

Senator Chris H. Wilson proposes the following substitute bill:

FIDUCIARY DUTY MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Chris H. Wilson

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses fiduciary duties for funds managed by public entities.

Highlighted Provisions:

This bill:

- ▶ requires a public entity to invest public funds in accordance with the prudent investor rule;
- ▶ provides that a public entity's consideration of environmental, social, or governance investment factors is a violation of the public entity's fiduciary duties under certain circumstances;
- ▶ addresses a public entity's proxy voting duties; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-11-203, as renumbered and amended by Laws of Utah 2002, Chapter 250



26 [49-11-303](#), as last amended by Laws of Utah 2005, Chapter 116
27 [51-7-2](#), as last amended by Laws of Utah 2022, Chapters 186, 298
28 [51-7-14](#), as last amended by Laws of Utah 2006, Chapter 277
29 [53B-8a-107](#), as last amended by Laws of Utah 2011, Chapter 46

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

32 Section 1. Section **49-11-203** is amended to read:

33 **49-11-203. Powers and duties of board.**

34 (1) The board shall:

35 (a) appoint an executive director to administer the office;

36 (b) receive and act upon reports covering the operations of the systems, plans,
37 programs, and funds administered by the office;

38 (c) ensure that the systems, plans, programs, and funds are administered according to
39 law;

40 (d) review any final order of a hearing officer and approve or modify the order at the
41 board's discretion in accordance with Section [49-11-613](#);

42 (e) examine and approve an annual operating budget for the office;

43 (f) serve as investment trustees of the Utah State Retirement Investment Fund as
44 provided under this title;

45 (g) maintain, in conjunction with participating employers and members, the systems,
46 plans, and programs on an actuarially sound basis;

47 (h) report annually to the governor, the Legislature, and each participating employer
48 the contribution rates, premium rates, and any adjustments necessary to maintain the systems,
49 plans, and programs on a financially and actuarially sound basis;

50 (i) receive and act upon recommendations of the executive director;

51 (j) recommend to the governor and Legislature, through the executive director, any
52 necessary or desirable changes to this title;

53 (k) develop broad policy for the long-term operation of the various systems, plans, and
54 programs under broad discretion and power to perform the board's policymaking functions,
55 including the specific authority to interpret and define any provision or term under this title
56 when the board or office provides written documentation which demonstrates that the

- 57 interpretation or definition promotes uniformity in the administration of the systems or
58 maintains the actuarial soundness of the systems, plans, or programs;
- 59 (l) adopt interest rates, premium rates, and annual contribution rates after reviewing
60 actuarial recommendations;
- 61 (m) establish the compensation of the executive director and adopt compensation plans
62 and policies based on market surveys for positions in the office;
- 63 (n) take action consistent with this title for the administration of the systems, plans, and
64 programs in order to carry out the purposes of this title;
- 65 (o) provide for audits of the systems, plans, programs, and funds;
- 66 (p) take actions not in conflict with the board's trust and fiduciary responsibilities or
67 other law, with respect to the governance of the office which are substantially similar to those
68 governing other public agencies; [~~and~~]
- 69 (q) in accordance with the board's fiduciary responsibilities, make investment decisions
70 with the sole purpose of maximizing the risk-adjusted return on the investments;
- 71 (r) to the extent practicable:
- 72 (i) (A) retain the right to vote investor proxies; or
73 (B) if the investments are commingled with another investor's funds, request the right
74 to vote investor proxies; and
- 75 (ii) ensure proxy voting is exercised:
76 (A) to maximize risk-adjusted returns for the exclusive benefit of beneficiaries; and
77 (B) against investments that prioritize social or environmental objectives or the
78 non-pecuniary governance of another entity; and
- 79 [~~(r)~~] (s) otherwise exercise the powers and perform the duties conferred on the board
80 by this title.
- 81 (2) The board may:
- 82 (a) subpoena witnesses and compel [~~their~~] the witnesses' attendance to testify before
83 [~~it~~] the board, for which purpose each board member may administer oaths and affirmations to
84 witnesses and others transacting business of the office;
- 85 (b) establish councils to recommend to the board and the executive director policies
86 affecting members of any systems, plans, and programs administered by the board;
- 87 (c) pay the travel expenses of council members who attend council meetings; and

88 (d) sue and be sued in ~~[its]~~ the board's own name.

