

REFERENCE TITLE: government investments; plans; fiduciaries; products

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2471

Introduced by
Representative Montenegro

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 11; 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 TITLE 35, CHAPTER 2,
15 ARTICLE 10, AND THE STATE TREASURER MAY NOT TAKE UNNECESSARY INVESTMENT
16 RISKS 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 11, to read:

19 ARTICLE 11. GOVERNMENT INVESTMENTS PROTECTION ACT

20 35-395. 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 35-395.01. 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 35-395.02. 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.