

1-1 By: Hughes S.B. No. 1446
 1-2 (In the Senate - Filed March 2, 2023; March 16, 2023, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 17, 2023, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 10, Nays 0; April 17, 2023,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
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 COMMITTEE SUBSTITUTE FOR S.B. No. 1446 By: Hughes

1-21 A BILL TO BE ENTITLED
 1-22 AN ACT

1-23 relating to the fiduciary responsibility of the governing body of
 1-24 the public retirement systems in this state and the investment
 1-25 managers and proxy advisors acting on behalf of those systems.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Section 802.001, Government Code, is amended by
 1-28 adding Subdivisions (1-b), (2-a), and (2-b) to read as follows:

1-29 (1-b) "Financial factor" means a factor taken into
 1-30 consideration when making investment decisions that a prudent
 1-31 investor would expect to have a material effect on controlling risk
 1-32 and achieving a rate of return for an investment based on
 1-33 appropriate investment horizons and consistent with the objectives
 1-34 of any controlling investment plan.

1-35 (2-a) "Investment manager" means a person who for
 1-36 compensation provides professional investment management services
 1-37 and may include a person eligible for appointment as an investment
 1-38 manager under Section 802.204. The term does not include:

1-39 (A) an employee or member of an advisory
 1-40 committee of a public retirement system; or

1-41 (B) a seller of security interests.

1-42 (2-b) "Proxy advisor" means a person who for
 1-43 compensation provides corporate governance ratings, proxy research
 1-44 and analyses, proxy voting, or other similar services to the
 1-45 shareholders of a publicly traded entity, or other interested
 1-46 parties, for the purpose of advising a shareholder on how to vote on
 1-47 measures under consideration by shareholders or proxy voting on
 1-48 behalf of a shareholder.

1-49 SECTION 2. Section 802.002(a), Government Code, is amended
 1-50 to read as follows:

1-51 (a) Except as provided by Subsection (b), the Employees
 1-52 Retirement System of Texas, the Teacher Retirement System of Texas,
 1-53 the Texas County and District Retirement System, the Texas
 1-54 Municipal Retirement System, and the Judicial Retirement System of
 1-55 Texas Plan Two are exempt from Sections 802.101(a), 802.101(b),
 1-56 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016,
 1-57 802.202, 802.203(c), (d), and (e) [802.203], 802.204, 802.205,
 1-58 802.206, and 802.207. The Judicial Retirement System of Texas Plan
 1-59 One is exempt from all of Subchapters B and C except Sections
 1-60 802.104 and 802.105. The optional retirement program governed by

2-1 Chapter 830 is exempt from all of Subchapters B and C except Section
 2-2 802.106.

2-3 SECTION 3. Section 802.203(a), Government Code, is amended
 2-4 to read as follows:

2-5 (a) In making and supervising investments of the reserve
 2-6 fund of a public retirement system, an investment manager or the
 2-7 governing body of a public retirement system shall discharge its
 2-8 duties solely in the financial interest of the participants and
 2-9 beneficiaries:

2-10 (1) for the exclusive purposes of:

2-11 (A) managing risk and providing financial
 2-12 benefits to participants and their beneficiaries; and

2-13 (B) defraying reasonable expenses of
 2-14 administering the system;

2-15 (2) with the care, skill, prudence, and diligence
 2-16 under the prevailing circumstances that a prudent person acting in
 2-17 a like capacity and familiar with matters of the type would use in
 2-18 the conduct of an enterprise with a like character and like aims;

2-19 (3) by diversifying the investments of the system to
 2-20 minimize the risk of large financial losses, unless under the
 2-21 circumstances it is clearly prudent not to do so; and

2-22 (4) in accordance with the documents and instruments
 2-23 governing the system to the extent that the documents and
 2-24 instruments are consistent with this subchapter.

