

BILL ANALYSIS

Senate Research Center
88R19837 JCG-D

C.S.S.B. 1246
By: Huffman
Finance
3/28/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Teacher Retirement System (TRS) pension fund, valued at approximately \$182 billion, is the 17th largest pension fund in the world and the 5th largest defined benefit fund in the nation, serving over nearly 2 million public education active members and retirees. The TRS' diversified portfolio provides long-term value to the pension fund that retirees, now and in the future, rely on.

S.B. 1246 provides TRS with an ability to enhance investment returns through repurchase agreements with the Comptroller of Public Accounts of the State of Texas (comptroller), hedge funds, real estate investments, and procurement and contracting flexibility. This bill establishes that the Trust Company, on behalf of the comptroller, may directly enter repurchase agreements with other state investing entities which also have authority to invest in repurchase agreements, such as TRS.

Additionally, the bill provides authority to the TRS Board of Trustees to set the limit on hedge fund investments like they do for other asset classes. It also clarifies TRS' investment authority by defining securities under the law to include interests in wholly owned real estate title-holding corporations controlled by TRS. Lastly, it removes inhibiting timelines associated with procurement and contracting that places TRS' investment-related procurements at a competitive disadvantage in the marketplace.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1246 amends current law relating to authorized investments of public money by certain governmental entities and the confidentiality of certain information related to those investments.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 404.024, Government Code, by amending Subsections (b) and (c) and adding Subsections (c-1), (c-2), and (c-3) as follows:

(b) Requires that state funds not deposited in state depositories, subject to Chapter 2270 (Prohibition on Investing Public Money in Certain Investments), be invested by the Comptroller of Public Accounts of the State of Texas (comptroller) in:

(1)-(5) makes no change to these subdivisions;

(6) commercial paper that:

(A) does not exceed 365 days, rather than 270 days, to maturity; and

(B) makes no change to this paragraph;

(7)-(14) makes no change to these subdivisions.

(c) Authorizes investments in direct security repurchase agreements and reverse security repurchase agreements to be:

(1) placed through financial institutions, rather than made with state or national banks, doing business in this state or through, rather than with, primary dealers as approved by the Federal Reserve System; or

(2) made directly with a state agency with the authority to invest in repurchase agreements.

(c-1) Defines "agency of the state" and "state agency."

(c-2) Creates this subsection from existing text. Prohibits the term of any reverse security repurchase agreement made by the comptroller, notwithstanding any other law, from exceeding 90 days after the date the reverse security repurchase agreement is delivered. Makes a conforming change.

(c-3) Authorizes a direct security repurchase agreement or reverse security repurchase agreement made by the comptroller under Section 404.024 (Authorized Investments) to be submitted for clearing and settlement to a covered clearing agency, as defined by the Securities and Exchange Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

SECTION 2. Amends Section 825.103(d), Government Code, as follows:

(d) Provides that notwithstanding any other law, the Teacher Retirement System of Texas (TRS) has exclusive authority over the purchase of goods and services using money other than money appropriated from the general revenue fund, including specifically money from trusts under the administration of TRS, and Subtitles D and F, rather than Subtitle D, Title 10, do not apply to TRS with respect to that money. Makes a nonsubstantive change.

SECTION 3. Amends Section 825.301(a), Government Code, to provide that an interest in a title-holding entity that is wholly owned, organized, and controlled by TRS, subject to Section 825.3013, is considered a security.

SECTION 4. Amends Section 825.3012(b), Government Code, as follows:

(b) Requires the board of trustees of TRS (board), notwithstanding any provision of Section 825.301 (Investment of Assets), to determine the maximum percentage, rather than not more than 10 percent, of the value of the total investment portfolio of the retirement system that is authorized to be invested in hedge funds.

SECTION 5. Amends Subchapter D, Chapter 825, Government Code, by adding Sections 825.3013 and 825.3014, as follows:

Sec. 825.3013. TITLE-HOLDING ENTITIES; INVESTMENTS IN REAL PROPERTY.

(a) Authorizes TRS to form a title-holding entity for the purpose of investing TRS' assets in real property. Requires the title-holding entity to be:

(1) wholly owned, organized, and controlled by TRS; and

(2) exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

(b) Authorizes a title-holding entity formed under this section, subject to Subsection (a)(2), to hold title to real property jointly with another person.

(c) Requires the board of trustees to adopt policies for the governance, management, and reporting for a title-holding entity formed under this section.

