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By:  Paul H.B. No. 2068

A BILL TO BE ENTITLED

AN ACT

relating to the fiduciary responsibility of governmental entities and the investment agents, plan administrators, or qualified vendors acting on behalf of those entities.

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

SECTION 1.  Subchapter A, Chapter 609, Government Code, is amended by adding Section 609.0015 to read as follows:

Sec. 609.0015.  INVESTMENT AND VOTING STANDARDS FOR GOVERNMENTAL ENTITIES, PLAN ADMINISTRATORS, AND QUALIFIED VENDORS; DUTY TO REPORT VOTES; INVESTIGATION. (a) Sections 802.203(a) and 802.2031 through 802.2036 apply to any governmental entity, plan administrator, or qualified vendor who administers or offers a qualified investment product in a deferred compensation plan under this chapter in the same manner as those sections apply to an investment agent or the governing body of a public retirement system.

(b)  Notwithstanding any other provision of this chapter, a plan administrator may approve a vendor to be a qualified vendor only if the vendor has a practice of following, and agrees in writing to follow, guidelines that are consistent with the plan administrator's duty under Subsection (a) to act solely in the pecuniary interests of the plan's participants and beneficiaries.

SECTION 2.  Section 802.001, Government Code, is amended by adding Subdivisions (2-a), (2-b), and (2-c) to read as follows:

(2-a)  "Investment agent" means any person with respect to a public retirement system, other than the governing body, who:

(A)  exercises any discretionary authority over or control in or has any responsibility in the administration of the public retirement system, including:

(i)  controlling or disposing of the system's assets; or

(ii)  advising on or exercising the right to vote any shares of the system, including proxy votes; or

(B)  provides, for compensation, directly or indirectly, investment advice regarding the assets of the system.

(2-b)  "Material factor," with respect to a risk, return, or investment:

(A)  means a factor for which there is a substantial likelihood that a reasonable investor would find important when evaluating the potential financial returns and risks of an investment or whether to exercise any right in connection with a security; and

(B)  does not include any portion of the factor that:

(i)  primarily relates to events that involve a high degree of uncertainty regarding what may occur in the distant future; and

(ii)  is systemic, general, or not investment-specific in nature.

(2-c)  "Pecuniary factor" means a material factor that has an effect on the financial returns and risks of an investment based on appropriate investment horizons.

SECTION 3.  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,~~] 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 4.  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 agent [~~manager~~] or the governing body of a public retirement system shall discharge its duties solely in the pecuniary interest of the participants and beneficiaries:

(1)  for the exclusive purposes of:

(A)  providing pecuniary 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 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 5.  Subchapter C, Chapter 802, Government Code, is amended by adding Sections 802.2031 through 802.2036 to read as follows:

Sec. 802.2031.  INVESTMENT STANDARDS: OBLIGATION TO ACT BASED SOLELY ON PECUNIARY INTERESTS. (a) Except as provided by this section and for purposes of Section 802.203(a), the governing body of a public retirement system or an investment agent:

(1)  may not take any action or consider any factor, including when determining whether a factor is a material factor, with a purpose of furthering an environmental, social, or political goal or any other similar goal; and

(2)  shall take into account only pecuniary factors when evaluating the potential financial returns and risks of an investment or whether to exercise any right in connection with a security.

(b)  The governing body of a public retirement system or an investment agent may take into account under Subsection (a) an environmental, social, or political factor or any other similar factor only to the extent that:

(1)  the factor presents a financial risk or opportunity that an experienced investment professional would treat as a material financial factor under generally accepted investment theories; and

(2)  the weight given to the factor is limited to the impact of the factor on the financial risk or opportunity that a similarly situated prudent investor would give.

(c)  In taking into account a factor as provided by Subsection (b) regarding a potential investment, the governing body or investment agent must compare the investment with other available alternative investments that would serve a similar purpose as the original investment being evaluated, including:

(1)  how the original investment and the alternative investments each impact the level of diversification of the system's portfolio;

(2)  the degree of liquidity of each investment;

(3)  the potential financial returns and risks of each investment; and

(4)  whether greater returns can be achieved through the alternative investments that have little impact on environmental, social, political, or similar factors.

(d)  To the extent of a conflict between this section and any other law, this section prevails.

Sec. 802.2032.  DUTY TO VOTE SHARES BASED SOLELY ON PECUNIARY INTERESTS. (a) In accordance with Section 802.203(a), all shares held directly or indirectly by or on behalf of a public retirement system or the system's participants and beneficiaries, as applicable, shall be voted solely in the pecuniary interest of the system's participants and beneficiaries and may not be voted with a purpose of furthering an environmental, social, or political goal or any other similar goal.

