

SUBJECT: Prudent person investment standard for volunteer fire fighter pension fund

COMMITTEE: Pensions and Investments — favorable, without amendment

VOTE: 8 ayes — Telford, Woolley, Berlanga, Goolsby, Rangel, Sadler, Serna, Williams

0 nays

1 absent— Tillery

WITNESSES: For — Ken Bailey, Texas State Association of Firefighters; Patrick Hlavaty and R.F. Sullivan, State Firemen's and Firemarshal's Association of Texas; Joe Rice, Volunteer Firefighters Pension Commission Board of Trustees; Bill Shanklin, Georgetown Fire Department; Herbert M. Williams, Jr., Conroe Firefighters Relief and Retirement Fund; Robert Epley

Against — None

On — Helen Campbell, Firefighters Pension Commission; Rita Horwitz, Pension Review Board

BACKGROUND
: Under the Texas Statewide Volunteer Fire Fighters Retirement Act, volunteer firefighters may participate in an insurance and pension fund. By law, the fund may invest only in certain instruments, including bonds, mortgage securities, and shares in savings and loans or banks.

DIGEST: HB 803 would eliminate the list of possible investments by the volunteer firefighters relief and retirement fund and provide instead that investments be made based on the prudent person standard that considers probable income and safety of the fund capital.

HB 803 would take take immediate effect if finally approved by a two-thirds record vote of the membership of both houses.

SUPPORTERS
SAY:

HB 803 would allow more efficient management of the volunteer firefighters' pension fund by using the sound, well-established prudent person investment standard. HB 803 would give the commissioner and board of trustees who oversee the fund the same investment latitude granted for other state funds, such as the Employee Retirement and Teacher Retirement Systems and the Permanent University Fund, with similar long-term investment cycles.

Eliminating the investment laundry list would provide the investment flexibility that today's market demands but still maintain the strict fiduciary responsibility for the trustees investing the pension fund. The board already is constituted to make sound investment decisions. By statute, one third of the board must be composed of persons experienced in finance, securities investment, or pension administration.

A prudent person standard would be more than appropriate for a pension fund of this type. All but four pension funds in the state are invested using the prudent person standard, the industry standard for this type of investment. The prudent person standard is actually a more secure investment standard than a laundry list of allowable investments because it requires that investments be made according to higher standards of diligence and discretion.

In fact, portfolios with restricted investment options often lack the flexibility needed to keep up with the best investment options, resulting in a higher risk factor. The investment list has actually prevented the volunteer firefighters' pension fund from making certain prudent investments because of its strict wording. Rather than require the fund's administrators to make repeat trips to the Legislature to adjust the list to keep up with changing markets, it makes more sense to apply a more flexible, yet sound and safe, investment standard.

It would be inappropriate to subject the volunteer firefighters' pension fund to the investment restrictions in the Public Fund Investments Act. This act, enacted in 1995, exempted pension funds because their investment needs require greater flexibility than the act's restrictive list of permissible investments.

OPPONENTS
SAY:

A list of permissible investments is needed to ensure that investments made by the volunteer firefighters' pension fund are properly conservative and low risk. Allowing the fund to invest under nothing more than the prudent person standard could make for a less balanced and secure portfolio, putting volunteer firefighter pensions potentially at risk.

The fiduciary responsibility granted to trustees of the fund would do nothing to prevent them from making serious mistakes. They could be sued only *after* endangering or losing the volunteer firefighters' retirement funds. Retaining a specified list of safe investments is the best way to prevent such a calamity.

OTHER
OPPONENTS
SAY:

The volunteer firefighters' retirement fund could be better invested with increased investment flexibility, but utmost caution should be used in determining what the fund's investment authority should be. A knowledgeable state agency, such as the State Auditor's Office, should study the fund's structure and investment needs to determine the proper investment standard. An intermediate level of investment flexibility, such as that provided by the Public Funds Investment Act, might be more appropriate for this fund.

NOTES:

The Senate Intergovernmental Relations Committee on February 27 reported favorably the companion bill, SB 481 by Armbrister, by 7-3 (Carona, Lindsay, Ogden). The bill was removed from the Senate Intent Calendar on March 5.

HB 337 by Telford, et al., also set on today's calendar for second reading, would expand the volunteer firefighter's pension fund to allow participation by other volunteer emergency service personnel.

During the 1993 regular session, the 74th Legislature considered SB 449 by Montford, concerning the Texas Local Fire Fighters Retirement Act. The bill passed the Senate with a provision allowing the fund use to the prudent person investment standard by repealing the list of permissible investments. A House floor amendment sought to remove this authority, and in conference committee the prudent person provision was removed to save the bill.