

SENATE FILE NO. SF0172

Stop ESG-State funds fiduciary duty act.

Sponsored by: Senator(s) Biteman, Bouchard, Driskill,
French, Hicks, Hutchings, Ide, Laursen, D,
McKeown and Salazar and Representative(s)
Haroldson, Jennings, Ottman, Pendergraft,
Singh, Tarver and Ward

A BILL

for

1 AN ACT relating to the administration of government;
2 specifying requirements for the hiring and retention of
3 investment managers, trustees and fiduciaries who invest
4 state funds as specified; specifying proxy voting
5 requirements for investment managers, trustees and
6 fiduciaries who invest state funds; providing definitions;
7 making conforming amendments; specifying applicability; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 9-4-722 is created to read:

13

1 **9-4-722. Investment of state funds; consideration of**
2 **only financial purposes.**

3

4 (a) As used in this section:

5

6 (i) "Fiduciary" means as defined by W.S.
7 9-3-434(a)(xi) and includes any investment trustee, manager
8 or other person responsible for making investment decisions
9 or investment policies concerning state funds;

10

11 (ii) "Fiduciary commitment" means any evidence
12 of a fiduciary's or trustee's purpose in managing the
13 investment of state funds, including but not limited to any
14 of the following in a fiduciary's capacity as a fiduciary
15 or in a trustee's capacity as a trustee:

16

17 (A) Advertising, statements, explanations,
18 reports, letters to clients, communications with portfolio
19 companies, statements of principles or commitments; or

20

21 (B) Participation in, affiliation with or
22 status as a signatory to any coalition, initiative, joint
23 statement of principles or agreement.

1

2 (iii) "Financial" means having been prudently
3 determined by a fiduciary or trustee to have a material
4 effect on the financial risk or the financial return of an
5 investment. "Financial" shall not include any action taken,
6 or factor considered, by a fiduciary or trustee with any
7 purpose whatsoever to further social, political or
8 ideological interests. A fiduciary may reasonably be
9 determined to have taken an action, or considered a factor,
10 with a purpose to further social, political or ideological
11 interests based upon evidence showing a fiduciary
12 commitment to further, through portfolio company
13 engagement, board or shareholder votes or other actions as
14 a fiduciary or a trustee, any of the following actions
15 beyond what state or federal law requires:

16

17 (A) Eliminating, reducing, offsetting or
18 disclosing greenhouse gas emissions;

19

20 (B) Instituting or assessing corporate
21 board or employment, composition, compensation or
22 disclosure criteria that incorporates characteristics

1 protected in this state as specified in W.S.
2 27-9-105(a)(i);

3

4 (C) Divesting from, limiting investment in
5 or limiting the activities or investments of any company
6 for failing or not committing to meet environmental
7 standards or disclosures;

8

9 (D) Access to abortion, sex or gender
10 changes or transgender surgery;

11

12 (E) Divesting from, limiting investment in
13 or limiting the activities of any company that engages in,
14 facilitates or supports the manufacture, import,
15 distribution, marketing, advertising, sale or lawful use of
16 firearms, ammunition, components, parts or accessories of
17 firearms or ammunition.

18

19 (iv) "Investment entity" means the state
20 treasurer, the state loan and investment board, the Wyoming
21 retirement board, the Wyoming retirement system and any
22 other entity responsible for the investment or management
23 of the investment of state funds;

1

2 (v) "State funds" means permanent funds as
3 defined by W.S. 9-4-714(a)(v), the retirement account
4 established in W.S. 9-3-407(a), any other funds invested by
5 the Wyoming retirement system and any other funds invested
6 by the state treasurer.

7

8 (b) In making and supervising investments of state
9 funds, each investment entity shall discharge its
10 investment duties solely in the financial interest of the
11 beneficiaries of the applicable state funds for the
12 exclusive purposes of:

13

14 (i) Providing financial benefits to the
15 beneficiaries of the state funds;

16

17 (ii) Defraying reasonable expenses of
18 administering the investment of state funds;

19

20 (iii) Meeting other purposes required by law and
21 not related to the actions and considerations prohibited by
22 this section.

23

1 (c) Any person or fiduciary designated as a custodian
2 of any state funds and any person or fiduciary retained to
3 invest state funds shall be subject to the same fiduciary
4 duties as an investment entity has under this section.

5

6 (d) Each fiduciary shall take into account only
7 financial factors when discharging its duties in investing
8 state funds.

9

10 (e) All shares of stock held directly or indirectly
11 by or on behalf of an investment entity or on behalf of the
12 investment entity's beneficiaries shall be voted solely in
13 the financial interest of the beneficiaries.

14

15 (f) Unless no economically practicable alternative is
16 available:

17

18 (i) The investment entity shall not grant proxy
19 voting authority to any person who is not part of the
20 investment entity or who is not employed by the investment
21 entity, except that the investment entity may grant proxy
22 voting authority to a person who has a practice of, and
23 commits in writing to, follow guidelines that match the

1 investment entity's obligation to act solely upon financial
2 factors as required by this section;

3

4 (ii) State funds shall not be entrusted to a
5 fiduciary unless the fiduciary has a practice of, and
6 commits in writing to, follow guidelines when engaging with
7 portfolio companies and voting shares or proxies that match
8 the investment entity's obligation to act solely upon
9 financial factors as required by this section;

10

11 (iii) No fiduciary shall adopt a practice of
12 following the recommendations of a proxy advisor or other
13 service provider unless the advisor or service provider has
14 a practice of, and commits in writing to, following proxy
15 voting guidelines that match the investment entity's
16 obligation to act solely upon financial factors as required
17 by this section.

