



Bill Number: H.B. 2637

Fann Floor Amendment

Reference to: APPROPRIATIONS Committee amendment

Amendment drafted by: Leg Council

FLOOR AMENDMENT EXPLANATION

1. Removes the financial institution prohibition and the related Legislative intent.
2. Removes the requirement for:
 - a) any investment manager to attest that the investment manager does not hold any environmental, social or governance-related investments; and
 - b) the State Treasurer to certify that the investment managers do not hold investments in environmental, social or governance-related products.
3. Defines *plan* as any plan, fund or program established or maintained by the state or a political subdivision of the state to do any of the following:
 - a) provide retirement income or other retirement benefits to employees or former employees;
 - b) defer income by employees for a period of time extending to the termination of covered employment or beyond; or
 - c) invest taxpayer monies for any purpose.
4. Requires a fiduciary to discharge the fiduciary's duties with respect to a plan solely in the interest of the participants and beneficiaries of the plan for the exclusive purpose of:
 - a) providing pecuniary benefits to the participants and their beneficiaries;
 - b) defraying reasonable expenses of administering the plan; and
 - c) earning a return on the investment.
5. Requires a fiduciary to take into account only pecuniary factors when evaluating an investment or discharging the fiduciary's duties with respect to a plan.
6. Outlines plan voting of ownership interests and proxy voting.
7. Prohibits a plan from entrusting any plan assets to a fiduciary that has a practice of:
 - a) engaging with, or commits to engage with, a company based on nonpecuniary factors; or
 - b) voting shares based on nonpecuniary factors.

Amendment explanation prepared by Molly Graver

06/08/2022

- 8. Prohibits a fiduciary from adopting a practice of following the recommendations of a proxy advisory firm or other service provided unless the proxy advisory firm's or the service provider's proxy voting guidelines are consistent with the fiduciary's obligation to act based only on pecuniary factors.**
- 9. Defines *fiduciary*, *nonpecuniary factor* and *pecuniary factor*.**
- 10. Makes technical and conforming changes.**

FANN FLOOR AMENDMENT

SENATE AMENDMENTS TO H.B. 2637

(Reference to APPROPRIATIONS Committee amendment)

1 Page 1, strike lines 2 through 20

2 Page 2, strike lines 1 through 8

3 Renumber to conform

4 Lines 11 and 12, strike "; voting shares"

5 Line 17, after "B." strike remainder of line

6 Strike lines 18 through 21

7 Line 22, strike "INVESTMENTS IN ENVIRONMENTAL, SOCIAL OR GOVERNANCE-RELATED
8 PRODUCTS."

9 Line 28, after "FACTORS" insert "AS PRESCRIBED IN TITLE 35, CHAPTER 2,
10 ARTICLE 10"

11 Strike lines 31 and 32

12 Page 3, strike lines 1 through 3, insert:

13 "Sec. 2. Title 35, chapter 2, Arizona Revised Statutes, is amended
14 by adding article 10, to read:

15 ARTICLE 10. GOVERNMENT INVESTMENTS PROTECTION ACT

16 35-394. Definitions

17 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

18 1. "FIDUCIARY" MEANS A PERSON WHO DOES ANY OF THE FOLLOWING:

19 (a) EXERCISES ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY CONTROL
20 WITH RESPECT TO A PLAN OR EXERCISES ANY AUTHORITY OR CONTROL MANAGING OR
21 DISPOSING OF THE PLAN'S ASSETS.

22 (b) RENDERS INVESTMENT ADVICE FOR A FEE OR OTHER COMPENSATION,
23 DIRECTLY OR INDIRECTLY, WITH RESPECT TO ANY MONIES OR OTHER PROPERTY OF A
24 PLAN OR HAS THE AUTHORITY OR RESPONSIBILITY TO RENDER INVESTMENT ADVICE.

25 (c) HAS ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITY
26 IN ADMINISTERING A PLAN.

1 2. "NONPECUNIARY FACTOR" INCLUDES ANY FACTOR THAT IS INTENDED TO
2 FURTHER OR IS BRANDED, ADVERTISED OR OTHERWISE PUBLICLY DESCRIBED BY THE
3 OFFEROR OR FIDUCIARY AS FURTHERING ANY OF THE FOLLOWING:

4 (a) INTERNATIONAL, DOMESTIC OR INDUSTRY AGREEMENTS RELATING TO
5 ENVIRONMENTAL OR SOCIAL GOALS.

6 (b) CORPORATE GOVERNANCE STRUCTURES BASED ON SOCIAL CHARACTERISTICS.

