

HOUSE BILL 2887

By Todd

AN ACT to amend Tennessee Code Annotated, Title 35,
Chapter 10, relative to the Uniform Prudent
Management of Institutional Funds Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-10-102, is amended by adding the following as new, appropriately designated subdivisions:

() "Materially negative financial impact":

(A) Means a materially negative financial impact on the institutional fund's total net investment performance, considering all financial returns received by the fund and all costs paid by the fund; and

(B) Excludes administrative costs of an institution as defined in subdivision (4)(B) not paid by the fund;

() "Service provider" means a person, including an affiliate of the person, offering or providing financial services to the institutional fund, including, but not limited to:

(A) An investment manager, investment company, securities broker or dealer, investment advisor, or subadvisor; or

(B) A proxy advisor, including a person who for compensation provides corporate governance ratings, proxy research and analyses, proxy voting advice, or other similar services, for the purpose of advising a shareholder on how to vote on measures under consideration by shareholders, or proxy voting on behalf of a shareholder;

SECTION 2. Tennessee Code Annotated, Section 35-10-103, is amended by adding the following new subsections:

(f) Notwithstanding this chapter or another law, except as provided in subsection (h), in managing and investing an institutional fund, an institution as defined in § 35-10-102(4)(B), including public institutions of higher education, shall not:

(1) Consider any of the goals listed in subdivisions (f)(2)(A)-(D) with regard to a possible investment by the institutional fund, or selection of a service provider, or the voting of shares by the institutional fund, except to the extent required to comply with subdivision (f)(2); or

(2) Select a service provider that has a purpose or ambition for its customers, investment portfolio, or a portfolio company, or has joined or participates in an initiative or organization that has a purpose or ambition for its signatories' or members' customers, investment portfolios, or portfolio companies, to be aligned with any of the following goals beyond what is required by law:

(A) Directly or indirectly eliminating, reducing, offsetting, or disclosing reduction targets for greenhouse gas emissions, including by restricting the exploration, production, utilization, transportation, sale, or manufacturing of timber, mining, agriculture, or fossil-fuel-based energy;

(B) Instituting corporate board or employment composition targets or criteria that incorporate characteristics protected in this state under title 4, chapter 21;

(C) Reducing the amount of business conducted with an entity, for the purpose of advancing any of the foregoing goals; or

(D) Advancing the purposes of an international agreement related to any of the foregoing goals.

(g) Subdivision (f)(2) does not apply in the event that the institution as defined in § 35-10-102(4)(B), determines that subdivision (f)(2) would require the selection of a service provider that would have a materially negative financial impact on the fund; provided, that the institution complies with the following requirements:

(1) Contracts with the service provider that most closely meets the requirements of subdivision (f)(2) and would not have a materially negative financial impact on the fund;

(2) Documents its determination, along with evidence supporting its determination, including a description of the services of at least three (3) alternative service providers consulted that includes a description of fees, historical investment performance, and compliance with subdivision (f)(2);

(3) Includes such documentation and evidence in its minutes or other publicly available medium;

(4) Publicly posts notices seeking a service provider that would comply with subdivision (f)(2) at the following times:

(i) No later than sixty (60) days after the selection of a service provider that does not meet the requirements of subdivision (f)(2);

(ii) No later than sixty (60) days before the beginning of any following procurement period under which that service provider could be replaced; and

(iii) As part of any following procurement announcement under which that service provider could be replaced; and

(5) Limits the contract duration to no more than a year and re-evaluates its determination at least annually pursuant to subdivisions (g)(1)-(4).

(h) Subsection (f) does not apply to the investment and management of specific gifts where the intent of a donor was contrary to subsection (f) and was expressed in the gift instrument prior to the effective date of this act.

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it, and applies to contracts or agreements entered into, amended, or renewed on or after such date.