

By: Hughes

S.B. No. 1446

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the fiduciary responsibility of the governing body of
3 the public retirement systems in this state and the investment
4 agents acting on behalf of those systems.

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

6 SECTION 1. Section 802.001, Government Code, is amended by
7 adding Subdivisions (1-b), (2-b), (2-c), and (2-d) to read as
8 follows:

9 (1-b) "Financial factor" means a factor taken into
10 consideration when making investment decisions that a prudent
11 investor would expect to have a material effect on the financial
12 risk or return of an investment based on appropriate investment
13 horizons and consistent with the objectives of any controlling
14 investment plan.

15 (2-b) "Investment agent" means any person charged with
16 managing or supervising the investments of a public retirement
17 system as an investment manager or proxy advisor.

18 (2-c) "Investment manager" means a person who for
19 compensation provides professional investment management services
20 and may include a person eligible for appointment as an investment
21 manager under Section 802.204.

22 (2-d) "Proxy advisor" means a person who for
23 compensation provides corporate governance ratings, proxy research
24 and analyses, or other similar services to the shareholders of a

1 publicly traded entity, or other interested parties, for the
2 purpose of advising a shareholder on how to vote on measures under
3 consideration by shareholders.

4 SECTION 2. Section 802.002(a), Government Code, is amended
5 to read as follows:

6 (a) Except as provided by Subsection (b), the Employees
7 Retirement System of Texas, the Teacher Retirement System of Texas,
8 the Texas County and District Retirement System, the Texas
9 Municipal Retirement System, and the Judicial Retirement System of
10 Texas Plan Two are exempt from Sections 802.101(a), 802.101(b),
11 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016,
12 802.202, [~~802.203~~] 802.204, 802.205, 802.206, and 802.207. The
13 Judicial Retirement System of Texas Plan One is exempt from all of
14 Subchapters B and C except Sections 802.104 and 802.105. The
15 optional retirement program governed by Chapter 830 is exempt from
16 all of Subchapters B and C except Section 802.106.

17 SECTION 3. Section 802.203(a), Government Code, is amended
18 to read as follows:

19 (a) In making and supervising investments of the reserve
20 fund of a public retirement system, an investment agent [~~manager~~]
21 or the governing body of a public retirement system shall discharge
22 its duties solely in the financial interest of the participants and
23 beneficiaries:

24 (1) for the exclusive purposes of:

25 (A) providing financial benefits to participants
26 and their beneficiaries; and

27 (B) defraying reasonable expenses of

1 administering the system;

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

6 (3) by diversifying the investments of the system to
7 minimize the risk of large financial losses, unless under the
8 circumstances it is clearly prudent not to do so; and

9 (4) in accordance with the documents and instruments
10 governing the system to the extent that the documents and
11 instruments are consistent with this subchapter.

12 SECTION 4. Subchapter C, Chapter 802, Government Code, is
13 amended by adding Sections 802.2031 through 802.2037 to read as
14 follows:

15 Sec. 802.2031. INVESTMENT STANDARDS: OBLIGATION TO
16 DISCHARGE DUTY BASED SOLELY ON CERTAIN FINANCIAL INTERESTS. (a)
17 For purposes of discharging its duties solely in the financial
18 interest of participants and beneficiaries under Section
19 802.203(a) and except as provided by Chapters 808, 809, and 2270 and
20 Chapter 2274, as added by Chapters 529 (S.B. 13), 530 (S.B. 19), 833
21 (S.B. 4), and 975 (S.B. 2116), Acts of the 87th Legislature, Regular
22 Session, 2021, the governing body of the public retirement system
23 or an investment agent:

24 (1) shall take into account only financial factors
25 when discharging its duties with respect to a plan administered by
26 the system; and

27 (2) may not take any action, or consider any factor,

1 with a purpose of furthering social, political, or ideological
2 interests.

3 (b) In accordance with this section and Section 802.203(a),
4 all shares held directly or indirectly by or on behalf of a public
5 retirement system or the system's participants and beneficiaries,
6 as applicable, shall be voted solely based on financial factors.

7 (c) This section does not prohibit an investment agent from
8 furthering any social, political, or ideological interest when
9 managing the assets of a person who is not a public retirement
10 system of the state or a political subdivision, or of an agency or
11 instrumentality of the state or political subdivision.