(b)  The governing body of a public retirement system may delegate proxy voting authority to an investment agent only if the agent has a practice of following, and commits in writing to follow, guidelines that are consistent with the governing body's duty to act solely in the pecuniary interests of the system's participants and beneficiaries.

Sec. 802.2033.  EVIDENCE OF VIOLATION OF INVESTMENT STANDARDS. Evidence of a violation of Section 802.203(a) may include a statement of a governing body of a public retirement system or an investment agent indicating the governing body's or agent's purpose in selecting investments, engaging with portfolio companies, or voting shares or proxy votes, or a similar statement by any coalition, initiative, or organization that the governing body or agent is a member of or otherwise participates in, at the time the statement was made.

Sec. 802.2034.  COMMITMENT IN WRITING. Unless an economically practicable alternative is not available:

(1)  the assets of a public retirement system may not be entrusted to an investment agent unless that agent has a practice of following, and commits in writing to follow, guidelines when engaging with portfolio companies that are consistent with the governing body's duty to act solely in the pecuniary interest of the system's participants and beneficiaries; and

(2)  the governing body of a public retirement system or an investment agent that manages the assets of a public retirement system may not adopt a practice of following the recommendations of a proxy advisor or other similar service provider unless the advisor or provider has a practice of following, and commits in writing to follow, proxy voting guidelines that are consistent with the duty of the governing body or investment agent to act solely in the pecuniary interest of the system's participants and beneficiaries.

Sec. 802.2035.  REPORT ON PROXY VOTES. The governing body of a public retirement system shall tabulate all proxy votes made on behalf of the system and report the votes annually to the State Pension Review Board. For each vote, the report must contain a vote caption, the system's vote, and, as applicable, the recommendation of the investment agent or any proxy advisor. The State Pension Review Board shall post reports submitted under this section to the board's publicly accessible Internet website.

Sec. 802.2036.  INVESTIGATION BY ATTORNEY GENERAL. If the attorney general has reasonable cause to believe that a person engaged in, is engaging in, or is likely to engage in an act that violates Section 802.203(a), 802.2034, or 802.2035, the attorney general may:

(1)  require the person to file, in a form and manner prescribed by the attorney general, a statement or report in writing, under oath, as to:

(A)  all the facts and circumstances concerning the violation; or

(B)  any other relevant information the attorney general considers necessary;

(2)  examine any person under oath in connection with the violation;

(3)  examine any record, book, document, account, paper, sample, or other material in connection with the violation; or

(4)  apply to a district court to issue a subpoena for any record, book, document, account, paper, sample, or other material in connection with the violation and retain the material until the completion of all related proceedings taken under this section.

SECTION 6.  Section 815.307, Government Code, is amended to read as follows:

Sec. 815.307.  DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. [~~A determination of whether the board of trustees has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.~~]

SECTION 7.  Section 840.303, Government Code, is amended to read as follows:

Sec. 840.303.  DUTY OF CARE. The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. [~~A determination of whether the board of trustees has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.~~]

SECTION 8.  Section 855.303, Government Code, is amended to read as follows:

Sec. 855.303.  PRUDENCE REGARDING INVESTMENTS. [~~A determination of whether the board of trustees has exercised prudence in an investment decision must be made by considering the investment of all of the assets of the trust over which the board has management and control, rather than by considering the prudence of a single investment.~~] In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

SECTION 9.  Section 865.008(b), Government Code, is amended to read as follows:

(b)  The assets of the pension system shall be invested and reinvested in accordance with Section 67, Article XVI, Texas Constitution. [~~A determination of whether the state board has exercised prudence with respect to an investment decision must be made, taking into consideration the investment of all assets of the trust over which the state board has management and control rather than considering the prudence of a single investment.~~]

SECTION 10.  Section 7.04(b), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read as follows:

(b)  The board shall diversify the investment of the fund to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. [~~In determining whether the board has exercised prudence concerning an investment decision, the investment of all assets of the fund, rather than the prudence of a single investment of the fund, shall be considered.~~]

SECTION 11.  Section 6.04(b), Chapter 1332 (S.B. 1568), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243q, Vernon's Texas Civil Statutes), is amended to read as follows:

(b)  The board shall diversify the investment of the reserve funds to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. [~~In determining whether the board has exercised prudence concerning an investment decision, the investment of all assets of the funds, rather than the prudence of a single investment of the funds, shall be considered.~~]

SECTION 12.  Section 802.2032, Government Code, as added by this Act, applies to the authority to vote shares and proxy votes granted before, on, or after the effective date of this Act.

SECTION 13.  This Act takes effect September 1, 2023.