

REFERENCE TITLE: government investments; products; fiduciaries; plans

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SB 1139**

Introduced by  
Senators Hoffman: Borrelli, Kern, Wadsack; Representatives Chaplik, Heap,  
Jones, Kolodin, McGarr, Parker B, Parker J, Pingerelli, Smith

AN ACT

AMENDING TITLE 35, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 35-320; AMENDING TITLE 35, CHAPTER 2, ARIZONA REVISED  
STATUTES, BY ADDING ARTICLE 4; RELATING TO HANDLING OF PUBLIC FUNDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 35, chapter 2, article 2, Arizona Revised  
3 Statutes, is amended by adding section 35-320, to read:

4 35-320. State investments; investment managers; list; posting

5 A. THE STATE TREASURER SHALL POST A CURRENT LIST OF STATE  
6 INVESTMENTS BY NAME ON THE STATE TREASURER'S PUBLICLY ACCESSIBLE WEBSITE.  
7 THE STATE TREASURER SHALL UPDATE ANY CHANGES TO THE LIST WITHIN A  
8 REASONABLE PERIOD OF TIME.

9 B. THE STATE TREASURER SHALL POST THE CURRENT LIST OF INVESTMENT  
10 MANAGERS ON THE STATE TREASURER'S PUBLICLY ACCESSIBLE WEBSITE AND SHALL  
11 UPDATE ANY CHANGES TO THE LIST WITHIN A REASONABLE PERIOD OF TIME.

12 C. ALL STATE INVESTMENTS SHALL BE MADE IN THE SOLE INTEREST OF THE  
13 BENEFICIARY TAXPAYER. THE STATE TREASURER'S EVALUATION OF AN INVESTMENT  
14 MUST BE BASED ON PECUNIARY FACTORS AS PRESCRIBED IN ARTICLE 4 OF THIS  
15 CHAPTER, AND THE STATE TREASURER MAY NOT TAKE UNNECESSARY INVESTMENT RISKS  
16 OR PROMOTE NONPECUNIARY BENEFITS OR OTHER NONPECUNIARY SOCIAL GOALS.

17 Sec. 2. Title 35, chapter 2, Arizona Revised Statutes, is amended  
18 by adding article 4, to read:

19 ARTICLE 4. GOVERNMENT INVESTMENTS PROTECTION ACT

20 35-351. Definitions

21 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

23 (a) EXERCISES ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY CONTROL  
24 WITH RESPECT TO A PLAN OR EXERCISES ANY AUTHORITY OR CONTROL MANAGING OR  
25 DISPOSING OF THE PLAN'S ASSETS.

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

29 (c) HAS ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITY  
30 IN ADMINISTERING A PLAN.

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

34 (a) INTERNATIONAL, DOMESTIC OR INDUSTRY AGREEMENTS RELATING TO  
35 ENVIRONMENTAL OR SOCIAL GOALS.

36 (b) CORPORATE GOVERNANCE STRUCTURES BASED ON SOCIAL  
37 CHARACTERISTICS.

38 (c) SOCIAL OR ENVIRONMENTAL GOALS.

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

43 4. "PLAN" MEANS ANY PLAN, FUND OR PROGRAM THAT IS ESTABLISHED OR  
44 MAINTAINED BY THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE,  
45 INCLUDING A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF

1 REGENTS AND A COMMUNITY COLLEGE DISTRICT AS DEFINED IN SECTION 15-1401, TO  
2 DO ANY OF THE FOLLOWING:

3 (a) PROVIDE RETIREMENT INCOME OR OTHER RETIREMENT BENEFITS TO  
4 EMPLOYEES OR FORMER EMPLOYEES.

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

7 (c) INVEST TAXPAYER MONIES FOR ANY PURPOSE.

8 35-352. Plans; fiduciaries; duties

9 A. A FIDUCIARY SHALL DISCHARGE THE FIDUCIARY'S DUTIES WITH RESPECT  
10 TO A PLAN SOLELY IN THE INTEREST OF THE PARTICIPANTS AND BENEFICIARIES OF  
11 THE PLAN FOR THE EXCLUSIVE PURPOSE OF PROVIDING PECUNIARY BENEFITS TO THE  
12 PARTICIPANTS AND THEIR BENEFICIARIES, DEFRAYING REASONABLE EXPENSES OF  
13 ADMINISTERING THE PLAN AND EARNING A RETURN ON THE INVESTMENT.

14 B. A FIDUCIARY MUST TAKE INTO ACCOUNT ONLY PECUNIARY FACTORS WHEN  
15 EVALUATING AN INVESTMENT OR DISCHARGING THE FIDUCIARY'S DUTIES WITH  
16 RESPECT TO A PLAN. A FIDUCIARY MAY NOT TAKE INTO ACCOUNT ANY NONPECUNIARY  
17 OR OTHER FACTORS WHEN EVALUATING AN INVESTMENT.

18 35-353. Plans; voting of ownership interests

19 A. ONLY THE GOVERNMENTAL ENTITY THAT ESTABLISHES OR MAINTAINS A  
20 PLAN MAY VOTE THE SHARES HELD BY THE PLAN. A GOVERNMENTAL ENTITY MAY NOT  
21 GRANT PROXY VOTING AUTHORITY TO ANY PERSON WHO IS NOT A PART OF THE  
22 GOVERNMENTAL ENTITY UNLESS THAT PERSON FOLLOWS GUIDELINES CONSISTENT WITH  
23 THE GOVERNMENTAL ENTITY'S OBLIGATION TO ACT BASED ONLY ON PECUNIARY  
24 FACTORS.

25 B. THE SHARES HELD DIRECTLY OR INDIRECTLY BY A PLAN SHALL BE VOTED  
26 ONLY IN THE PECUNIARY INTEREST OF THE PLAN. THE SHARES MAY NOT BE VOTED  
27 TO FURTHER NONPECUNIARY, ENVIRONMENTAL, SOCIAL, POLITICAL, IDEOLOGICAL OR  
28 OTHER BENEFITS OR GOALS. A PLAN MAY NOT ENTRUST ANY PLAN ASSETS TO A  
29 FIDUCIARY THAT:

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

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

33 C. A FIDUCIARY MAY NOT ADOPT A PRACTICE OF FOLLOWING THE  
34 RECOMMENDATIONS OF A PROXY ADVISORY FIRM OR OTHER SERVICE PROVIDER UNLESS  
35 THE PROXY ADVISORY FIRM'S OR THE SERVICE PROVIDER'S PROXY VOTING  
36 GUIDELINES ARE CONSISTENT WITH THE FIDUCIARY'S OBLIGATION TO ACT BASED  
37 ONLY ON PECUNIARY FACTORS.