

FIDUCIARY DUTY MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: Susan Pulsipher

LONG TITLE

General Description:

This bill addresses fiduciary duties for management of government funds.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a person who manages or invests funds on behalf of a governmental entity or votes on an ownership share in a governmental entity to consider only certain factors;
- ▶ creates a rebuttable presumption that a person did not comply with the requirement to consider only certain factors under certain circumstances;
- ▶ addresses proxy voting requirements within a governmental entity;
- ▶ requires a governmental entity to compile and publicly provide proxy voting reports; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **49-11-303**, as last amended by Laws of Utah 2005, Chapter 116

29 **53D-1-601**, as enacted by Laws of Utah 2014, Chapter 426

30 **67-19d-301**, as last amended by Laws of Utah 2012, Chapter 376

31 ENACTS:

32 **63G-28-101**, Utah Code Annotated 1953

33 **63G-28-201**, Utah Code Annotated 1953

34 **63G-28-202**, Utah Code Annotated 1953



36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **49-11-303** is amended to read:

38 **49-11-303. Fund investment standard -- Prudent investor rule.**

39 ~~[The]~~ Subject to Title 63G, Chapter 28, Government Fiduciary Duties, the fund shall be
40 invested in accordance with the prudent investor rule established in Title 75, Chapter 7, Part 9,
41 Utah Uniform Prudent Investor Act.

42 Section 2. Section **53D-1-601** is amended to read:

43 **53D-1-601. General management and investment principles -- Duty of person**
44 **with special skills or expertise.**

45 (1) Board members, the director, and office staff shall act in the best interests of the
46 beneficiaries and comply with the duty of undivided loyalty to the beneficiaries.

47 (2) ~~[A]~~ Subject to Title 63G, Chapter 28, Government Fiduciary Duties, a person who
48 manages and invests trust fund money or assets shall:

49 (a) manage and invest in good faith and with the care a prudent professional in a like
50 position would exercise under similar circumstances;

51 (b) consider, as relevant:

52 (i) general economic conditions;

53 (ii) the possible effect of inflation or deflation;

54 (iii) any expected tax consequences of investment decisions or strategies;

55 (iv) the role that each investment or course of action plays within the overall
56 investment portfolio of the trust fund;

57 (v) the expected net return from income and the appreciation of investments;

58 (vi) the expected returns and risk characteristics of individual assets;

- 59 (vii) the needs of the beneficiaries to receive distributions and to preserve capital;
- 60 (viii) liquidity;
- 61 (ix) asset allocation; and
- 62 (x) costs and management fees; and
- 63 (c) make management and investment decisions about an individual asset not in
- 64 isolation but in the context of the trust fund's portfolio of investments as a whole and as part of
- 65 an overall investment strategy, having risk and return objectives reasonably suited to the trust
- 66 fund and to the beneficiaries.

67 (3) A person who has special skills or expertise, or who is selected to assist in

68 managing and investing the trust fund money or assets based on the person's representation of

69 having special skills or expertise, has a duty to use those skills and that expertise in managing

70 and investing trust fund money and assets.

71 Section 3. Section **63G-28-101** is enacted to read:

72 **CHAPTER 28. GOVERNMENT FIDUCIARY DUTIES**

73 **Part 1. General Provisions**

74 **63G-28-101. Definitions.**

75 As used in this chapter:

76 (1) "Fiduciary" means a person who manages, invests, or advises on the investment of

77 funds.

78 (2) (a) "Fiduciary commitment" means evidence of a fiduciary's purpose or goal in

79 managing funds or assets as a fiduciary.

80 (b) "Fiduciary commitment" includes:

81 (i) an advertisement, statement, explanation, report, letter to a client, communication

82 with a portfolio company, statement of principles, or commitment; or

83 (ii) the fiduciary's participation in, affiliation with, or status as a signatory to, a

84 coalition, initiative, joint statement of principles, or agreement.

85 (3) (a) "Financial factor" means a factor considered by a fiduciary that has a material

86 effect on the financial risk or return of an investment.

87 (b) "Financial factor" does not include a factor considered by a fiduciary for the

88 purpose of furthering a social, political, or ideological interest.

89 (4) "Government funds" means funds that:

90 (a) are derived from public taxes or public revenue; or

91 (b) are owned, held, or administered by a governmental entity.

92 (5) (a) "Governmental entity" means:

93 (i) the state;

94 (ii) a county, city, town, metro township, school district, local district, special service
95 district, or other political subdivision of the state; or

96 (iii) an independent entity.

