

SECOND REGULAR SESSION

HOUSE BILL NO. 1700

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPARKS.

2865H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 105.687 and 105.688, RSMo, and to enact in lieu thereof two new sections relating to the fiduciary duties for investments of public retirement systems.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 105.687 and 105.688, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 105.687 and 105.688, to read as follows:

105.687. As used in sections 105.687 to 105.689, the following terms mean:

2 (1) "Equity interests", limited partnership interests and other interests in which the
3 liability of the investor is limited to the amount of the investment, but does not include
4 general partnership interests or other interests involving general liability of the investor;

5 (2) "Fiduciary", **any person acting on behalf of a public retirement system as an**
6 **investment manager or proxy advisor;**

7 (3) "Fiduciary commitment", **any evidence of a fiduciary's purpose in managing**
8 **assets as a fiduciary including, but not limited to, any of the following:**

9 (a) **Advertising, statements, explanations, reports, letters to clients,**
10 **communications with portfolio companies, statements of principles, or commitments; or**

11 (b) **Participation in, affiliation with, or status as a signatory to any coalition,**
12 **initiative, joint statement of principles, or agreement;**

13 (4) "Financial", **having been prudently determined by a fiduciary to have a**
14 **material effect on the financial risk or the financial return of an investment. The term**
15 **"financial" shall not include any action taken, or factor considered, by a fiduciary with**
16 **any purpose to further social, political, or ideological interests. A fiduciary may**
17 **reasonably be determined to have taken an action, or considered a factor, with a**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 **purpose to further social, political, or ideological interests based upon evidence**
19 **indicating such a purpose including, but not limited to, any fiduciary commitment to**
20 **further, through portfolio company engagement, board or shareholder votes, or**
21 **otherwise as a fiduciary, any of the following beyond what controlling federal or state**
22 **law requires:**

23 **(a) Eliminating, reducing, offsetting, or disclosing greenhouse gas emissions;**

24 **(b) Instituting or assessing corporate board or employment composition,**
25 **compensation, or disclosure criteria that incorporates characteristics protected in this**
26 **state under chapter 213;**

27 **(c) Divesting from, limiting investment in, or limiting the activities or**
28 **investments of any company for failing, or not committing, to meet environmental**
29 **standards or disclosures;**

30 **(d) Access to abortion, sex or gender reassignment treatment, or transgender**
31 **surgery; or**

32 **(e) Divesting from, limiting investment in, or limiting the activities or**
33 **investments of any company that engages in, facilitates, or supports the manufacture,**
34 **import, distribution, marketing or advertising, sale, or lawful use of firearms,**
35 **ammunition, or components, parts, and accessories of firearms or ammunition;**

36 **(5) "Invest" or "investment", utilization of money in the expectation of future returns**
37 **in the form of income or capital gain;**

38 ~~[(3)]~~ **(6) "Investment fiduciary", a person who either exercises any discretionary**
39 **authority or control in the investment of a public employee retirement system's assets or who**
40 **renders for a fee advice for a public employment retirement system;**

41 ~~[(4)]~~ **(7) "Small business", an independently owned and operated business as defined**
42 **in Title 15 U.S.C. Section 632A and as described by Title 13 CFR Part 121;**

43 ~~[(5)]~~ **(8) "Small business investment company", an incorporated body or a limited**
44 **partnership under Section 301 of Title III of the Small Business Investment Act of 1958, 15**
45 **U.S.C. 681;**

46 ~~[(6)]~~ **(9) "System" or "public retirement system", [a public employee] any**
47 **retirement or pension system [established] or plan maintained, provided, or offered by:**

48 **(a) The state or any political subdivision of the state including, but not limited to,**
49 **any county, city, municipality, town, township, village, or school district; or**

50 **(b) Any school, college, university, administration, authority, or other enterprise**
51 **operated by the state or any political subdivision of the state;**

52 ~~[(7)]~~ **(10) "Venture capital firm", a corporation, partnership, proprietorship, or other**
53 **entity, the principal businesses of which is the making of investments in small businesses,**

54 either directly or indirectly by investing in entities the principal business of which is the
55 making of investments in small businesses.

