By: Hughes (Capriglione) S.B. No. 1446

Substitute the following for S.B. No. 1446:

By: Capriglione C.S.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 parties, for the purpose of advising a shareholder on how to vote on measures under consideration by shareholders or proxy voting on behalf of a shareholder.

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

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

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

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

(1) for the exclusive purposes of:

(A) managing risk and providing financial 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

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

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

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

Sec. 802.2032. REQUIRED INVESTMENT CONTRACT PROVISIONS; EFFECT ON CERTAIN OTHER LAW. (a) The governing body of a public retirement system may not enter into a contract with an investment manager or a proxy advisor relating to investing the system's assets or voting, or advising on voting, shares held by the system unless the contract contains a requirement that the manager or advisor, as applicable:

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

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

(b) Notwithstanding Section 809.051, the list maintained under that section may not contain an investment manager, proxy advisor, or other financial company who enters into a contract under this section for the period during which the contract is in effect.

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

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

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

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

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

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

(c) The governing body of a public retirement system that grants proxy voting authority in accordance with this section shall provide the State Pension Review Board a copy of the policy described by Subsection (a)(1). If the public retirement system is subject to Section 802.2035, the governing body of the system shall provide a copy of the policy to the State Pension Review Board at the same time the governing body provides the board with the annual report required under that section.

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

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

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

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

(c) A public retirement system shall post on the system's publicly accessible Internet website how a proxy advisor will cast a proxy vote made on behalf of the system or the system's participants and beneficiaries not later than 24 hours before the proxy vote is to be cast.

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

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

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

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

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

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

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

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

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

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

(2) the date on which the fund or investment entity described by Subdivision (1) was established and each date during the applicable 12-month period the system invested in the fund or entity;

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

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

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

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

(4) the total amount of fees, including expenses, charges, and other compensation, assessed against the system by, or

paid by the system to, any fund or investment entity in which the system is invested in or has invested in during the applicable 12-month period; and

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

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

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

(2) the total amount of fees, including expenses, charges, and other compensation, assessed against the system by, or paid by the system to, any fund or investment entity in which the system is invested in or has invested in during the preceding 12-month period.

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

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

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

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

Sec. 802.2037. INAPPLICABILITY OF REQUIREMENTS INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES. (a) A public retirement system is not subject to a requirement of Sections 802.203 through 802.2035 if the system determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of system assets or other duties imposed by law relating to the investment of system assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

(b) If a public retirement system determines that complying with the requirement in a specific case is inconsistent with its fiduciary responsibility as described by Subsection (a), the system shall notify in writing the State Pension Review Board of the determination and the board shall post the determination on the board's publicly accessible Internet website.

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

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

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

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

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

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

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