7 (c) SOCIAL OR ENVIRONMENTAL GOALS.

8 3. "PECUNIARY FACTOR" MEANS A FACTOR THAT HAS A MATERIAL EFFECT ON
9 THE FINANCIAL RISK OR THE FINANCIAL RETURN OF AN INVESTMENT BASED ON
10 APPROPRIATE INVESTMENT HORIZONS CONSISTENT WITH A PLAN'S INVESTMENT
11 OBJECTIVES AND FUNDING POLICY.

12 4. "PLAN" MEANS ANY PLAN, FUND OR PROGRAM THAT IS ESTABLISHED OR
13 MAINTAINED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE,
14 INCLUDING A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF
15 REGENTS AND A COMMUNITY COLLEGE DISTRICT AS DEFINED IN SECTION 15-1401, TO
16 DO ANY OF THE FOLLOWING:

17 (a) PROVIDE RETIREMENT INCOME OR OTHER RETIREMENT BENEFITS TO
18 EMPLOYEES OR FORMER EMPLOYEES.

19 (b) DEFER INCOME BY EMPLOYEES FOR A PERIOD OF TIME EXTENDING TO THE
20 TERMINATION OF COVERED EMPLOYMENT OR BEYOND.

21 (c) INVEST TAXPAYER MONIES FOR ANY PURPOSE.

22 35-394.01. Plans; fiduciaries; duties

23 A. A FIDUCIARY SHALL DISCHARGE THE FIDUCIARY'S DUTIES WITH RESPECT
24 TO A PLAN SOLELY IN THE INTEREST OF THE PARTICIPANTS AND BENEFICIARIES OF
25 THE PLAN FOR THE EXCLUSIVE PURPOSE OF PROVIDING PECUNIARY BENEFITS TO THE
26 PARTICIPANTS AND THEIR BENEFICIARIES, DEFRAYING REASONABLE EXPENSES OF
27 ADMINISTERING THE PLAN AND EARNING A RETURN ON THE INVESTMENT.

28 B. A FIDUCIARY MUST TAKE INTO ACCOUNT ONLY PECUNIARY FACTORS WHEN
29 EVALUATING AN INVESTMENT OR DISCHARGING THE FIDUCIARY'S DUTIES WITH RESPECT
30 TO A PLAN. A FIDUCIARY MAY NOT TAKE INTO ACCOUNT ANY NONPECUNIARY OR OTHER
31 FACTORS WHEN EVALUATING AN INVESTMENT.

1 35-394.02. Plans; voting of ownership interests

2 A. ONLY THE GOVERNMENTAL ENTITY THAT ESTABLISHES OR MAINTAINS A PLAN
3 MAY VOTE THE SHARES HELD BY THE PLAN. A GOVERNMENTAL ENTITY MAY NOT GRANT
4 PROXY VOTING AUTHORITY TO ANY PERSON WHO IS NOT A PART OF THE GOVERNMENTAL
5 ENTITY UNLESS THAT PERSON FOLLOWS GUIDELINES CONSISTENT WITH THE
6 GOVERNMENTAL ENTITY'S OBLIGATION TO ACT BASED ONLY ON PECUNIARY FACTORS.

7 B. THE SHARES HELD DIRECTLY OR INDIRECTLY BY A PLAN SHALL BE VOTED
8 ONLY IN THE PECUNIARY INTEREST OF THE PLAN. THE SHARES MAY NOT BE VOTED TO
9 FURTHER NONPECUNIARY, ENVIRONMENTAL, SOCIAL, POLITICAL, IDEOLOGICAL OR
10 OTHER BENEFITS OR GOALS. A PLAN MAY NOT ENTRUST ANY PLAN ASSETS TO A
11 FIDUCIARY THAT:

12 1. HAS A PRACTICE OF ENGAGING WITH, OR COMMITS TO ENGAGING WITH, A
13 COMPANY BASED ON NONPECUNIARY FACTORS.

14 2. HAS A PRACTICE OF VOTING SHARES BASED ON NONPECUNIARY FACTORS.

15 C. A FIDUCIARY MAY NOT ADOPT A PRACTICE OF FOLLOWING THE
16 RECOMMENDATIONS OF A PROXY ADVISORY FIRM OR OTHER SERVICE PROVIDER UNLESS
17 THE PROXY ADVISORY FIRM'S OR THE SERVICE PROVIDER'S PROXY VOTING GUIDELINES
18 ARE CONSISTENT WITH THE FIDUCIARY'S OBLIGATION TO ACT BASED ONLY ON
19 PECUNIARY FACTORS."

20 Amend title to conform

KAREN FANN

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C: MEB