105.688. 1. The assets of a system may be invested, reinvested and managed by an
2 investment fiduciary subject to the terms, conditions and limitations provided in sections
3 105.687 to 105.689. An investment fiduciary shall discharge his or her duties in the interest
4 of the participants in the system and their beneficiaries and shall:

5 (1) Act with the same care, skill, prudence, and diligence under the circumstances
6 then prevailing that a prudent person acting in a similar capacity and familiar with those
7 matters would use in the conduct of a similar enterprise with similar aims;

8 (2) Act with due regard for the management, reputation, and stability of the issuer and
9 the character of the particular investments being considered;

10 (3) Make investments for the purposes of providing benefits to participants and
11 participants' beneficiaries, and of defraying reasonable expenses of investing the assets of the
12 system;

13 (4) Give appropriate consideration to those facts and circumstances that the
14 investment fiduciary knows or should know are relevant to the particular investment or
15 investment course of action involved, including the role of the investment or investment
16 course of action plays in that portion of the system's investments for which the investment
17 fiduciary has responsibility. For purposes of this subdivision, "appropriate consideration"
18 shall include, but is not necessarily limited to a determination by the investment fiduciary that
19 a particular investment or investment course of action is reasonably designed, as part of the
20 investments of the system, to further the purposes of the system, taking into consideration the
21 risk of loss and the opportunity for gain or other return associated with the investment or
22 investment course of action; and consideration of the following factors as they relate to the
23 investment or investment course of action:

24 (a) The diversification of the investments of the system;

25 (b) The liquidity and current return of the investments of the system relative to the
26 anticipated cash flow requirements of the system; and

27 (c) The projected return of the investments of the system relative to the funding
28 objectives of the system;

29 (5) Give appropriate consideration to investments which would enhance the general
30 welfare of this state and its citizens if those investments offer the safety and rate of return
31 comparable to other investments available to the investment fiduciary at the time the
32 investment decision is made.

33 **2. (1) In addition to the duties expressed under subsection 1 of this section, when**
34 **making and supervising investments of the reserve fund of a public retirement system,**
35 **the board of trustees of a public retirement system and any of its fiduciaries shall**

36 discharge its duties solely in the financial interest of the participants and beneficiaries
37 for the exclusive purposes of:

38 (a) Providing financial benefits to participants and their beneficiaries; and

39 (b) Defraying reasonable expenses of administering the system.

40 (2) Any investment manager appointed by the system shall be subject to the
41 same fiduciary duties as a member of the board of trustees of a system.

42 (3) A fiduciary shall take into account only financial factors when discharging
43 his or her duties with respect to a public retirement system.

44 (4) All shares held directly or indirectly by or on behalf of a public retirement
45 system or the participants in a system and the participants' beneficiaries shall be voted
46 solely in the financial interest of the participants in the system and the participants'
47 beneficiaries.

48 (5) Unless no economically practicable alternative is available, the board of
49 trustees shall not grant proxy voting authority to any person who is not a part of the
50 board of trustees unless that person has a practice of, and in writing commits to,
51 following guidelines that match the board of trustees' obligation to act solely upon
52 financial factors.

53 (6) Unless no economically practicable alternative is available, public retirement
54 system assets shall not be entrusted to a fiduciary unless that fiduciary has a practice of,
55 and in writing commits to, following guidelines, when engaging with portfolio
56 companies and voting shares or proxies, that match the board of trustees' obligation
57 to act solely upon financial factors.

58 (7) Unless no economically practicable alternative is available, the board of
59 trustees or any of its fiduciaries shall not adopt a practice of following the
60 recommendations of a proxy advisor or other service provider unless such advisor or
61 service provider has a practice of, and in writing commits to, following proxy voting
62 guidelines that match the board of trustees' obligation to act solely upon financial
63 factors.

64 (8) All proxy votes shall be tabulated and reported annually to the board of
65 trustees. For each vote, the report shall contain a vote caption, the system's vote, the
66 recommendation of company management, and, if applicable, the proxy advisor's
67 recommendation. This report shall be posted on a publicly available web page on the
68 system's website.

69 (9) The provisions of this subsection, or any contract subject to the provisions of
70 this subsection, may be enforced by the attorney general. If the attorney general has
71 reasonable cause to believe that a person has engaged in, is engaging in, or is about to
72 engage in a violation of this subsection, the attorney general may require such person to

73 file, on such forms as prescribed by the attorney general, a statement or report in
74 writing, under oath, as to all the facts and circumstances concerning the alleged
75 violation, and such other data and information as the attorney general deems necessary.

76 (10) In addition to any other remedies available under general law, a company
77 that serves as a fiduciary and that violates this subsection shall be obligated to pay
78 damages to the state in an amount equal to three times all moneys paid to the company
79 by the system for the company's services.

✓