

1-1 By: Huffman S.B. No. 1246
 1-2 (In the Senate - Filed February 27, 2023; March 9, 2023,
 1-3 read first time and referred to Committee on Finance;
 1-4 April 3, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 17, Nays 0; April 3, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			
1-24	X			
1-25	X			

1-26 COMMITTEE SUBSTITUTE FOR S.B. No. 1246 By: Huffman

1-27 A BILL TO BE ENTITLED
 1-28 AN ACT

1-29 relating to authorized investments of public money by certain
 1-30 governmental entities and the confidentiality of certain
 1-31 information related to those investments.

1-32 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-33 SECTION 1. Section 404.024, Government Code, is amended by
 1-34 amending Subsections (b) and (c) and adding Subsections (c-1),
 1-35 (c-2), and (c-3) to read as follows:

1-36 (b) Subject to Chapter 2270, state funds not deposited in
 1-37 state depositories shall be invested by the comptroller in:

- 1-38 (1) direct security repurchase agreements;
- 1-39 (2) reverse security repurchase agreements;
- 1-40 (3) direct obligations of or obligations the principal
 1-41 and interest of which are guaranteed by the United States;
- 1-42 (4) direct obligations of or obligations guaranteed by
 1-43 agencies or instrumentalities of the United States government;
- 1-44 (5) bankers' acceptances that:

1-45 (A) are eligible for purchase by the Federal
 1-46 Reserve System;

1-47 (B) do not exceed 270 days to maturity; and

1-48 (C) are issued by a bank whose other comparable
 1-49 short-term obligations are rated in the highest short-term rating
 1-50 category, within which there may be subcategories or gradations
 1-51 indicating relative standing, including such subcategories or
 1-52 gradations as "rating category" or "rated," by a nationally
 1-53 recognized statistical rating organization, as defined by 15 U.S.C.
 1-54 Section 78c;

1-55 (6) commercial paper that:

1-56 (A) does not exceed 365 [~~270~~] days to maturity;

1-57 and

1-58 (B) except as provided by Subsection (i), is
 1-59 issued by an entity whose other comparable short-term obligations
 1-60 are rated in the highest short-term rating category by a nationally
 1-61 recognized statistical rating organization;

1-62 (7) contracts written by the treasury in which the

2-1 treasury grants the purchaser the right to purchase securities in
2-2 the treasury's marketable securities portfolio at a specified price
2-3 over a specified period and for which the treasury is paid a fee and
2-4 specifically prohibits naked-option or uncovered option trading;

2-5 (8) direct obligations of or obligations guaranteed by
2-6 the Inter-American Development Bank, the International Bank for
2-7 Reconstruction and Development (the World Bank), the African
2-8 Development Bank, the Asian Development Bank, and the International
2-9 Finance Corporation that have received the highest long-term rating
2-10 categories for debt obligations by a nationally recognized
2-11 statistical rating organization;

2-12 (9) bonds issued, assumed, or guaranteed by the State
2-13 of Israel;

2-14 (10) obligations of a state or an agency, county,
2-15 city, or other political subdivision of a state;

2-16 (11) mutual funds secured by obligations that are
2-17 described by Subdivisions (1) through (6) or by obligations
2-18 consistent with Rule 2a-7 (17 C.F.R. Section 270.2a-7), promulgated
2-19 by the Securities and Exchange Commission, including pooled funds:

2-20 (A) established by the Texas Treasury
2-21 Safekeeping Trust Company;

2-22 (B) operated like a mutual fund; and

2-23 (C) with portfolios consisting only of
2-24 dollar-denominated securities;

2-25 (12) foreign currency for the sole purpose of
2-26 facilitating investment by state agencies that have the authority
2-27 to invest in foreign securities;

2-28 (13) asset-backed securities, as defined by the
2-29 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
2-30 270.2a-7), that are rated at least A or its equivalent by a
2-31 nationally recognized statistical rating organization and that
2-32 have a weighted-average maturity of five years or less; and

2-33 (14) corporate debt obligations that are rated at
2-34 least A or its equivalent by a nationally recognized statistical
2-35 rating organization and mature in five years or less from the date
2-36 on which the obligations were "acquired," as defined by the
2-37 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
2-38 270.2a-7).