2-25 SECTION 4. Subchapter C, Chapter 802, Government Code, is
 2-26 amended by adding Sections 802.2031 through 802.2038 to read as
 2-27 follows:

2-28 Sec. 802.2031. INVESTMENT STANDARDS: OBLIGATION TO
 2-29 DISCHARGE DUTY BASED SOLELY ON CERTAIN FINANCIAL INTERESTS. (a)
 2-30 For purposes of discharging its duties solely in the financial
 2-31 interest of participants and beneficiaries under Section
 2-32 802.203(a) and except as provided by Chapters 808, 809, and 2270 and
 2-33 Chapter 2274, as added by Chapters 529 (S.B. 13), 530 (S.B. 19), 833
 2-34 (S.B. 4), and 975 (S.B. 2116), Acts of the 87th Legislature, Regular
 2-35 Session, 2021, the governing body of the public retirement system
 2-36 or an investment manager:

2-37 (1) shall:

2-38 (A) make all investments prudently and in
 2-39 accordance with applicable fiduciary and ethical standards; and

2-40 (B) take into account only financial factors when
 2-41 discharging its duties with respect to a plan administered by the
 2-42 system; and

2-43 (2) may not use the system's assets to take any action
 2-44 with a purpose of furthering social, political, or ideological
 2-45 interests.

2-46 (b) In accordance with this section and Section 802.203(a),
 2-47 all shares held by or on behalf of a public retirement system or the
 2-48 system's participants and beneficiaries, as applicable, if voted,
 2-49 shall be voted solely based on financial factors.

2-50 Sec. 802.2032. REQUIRED INVESTMENT CONTRACT PROVISIONS.
 2-51 The governing body of a public retirement system may not enter into
 2-52 a contract with an investment manager or a proxy advisor relating to
 2-53 investing the system's assets or voting, or advising on voting,
 2-54 shares held by the system unless the contract contains a
 2-55 requirement that the manager or advisor, as applicable:

2-56 (1) take into account only financial factors when
 2-57 discharging the manager's or advisor's duties under the contract,
 2-58 with respect to investing the system's assets and voting, or
 2-59 advising on voting, shares held by the system; and

2-60 (2) not take any action under the contract with a
 2-61 purpose of furthering social, political, or ideological interests,
 2-62 including an action with respect to investing the system's assets
 2-63 or voting, or advising on voting, shares held by the system.

2-64 Sec. 802.2033. PROXY VOTING AUTHORITY. (a) The governing
 2-65 body of a public retirement system may not grant proxy voting
 2-66 authority to a proxy advisor unless:

2-67 (1) the proxy advisor offers a policy for proxy voting
 2-68 advice:

