holding the election, and, as applicable, the
11 recommendation of the proxy advisor. The State Pension Review Board
12 shall post reports submitted under this subsection to the board's
13 publicly accessible Internet website.

14 (e) In lieu of submitting a report under Subsection (d), the
15 governing body of a public retirement system may provide to the
16 State Pension Review Board the location of a report posted to the
17 system's publicly accessible Internet website that contains the
18 information required by that subsection.

19 (f) Except as provided by Subsection (g), if the governing
20 body of a public retirement system grants proxy voting authority to
21 an investment manager, the investment manager shall submit a report
22 to the retirement system, and the retirement system shall submit a
23 report to the State Pension Review Board, that tabulates all proxy
24 votes cast by the investment manager on behalf of the system for
25 each 12-month period the investment manager is managing any assets
26 of the system. The State Pension Review Board shall post the reports
27 submitted under this subsection to the board's publicly accessible

1 Internet website.

2 (g) Subsection (f) does not apply to an investment manager
3 that manages less than \$50 million of a public retirement system's
4 assets.

5 Sec. 802.2035. ANNUAL REPORT TO STATE PENSION REVIEW BOARD
6 ON CERTAIN INVESTMENT RELATIONSHIPS. (a) This section applies
7 only to a public retirement system with more than \$100 million in
8 assets.

9 (b) Annually, the governing body of a public retirement
10 system shall submit a report to the State Pension Review Board that
11 details investment relationships maintained by the system and, if
12 applicable, shall consolidate the report with any annual
13 comprehensive financial report required of the system under other
14 law. The report required by this section must include information
15 regarding each:

16 (1) subject to Subsection (c), fund or investment
17 entity the system is invested in or has invested in during the
18 preceding 12-month period; and

19 (2) subject to Subsection (d), investment manager with
20 which the system contracts to provide investment management
21 services.

22 (c) For purposes of Subsection (b)(1), regarding each fund
23 or investment entity described by that subdivision, the report
24 required by this section must contain:

25 (1) the name of the fund or investment entity;

26 (2) the date on which the fund or investment entity
27 described by Subdivision (1) was established and each date during

1 the applicable 12-month period the system invested in the fund or
2 entity;

3 (3) with respect to a fund or investment entity, the
4 amount of money, expressed in dollars, the system:

5 (A) committed to the fund or entity described by
6 Subdivision (1);

7 (B) is invested in or has invested in the fund or
8 entity during the applicable 12-month period under Subsection
9 (b)(1); and

10 (C) received from any fund or investment entity
11 during the applicable 12-month period;

12 (4) the total amount of fees, including expenses,
13 charges, and other compensation, assessed against the system by, or
14 paid by the system to, any fund or investment entity in which the
15 system is invested in or has invested in during the applicable
16 12-month period; and

17 (5) the internal rate of return, or other standard of
18 investment return, on money invested in each fund or investment
19 entity, and the date on which the return was calculated.

20 (d) For purposes of Subsection (b)(2), regarding each
21 contract with an investment manager providing investment manager
22 services, the report required by this section must contain:

23 (1) the net value of the assets being managed under the
24 contract; and

25 (2) the total amount of fees, including expenses,
26 charges, and other compensation, assessed against the system by, or
27 paid by the system to, any fund or investment entity in which the

1 system is invested in or has invested in during the preceding
2 12-month period.

3 (e) The State Pension Review Board shall post the report
4 received under this section to the board's publicly accessible
5 Internet website.

6 Sec. 802.2036. INJUNCTION BY RETIREMENT SYSTEMS. (a) A
7 public retirement system may bring an action in district court to
8 restrain or enjoin an investment manager or proxy advisor from
9 breaching a contract provision required under Section 802.2032 or
10 violating Section 802.203(a).

11 (b) The court may award court costs and reasonable
12 attorney's fees to a party who prevails in an action brought under
13 this section.

14 (c) The court in which the action is brought shall give
15 precedence to proceedings in the same manner as provided for an
16 election contest under Section 23.101.

17 Sec. 802.2037. INAPPLICABILITY OF REQUIREMENTS
18 INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES.

19 (a) A public retirement system is not subject to a requirement of
20 Section 802.203, 802.2031, 802.2033, 802.2034, or 802.2035 if the
21 system determines that the requirement would be inconsistent with
22 its fiduciary responsibility with respect to the investment of
23 system assets or other duties imposed by law relating to the
24 investment of system assets, including the duty of care established
25 under Section 67, Article XVI, Texas Constitution.

26 (b) If a public retirement system determines that complying
27 with the requirement in a specific case is inconsistent with its

1 fiduciary responsibility as described by Subsection (a), the system
2 shall notify in writing the State Pension Review Board of the
3 determination and the board shall post the determination on the
4 board's publicly accessible Internet website.

5 Sec. 802.2038. RULES ON INVESTMENTS, VOTING SHARES, AND
6 RELATED REPORTS. The State Pension Review Board may adopt rules to
7 implement Section 802.203, 802.2031, 802.2032, 802.2033, 802.2034,
8 802.2035, or 802.2037.

9 SECTION 5. The changes in law made by this Act apply only to
10 a contract entered into on or after the effective date of this Act.
11 A contract entered into before the effective date of this Act is
12 governed by the law in effect on the date the contract was entered
13 into, and the former law is continued in effect for that purpose.

14 SECTION 6. (a) Notwithstanding any other section of this
15 Act, in a state fiscal year, the State Pension Review Board is not
16 required to implement a provision found in another section of this
17 Act that is drafted as a mandatory provision imposing a duty on the
18 board to take an action unless money is specifically appropriated
19 to the board for that fiscal year to carry out that duty. The State
20 Pension Review Board may implement the provision in that fiscal
21 year to the extent other funding is available to the board to do so.

22 (b) If, as authorized by Subsection (a) of this section, the
23 State Pension Review Board does not implement the mandatory
24 provision in a state fiscal year, the board, in its legislative
25 budget request for the next state fiscal biennium, shall certify
26 that fact to the Legislative Budget Board and include a written
27 estimate of the costs of implementing the provision in each year of

1 that next state fiscal biennium.

2 (c) This section expires and any duty suspended by
3 Subsection (a) becomes mandatory on September 1, 2027.

4 SECTION 7. It is the intent of the 88th Legislature, Regular
5 Session, 2023, that the amendments made by this Act be harmonized
6 with another Act of the 88th Legislature, Regular Session, 2023,
7 relating to nonsubstantive additions to and corrections in enacted
8 codes.

9 SECTION 8. This Act takes effect September 1, 2023.