18

19 (g) All proxy votes shall be tabulated and reported
20 annually by the investment entity not later than September
21 1 of each year. For each vote, the report shall contain a
22 vote caption, the plan's vote, the recommendation of
23 company management and, if applicable, the proxy advisor's

1 recommendation. Each report prepared under this subsection
2 shall be posted on the investment entity's website.

3

4 (h) The attorney general may enforce any violation of
5 this section. If the attorney general believes that a
6 person has engaged in or is engaging in a violation of this
7 section, the attorney general may require the person to
8 file a statement or report in writing, under oath, as to
9 all of the facts and circumstances concerning the violation
10 and to provide any other data and information deemed
11 necessary.

12

13 (j) In addition to any other remedies available at
14 law or equity, any person who serves as a fiduciary and who
15 violates this section shall be liable for damages to the
16 investment entity in an amount equal to three (3) times the
17 amount paid to the person by the board for the person's
18 services. All amounts collected under this subsection shall
19 be deposited into the applicable state fund against which
20 the violation was committed.

21

1 **Section 2.** W.S. 9-3-405(a)(v), 9-3-408(b)(intro),
2 9-3-436(a), 9-3-440(a)(intro) and (b), 9-4-715(a)(intro)
3 and (b) and 9-4-716(a)(intro) are amended to read:

4

5 **9-3-405. Retirement board duties and powers.**

6

7 (a) In addition to any other duties prescribed by
8 law, the board shall:

9

10 (v) Serve as investment trustee of the funds of
11 the system. In serving as investment trustee under this
12 paragraph, the board shall comply with the requirements of
13 W.S. 9-4-722;

14

15 **9-3-408. Designated custodian of retirement account;**
16 **disbursements; investment of account monies.**

17

18 (b) The board, or its designee, which shall be
19 registered under the Investment Advisor's Act of 1940 as
20 amended, or any bank as defined in that act, upon written
21 authority, shall invest monies in the retirement account,
22 which investments shall not be considered disbursements for
23 the purposes of W.S. 9-4-214 and subsection (a) of this

1 section. In investing and managing monies in the retirement
2 account and subject to the requirements of W.S. 9-4-722,
3 the board, or its designee, shall exercise the judgment and
4 care that a prudent investor would, in light of the
5 purposes, terms, distribution requirements and all other
6 circumstances surrounding the monies in the retirement
7 account, including risk and return objectives established
8 by the board which are reasonably suitable to the purpose
9 of the Wyoming retirement system.

10

11 **9-3-436. Establishment of trust.**

12

13 (a) Except as otherwise provided in subsection (b) of
14 this section, all assets of a retirement system are held in
15 trust for the exclusive benefit of the members, retirees
16 and beneficiaries of the system, including reasonable
17 administrative expenses. The trustee has the exclusive
18 authority, subject to this act, to invest and manage those
19 assets, subject to the requirements of W.S. 9-4-722.

20

21 **9-3-440. Duties of trustee in investing and managing**
22 **assets of retirement system.**

23

1 (a) In investing and managing assets of a retirement
2 system pursuant to W.S. 9-3-439 and subject to W.S.
3 9-4-722, a trustee with authority to invest and manage
4 assets:

5
6 (b) A trustee with authority to invest and manage
7 assets of a retirement system shall adopt a statement of
8 investment objectives and policies for each retirement
9 program or appropriate grouping of programs, subject to the
10 requirements of W.S. 9-4-722. The statement shall include
11 the desired rate of return on assets overall, the desired
12 rates of return and acceptable levels of risk for each
13 asset class, asset-allocation goals, guidelines for the
14 delegation of authority and information on the types of
15 reports to be used to evaluate investment performance. At
16 least annually, the trustee shall review the statement and
17 change or reaffirm it.

18

19 **9-4-715. Permissible investments.**

20

21 (a) The state treasurer, in consultation with the
22 investment funds committee, shall employ a designated chief
23 investment officer who shall have minimum qualifications

1 including at least ten (10) years of experience managing
2 institutional investment portfolios of in excess of five
3 hundred million dollars (\$500,000,000.00), experience with
4 hiring and managing internal and external investment
5 managers and extensive experience in any two (2) or more of
6 the following areas: domestic equity, fixed income
7 securities, international equity or alternative
8 investments. The designated chief investment officer shall
9 provide the state treasurer with information and
10 recommendations regarding the investment of state funds and
11 additional information as requested by the state treasurer.
12 The state treasurer shall compile an annual report which
13 shall include investment, income, individual and aggregate
14 gains and losses by fund and the extent to which the state
15 investment policy is being implemented. Subject to
16 requirements of W.S. 9-4-722 and subsection (c) of this
17 section, state funds may be invested in any investment:

18

19 (b) The state treasurer, or his designee, which shall
20 be registered under the Investment Advisor's Act of 1940 as
21 amended if required to be registered by the terms of that
22 act as amended, may invest the permanent funds in equities,
23 including stocks of corporations in accordance with

1 subsections (a) through (e) of this section, ~~and~~ W.S.
2 9-4-716 and 9-4-722. The state treasurer shall report at
3 least annually to the select committee on capital financing
4 and investments, the joint appropriations committee and the
5 investment funds committee on the analysis conducted
6 pursuant to paragraph (d)(ii) of this section and W.S.
7 9-4-716(b)(ix) and (e).

8

9 **9-4-716. State investment policy; investment**
10 **consultant.**

11

12 (a) The board, in consultation with the investment
13 funds committee, shall adopt investment policy statements
14 for state funds and shall review those policy statements at
15 least annually. These policy statements shall be subject to
16 W.S. 9-4-722 and to the following:

17

18 **Section 3.** Nothing in this act shall be construed to
19 impair or otherwise modify any contract entered into before
20 the effective date of this act.

21

1 **Section 4.** This act is effective July 1, 2023.

2

3

(END)