

SENATE FILE NO. SF0191

State funds-proxy voting and pecuniary investments.

Sponsored by: Senator(s) Biteman, Barlow, French, Ide,
Laursen, D, McKeown, Nethercott, Salazar and
Smith, D

A BILL

for

1 AN ACT relating to state funds; requiring the state
2 treasurer and the Wyoming retirement board to provide for
3 proxy voting associated with the investment of state funds;
4 specifying investment criteria to ensure investments are
5 made only on pecuniary factors; providing definitions;
6 authorizing contracts and the use of investment earnings;
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

14 **9-4-722. Investment of state funds; proxy voting**
15 **requirements.**

1

2 (a) As used in this section, "investment entity"
3 means the state treasurer and the Wyoming retirement board.

4

5 (b) The following shall apply to the investment of
6 funds made by each investment entity:

7

8 (i) All investments shall be made through the
9 exercise of judgment and care of a prudent investor in
10 accordance with W.S. 9-3-408(b) and 9-4-715(d)(i);

11

12 (ii) Each investment entity shall act in the
13 best financial interest of beneficiaries when evaluating
14 managers, vendors, asset allocations and investment
15 potential in order to obtain the highest total return on a
16 risk-adjusted basis while adhering to all applicable laws;

17

18 (iii) Fiduciary decisions made by each
19 investment entity shall be based only on pecuniary factors.

20 For purposes of this paragraph, "pecuniary factors":

21

22 (A) Are factors that have been prudently
23 determined and are expected to have a positive effect on

1 the risk-adjusted return of investments, based on
2 appropriate investment horizons consistent with the
3 objectives of the applicable funds and investment policies
4 while adhering to compliance, statutory and regulatory
5 guidance;

6

7 (B) Do not include the furtherance of
8 environmental, social, governance, political or ideological
9 interests. Ideological interests include those that have
10 crippled, corrupted, disadvantaged, subverted, damaged or
11 otherwise harmed the citizens, children, industry and
12 financial well-being of Wyoming and America.

13

14 (iv) Nonpecuniary factors are those that do not
15 provide confidence in increased returns or lower risk and
16 shall be deemed causes for concern by each investment
17 entity. Each investment entity shall avoid nonpecuniary
18 diversions from fiduciary responsibilities that may result
19 in lower returns, increased risk and less funding being
20 available to the state of Wyoming;

21

22 (v) All vendors of each investment entity shall
23 adhere to the laws of Wyoming and the United States. Each

1 contract that an investment entity enters into with a
2 vendor shall require the vendor to acknowledge the
3 requirements of this paragraph;

4

5 (vi) Each investment entity shall respond to an
6 investment partner, manager or vendor that acts in a
7 nonpecuniary manner that may result in a potential
8 detrimental outcome to the highest total return on a
9 risk-adjusted basis or a loss to the state's revenue;

10

11 (vii) In addition to providing a response under
12 paragraph (vi) of this subsection, each investment entity
13 may take any of the following actions necessary to insure
14 that all fiduciary decisions are based on pecuniary
15 factors:

16

17 (A) Requesting that the investment partner,
18 manager or vendor change policies to ensure that
19 investments are made based only on pecuniary factors;

20

21 (B) Voting of proxies to force change;

22

1 (C) Divesting or replacing investments with
2 competitive alternatives.

3

4 (viii) Each investment partner, vendor and
5 manager selected and utilized by each investment entity
6 shall adhere to the standard of care of being a fiduciary
7 and comply with all requirements of the investment policy
8 statements adopted by the board under W.S. 9-4-716.

9

10 (c) Each investment entity shall provide management
11 oversight for the voting of proxies for all investments
12 made by the investment entity. Proxy votes shall be made in
13 a way that is consistent with the investment policy
14 statements adopted by the board under W.S. 9-4-716 and in
15 accordance with the pecuniary interests of Wyoming's
16 investments and the state's financial interests.

17

18 (d) Each investment entity may hire a proxy manager
19 to implement this section. The investment entity shall
20 oversee the proxy manager selected under this subsection.
21 Each proxy manager shall report to the investment entity
22 not less than semiannually of the proxy manager's
23 activities.

1

2 (e) Each external investment manager selected by an
3 investment entity shall attest in writing not less than one
4 (1) time each year that the manager has adhered to the
5 requirements of this section.

6

7 (f) Each investment entity may use not more than one
8 (1) basis point from annual investment returns, with each
9 invested fund's share calculated in proportion to the
10 magnitude of each fund invested, for purposes of
11 implementing the requirements of this section. Funds
12 authorized under this subsection are continuously
13 appropriated to the investment entity for use as authorized
14 by this subsection.

15

16 **Section 2.** W.S. 9-3-405(a)(v), 9-3-408(b),
17 9-3-436(a), 9-3-440(a)(intro) and (b), 9-4-714(a)(viii),
18 9-4-715(a)(intro) and (b) and 9-4-716(a) by creating new
19 paragraphs (iii) and (iv) are amended to read:

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21 **9-3-405. Retirement board duties and powers.**

22

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

3
4 (v) Serve as investment trustee of the funds of
5 the system. In serving as investment trustee under this
6 paragraph, the board shall comply with the requirements of
7 W.S. 9-4-722;

8
9 **9-3-408. Designated custodian of retirement account;**
10 **disbursements; investment of account monies.**

11
12 (b) The board, or its designee, which shall be
13 registered under the Investment Advisor's Act of 1940 as
14 amended, or any bank as defined in that act, upon written
15 authority, shall invest monies in the retirement account,
16 which investments shall not be considered disbursements for
17 the purposes of W.S. 9-4-214 and subsection (a) of this
18 section. In investing and managing monies in the retirement
19 account and subject to the requirements of W.S. 9-4-722,
20 the board, or its designee, shall exercise the judgment and
21 care that a prudent investor would, in light of the
22 purposes, terms, distribution requirements and all other
23 circumstances surrounding the monies in the retirement

1 account, including risk and return objectives established
2 by the board which are reasonably suitable to the purpose
3 of the Wyoming retirement system.

4

5 **9-3-436. Establishment of trust.**

6

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

14

15 **9-3-440. Duties of trustee in investing and managing**
16 **assets of retirement system.**

17

18 (a) In investing and managing assets of a retirement
19 system pursuant to W.S. 9-3-439 and subject to W.S.
20 9-4-722, a trustee with authority to invest and manage
21 assets:

22

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

13

14 **9-4-714. Definitions.**

15

16 (a) As used in this act:

17

18 (viii) "This act" means W.S. 9-4-714 through
19 ~~9-4-721~~ 9-4-722.

20

21 **9-4-715. Permissible investments.**

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

23

1 (b) The state treasurer, or his designee, which shall
2 be registered under the Investment Advisor's Act of 1940 as
3 amended if required to be registered by the terms of that
4 act as amended, may invest the permanent funds in equities,
5 including stocks of corporations in accordance with
6 subsections (a) through (e) of this section, ~~and~~ W.S.
7 9-4-716 and 9-4-722. The state treasurer shall report at
8 least annually to the select committee on capital financing
9 and investments, the joint appropriations committee and the
10 investment funds committee on the analysis conducted
11 pursuant to paragraph (d)(ii) of this section and W.S.
12 9-4-716(b)(ix) and (e).

13

14 **9-4-716. State investment policy; investment**
15 **consultant.**

16

17 (a) The board, in consultation with the investment
18 funds committee, shall adopt investment policy statements
19 for state funds and shall review those policy statements at
20 least annually. These policy statements shall be subject to
21 the following:

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