

By: Middleton

H.B. No. 4536

A BILL TO BE ENTITLED

AN ACT

relating to the consideration of pecuniary factors in certain state investments.

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

SECTION 1. Section 802.001, Government Code, is amended by adding Subdivisions (5), (6), and (7) as follows:

(5) "Pecuniary Factor" means a factor that a governing body or investment manager, operating as the fiduciary in accordance with Chapter 802, Government Code, has determined is expected to have a material effect on the risk or return of an investment based on appropriate investment horizons consistent with the investment objectives of a plan established in accordance to Chapter 802, Government Code, and the funding policy established by Sections 802.2011 and 802.208.

(6) "Funded ratio" means the ratio of a public retirement system's actuarial value of assets divided by the system's actuarial accrued liability.

(7) "Governmental entity" has the meaning assigned by Section 802.1012.

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

Sec. 802.002. EXEMPTIONS. (a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District

1 Retirement System, the Texas Municipal Retirement System, and the
2 Judicial Retirement System of Texas Plan Two are exempt from
3 Sections 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a),
4 802.103(b), 802.2015, 802.2016, 802.202, 802.203, 802.204,
5 802.205, 802.206, and 802.207. The Judicial Retirement System of
6 Texas Plan One is exempt from all of Subchapters B and C except
7 Sections 802.104, ~~and~~ 802.105, and 802.208. The optional
8 retirement program governed by Chapter 830 is exempt from all of
9 Subchapters B and C except Section 802.106 and 802.208.

10 (b) If a public retirement system or program that is exempt
11 under Subsection (a) is required by law to make an actuarial
12 valuation of the assets of the system or program and publish
13 actuarial information about the system or program, the actuary
14 making the valuation and the governing body publishing the
15 information must include the information required by Section
16 802.101(b).

17 (c) Notwithstanding any other law, a defined contribution
18 plan is exempt from Sections 802.101, 802.1012, 802.1014, 802.103,
19 802.104, and 802.202(d). This subsection may not be construed to
20 exempt any plan from Section 802.105, ~~or~~ 802.106(h), and 802.208.

21 (d) Notwithstanding any other law, a retirement system that
22 is organized under the Texas Local Fire Fighters Retirement Act
23 (Article 6243e, Vernon's Texas Civil Statutes) for a fire
24 department consisting exclusively of volunteers as defined by that
25 Act is exempt from Sections 802.101, 802.1012, 802.1014, 802.102,
26 802.103, 802.104, and 802.202(d). This subsection may not be
27 construed to exempt any plan from Section 802.105, ~~or~~ 802.106(h),

1 and 802.208.

2 (e) Notwithstanding any other law, a retirement system,
3 program, or plan that is exempt under Subsections (a), (c), and (d)
4 is not exempt from Sections 802.202(d)(1), 802.203(a)(4), and
5 802.205(d)(6), as applicable, for the purpose of compliance with
6 Section 802.208.

7 SECTION 3. Section 802.106, Government Code, is amended by
8 adding Subsection (i) to read as follows:

9 (i) A public retirement system shall distribute to each
10 active member and retiree a summary of any investment or investment
11 course of action in accordance to Section 802.208.

12 SECTION 4. Section 802.107, Government Code, is amended by
13 amending Subsection (c) to read as follows:

14 (c) A public retirement system shall post on a publicly
15 available Internet website:

16 (1) the name, business address, and business telephone
17 number of a system administrator of the public retirement system;
18 ~~[and]~~

19 (2) a copy of the most recent edition of each report
20 and other written information that is required by this chapter or
21 Chapter 801 to be submitted to the board; and

22 (3) a copy of a summary of any investment or investment
23 course of action in accordance to Section 802.208.

24 SECTION 5. Section 802.2011, Government Code, is amended to
25 read as follows:

26 Sec. 802.2011. FUNDING POLICY. ~~[(a) In this section:~~

27 ~~(1) "Funded ratio" means the ratio of a public~~

1 ~~retirement system's actuarial value of assets divided by the~~
2 ~~system's actuarial accrued liability.~~

3 ~~(2) "Governmental entity" has the meaning assigned by~~
4 ~~Section 802.1012.~~

5 ~~(b)]~~ The governing body of a public retirement system shall:

6 (1) adopt a written funding policy that details the
7 governing body's plan for achieving a funded ratio of the system
8 that is equal to or greater than 100 percent;

9 (2) maintain for public review at its main office a
10 copy of the policy;

11 (3) file a copy of the policy and each change to the
12 policy with the board not later than the 31st day after the date the
13 policy or change, as applicable, is adopted; and

14 (4) submit a copy of the policy and each change to the
15 policy to the system's associated governmental entity not later
16 than the 31st day after the date the policy or change is adopted.

