

SENATE BILL NO. 436

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CARTER.

1663S.03I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 105.687 and 105.688, RSMo, and to enact in lieu thereof two new sections relating to fiduciary duties for investments of public employee 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
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 105.687 and 105.688, to read as follows:

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

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

8 (2) "Fiduciary commitment", any evidence of an
9 investment fiduciary's purpose in managing assets as an
10 investment fiduciary, including, but not limited to, any of
11 the following:

12 (a) Advertising, statements, explanations, reports,
13 letters to clients, communications with portfolio companies,
14 statements of principles, or commitments; or

15 (b) Participation in, affiliation with, or status as a
16 signatory to, any coalition, initiative, joint statement of
17 principles, or agreement;

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (3) "Financial", prudently determined by an investment
19 fiduciary to have a material effect on the financial risk or
20 the financial return of an investment, but does not include
21 any action taken, or factor considered, by an investment
22 fiduciary with any purpose whatsoever to further social,
23 political, or ideological interests. An investment
24 fiduciary may be determined to have taken an action, or
25 considered a factor, with a purpose to further social,
26 political, or ideological interests based upon evidence
27 indicating such a purpose, including, but not limited to,
28 any fiduciary commitment to further, through portfolio
29 company engagement, board or shareholder votes, or otherwise
30 as an investment fiduciary, any of the following beyond what
31 controlling federal or state law requires:

32 (a) Eliminating, reducing, offsetting, or disclosing
33 greenhouse gas emissions;

34 (b) Instituting or assessing corporate board, or
35 employment, composition, compensation, or disclosure
36 criteria that incorporates characteristics protected in
37 chapter 213;

38 (c) Divesting from, limiting investment in, or
39 limiting the activities or investments of, any company, for
40 failing, or not committing, to meet environmental standards
41 or disclosures;

42 (d) Access to abortion, sex or gender reassignment
43 treatment, or transgender surgery; or

44 (e) Divesting from, limiting investment in, or
45 limiting the activities or investments of, any company that
46 engages in, facilitates, or supports the manufacture,
47 import, distribution, marketing or advertising, sale, or
48 lawful use of firearms, ammunition or components parts and
49 accessories of firearms or ammunition;

50 [(2)] (4) "Invest" or "investment", utilization of
51 money in the expectation of future returns in the form of
52 income or capital gain;

53 [(3)] (5) "Investment fiduciary", a person who either
54 exercises any discretionary authority or control in the
55 investment of a [public employee retirement] system's assets
56 or who renders for a fee advice for a [public employment
57 retirement] system, **including any investment manager or**
58 **proxy advisor;**

59 [(4)] (6) "Small business", an independently owned and
60 operated business as defined in Title 15 U.S.C. Section 632A
61 and as described by Title 13 CFR Part 121;

62 [(5)] (7) "Small business investment company", an
63 incorporated body or a limited partnership under Section 301
64 of Title III of the Small Business Investment Act of 1958,
65 15 U.S.C. 681;

66 [(6)] (8) "System", a public employee retirement
67 system established, **maintained, or offered** by the state or
68 any political subdivision of the state, **or instrumentality**
69 **of the state, including, but not limited to, any department,**
70 **county, city, school district, college, or university;**

71 [(7)] (9) "Venture capital firm", a corporation,
72 partnership, proprietorship, or other entity, the principal
73 businesses of which is the making of investments in small
74 businesses, either directly or indirectly by investing in
75 entities the principal business of which is the making of
76 investments in small businesses.

