

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: H3/28/23

A Bill

HOUSE BILL 1253

5 By: Representatives McAlindon, Gonzales
6 By: Senator J. Bryant
7

For An Act To Be Entitled

9 AN ACT TO CREATE THE STATE GOVERNMENT EMPLOYEE
10 RETIREMENT PROTECTION ACT; AND FOR OTHER PURPOSES.
11

Subtitle

14 TO CREATE THE STATE GOVERNMENT EMPLOYEE
15 RETIREMENT PROTECTION ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

22 Subchapter 8 – State Government Employee Retirement Protection Act

23
24 24-2-801. Title.

25 This subchapter shall be known and may be cited as the "State
26 Government Employee Retirement Protection Act".
27

28 24-2-802. Definitions.

29 As used in this subchapter:

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

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

36 (B) Has any discretionary authority or discretionary



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6
7 24-2-803. Standard of care – Sole interest and prudent person.

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

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

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

14 (B) Defraying reasonable expenses of administering the
15 plan;

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

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

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

26
27 24-2-804. Consideration of nonpecuniary factors prohibited.

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

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

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

1 investment theories.

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

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

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

14
15 24-2-805. Voting ownership interests.

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

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

21 (b) Unless no economically practicable alternative is available:

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

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

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

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

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

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

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

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

12
13 24-2-806. Enforcement.

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

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

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

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

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

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

31
32 */s/McAlindon*