

REFERENCE TITLE: government investments; fiduciaries; pecuniary benefit

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

SB 1500

Introduced by
Senators Carroll: Bennett, Gowan, Kerr, Shamp; Representatives Carbone,
Carter, Dunn, Martinez, Nguyen, Smith, Wilmeth

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. "BOYCOTT OF AN ENERGY COMPANY" MEANS ENGAGING IN A REFUSAL TO
23 DEAL, TERMINATING BUSINESS ACTIVITIES OR PERFORMING OTHER ACTIONS THAT ARE
24 INTENDED TO PENALIZE, INFLICT ECONOMIC HARM OR LIMIT COMMERCIAL RELATIONS
25 WITH AN ENTITY IF THOSE ACTIONS ARE TAKEN WITHOUT A REASONABLE BUSINESS
26 PURPOSE BECAUSE THE ENTITY DOES ANY OF THE FOLLOWING:

27 (a) ENGAGES IN EXPLORING, PRODUCING, USING, TRANSPORTING, SELLING
28 OR MANUFACTURING FOSSIL FUEL-BASED OR NUCLEAR-BASED ENERGY.

29 (b) ENGAGES IN EXPLORING, PRODUCING, USING, TRANSPORTING, SELLING
30 OR MANUFACTURING FOSSIL FUEL-BASED OR NUCLEAR-BASED ENERGY AND DOES NOT
31 COMMIT OR PLEDGE TO MEET ENVIRONMENTAL STANDARDS BEYOND APPLICABLE FEDERAL
32 AND STATE LAW.

33 (c) DOES BUSINESS WITH AN ENTITY THAT ENGAGES IN EXPLORING,
34 PRODUCING, USING, TRANSPORTING, SELLING OR MANUFACTURING FOSSIL FUEL-BASED
35 OR NUCLEAR-BASED ENERGY.

36 2. "FIDUCIARY" MEANS A PERSON WHO DOES ANY OF THE FOLLOWING:

37 (a) EXERCISES ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY CONTROL
38 WITH RESPECT TO A PLAN OR WHO EXERCISES ANY AUTHORITY OR CONTROL MANAGING
39 OR DISPOSING OF THE PLAN'S ASSETS.

40 (b) RENDERS INVESTMENT ADVICE FOR A FEE OR OTHER COMPENSATION,
41 DIRECTLY OR INDIRECTLY, WITH RESPECT TO ANY MONIES OR OTHER PROPERTY OF A
42 PLAN OR WHO HAS THE AUTHORITY OR RESPONSIBILITY TO RENDER INVESTMENT
43 ADVICE.

44 (c) HAS ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITY
45 IN ADMINISTERING A PLAN.

1 3. "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
7 CHARACTERISTICS.

8 (c) SOCIAL OR ENVIRONMENTAL GOALS.

9 (d) A BOYCOTT OF AN ENERGY COMPANY.

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

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

19 (a) PROVIDE RETIREMENT INCOME OR OTHER RETIREMENT BENEFITS TO
20 EMPLOYEES OR FORMER EMPLOYEES.

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

23 (c) INVEST TAXPAYER MONIES FOR ANY PURPOSE.

24 35-352. Plans; fiduciaries; duties

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

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

34 35-353. Plans; voting of ownership interests

35 A. ONLY A GOVERNMENTAL ENTITY THAT ESTABLISHES OR MAINTAINS A PLAN
36 MAY VOTE THE SHARES HELD BY THE PLAN. THE GOVERNMENTAL ENTITY MAY NOT
37 GRANT PROXY VOTING AUTHORITY TO ANY PERSON WHO IS NOT A PART OF THE
38 GOVERNMENTAL ENTITY UNLESS THAT PERSON FOLLOWS GUIDELINES CONSISTENT WITH
39 THE GOVERNMENTAL ENTITY'S OBLIGATION TO ACT BASED ONLY ON PECUNIARY
40 FACTORS.

41 B. THE SHARES HELD DIRECTLY OR INDIRECTLY BY A PLAN SHALL BE VOTED
42 ONLY IN THE PECUNIARY INTEREST OF THE PLAN. THE SHARES MAY NOT BE VOTED
43 TO FURTHER NONPECUNIARY, ENVIRONMENTAL, SOCIAL, POLITICAL, IDEOLOGICAL OR
44 OTHER BENEFITS OR GOALS. THE PLAN MAY NOT ENTRUST ANY PLAN ASSETS TO A
45 FIDUCIARY THAT:

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

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

4 C. A FIDUCIARY MAY NOT ADOPT A PRACTICE OF FOLLOWING THE
5 RECOMMENDATIONS OF A PROXY ADVISORY FIRM OR OTHER SERVICE PROVIDER UNLESS
6 THE PROXY ADVISORY FIRM'S OR THE SERVICE PROVIDER'S PROXY VOTING
7 GUIDELINES ARE CONSISTENT WITH THE FIDUCIARY'S OBLIGATION TO ACT BASED
8 ONLY ON PECUNIARY FACTORS.

9 Sec. 3. Findings

10 The legislature finds that:

11 1. The state treasurer has the authority and duty to invest state
12 monies, to ensure transparency of state investments and to safeguard the
13 pecuniary interests of this state.

14 2. State investments must be made in the pecuniary interest of
15 beneficiaries.

16 3. Environmental, social and governance investing has increasingly
17 become a significant strategy in state investments in states other than
18 this state.

19 4. Environmental, social and governance investing strategies are
20 implemented to achieve nonpecuniary goals.

21 5. Environmental, social and governance investing consistently
22 underperforms market indexes and yields lower returns for beneficiaries.

23 6. Environmental, social and governance investing strategies
24 violate the duty of fiduciaries to maximize the financial return on state
25 investments for beneficiaries.

26 7. Shares held directly or indirectly by a plan established or
27 maintained by this state or a political subdivision of this state shall be
28 voted only in the pecuniary interest of the plan.