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

14 Sec. 802.2032. CONDUCT CONSIDERED A VIOLATION OF FIDUCIARY
15 DUTY; EVIDENCE. (a) The governing body of a public retirement
16 system or an investment agent may reasonably be determined to have
17 violated Section 802.203(a) if the governing body or investment
18 agent takes an action or considers a factor in managing assets of a
19 public retirement system that furthers, through company
20 engagement, board or shareholder votes, or otherwise, any social,
21 political, or ideological interest beyond what federal or state law
22 requires.

23 (b) Evidence of a violation of Section 802.203(a) may
24 include any of the following actions taken or work product produced
25 by the governing body of a public retirement system or investment
26 agent in the scope of managing assets on behalf of a public
27 retirement system:

1 (1) branding, advertising, statements, explanations,
2 reports, letters to clients, communications with portfolio
3 companies, statements of principles, or commitments; or

4 (2) participation in, affiliation with, or status as a
5 signatory to any coalition, initiative, joint statement of
6 principles, or agreement.

7 Sec. 802.2033. QUALIFICATIONS OF INVESTMENT AGENT;
8 COMMITMENT IN WRITING REQUIRED. (a) The assets of a public
9 retirement system may not be entrusted to an investment agent
10 unless that agent has a demonstrated practice of following, and
11 commits in writing to follow, guidelines when engaging with
12 portfolio companies and voting shares or proxies that match its and
13 the governing body's fiduciary responsibility under Section
14 802.203, including the duty under Section 802.2031 to take into
15 account only financial factors when discharging its duties with
16 respect to the system's plan.

17 (b) The governing body of a public retirement system may not
18 grant proxy voting authority to an investment agent unless:

19 (1) the investment agent offers a benchmark policy for
20 proxy voting advice the sole goal of which is to maximize financial
21 return and the grant of proxy voting authority requires the
22 investment agent to follow that benchmark policy; or

23 (2) the governing body develops a publicly available
24 policy on granting proxy voting authority and the grant of
25 authority requires the investment agent to follow that policy.

26 Sec. 802.2034. PROXY VOTING: PUBLIC NOTICE AND ANNUAL
27 REPORT. (a) Subject to Subsection (b), the governing body of a

1 public retirement system shall post on the system's publicly
2 available Internet website how a proxy advisor or other investment
3 agent will cast a proxy vote made on behalf of the system or the
4 system's participants and beneficiaries, if possible, not later
5 than the earlier of:

6 (1) the seventh day before the date a proxy vote is to
7 be cast; or

8 (2) 48 hours after receiving a vote recommendation
9 from the proxy advisor or investment agent on the proxy vote.

10 (b) A public retirement system shall post on the system's
11 publicly available Internet website how a proxy advisor or other
12 investment agent will cast a proxy vote made on behalf of the system
13 or the system's participants and beneficiaries not later than 24
14 hours before the proxy vote is to be cast.

15 (c) Not later than November 1 of each year, the governing
16 body of a public retirement system shall tabulate all proxy votes
17 made on behalf of the system during the preceding state fiscal year
18 and report the votes to the State Pension Review Board. For each
19 vote, the report must contain a vote caption, the system's vote, the
20 recommendation, if any, of the company holding the election, and,
21 as applicable, the recommendation of the investment agent. The
22 State Pension Review Board shall post reports submitted under this
23 subsection to the board's publicly accessible Internet website.

24 Sec. 802.2035. ANNUAL REPORT TO STATE PENSION REVIEW BOARD
25 ON CERTAIN INVESTMENT RELATIONSHIPS. (a) Not later than November 1
26 of each year, the governing body of a public retirement system shall
27 submit a report to the State Pension Review Board that details

1 investment relationships maintained by the system. The report must
2 include information regarding each:

3 (1) subject to Subsection (b), limited partnership
4 with which the system is affiliated; and

5 (2) subject to Subsection (c), investment manager or
6 consulting firm with which the system contracts to provide
7 investment management services.

8 (b) For purposes of Subsection (a)(1), the report must
9 contain:

10 (1) the name of each limited partnership;

11 (2) the date on which the retirement system became
12 affiliated with the limited partnership;

13 (3) the amount of capital:

14 (A) committed and actually contributed to the
15 limited partnership; and

16 (B) distributed from the limited partnership;

17 (4) any costs or fees paid or owed to the limited
18 partnership during the period of affiliation, categorized by state
19 fiscal year; and

20 (5) the annualized rate of return on capital invested
21 in the limited partnership.