(d) 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 this section:

(1) a trustee or employee of TRS; or

(2) a relative of a trustee or employee of TRS within the second degree of consanguinity or affinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions).

(e) Provides that Chapter 551 (Open Meetings) and certain subtitles, do not apply to a title-holding entity formed under this section.

Sec. 825.3014. CONFIDENTIALITY OF RECORDS RELATED TO TITLE-HOLDING ENTITIES. (a) Provides that all information that relates to a title-holding entity formed under Section 825.3013, notwithstanding any other law other than this section, is confidential and excepted from disclosure under Section 552.021 (Availability of Public Information), including information relating to:

(1) a pre-due diligence or post-due diligence review, audit, or investigation;

(2) the formation of a title-holding entity under Section 825.3013; or

(3) a potential purchase of real property by a title-holding entity, regardless of whether the purchase is completed.

(b) Provides that the following information as it relates to a title-holding entity formed under Section 825.3013 is public information under Chapter 552 (Public Information):

(1) the title-holding entity's certificate of formation or comparable instrument issued by a foreign jurisdiction;

(2) the date or dates on which the title-holding entity purchased or sold an interest in real property;

(3) information relating to the title-holding entity's qualification for the federal income tax exemption required under Section 825.3013(a)(2);

(4) the name and location, including the physical address, city, state, and country, of any real property in which the title-holding entity has an interest;

(5) as shown in the meeting minutes of the board, each recusal by a member of the board in connection with a deliberation or action relating to the title-holding entity, any real property in which the entity has an ownership interest, or a lease or contract with the title-holding entity;

(6) the name of each employer or business entity 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 under Chapter 573, that is a prospective party to a transaction or contract with the title-holding entity, including a contract that is:

(A) a real property purchase and sale agreement;

(B) for goods or services; or

(C) a lease agreement, including a ground lease agreement;

(7) the name of the business entity or employer described by Subdivision (6) as stated in the business entity's or employer's certificate of formation or comparable instrument;

(8) 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 titleholding entity;

(9) if TRS or a state agency is a tenant of real property owned by the titleholding entity:

(A) the name of that tenant;

(B) the name and address of the property; and

(C) the financial returns to TRS from investing in the property; and

(10) if applicable, the name of any joint owner of real property a titleholding entity has an ownership interest in and the percentage of the property owned by a joint owner.

(c) Provides that this section applies 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.

(d) Provides that this section does not prohibit TRS or any person from asserting that any information described by this section is confidential or exempt from disclosure under Section 552.021 or other law. Provides that the disclosure, notwithstanding any other law, if TRS discloses information described by Subsection (a) to a person, does not:

(1) waive or affect the confidentiality of information relating to any other title-holding entity; or

(2) waive the retirement system's right to assert exceptions to disclosure of the information in the future.

SECTION 6. Amends Section 2256.011, Government Code, by amending Subsections (a) and (b) and adding Subsections (a-1), (f), and (g), as follows:

(a) Provides that a fully collateralized repurchase agreement is an authorized investment under Subchapter A (Authorized Investments for Governmental Entities) if the repurchase agreement:

(1)-(2) makes no change to these subdivisions;

(3) requires the securities being purchased by the entity or cash held by the entity to be pledged to the entity either directly or through a joint account approved by the entity, held in the entity's name either directly or through a joint account approved by the entity, and deposited at the time the investment is made with the entity or with a third party selected and approved by the entity; and

(4) makes no change to this subdivision.

(a-1) Authorizes a repurchase agreement made by an investing entity under Section 2256.011 (Authorized Investments: Repurchase Agreements) to be submitted for clearing and settlement to a covered clearing agency, as defined by the Securities and Exchange Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

(b) Defines "joint account" and makes a nonsubstantive change.

(f) Authorizes an investing entity that contracts with an investment management firm under Section 2256.003(b) (relating to authorizing a governing body of an investing entity to contract with an investment management firm) to authorize the firm to invest the entity's public funds or other funds under the entity's control in repurchase agreements as provided by this section using a joint account.

(g) Requires an investment management firm responsible for managing a repurchase agreement transaction using a joint account on behalf of an investing entity as authorized under Subsection (f) to ensure that:

(1) accounting and control procedures are implemented to document the investing entity's aggregate daily investment and pro rata share in the joint account;

(2) 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

(3) 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.

SECTION 7. Effective date: upon passage or September 1, 2023.