

## **BILL ANALYSIS**

H.B. 2376  
By: Gattis  
Pensions & Investments  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Teacher Retirement System (TRS) provides retirement, disability retirement, and death benefits for public school and certain higher education employees in Texas. While TRS investments have rebounded since 2002 to exceed \$100 billion, the existing portfolio is largely a reflection of the U.S. and international stock markets. The trust fund and benefits for members and retirees faces the risk of a future potential market downturn unless an expanded list of investment tools is available to the TRS board of trustees for risk management. This bill will allow for higher earnings for TRS at the current or reduced risk levels.

This bill clarifies TRS investment authority by clarifying the meaning of the word “securities” to include the certain types of private investments used by public pension funds to manage investment risk. The bill includes specific investments as “securities” and authorizes TRS to use them and other instruments used by pension funds to manage investment risk. Currently, some public pension funds similar in size to TRS manage their portfolio risk through these investment instruments. The same standard of investment care and prudence in the Texas Constitution would apply to all “securities” used by TRS to manage investments.

This bill allows delegation of investment authority to and contracting with outside investment managers. Use of external managers will allow TRS to invest in certain markets for which TRS is not able to efficiently invest in due to either staff limitations or the inability to obtain internal expertise in these areas.

This bill clarifies ambiguity in the Government Code so that the TRS board of trustees may expressly delegate responsibilities for investment operations to the executive director and the staff. The bill would allow the TRS board of trustees to receive certain information on private investment funds in closed session. Current law will remain unchanged in that the board would not be allowed to make investment decisions in closed session.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

This bill allows the TRS board of trustees to invest and reinvest retirement system's assets in any investment instrument commonly known as a security, including instruments described by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section 77b (a) (1), or 15 U.S.C. Section 78c (a) (10). This bill provides that an investment is authorized for investment even if TRS is the only investor or has rights or privileges pertaining to the investment that are not granted to other investors. This bill provides that the TRS board of trustees may buy and sell futures contracts, options, options on futures contracts, forward contracts, swap contracts, including swap contracts with embedded options, any instrument or contract intended to manage transaction or currency exchange risk in purchasing, selling, or holding investments, and any other instrument commonly used by institutional investors to manage institutional investment portfolios. This bill provides that investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004 (b), Property Code. This bill provides that the TRS board of trustees may delegate investment authority and contract with private professional investment managers for investment and management of assets held in trust by TRS. This bill provides language that in a contract made, the board of trustees shall

specify any applicable policies, requirements, or restrictions, including criteria for determining the quality of investments or the use of standard rating services, that the board of trustees adopts for investments of the system. This bill provides that the board of trustees may delegate investment authority with respect to assets held by TRS to the TRS executive director or staff. This bill provides that, in addition to the board's authority, the board of trustees may contract with private professional investment managers, advisors, and consultants to assist and advise the TRS board and staff in investing TRS assets. This bill provides that by accepting a delegation of investment authority or an engagement to assist or advise the TRS board or the staff, a professional investment manager, advisor, or consultant submits to the jurisdiction of the courts of this state in all proceedings arising from or related to performance of the delegated authority or engagement. This bill provides that an action relating to services rendered shall be brought only in a state district court sitting in Travis County, Texas. This bill provides that Chapter 2260, Government Code, does not apply to a contract under Subsection (a-2) or (b). This bill provides language that does not waive any immunity of the retirement system.

The bill also provides "private investment fund," "reinvestment," and "restricted securities" have the meanings assigned by Section 552.143, Government Code. This bill provides that Chapter 551 Government Code does not require the TRS board of trustees to confer with one or more TRS employees, consultants, or legal counsel or with a third party, including representatives of an issuer of restricted securities or a private investment fund, in an open meeting if the only purpose of the conference is to receive information from or question the TRS employees, consultants, or legal counsel or the third party relating to an investment or a potential investment by the board of trustees in a private investment fund, or the purchase, holding, or disposal of restricted securities or a private investment fund's investment in restricted securities if the information discussed would be confidential and excepted from the requirements of Section 552.021, Government Code, if the information was included in the records of a governmental body. This bill provides that this section, Section 825.3011, Government Code, applies notwithstanding Section 825.115, Government Code.

#### **EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.