2-39 (c) Investments in direct security repurchase agreements
2-40 and reverse security repurchase agreements may be:

2-41 (1) placed through financial institutions [made with
2-42 state or national banks] doing business in this state or through
2-43 [with] primary dealers as approved by the Federal Reserve System;
2-44 or

2-45 (2) made directly with a state agency with the
2-46 authority to invest in repurchase agreements.

2-47 (c-1) For purposes of this section, "agency of the state" or
2-48 "state agency" means:

2-49 (1) an office, department, commission, board, or
2-50 agency that is part of any branch of state government;

2-51 (2) an institution of higher education as defined by
2-52 Section 61.003, Education Code; or

2-53 (3) a nonprofit corporation acting on behalf of an
2-54 entity described by Subdivision (1) or (2).

2-55 (c-2) Notwithstanding any other law, the term of any reverse
2-56 security repurchase agreement made by the comptroller may not
2-57 exceed 90 days after the date the reverse security repurchase
2-58 agreement is delivered. Money received by the comptroller under
2-59 the terms of a reverse security repurchase agreement may be used to
2-60 acquire additional authorized investments, but the term of the
2-61 authorized investments acquired must mature not later than the
2-62 expiration date stated in the reverse security repurchase
2-63 agreement.

2-64 (c-3) A direct security repurchase agreement or reverse
2-65 security repurchase agreement made by the comptroller under this
2-66 section may be submitted for clearing and settlement to a covered
2-67 clearing agency, as defined by the Securities and Exchange
2-68 Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

2-69 SECTION 2. Section 825.103(d), Government Code, is amended
2-70 to read as follows:

2-71 (d) Notwithstanding any other law, the retirement system

3-1 has exclusive authority over the purchase of goods and services
 3-2 using money other than money appropriated from the general revenue
 3-3 fund, including specifically money from trusts under the
 3-4 administration of the retirement system, and Subtitles [Subtitle] D
 3-5 and F, Title 10, do [does] not apply to the retirement system with
 3-6 respect to that money. The retirement system shall acquire goods or
 3-7 services by procurement methods approved by the board of trustees
 3-8 or the board's designee. For purposes of this subsection, goods and
 3-9 services include all professional and consulting services and
 3-10 utilities as well as supplies, materials, equipment, skilled or
 3-11 unskilled labor, and insurance. The comptroller shall procure
 3-12 goods or services for the retirement system at the request of the
 3-13 retirement system, and the retirement system may use the services
 3-14 of the comptroller in procuring goods or services.

3-15 SECTION 3. Section 825.301(a), Government Code, is amended
 3-16 to read as follows:

3-17 (a) The board of trustees shall invest and reinvest assets
 3-18 of the retirement system without distinction as to their source in
 3-19 accordance with Section 67, Article XVI, Texas Constitution. For
 3-20 purposes of the investment authority of the board of trustees under
 3-21 Section 67, Article XVI, Texas Constitution, "securities" includes
 3-22 any investment instrument within the meaning of the term as defined
 3-23 by Section 4001.068, 15 U.S.C. Section 77b(a)(1), or 15 U.S.C.
 3-24 Section 78c(a)(10), any derivative instrument, and any other
 3-25 instrument commonly used by institutional investors to manage
 3-26 institutional investment portfolios. An interest in a limited
 3-27 partnership or investment contract is considered a security without
 3-28 regard to the number of investors or the control, access to
 3-29 information, or rights granted to or retained by the retirement
 3-30 system. Any instrument or contract intended to manage transaction
 3-31 or currency exchange risk in purchasing, selling, or holding
 3-32 securities is considered to be a security. Subject to Section
 3-33 825.3013, an interest in a title-holding entity that is wholly
 3-34 owned, organized, and controlled by the retirement system is
 3-35 considered a security. Investment decisions are subject to the
 3-36 standard provided in the Texas Trust Code by Section 117.004(b),
 3-37 Property Code.

3-38 SECTION 4. Section 825.3012(b), Government Code, is amended
 3-39 to read as follows:

3-40 (b) Notwithstanding any provision of Section 825.301, the
 3-41 board of trustees shall determine the maximum percentage [~~not more~~
 3-42 ~~than 10 percent~~] of the value of the total investment portfolio of
 3-43 the retirement system that may be invested in hedge funds.