105.688. 1. The assets of a system may be invested,
2 reinvested and managed by an investment fiduciary subject to
3 the terms, conditions and limitations provided in sections
4 105.687 to 105.689. **In making and supervising investments**
5 **of a system,** an investment fiduciary shall discharge his or

6 her duties in the interest of the participants in the system
7 and their beneficiaries **for the exclusive purpose of**
8 **providing financial benefits to participants in the system**
9 **and their beneficiaries and defraying reasonable expenses of**
10 **administering the system** and shall:

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

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

19 (3) Make investments for the purposes of providing
20 benefits to participants and participants' beneficiaries,
21 and of defraying reasonable expenses of investing the assets
22 of the system;

23 (4) Give appropriate consideration to those facts and
24 circumstances that the investment fiduciary knows or should
25 know are relevant to the particular investment or investment
26 course of action involved, including the role of the
27 investment or investment course of action plays in that
28 portion of the system's investments for which the investment
29 fiduciary has responsibility. For purposes of this
30 subdivision, "appropriate consideration" shall include, but
31 is not necessarily limited to a determination by the
32 investment fiduciary that a particular investment or
33 investment course of action is reasonably designed, as part
34 of the investments of the system, to further the purposes of
35 the system, taking into consideration the risk of loss and
36 the opportunity for gain or other return associated with the
37 investment or investment course of action; and consideration

38 of the following factors as they relate to the investment or
39 investment course of action:

40 (a) The diversification of the investments of the
41 system;

42 (b) The liquidity and current return of the
43 investments of the system relative to the anticipated cash
44 flow requirements of the system; and

45 (c) The projected return of the investments of the
46 system relative to the funding objectives of the system;

47 (5) Give appropriate consideration to investments
48 which would enhance the general welfare of this state and
49 its citizens if those investments offer the safety and rate
50 of return comparable to other investments available to the
51 investment fiduciary at the time the investment decision is
52 made.

53 **2. An investment fiduciary appointed by the system**
54 **shall be subject to the same fiduciary duties as a member of**
55 **the board of trustees of a system.**

56 **3. An investment fiduciary shall take into account**
57 **only financial factors when discharging his or her duties**
58 **with respect to a system.**

59 **4. All shares held, directly or indirectly, by or on**
60 **behalf of a system, the participants in a system, and**
61 **participants' beneficiaries shall be voted solely in the**
62 **financial interest of participants in the system and their**
63 **beneficiaries.**

64 **5. Unless no economically practicable alternative is**
65 **available, the board of trustees that establishes or**
66 **maintains a system shall not grant proxy voting authority to**
67 **any person who is not a part of the board of trustees,**
68 **unless that person has a practice of, and in writing commits**

69 to, following guidelines that match the system's obligation
70 to act solely upon financial factors.

71 6. Unless no economically practicable alternative is
72 available, a system's assets shall not be entrusted to an
73 investment fiduciary, unless that investment fiduciary has a
74 practice of, and in writing commits to, following
75 guidelines, when engaging with portfolio companies and
76 voting shares or proxies, that match the system's obligation
77 to act solely upon financial factors.

78 7. Unless no economically practicable alternative is
79 available, the system shall not adopt a practice of
80 following the recommendations of a proxy advisor or other
81 service provider, unless such advisor or service provider
82 has a practice of, and in writing commits to, following
83 proxy voting guidelines that match the system's obligation
84 to act solely upon financial factors.

85 8. All proxy votes shall be tabulated and reported
86 annually to the board of trustees of a system. For each
87 vote, the report shall contain a vote caption, the system's
88 vote, the recommendation of company management, and, if
89 applicable, the proxy advisor's recommendation. These
90 reports shall be posted on a publicly available webpage on
91 the system's website.

92 9. The provisions of this section, or any contract
93 subject to the provisions of this section, may be enforced
94 by the attorney general. If the attorney general has
95 reasonable cause to believe that a person has engaged in, is
96 engaging in, or is about to engage in, a violation of this
97 section, the attorney general may require such person to
98 file:

99 (1) A statement or report in writing, under oath, in a
100 form prescribed by the attorney general, as to all the facts
101 and circumstances concerning the violation; and

102 (2) Such other data and information as the attorney
103 general deems necessary.

104 10. A system, a participant of a system, or a
105 participant's beneficiary may bring an action for damages or
106 injunctive relief against any person that has engaged in, is
107 engaging in, or is about to engage in, a violation of this
108 section.

109 11. In addition to any other remedies available, a
110 company who serves as an investment fiduciary and who
111 violates this section shall be obligated to pay damages to
112 the state in an amount equal to three times all moneys paid
113 to the company by the system for the company's services.

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