17 SECTION 6. Section 802.202, Government Code, is amended by
18 amending Subsection (d) to read as follows:

19 (d) The governing body of a public retirement system shall:

20 (1) develop and adopt a written investment policy, in
21 accordance with Section 802.208;

22 (2) maintain for public review at its main office a
23 copy of the policy;

24 (3) file a copy of the policy with the State Pension
25 Review Board not later than the 90th day after the date the policy
26 is adopted; and

27 (4) file a copy of each change to the policy with the

1 State Pension Review Board not later than the 90th day after the
2 change is adopted.

3 SECTION 7. Section 802.203, Government Code, is amended by
4 amending Subsection (a) to read as follows:

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

9 (1) for the exclusive purposes of:

10 (A) providing benefits to participants and their
11 beneficiaries; and

12 (B) defraying reasonable expenses of
13 administering the system;

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

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

21 (4) by considering only pecuniary factors in the
22 evaluation of an investment or investment course of action; and

23 (5) in accordance with the documents and instruments
24 governing the system to the extent that the documents and
25 instruments are consistent with this subchapter.

26 SECTION 8. Section 802.204, Government Code, is amended by
27 amending Subsection (c) to read as follows:

1 (c) In a contract made under this section, the governing
2 body shall specify any policies, requirements, or restrictions,
3 including criteria for determining the quality of investments and
4 for the use of standard rating services in accordance with Section
5 802.208, that the governing body adopts for investments of the
6 system.

7 SECTION 9. Section 802.205, Government Code, is amended by
8 amending Subsection (d) to read as follows:

9 (d) If the governing body enters into a contract under
10 Subsection (a) with a brokerage firm, the firm must:

11 (1) be a broker-dealer registered with the Securities
12 and Exchange Commission;

13 (2) be a member of a national securities exchange;

14 (3) be a member of the Securities Investor Protection
15 Corporation;

16 (4) be registered with the State Securities Board;

17 [~~and~~]

18 (5) maintain net regulatory capital of at least \$200
19 million; and

20 (6) only consider pecuniary factors in the evaluation
21 of an investment or investment course of action.

22 SECTION 10. Subchapter B, Chapter 802, Government Code, is
23 amended by adding Section 802.208 to read as follows:

24 Sec. 802.208. INVESTMENT POLICY REQUIREMENTS AND
25 RESTRICTIONS. (a) The governing body of a public retirement system
26 shall create an investment policy or investment course of action
27 pursuant to this section.

1 (b) An investment policy or investment course of action
2 under Subsection (a) shall:

3 (1) instruct investment managers or persons with a
4 fiduciary responsibility, established under Section 802.203, to
5 consider only pecuniary factors in the evaluation of an investment
6 or investment course of action; and

7 (2) establish a plan for the divestment from any
8 indirect holdings in actively or passively managed investment funds
9 or private equity funds that have been evaluated using factors
10 other than pecuniary factors, not in accordance with this section.

11 (c) An investment or investment course of action made on
12 behalf of, for the benefit of, or in relation to a public retirement
13 system shall not be evaluated considering factors other than
14 pecuniary factors, except as provided by Subsection (d).

15 (d) If the evaluation of an investment or investment course
16 of action, in accordance with Subsections (b) and (c), determines
17 that investments or investment courses of action would have an
18 indistinguishable material effect on the risk or return of an
19 investment or investment course of action, the investment manager
20 or person with a fiduciary responsibility, established under
21 Section 802.203, may consider factors other than pecuniary factors
22 to evaluate an investment or investment course of action.

23 (e) If an investment manager or person with a fiduciary
24 responsibility established under Section 802.203 considers factors
25 other than pecuniary factors under Subsection (d), the investment
26 manager or person with a fiduciary duty shall document:

27 (1) the reason pecuniary factors were insufficient in

1 the evaluation;

2 (2) a comparison of the investment or investment
3 course of action with alternative investments or investment courses
4 of action; and

5 (3) the factors other than pecuniary factors
6 considered in the evaluation of an investment or investment course
7 of action.

8 (f) Any documented use of factors other than pecuniary
9 factors in the consideration of an investment or investment course
10 of action, in accordance to Subsection (d), shall:

11 (1) be published in a monthly report; and

12 (2) be prominently available on the Internet website
13 of the public retirement system.

14 (g) Not later than January 5 of each year, each state
15 governmental entity shall file a publicly available report with the
16 presiding officer of each house of the legislature and the attorney
17 general that:

18 (1) identifies all securities sold, redeemed,
19 divested, or withdrawn in compliance with this section; and

20 (2) identifies all prohibited investments under this
21 section.

22 (h) This section applies to all public retirement systems.

23 SECTION 11. This Act takes effect September 1, 2021.