

BILL ANALYSIS

S.B. 1246
By: Huffman
Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Teacher Retirement System (TRS) pension fund, valued at approximately \$182 billion, is the 17th largest pension fund in the world and the fifth largest defined benefit fund in the nation, serving nearly 2 million active members and retirees. The diversified portfolio of TRS provides long-term value to the pension fund on which retirees, now and in the future, rely. TRS needs the ability to diversify its investment portfolio. S.B. 1246 provides TRS with the ability to enhance investment returns through repurchase agreements with the comptroller of public accounts, among other investments.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

S.B. 1246 amends the Government Code to authorize the Teacher Retirement System of Texas (TRS) to form a title-holding entity for the purpose of investing TRS's assets in real property. The title-holding entity must be wholly owned, organized, and controlled by TRS and be a 501(c) tax-exempt organization. The bill authorizes a title-holding entity to hold title to real property jointly with another person and requires the board of trustees of TRS to adopt policies for the governance, management, and reporting for a title-holding entity. The bill prohibits the following persons from being employed by, receiving compensation from, being a party to a contract with or a direct or indirect financial beneficiary of a contract with, or holding a direct or indirect interest in a title-holding entity formed by TRS under the bill:

- a TRS trustee or employee; or
- a relative of a TRS trustee or employee within the second degree of consanguinity or affinity.

The bill establishes that an interest in a title-holding entity is considered a security for purposes of provisions relating to the investment and reinvestment of TRS assets.

S.B. 1246 establishes that information related to a title-holding entity formed by TRS is confidential and is excepted from disclosure under the public availability requirement of state public information law, including information relating to the formation of a title-holding entity; a pre-due diligence or post-due diligence review, audit, or investigation; or a potential purchase of real property by a title-holding entity, regardless of whether the purchase is completed. The bill establishes that the following information is public under state public information law as it relates to a title-holding entity:

- the entity's certificate of formation or comparable instrument;
- the date or dates on which the entity purchased or sold an ownership interest in real property;
- information relating to the entity's qualification for the required federal income tax exemption;
- the name and location, including the physical address, city, state, and country, of any real property in which the entity has an ownership interest;
- as shown in the meeting minutes of the TRS board of trustees, each recusal by a board member in connection with a deliberation or action relating to the entity, any real property in which the entity has an ownership interest, or a lease or contract with the entity;
- the name of each business entity or employer owned wholly or partly by the relative of a member of the board or a TRS employee within the second degree of consanguinity or affinity that is a prospective party to a transaction or contract with the entity;
- the name of the business entity or employer as stated in the business entity's or employer's certificate of formation or comparable instrument;
- copies of income tax returns filed by the title-holding entity, except information in the returns relating to indebtedness, tax basis, and gains or losses realized on the sale or other disposition of real property by the title-holding entity;
- if TRS or a state agency is a tenant of real property owned by the title-holding entity, the name of that tenant, the name and address of the property, and the financial returns to TRS from investing in the property; and
- if applicable, the name of any joint owner of real property a title-holding entity has an ownership interest in and the percentage of the property owned by a joint owner.

The bill's confidentiality provisions apply to information regardless of whether the title-holding entity disposes of the entity's interest in real property or an asset if the information is inextricably intertwined with another interest in real property or other assets owned by the title-holding entity. The bill expressly does not prohibit TRS or any person from asserting that any of the described information is confidential or exempt from disclosure under the public availability requirement of state public information law or other law. If TRS discloses confidential information to a person, the disclosure expressly does not waive or affect the confidentiality of information relating to any other title-holding entity or waive TRS's right to assert exceptions to disclosure of the information in the future.

S.B. 1246 makes state open meetings law and statutory provisions relating to state purchasing and general services and state and local contracts and fund management inapplicable to a title-holding company. The bill additionally makes statutory provisions relating to state and local contracts and fund management inapplicable to TRS with respect to money from trusts under the administration of TRS. The bill replaces a 10 percent cap on the value of TRS's total investment portfolio that may be invested in hedge funds with a requirement for the TRS board of trustees to determine that maximum percentage.

S.B. 1246 changes the provision of the Public Funds Investment Act that makes a fully collateralized repurchase agreement that meets certain criteria an authorized investment, as follows:

- with respect to the requirement in current law that such a repurchase agreement require that the securities being purchased by the entity or cash being held by the entity be pledged to the entity, held in the entity's name, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity, the bill specifies, as follows, that:
 - the securities being purchased or the cash held to be pledged to the entity is pledged either directly or through a joint account approved by the entity; and
 - the securities being purchased or cash held is held in the entity's name either directly or through a joint account approved by the entity;

- the bill provides that a repurchase agreement made by an investing entity may be submitted for clearing and settlement to a covered clearing agency, as defined by federal Securities and Exchange Commission rules;
- the bill provides that an investing entity that contracts with an investment management firm registered under the federal Investment Advisers Act of 1940 or with the State Securities Board may authorize the firm to invest the entity's public funds or other funds under the entity's control in repurchase agreements using a joint account;
- the bill requires a contracted investment management firm responsible for managing a repurchase agreement transaction using a joint account on behalf of an investing entity as authorized under the preceding bulleted item to ensure the following:
 - accounting and control procedures are implemented to document the investing entity's aggregate daily investment and pro rata share in the joint account;
 - each party participating in the joint account retains the sole rights of ownership to the party's pro rata share of assets invested in the joint account, including investment earnings on those assets; and
 - policies and procedures are implemented to prevent a party participating in the joint account from using any part of a balance of the joint account that is credited to another party; and
- the bill defines "joint account," for the purpose of the revised provision, as an account maintained by a custodian bank and established on behalf of two or more parties to engage in aggregate repurchase agreement transactions.

S.B. 1246 makes a number of changes with respect to the provisions in state law governing the state treasury operations of the comptroller of public accounts in regard to state depositories and the authorized investment of state funds, as follows:

- the bill changes the maximum maturity of commercial paper in which the comptroller must invest with state funds not deposited in state depositories from a maturity that does not exceed 270 days to a maturity that does not exceed 365 days;
- while current state law authorizes investments in direct security repurchase agreements and reverse security repurchase agreements to be made with state or national banks doing business in Texas or with primary dealers as approved by the Federal Reserve System, the bill revises that provision to specify that such investments may be placed through financial institutions doing business in Texas or may be made directly with a state agency with the authority to invest in repurchase agreements;
- the bill defines "agency of the state" or "state agency" for purposes of authorized investments by the comptroller as an office, department, commission, board, or agency that is part of any branch of state government, an institution of higher education, or a nonprofit corporation acting on behalf of any such entity;
- the bill revises the provision that limits the term of a reverse security repurchase agreement and authorizes the use of money received under the terms of such an agreement to acquire additional authorized investments to clarify that this limitation and authorization apply to an agreement made and money received by the comptroller; and
- the bill authorizes a direct security repurchase agreement or reverse security repurchase agreement made by the comptroller under these provisions, as revised by the bill, to be submitted for clearing and settlement to a covered clearing agency, as defined by federal Securities and Exchange Commission rule.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.