3-44 SECTION 5. Subchapter D, Chapter 825, Government Code, is
 3-45 amended by adding Sections 825.3013 and 825.3014 to read as
 3-46 follows:

3-47 Sec. 825.3013. TITLE-HOLDING ENTITIES; INVESTMENTS IN REAL
 3-48 PROPERTY. (a) The retirement system may form a title-holding
 3-49 entity for the purpose of investing the retirement system's assets
 3-50 in real property. The title-holding entity must be:

3-51 (1) wholly owned, organized, and controlled by the
 3-52 system; and

3-53 (2) exempt from taxation under Section 501(a),
 3-54 Internal Revenue Code of 1986, as an organization described by
 3-55 Section 501(c) of that code.

3-56 (b) Subject to Subsection (a)(2), a title-holding entity
 3-57 formed under this section may hold title to real property jointly
 3-58 with another person.

3-59 (c) The board of trustees shall adopt policies for the
 3-60 governance, management, and reporting for a title-holding entity
 3-61 formed under this section.

3-62 (d) The following persons may not be employed by, receive
 3-63 compensation from, be a party to a contract with or a direct or
 3-64 indirect financial beneficiary of a contract with, or hold a direct
 3-65 or indirect interest in a title-holding entity formed by the
 3-66 retirement system under this section:

3-67 (1) a trustee or employee of the system; or

3-68 (2) a relative of a trustee or employee of the system
 3-69 within the second degree of consanguinity or affinity, as
 3-70 determined under Chapter 573.

3-71 (e) Chapter 551 and Subtitles D and F, Title 10, do not apply

4-1 to a title-holding entity formed under this section.
4-2 Sec. 825.3014. CONFIDENTIALITY OF RECORDS RELATED TO
4-3 TITLE-HOLDING ENTITIES. (a) Notwithstanding any other law other
4-4 than this section, information that relates to a title-holding
4-5 entity formed under Section 825.3013 is confidential and excepted
4-6 from disclosure under Section 552.021, including information
4-7 relating to:
4-8 (1) a pre-due diligence or post-due diligence review,
4-9 audit, or investigation;
4-10 (2) the formation of a title-holding entity under
4-11 Section 825.3013; or
4-12 (3) a potential purchase of real property by a
4-13 title-holding entity, regardless of whether the purchase is
4-14 completed.
4-15 (b) The following information as it relates to a
4-16 title-holding entity formed under Section 825.3013 is public
4-17 information under Chapter 552:
4-18 (1) the title-holding entity's certificate of
4-19 formation or comparable instrument;
4-20 (2) the date or dates on which the title-holding
4-21 entity purchased or sold an ownership interest in real property;
4-22 (3) information relating to the title-holding entity's
4-23 qualification for the federal income tax exemption required under
4-24 Section 825.3013(a)(2);
4-25 (4) the name and location, including the physical
4-26 address, city, state, and country, of any real property in which the
4-27 title-holding entity has an ownership interest;
4-28 (5) as shown in the meeting minutes of the board of
4-29 trustees, each recusal by a member of the board in connection with a
4-30 deliberation or action relating to the title-holding entity, any
4-31 real property in which the entity has an ownership interest, or a
4-32 lease or contract with the title-holding entity;
4-33 (6) the name of each business entity or employer owned
4-34 wholly or partly by the relative of a member of the board of
4-35 trustees or a retirement system employee, within the second degree
4-36 of consanguinity or affinity under Chapter 573, that is a
4-37 prospective party to a transaction or contract with the
4-38 title-holding entity, including a contract that is:
4-39 (A) a real property purchase and sale agreement;
4-40 (B) for goods or services; or
4-41 (C) a lease agreement, including a ground lease
4-42 agreement;
4-43 (7) the name of the business entity or employer
4-44 described by Subdivision (6) as stated in the business entity's or
4-45 employer's certificate of formation or comparable instrument;
4-46 (8) copies of income tax returns filed by the
4-47 title-holding entity, except information in the returns relating to
4-48 indebtedness, tax basis, and gains or losses realized on the sale or
4-49 other disposition of real property by the title-holding entity;
4-50 (9) if the system or a state agency is a tenant of real
4-51 property owned by the title-holding entity:
4-52 (A) the name of that tenant;
4-53 (B) the name and address of the property; and
4-54 (C) the financial returns to the system from
4-55 investing in the property; and
4-56 (10) if applicable, the name of any joint owner of real
4-57 property a title-holding entity has an ownership interest in and
4-58 the percentage of the property owned by a joint owner.
4-59 (c) This section applies to information regardless of
4-60 whether the title-holding entity disposes of the entity's interest
4-61 in real property or an asset if the information is inextricably
4-62 intertwined with another interest in real property or other assets
4-63 owned by the title-holding entity.
4-64 (d) This section does not prohibit the retirement system or
4-65 any person from asserting that any information described by this
4-66 section is confidential or exempt from disclosure under Section
4-67 552.021 or other law. Notwithstanding any other law, if the
4-68 retirement system discloses information described by Subsection
4-69 (a) to a person, the disclosure does not:
4-70 (1) waive or affect the confidentiality of information
4-71 relating to any other title-holding entity; or