97 (b) "Governmental entity" includes an agency, bureau, office, department, division,
98 board, commission, institution, laboratory, or other instrumentality of an entity described in
99 Subsection (5)(a).

100 (6) "Independent entity" means the same as that term is defined in Section [63E-1-102](#).

101 (7) "Member" means:

102 (a) an owner of an interest in a governmental entity; or

103 (b) a person acting as the owner's agent.

104 Section 4. Section **63G-28-201** is enacted to read:

105 **Part 2. Fiduciary Duties**

106 **63G-28-201. Fiduciary duties -- Rebuttable presumption.**

107 (1) Notwithstanding any other law of this state, in making or supervising an investment
108 of government funds or discharging any other duty with respect to government funds, a
109 fiduciary may only consider:

110 (a) a factor the fiduciary determines is a financial factor;

111 (b) defraying reasonable administration expenses; or

112 (c) whether another person knowingly engages in unlawful activity.

113 (2) There is a rebuttable presumption that a fiduciary did not comply with Subsection
114 (1) if, before taking an action described in Subsection (1), the fiduciary makes a fiduciary
115 commitment to further any of the following interests beyond applicable state and federal law
116 requirements:

117 (a) elimination, reduction, offset, or disclosure of greenhouse gas emissions;

118 (b) institution or assessment of a board of directors or employment, composition,
119 compensation, or disclosure criteria that incorporates race, color, sex, pregnancy, religion,
120 ancestry, or national origin;

- 121 (c) divestment from, limitation on investment in, or limitation on the activities or
- 122 investments of, a company, for:
- 123 (i) failing or not committing to meet environmental standards or disclosures; or
- 124 (ii) facilitating or supporting the manufacture, importation, distribution, marketing,
- 125 advertisement, sale, or lawful use of a firearm, ammunition, or a component or accessory of a
- 126 firearm or ammunition; or
- 127 (d) access to abortion or sex characteristic surgical procedures.

128 Section 5. Section **63G-28-202** is enacted to read:

129 **63G-28-202. Member voting -- Proxy voting -- Reporting.**

130 (1) Notwithstanding any other law of this state, in voting on an ownership share in a

131 governmental entity, a member may only consider:

- 132 (a) a factor the member determines is a financial factor;
- 133 (b) defraying reasonable administration expenses; or
- 134 (c) whether another person knowingly engages in unlawful activity.

135 (2) A governmental entity may not grant proxy voting authority to, entrust government

136 funds to, or adopt a practice of following the recommendations of a person outside of the

137 governmental entity, unless:

- 138 (a) (i) the person has a practice of acting on and considering only financial factors
- 139 when making or supervising the investment of funds; and
- 140 (ii) the person agrees in writing to act on and consider only financial factors when
- 141 making or supervising an investment of government funds or discharging any other duty with
- 142 respect to government funds; or
- 143 (b) there is no economically practicable alternative available.

144 (3) (a) A governmental entity shall annually compile a report of proxy votes within the

145 governmental entity during the previous year that includes:

- 146 (i) a tabulation of the proxy votes; and
- 147 (ii) for each proxy vote:
- 148 (A) a vote caption;
- 149 (B) the governmental entity's vote;
- 150 (C) if applicable, the recommendation of the governmental entity's management; and
- 151 (D) if applicable, the proxy advisor's recommendation.

152 **(b) The governmental entity shall post a report described in Subsection (3)(a) on the**
153 **governmental entity's website or another publicly accessible location.**

154 Section 6. Section **67-19d-301** is amended to read:

155 **67-19d-301. Investment of State Post-Retirement Benefits Trust Fund.**

156 (1) [~~The~~] Subject to Title 63G, Chapter 28, Government Fiduciary Duties, the state
157 treasurer shall invest the assets of the State Post-Retirement Benefits Trust Fund created under
158 Section 67-19d-201 and the Elected Official Post-Retirement Benefits Trust Fund created
159 under Section 67-19d-201.5 with the primary goal of providing for the stability, income, and
160 growth of the principal.

161 (2) Nothing in this section requires a specific outcome in investing.

162 (3) The state treasurer may deduct any administrative costs incurred in managing trust
163 fund assets from earnings before distributing them.

164 (4) (a) The state treasurer may employ professional asset managers to assist in the
165 investment of assets of the trust fund.

166 (b) The treasurer may only provide compensation to asset managers from earnings
167 generated by the trust fund's investments.