

BILL ANALYSIS

Senate Research Center

H.B. 3009
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State Affairs
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Engrossed

DIGEST

H.B. 3009 would authorize the governing body of an investing entity, such as a local government, state agency, or nonprofit corporation acting on behalf of a local government or state agency, to contract with a registered investment advisory firm to provide for the investment and management of its public funds or other funds under its control.

PURPOSE

As proposed, H.B. 3009 sets forth provisions relating to investments and audits under the Public Funds Investment Act.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2256.002(10), Government Code, to redefine “qualified representative.”

SECTION 2. Amends Section 2256.003, Government Code, to authorize the governing body of an investing entity to contract with an investment management firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to provide for the investment and management of its public funds or other funds under its control, in the exercise of its powers under Subsection (a). Prohibits a contract made under authority of this subsection for a term longer than two years. Requires a renewal or extension of the contract to be made by the governing body of the investing entity by order, ordinance, or resolution. Makes a conforming change.

SECTION 3. Amends Section 2256.004, Government Code, as amended by Chapters 505 and 1421, Acts of the 75th Legislature, Regular Session, 1997, to provide that this subchapter does not apply to an investment donated to an investing entity for a particular purpose or under terms of use specified by the donor. Makes conforming changes.

SECTION 4. Amends Section 2256.005, Government Code, by amending Subsections (f), (k), and (m) and adding Subsections (n) and (o), as follows:

(f) Requires each investing entity to contract with an investment management firm under Section 2256.003(b) to be responsible for the investment of its funds consistent with the investment policy adopted by the entity. Provides that the investment officer of the other investing entity is considered to be the investment officer of the first investing entity for purposes of this chapter, if the governing body of an investing entity has contracted with another investing entity to invest its funds. Provides that authority granted to a fiduciary to invest an entity’s funds is effective until rescinded by the investing entity, until the expiration of the officer’s term or the termination of the person’s employment by the investing entity, or if an investment management firm, until the expiration of the contract with the investing entity. Requires the fiduciary designated as investment officer to exercise the judgment and care that a prudent person would exercise in the management of the person’s own affairs, but the governing body of the investing entity retains ultimate responsibility as fiduciaries of the assets of the entity.

(k) Requires a written copy of the investment policy to be presented to any person offering to engage in an investment transaction with an investing entity or to an investment management firm

under contract with an investing entity to invest or manage the entity's investment portfolio. Provides that an investment management firm under contract with an investing entity invests or manages the entity's investment portfolio.

(m) Requires an investing entity other than a state agency, to perform a compliance audit of management controls on investments and adherence to the entity's established investment policies. Deletes text regarding the state auditor.

(n) Requires at least once every two years a state agency to arrange for a compliance audit of management controls on investments and adherence to the agency's established investment policies, except as provided by Subsection (o). Requires the compliance audit to be performed by the agency's internal auditor or by a private auditor employed in the manner provided by Section 321.020. Requires a state agency to report the results of the most recent audit performed under this subsection to the state auditor, no later than January 1 of each even-numbered year. Requires a state agency also to report to the state auditor other information the state auditor determines necessary to assess compliance with laws and policies applicable to state agency investments. Requires a report under this subsection to be prepared in a manner the state auditor prescribes.

(o) Provides that the audit requirements of Subsection (n) do not apply to assets of a state agency that are invested by the comptroller under 404.024.

SECTION 5. Amends Section 2256.007(c), Government Code, to require training under this section to include education in diversification of an investment portfolio.

SECTION 6. Amends Section 2256.008, Government Code, to require the treasurer and the investment officer of a local government to attend certain training sessions, except as provided by Subsection (b). Authorizes an investing entity created under authority of Section 52(b), Article III, or Section 59, Article XVI, Texas Constitution, that has contracted with an investment management firm under Section 2256.003(b) and has fewer than five full-time employees or an investing entity that has contracted with another investing entity to invest the entity's funds to satisfy the training requirement provided by Subsection (a)(2) by having an officer of the governing body attend four hours of appropriate instruction in a two-year period. Makes conforming changes.

SECTION 7. Amends Section 2256.009(a), Government Code, to provide that the following are authorized investments under this subchapter, including bonds issued, assumed, or guaranteed by the State of Israel, except as provided by Subsection (b). Makes a conforming and nonsubstantive change.

SECTION 8. Amends Section 2256.014(c), Government Code, to delete text regarding mutual funds. Makes conforming changes.

SECTION 9. Amends the heading for Section 2256.015, Government Code, as follows:

Sec. 2256.015. AUTHORIZED INVESTMENTS: GUARANTEED INVESTMENT CONTRACTS.

SECTION 10. Amends Section 2256.015(a), Government Code, to delete text regarding state agencies.

SECTION 11. Effective date: September 1, 1999.

SECTION 12. Emergency clause.