

Stricken language would be deleted from and underlined language would be added to present law.
Act 498 of the Regular Session

State of Arkansas
94th General Assembly
Regular Session, 2023

As Engrossed: H3/28/23
A Bill

HOUSE BILL 1253

By: Representatives McAlindon, Gonzales

By: Senator J. Bryant

For An Act To Be Entitled

AN ACT TO CREATE THE STATE GOVERNMENT EMPLOYEE
RETIREMENT PROTECTION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE STATE GOVERNMENT EMPLOYEE
RETIREMENT PROTECTION ACT.

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

SECTION 1. Arkansas Code Title 24, Chapter 2, is amended to add an additional subchapter to read as follows:

Subchapter 8 – State Government Employee Retirement Protection Act

24-2-801. Title.

This subchapter shall be known and may be cited as the "State Government Employee Retirement Protection Act".

24-2-802. Definitions.

As used in this subchapter:

(1) "Fiduciary" means a person who, with respect to a pension benefit plan:

(A) Exercises any discretionary authority or discretionary control regarding the management of the pension benefit plan or exercises an authority or control regarding the management or disposition of the pension benefit plan's assets;

(B) Has any discretionary authority or discretionary



responsibility in the administration of the pension benefit plan, including making recommendations or voting on or for a plan's shares or proxies;

(2)(A) "Material", when used to qualify a financial risk or financial return, means a financial risk or financial return in which there is a substantial likelihood that a reasonable investor would attach importance when:

(i) Evaluating the potential financial risks or returns of an existing or prospective investment; or

(ii) Exercising, or declining to exercise, any rights appurtenant to securities.

(B) "Material", when used to qualify a financial risk or financial return, does not include:

(i) Furthering nonpecuniary, environmental, social, political, ideological, or other goals or objectives; or

(ii) Any portion of a financial risk or financial return that primarily relates to events that:

(a) Involve a high degree of uncertainty regarding what may occur in the long-term future; and

(b) Are systemic, general, or not investment-specific in nature;

(3) "Pension benefit plan" means any plan, fund, or program, other than an individually directed defined contribution plan, that is established, maintained, or offered by the State of Arkansas or any subdivision, county, municipality, agency, or instrumentality of the State of Arkansas, or any school, college, university, administration, authority, or other enterprise operated by the State of Arkansas to the extent that, by its terms or as a result of prevailing circumstances, the plan, fund, or program:

(A) Provides retirement income or other retirement benefits to employees or former employees; or

(B) Results in a deferral of income by employees for a period of time extending to or beyond the termination of the covered employment;

(4)(A) "Pecuniary factor" means a factor that has a material effect on the financial risk or financial return, or both, of an investment based on appropriate investment horizons consistent with the pension benefit plan's investment objectives and the funding policy.

(B) "Pecuniary factor" does not include a nonpecuniary factor; and

(5) "Nonpecuniary" means any action taken or factor considered by a fiduciary with any purpose to further environmental, social, political, or ideological goals.

24-2-803. Standard of care – Sole interest and prudent person.

(a) A fiduciary shall discharge his or her duties with respect to a pension benefit plan:

(1) Solely in the pecuniary interest of the participants and beneficiaries and for the exclusive purpose of:

(A) Providing pecuniary benefits to participants and their beneficiaries; and

(B) Defraying reasonable expenses of administering the plan;

(2) With the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims;

(3) By diversifying the investments of the pension benefit plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) In accordance with the documents and instruments governing the pension benefit plan insofar as the documents and instruments are consistent with the provisions of this subchapter.

24-2-804. Consideration of nonpecuniary factors prohibited.

(a) A fiduciary's evaluation of an investment, or evaluation or exercise of any right appurtenant to an investment, shall take into account only pecuniary factors.

(b) A fiduciary shall not promote a nonpecuniary benefit or any other nonpecuniary goals.

(c)(1) An environmental, social, corporate governance, or other similarly oriented consideration is a pecuniary factor only if it presents an economic risk or opportunity that a qualified investment professional would treat as a material economic consideration under generally accepted

investment theories.

(2) The weight given to any factor listed in subdivision (c)(1) of this section should reflect solely a prudent assessment of its impact on financial risk and financial return.

(3) A fiduciary considering an environmental, social, corporate governance, or other similarly oriented factor as a pecuniary factor is also required to examine the level of diversification, degree of liquidity, and the potential financial risk and financial return in comparison with other available alternative investments that would play a similar role in the pension benefit plan portfolio.

(4) Any pecuniary consideration of an environmental, social, or governance factor must include an evaluation of whether a greater return can be achieved through investments that rank poorly on that factor.

24-2-805. Voting ownership interests.

(a)(1) All shares held directly or indirectly by or on behalf of a pension benefit plan or its beneficiaries, or both, shall be voted upon solely in the pecuniary interest of the pension benefit plan participants.

(2) Voting to further a nonpecuniary, environmental, social, political, ideological, or other benefit or goal is prohibited.

(b) Unless no economically practicable alternative is available:

(1) A fiduciary shall not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless the firm or service provider has a practice of following proxy voting guidelines that are consistent with the fiduciary's obligation to act based only upon pecuniary factors and makes a written commitment to do so; and

(2) Plan assets shall not be entrusted to a fiduciary unless that fiduciary has a practice of following guidelines when engaging with portfolio companies and voting shares or proxies that match the obligation of the pension benefit plan to act based only upon pecuniary factors and makes a written commitment to do so.

(c) Authority to vote upon shares as discussed in this section shall be in the hands of the existing state official or board who is politically accountable to the people of the State of Arkansas for each pension benefit plan.

(d) All voting authority shall reside with the appropriate state

official or board, except that the state official or board may delegate that authority to a person who has a practice of following guidelines that match the governmental entity's obligation to act based only on pecuniary factors and makes a written commitment to do so.

(e)(1) All proxy votes shall be tabulated and reported annually to the each pension benefit plan's board of trustees.

(2)(A) For each vote, the report shall contain a vote caption, the plan's vote, the recommendation of company management and, if applicable, the proxy advisor's recommendation.

(B) These reports shall be posted on a publicly available webpage on each applicable board of trustees' website.

24-2-806. Enforcement.

(a) This subchapter may be enforced by the Attorney General.

(b) If the Attorney General has reasonable cause to believe that a person has engaged in or is engaging in a violation of this subchapter, the Attorney General may:

(1) Require the person to file on forms the Attorney General prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the violation, as well as other data and information the Attorney General deems necessary;

(2) Examine under oath any person in connection with the violation;

(3) Examine any record, book, document, account, or paper the Attorney General deems necessary; and

(4) Pursuant to an order of a circuit court with jurisdiction, impound any record, book, document, account, paper, sample, or material relating to the practice and retain the same in the Attorney General's possession until the completion of all proceedings undertaken under this subchapter or in the court.

/s/McAlindon

APPROVED: 4/10/23