89 Section 2. Section **49-11-303** is amended to read:

90 **49-11-303. Fund investment standard -- Prudent investor rule -- Consideration of**
91 **environmental, social, or governance factors.**

92 (1) The fund shall be invested in accordance with the prudent investor rule established
93 in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

94 (2) An investment by the board that equates or subordinates the maximum of
95 risk-adjusted returns to social or environmental objectives or the non-pecuniary governance of
96 another entity is a violation of the board's duty under Subsection (1).

97 Section 3. Section **51-7-2** is amended to read:

98 **51-7-2. Exemptions from chapter.**

99 (1) ~~[The]~~ Except as provided in Subsection (2), the following funds are exempt from
100 this chapter:

101 ~~[(1)]~~ (a) funds invested in accordance with the participating employees' designation or
102 direction pursuant to a public employees' deferred compensation plan established and operated
103 in compliance with Section 457 of the Internal Revenue Code of 1986, as amended;

104 ~~[(2)]~~ (b) funds of the Utah State Retirement Board;

105 ~~[(3)]~~ (c) funds of the Utah Housing Corporation;

106 ~~[(4)]~~ (d) endowment funds of higher education institutions, including funds of the
107 Higher Education Student Success Endowment, created in Section [53B-7-801](#);

108 ~~[(5)]~~ (e) permanent and other land grant trust funds established pursuant to the Utah
109 Enabling Act and the Utah Constitution;

110 ~~[(6)]~~ (f) the State Post-Retirement Benefits Trust Fund;

111 ~~[(7)]~~ (g) the funds of the Utah Educational Savings Plan;

112 ~~[(8)]~~ (h) funds of the permanent state trust fund created by and operated under Utah
113 Constitution, Article XXII, Section 4;

114 ~~[(9)]~~ (i) the funds in the Navajo Trust Fund;

115 ~~[(10)]~~ (j) the funds in the Radioactive Waste Perpetual Care and Maintenance Account;

116 ~~[(11)]~~ (k) the funds in the Employers' Reinsurance Fund;

117 ~~[(12)]~~ (l) the funds in the Uninsured Employers' Fund;

118 ~~[(13)]~~ (m) the Utah State Developmental Center Long-Term Sustainability Fund,

119 created in Section [62A-5-206.7](#);

120 ~~[(14)]~~ (n) the funds in the Risk Management Fund created in Section [63A-4-201](#); and

121 ~~[(15)]~~ (o) the Utah fund of funds created in Section [63N-6-401](#).

122 (2) Except for the funds of the Utah State Retirement Board and the Utah Educational
 123 Savings Plan, the funds described in Subsection (1) are not exempt from Subsections
 124 [51-7-14](#)(2) and (3).

125 Section 4. Section **51-7-14** is amended to read:

126 **51-7-14. Prudent investor rule for management of investments -- Proxy voting --**
 127 **Consideration of environmental, social, or governance factors -- Sale of security or**
 128 **investment for less than cost.**

129 (1) ~~[Persons]~~ Subject to Subsection (2), a person selecting investments authorized by
 130 Sections [51-7-11](#) and [51-7-13](#) shall:

131 ~~[(a) exercise that degree of judgment and care, under the circumstances prevailing at~~
 132 ~~the time the investment is selected, that persons of prudence, discretion, and intelligence~~
 133 ~~exercise in the management of their own affairs;]~~

134 ~~[(b)]~~ (a) select investments not for speculation but for investment; and

135 ~~[(c)]~~ (b) consider:

136 (i) the probable safety of the capital;

137 (ii) the probable benefits to be derived;

138 (iii) the probable duration for which that investment may be made;

139 (iv) the investment objectives specified in Section [51-7-17](#); and

140 (v) the investment portfolio as a whole.

141 (2) A public treasurer shall:

142 (a) invest public funds in accordance with the prudent investor rule established in Title
 143 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act;

144 (b) make public fund investment decisions with the sole purpose of maximizing the
 145 risk-adjusted return on the investments; and

146 (c) to the extent practicable:

147 (i) (A) retain the right to vote investor proxies; or

148 (B) if the investments are commingled with another investor's funds, request the right
 149 to vote investor proxies; and

150 (ii) ensure proxy voting is exercised:

151 (A) to maximize risk-adjusted returns for the exclusive benefit of beneficiaries; and

152 (B) against investments that prioritize social or environmental objectives or the
153 non-pecuniary governance of another entity.

154 (3) An investment by a public treasurer that equates or subordinates the maximum of
155 risk-adjusted returns to social or environmental objectives or the non-pecuniary governance of
156 another entity is a violation of the public treasurer's duty under Subsection (2)(a).