22 (c) For purposes of Subsection (a)(2), regarding each
23 contract with an investment manager or consulting firm providing
24 investment manager services, the report must contain:

25 (1) the net value of the assets being managed under the
26 contract;

27 (2) the nature of the services provided;

1 (3) the performance of the investment manager or
2 consulting firm, categorized by state fiscal year; and

3 (4) any costs or fees charged under the contract,
4 categorized by state fiscal year.

5 (d) The State Pension Review Board shall post the report
6 received under this section to the board's publicly accessible
7 Internet website.

8 Sec. 802.2036. INVESTIGATION AND INJUNCTION BY ATTORNEY
9 GENERAL. (a) If the attorney general has reason to believe that a
10 person engaged in or is engaging in an act that violates Section
11 802.203(a), including an act described by Section 802.2032, or
12 Section 802.2033, 802.2034, or 802.2035, the attorney general may:

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

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

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

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

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

25 (4) apply to a district court to issue a subpoena for
26 any record, book, document, account, paper, sample, or other
27 material in connection with the violation and retain the material

1 until the completion of all related proceedings taken under this
2 section.

3 (b) The attorney general may bring an action in the name of
4 the state in district court to restrain or enjoin a person from
5 violating Section 802.203(a), 802.2033, 802.2034, or 802.2035.

6 Sec. 802.2037. SUSPENSION OF TRUSTEE; INTERIM APPOINTMENT.

7 (a) Any trustee of a governing body of a public retirement system
8 against whom an action is pending under Section 802.003 or 802.2036
9 for a violation of Section 802.203(a), 802.2033, or 802.2035 is
10 suspended from the governing body until either the trustee's term
11 of office expires or the action is dismissed without a finding that
12 the trustee violated the relevant section. If the term of the
13 suspended trustee's office expires before the action is dismissed,
14 the office is considered vacant as of the day the trustee's term
15 expires.

16 (b) During the period a trustee is suspended from the
17 governing body of a public retirement system under Subsection (a),
18 the trustee's position on the body is considered vacated. Subject
19 to Subsection (c), an interim trustee may be appointed or otherwise
20 selected to serve in the vacated position.

21 (c) An interim trustee must comply with any qualifications
22 required by the governing law of the public retirement system
23 applicable to the trustee position suspended and must be selected
24 in the manner prescribed by that law for filling a vacancy. If the
25 governing law does not specify any qualifications, to be eligible
26 for appointment as an interim trustee a person:

27 (1) must demonstrate financial expertise and have

1 substantial employment experience in private business or industry
2 with broad investment management experience, preferably in the
3 investment of public funds; and

4 (2) may not be a member or annuitant of the system on
5 whose governing body the trustee will serve.

6 SECTION 5. Section 815.307, Government Code, is amended to
7 read as follows:

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

18 SECTION 6. Section 840.303, Government Code, is amended to
19 read as follows:

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

1 ~~than considering the prudence of a single investment of the trust or~~
2 ~~the collective investment vehicle, as applicable.]~~

3 SECTION 7. Section [855.303](#), Government Code, is amended to
4 read as follows:

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

16 SECTION 8. Section [865.008\(b\)](#), Government Code, is amended
17 to read as follows:

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

25 SECTION 9. Section 7.04(b), Chapter 824 (S.B. 817), Acts of
26 the 73rd Legislature, Regular Session, 1993 (Article [6243o](#),
27 Vernon's Texas Civil Statutes), is amended to read as follows:

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

7 SECTION 10. Section 6.04(b), Chapter 1332 (S.B. 1568), Acts
8 of the 75th Legislature, Regular Session, 1997 (Article 6243q,
9 Vernon's Texas Civil Statutes), is amended to read as follows:

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

16 SECTION 11. Section 802.203(d), Government Code, is
17 repealed.

18 SECTION 12. The changes in law made by this Act apply only
19 to a contract entered into on or after the effective date of this
20 Act. A contract entered into before the effective date of this Act
21 is governed by the law in effect on the date the contract was
22 entered into, and the former law is continued in effect for that
23 purpose.

24 SECTION 13. It is the intent of the 88th Legislature,
25 Regular Session, 2023, that the amendments made by this Act be
26 harmonized with another Act of the 88th Legislature, Regular
27 Session, 2023, relating to nonsubstantive additions to and

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1 corrections in enacted codes.

2 SECTION 14. This Act takes effect September 1, 2023.