5-1 (2) waive the retirement system's right to assert
5-2 exceptions to disclosure of the information in the future.

5-3 SECTION 6. Section 2256.011, Government Code, is amended by
5-4 amending Subsections (a) and (b) and adding Subsections (a-1), (f),
5-5 and (g) to read as follows:

5-6 (a) A fully collateralized repurchase agreement is an
5-7 authorized investment under this subchapter if the repurchase
5-8 agreement:

5-9 (1) has a defined termination date;

5-10 (2) is secured by a combination of cash and
5-11 obligations described by Section 2256.009(a)(1) or 2256.013 or, if
5-12 applicable, Section 2256.0204;

5-13 (3) requires the securities being purchased by the
5-14 entity or cash held by the entity to be pledged to the entity either
5-15 directly or through a joint account approved by the entity, held in
5-16 the entity's name either directly or through a joint account
5-17 approved by the entity, and deposited at the time the investment is
5-18 made with the entity or with a third party selected and approved by
5-19 the entity; and

5-20 (4) is placed through a primary government securities
5-21 dealer, as defined by the Federal Reserve, or a financial
5-22 institution doing business in this state.

5-23 (a-1) A repurchase agreement made by an investing entity
5-24 under this section may be submitted for clearing and settlement to a
5-25 covered clearing agency, as defined by the Securities and Exchange
5-26 Commission in Rule 17Ad-22 (17 C.F.R. Section 240.17Ad-22).

5-27 (b) In this section:

5-28 (1) "Joint account" means an account maintained by a
5-29 custodian bank and established on behalf of two or more parties to
5-30 engage in aggregate repurchase agreement transactions.

5-31 (2) "Repurchase [~~,"~~ "repurchase] agreement" means a
5-32 simultaneous agreement to buy, hold for a specified time, and sell
5-33 back at a future date obligations described by Section
5-34 2256.009(a)(1) or 2256.013 or, if applicable, Section 2256.0204, at
5-35 a market value at the time the funds are disbursed of not less than
5-36 the principal amount of the funds disbursed. The term includes a
5-37 direct security repurchase agreement and a reverse security
5-38 repurchase agreement.

5-39 (f) An investing entity that contracts with an investment
5-40 management firm under Section 2256.003(b) may authorize the firm to
5-41 invest the entity's public funds or other funds under the entity's
5-42 control in repurchase agreements as provided by this section using
5-43 a joint account.

5-44 (g) An investment management firm responsible for managing
5-45 a repurchase agreement transaction using a joint account on behalf
5-46 of an investing entity as authorized under Subsection (f) must
5-47 ensure that:

5-48 (1) accounting and control procedures are implemented
5-49 to document the investing entity's aggregate daily investment and
5-50 pro rata share in the joint account;

5-51 (2) each party participating in the joint account
5-52 retains the sole rights of ownership to the party's pro rata share
5-53 of assets invested in the joint account, including investment
5-54 earnings on those assets; and

5-55 (3) policies and procedures are implemented to prevent
5-56 a party participating in the joint account from using any part of a
5-57 balance of the joint account that is credited to another party.

5-58 SECTION 7. This Act takes effect immediately if it receives
5-59 a vote of two-thirds of all the members elected to each house, as
5-60 provided by Section 39, Article III, Texas Constitution. If this
5-61 Act does not receive the vote necessary for immediate effect, this
5-62 Act takes effect September 1, 2023.

5-63 * * * * *