2-69 (A) that is consistent with the requirements for

3-1 voting shares imposed on the system under Section 802.2031(b); and
3-2 (B) the sole goal of which is to maximize
3-3 financial return and control associated levels of risk; and
3-4 (2) the grant of proxy voting authority requires the
3-5 proxy advisor to follow that policy.
3-6 (b) The policy may include additions or customizations only
3-7 if those additions or customizations are consistent with the sole
3-8 goal of the policy as described by Subsection (a).
3-9 Sec. 802.2034. PROXY VOTING: PUBLIC NOTICE AND ANNUAL
3-10 REPORT. (a) This section applies only to a public retirement
3-11 system that holds shares that the system is entitled to vote by
3-12 proxy.
3-13 (b) Subject to Subsection (c), the governing body of a
3-14 public retirement system shall post on the system's publicly
3-15 accessible Internet website how a proxy advisor will cast a proxy
3-16 vote made on behalf of the system or the system's participants and
3-17 beneficiaries, if possible, not later than the earlier of:
3-18 (1) the seventh day before the date a proxy vote is to
3-19 be cast; or
3-20 (2) 48 hours after receiving a vote recommendation
3-21 from the proxy advisor on the proxy vote.
3-22 (c) A public retirement system shall post on the system's
3-23 publicly accessible Internet website how a proxy advisor will cast
3-24 a proxy vote made on behalf of the system or the system's
3-25 participants and beneficiaries not later than 24 hours before the
3-26 proxy vote is to be cast.
3-27 (d) Except as provided by Subsection (e), not later than
3-28 November 1 of each year, the governing body of a public retirement
3-29 system shall tabulate all proxy votes made on behalf of the system
3-30 by proxy advisors during the preceding state fiscal year and report
3-31 the votes to the State Pension Review Board. For each vote, the
3-32 report must contain a vote caption, the system's vote, the
3-33 recommendation, if any, of the company holding the election, and,
3-34 as applicable, the recommendation of the proxy advisor. The State
3-35 Pension Review Board shall post reports submitted under this
3-36 subsection to the board's publicly accessible Internet website.
3-37 (e) In lieu of submitting a report under Subsection (d), the
3-38 governing body of a public retirement system may provide to the
3-39 State Pension Review Board the location of a report posted to the
3-40 system's publicly accessible Internet website that contains the
3-41 information required by that subsection.
3-42 (f) Except as provided by Subsection (g), if the governing
3-43 body of a public retirement system grants proxy voting authority to
3-44 an investment manager, the investment manager shall submit a report
3-45 to the retirement system, and the retirement system shall submit a
3-46 report to the State Pension Review Board, that tabulates all proxy
3-47 votes cast by the investment manager on behalf of the system for
3-48 each 12-month period the investment manager is managing any assets
3-49 of the system. The State Pension Review Board shall post the reports
3-50 submitted under this subsection to the board's publicly accessible
3-51 Internet website.
3-52 (g) Subsection (f) does not apply to an investment manager
3-53 that manages less than \$50 million of a public retirement system's
3-54 assets.
3-55 Sec. 802.2035. ANNUAL REPORT TO STATE PENSION REVIEW BOARD
3-56 ON CERTAIN INVESTMENT RELATIONSHIPS. (a) This section applies
3-57 only to a public retirement system with more than \$100 million in
3-58 assets.
3-59 (b) Annually, the governing body of a public retirement
3-60 system shall submit a report to the State Pension Review Board that
3-61 details investment relationships maintained by the system and, if
3-62 applicable, shall consolidate the report with any annual
3-63 comprehensive financial report required of the system under other
3-64 law. The report required by this section must include information
3-65 regarding each:
3-66 (1) subject to Subsection (c), fund or investment
3-67 entity the system is invested in or has invested in during the
3-68 preceding 12-month period; and
3-69 (2) subject to Subsection (d), investment manager with

4-1 which the system contracts to provide investment management
 4-2 services.

4-3 (c) For purposes of Subsection (b)(1), regarding each fund
 4-4 or investment entity described by that subdivision, the report
 4-5 required by this section must contain:

4-6 (1) the name of the fund or investment entity;

4-7 (2) the date on which the fund or investment entity
 4-8 described by Subdivision (1) was established and each date during
 4-9 the applicable 12-month period the system invested in the fund or
 4-10 entity;

4-11 (3) with respect to a fund or investment entity, the
 4-12 amount of money, expressed in dollars, the system:

4-13 (A) committed to the fund or entity described by
 4-14 Subdivision (1);

4-15 (B) is invested in or has invested in the fund or
 4-16 entity during the applicable 12-month period under Subsection
 4-17 (b)(1); and

4-18 (C) received from any fund or investment entity
 4-19 during the applicable 12-month period;

4-20 (4) the total amount of fees, including expenses,
 4-21 charges, and other compensation, assessed against the system by, or
 4-22 paid by the system to, any fund or investment entity in which the
 4-23 system is invested in or has invested in during the applicable
 4-24 12-month period; and

4-25 (5) the internal rate of return, or other standard of
 4-26 investment return, on money invested in each fund or investment
 4-27 entity, and the date on which the return was calculated.

4-28 (d) For purposes of Subsection (b)(2), regarding each
 4-29 contract with an investment manager providing investment manager
 4-30 services, the report required by this section must contain:

4-31 (1) the net value of the assets being managed under the
 4-32 contract; and

4-33 (2) the total amount of fees, including expenses,
 4-34 charges, and other compensation, assessed against the system by, or
 4-35 paid by the system to, any fund or investment entity in which the
 4-36 system is invested in or has invested in during the preceding
 4-37 12-month period.