157 ~~[(2)]~~ (4) A public treasurer may sell or otherwise dispose of, at less than cost, any
158 security or investment in which public funds under ~~[his]~~ the public treasurer's jurisdiction have
159 been invested if that sale or other disposition tends to maximize the benefits that may be
160 derived from the changed investment.

161 Section 5. Section **53B-8a-107** is amended to read:

162 **53B-8a-107. Program, administrative, and endowment funds -- Investment and**
163 **payments from funds -- Consideration of environmental, social, or governance factors.**

164 (1) ~~[(a)]~~ The plan shall segregate money received by the plan into three funds, the
165 program fund, the administrative fund, and the endowment fund.

166 ~~[(b) The plan, as approved by the board, may hold, deposit, and invest program fund,~~
167 ~~administrative fund, and endowment fund money in the following:]~~

168 ~~[(i) the Public Treasurer's Investment Fund;]~~

169 ~~[(ii) mutual funds, securities, or other investments registered with the United States~~
170 ~~Securities and Exchange Commission;]~~

171 ~~[(iii) federally insured depository institutions;]~~

172 ~~[(iv) stable value products, including guaranteed investment contracts, guaranteed~~
173 ~~interest contracts, and guaranteed insurance contracts; and]~~

174 ~~[(v) any investments that are determined by the board to be appropriate and that would~~
175 ~~be authorized under:]~~

176 ~~[(A) the provisions of Section ~~51-7-11~~; or]~~

177 ~~[(B) rules of the State Money Management Council applicable to gift funds.]~~

178 (2) The board shall:

179 (a) invest the plan in a manner that is consistent with the prudent investor rule for
180 trustees established in Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Rule;

181 (b) in accordance with the board's fiduciary responsibilities, make investment decisions
182 with the sole purpose of maximizing the risk-adjusted return on the investments; and

183 (c) to the extent practicable:

184 (i) (A) retain the right to vote investor proxies; or

185 (B) if the investments are commingled with another investor's funds, request the right
186 to vote investor proxies; and

187 (ii) ensure proxy voting is exercised:

188 (A) to maximize risk-adjusted returns for the exclusive benefit of beneficiaries; and

189 (B) against investments that prioritize social or environmental objectives or the
190 non-pecuniary governance of another entity.

191 (3) (a) An investment by the board that equates or subordinates the maximum of
192 risk-adjusted returns to social or environmental objectives or the non-pecuniary governance of
193 another entity is a violation of the board's duty under Subsection (2)(a).

194 (b) Subsections (2) and (3)(a) do not prohibit the board from offering individual
195 account owners a variety of voluntary investment options that have different risk profiles and
196 investment objectives.

197 ~~[(2)]~~ (4) Transfers may be made from the program fund to the administrative fund to
198 pay operating costs:

199 (a) associated with administering the plan and as required under Sections 53B-8a-103
200 through 53B-8a-105; and

201 (b) as included in the budget approved by the board.

202 ~~[(3)]~~ (5) (a) All money paid by account owners in connection with account agreements
203 shall be deposited as received into separate accounts within the program fund which shall be
204 invested and accounted for separately.

205 (b) Money accrued by account owners in the program fund may be used for:

206 (i) payments to any institution of higher education;

207 (ii) payments to the account owner or beneficiary;

208 (iii) transfers to another 529 plan; or

209 (iv) other expenditures or transfers made in accordance with the account agreement.

210 ~~[(4)]~~ (6) (a) All money received by the plan from the proceeds of gifts and other
211 endowments for the purposes of the plan shall be:

212 (i) deposited, according to the nature of the donation, as received into the endowment
213 fund or the administrative fund; and

214 (ii) invested and accounted for separately.

215 (b) Any gifts, grants, or donations made by any governmental unit or any person, firm,
216 partnership, or corporation to the plan for deposit to the endowment fund or the administrative
217 fund is a grant, gift, or donation to the state for the accomplishment of a valid public
218 eleemosynary, charitable, and educational purpose and is not included in the income of the
219 donor for Utah tax purposes.

220 (c) The endowment fund or the administrative fund may be used to enhance the savings
221 of low income account owners investing in the plan, for scholarships, or for other college
222 savings incentive programs as approved by the board.

223 (d) Transfers may be made between the endowment fund and the administrative fund
224 upon approval by the board.

225 (e) Endowment fund earnings not accruing to a beneficiary under an account
226 agreement, not transferred to the administrative fund, or not otherwise approved by the board
227 for expenditure, shall be reinvested in the endowment fund.