Texas County & District Retirement System Bill Impact: SB 1446

88th Legislative Session

SB 1446 by Senator Bryan Hughes *relates to the fiduciary responsibility of the governing body of the public retirement systems in this state and the investment agents acting on behalf of those systems.*

Update:

SB 1446 imposes new investment restrictions that prohibit TCDRS and our investment managers from considering social, political or ideological interests (commonly known as "ESG") when making investment decisions.

TCDRS has serious concerns with the bill that we will lose access to some of our investment partnerships, which would negatively impact TCDRS' earnings and significantly increase employer costs.

TCDRS manages $45 billion in investments. TCDRS' investment strategy is to **maximize risk-adjusted returns. TCDRS has never had an ESG policy** and has no plans to introduce ESG criteria into investment decisions.

TCDRS is unique from other statewide retirement systems in that we are savings-based and do not require state funding.

We allocate more assets to private markets and have a larger percentage of our portfolio dedicated to private equity partnerships than other state funds. TCDRS' private equity investments are nearly $12 billion — 27% of our fund. **TCDRS would be more negatively impacted than other statewide systems.**

Specifically, SB 1446 would:

- **Modify fiduciary standards** that are based on widely known and accepted fiduciary principles (i.e., ERISA, trust law, case law, etc.). The inconsistency in standards will create uncertainty for fiduciaries in exercising their duties, including investment managers contracting with TCDRS.

- **Remove TCDRS trustees from the protection** against liability for the acts or omissions of an investment manager, thereby subjecting trustees to significant liability under an untested fiduciary standard.

- Require that contracts with investment managers include an agreement that the investment manager will invest according to a **new investment standard**. This standard would require consideration of financial factors based on a prudent investor standard instead of the existing prudent person standard as required by the Texas Constitution. In addition, SB 1446 creates a new cause of action against an investment manager for breach of the new standard.

The greatest risk to TCDRS is that our private investment partners **will no longer do business with us** due to increased legal and fiduciary risks created by new standards and required contract provisions. These managers are oversubscribed, on average, roughly ten times TCDRS' typical investment commitment. This means that they can easily replace TCDRS with other investors and limited partners that are not imposing new investment standards or requesting additional contract attestations.

While we appreciate the work that has been done on this legislation so far, the risks and liabilities outlined above remain cause for concern.