4-38 (e) The State Pension Review Board shall post the report
 4-39 received under this section to the board's publicly accessible
 4-40 Internet website.

4-41 Sec. 802.2036. INJUNCTION BY RETIREMENT SYSTEMS. (a) A
 4-42 public retirement system may bring an action in district court to
 4-43 restrain or enjoin an investment manager or proxy advisor from
 4-44 breaching a contract provision required under Section 802.2032 or
 4-45 violating Section 802.203(a).

4-46 (b) The court may award court costs and reasonable
 4-47 attorney's fees to a party who prevails in an action brought under
 4-48 this section.

4-49 (c) The court in which the action is brought shall give
 4-50 precedence to proceedings in the same manner as provided for an
 4-51 election contest under Section 23.101.

4-52 Sec. 802.2037. INAPPLICABILITY OF REQUIREMENTS
 4-53 INCONSISTENT WITH FIDUCIARY RESPONSIBILITIES AND RELATED DUTIES.

4-54 (a) A public retirement system is not subject to a requirement of
 4-55 Section 802.203, 802.2031, 802.2033, 802.2034, or 802.2035 if the
 4-56 system determines that the requirement would be inconsistent with
 4-57 its fiduciary responsibility with respect to the investment of
 4-58 system assets or other duties imposed by law relating to the
 4-59 investment of system assets, including the duty of care established
 4-60 under Section 67, Article XVI, Texas Constitution.

4-61 (b) If a public retirement system determines that complying
 4-62 with the requirement in a specific case is inconsistent with its
 4-63 fiduciary responsibility as described by Subsection (a), the system
 4-64 shall notify in writing the State Pension Review Board of the
 4-65 determination and the board shall post the determination on the
 4-66 board's publicly accessible Internet website.

4-67 Sec. 802.2038. RULES ON INVESTMENTS, VOTING SHARES, AND
 4-68 RELATED REPORTS. The State Pension Review Board may adopt rules to
 4-69 implement Section 802.203, 802.2031, 802.2032, 802.2033, 802.2034,

5-1 802.2035, or 802.2037.

5-2 SECTION 5. The changes in law made by this Act apply only to
5-3 a contract entered into on or after the effective date of this Act.
5-4 A contract entered into before the effective date of this Act is
5-5 governed by the law in effect on the date the contract was entered
5-6 into, and the former law is continued in effect for that purpose.

5-7 SECTION 6. (a) Notwithstanding any other section of this
5-8 Act, in a state fiscal year, the State Pension Review Board is not
5-9 required to implement a provision found in another section of this
5-10 Act that is drafted as a mandatory provision imposing a duty on the
5-11 board to take an action unless money is specifically appropriated
5-12 to the board for that fiscal year to carry out that duty. The State
5-13 Pension Review Board may implement the provision in that fiscal
5-14 year to the extent other funding is available to the board to do so.

5-15 (b) If, as authorized by Subsection (a) of this section, the
5-16 State Pension Review Board does not implement the mandatory
5-17 provision in a state fiscal year, the board, in its legislative
5-18 budget request for the next state fiscal biennium, shall certify
5-19 that fact to the Legislative Budget Board and include a written
5-20 estimate of the costs of implementing the provision in each year of
5-21 that next state fiscal biennium.

5-22 (c) This section expires and any duty suspended by
5-23 Subsection (a) becomes mandatory on September 1, 2027.

5-24 SECTION 7. It is the intent of the 88th Legislature, Regular
5-25 Session, 2023, that the amendments made by this Act be harmonized
5-26 with another Act of the 88th Legislature, Regular Session, 2023,
5-27 relating to nonsubstantive additions to and corrections in enacted
5-28 codes.

5-29 SECTION 8. This Act takes effect September 1, 2023.

5-30

* * * * *