

House Bill 3219

Sponsored by Representatives DIEHL, WRIGHT, MCINTIRE, CONRAD, Senator LINTHICUM; Representatives CRAMER, JAVADI, STOUT, Senators HANSELL, THATCHER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes standards for fiduciary of pension benefit plan offered by public body. Limits factors that may be considered in investment of assets of plan.

A BILL FOR AN ACT

1
2 Relating to pension benefit plans offered by public bodies.

3 **Be It Enacted by the People of the State of Oregon:**

SECTION 1. As used in sections 1 to 5 of this 2023 Act:

4
5 (1) **"Fiduciary" means a person who with respect to a pension benefit plan:**

6 (a) **Exercises any discretionary authority or discretionary control respecting manage-**
7 **ment of the plan or exercises any authority or control respecting management or disposition**
8 **of the plan's assets;**

9 (b) **Renders investment advice for a fee or other compensation, direct or indirect, with**
10 **respect to any moneys or other property of the plan, or has any authority or responsibility**
11 **to do so; or**

12 (c) **Has any discretionary authority or discretionary responsibility in the administration**
13 **of the plan, including making recommendations or voting a plan's shares or proxies.**

14 (2)(a) **"Material" means, with respect to a risk or return, that there is a substantial**
15 **likelihood that a reasonable investor would attach importance when:**

16 (A) **Evaluating the potential financial return and financial risks of an existing or pro-**
17 **spective investment; or**

18 (B) **Exercising, or declining to exercise, any rights appurtenant to securities.**

19 (b) **"Material" does not mean, with respect to a risk or return:**

20 (A) **Furthering nonpecuniary, environmental, social, political, ideological or other goals**
21 **or objectives; or**

22 (B) **Any portion of a risk or return that primarily relates to events that:**

23 (i) **Involve a high degree of uncertainty regarding what may or may not occur in the**
24 **distant future; and**

25 (ii) **Are systemic, general or not investment-specific in nature.**

26 (3) **"Nonpecuniary" means, with respect to any action taken or factor considered by a**
27 **fiduciary, having any purpose to further environmental, social or political goals. A fiduciary**
28 **purpose may be reasonably determined by evidence including, but not limited to, a fiduciary's**
29 **statements indicating its purpose in selecting investments, engaging with portfolio compa-**
30 **nies or voting shares or proxies, or any such statements by any coalition, initiative or or-**
31 **ganization that the fiduciary has joined, participated in or become a signatory to, in its**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 capacity as a fiduciary.

2 (4)(a) “Pecuniary factor” means a factor that has a material effect on the financial risk
3 or financial return of an investment based on appropriate investment horizons consistent
4 with a pension benefit plan’s investment objectives and the funding policy.

5 (b) “Pecuniary factor” does not include nonpecuniary factors.

6 (5) “Pension benefit plan” means any plan, fund or program established, maintained or
7 offered by a public body, to the extent that by its terms or as a result of surrounding cir-
8 cumstances:

9 (a) The plan provides retirement income or other retirement benefits to employees or
10 former employees; or

11 (b) The plan results in a deferral of income by employees for a period extending to the
12 termination of covered employment or beyond.

13 (6) “Public body” has the meaning given that term in ORS 174.109.

14 **SECTION 2.** A fiduciary shall discharge the fiduciary’s duties with respect to a pension
15 benefit plan:

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

18 (a) Providing pecuniary benefits to participants and their beneficiaries; and

19 (b) Defraying reasonable expenses of administering the plan;

20 (2) With the care, skill, prudence and diligence under the circumstances then prevailing
21 that a prudent person acting in a like capacity and familiar with such matters would use in
22 the conduct of an enterprise of a like character and with like aims;

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

25 (4) In accordance with the documents and instruments governing the plan insofar as
26 such documents and instruments are consistent with the provisions of sections 1 to 5 of this
27 2023 Act.

28 **SECTION 3.** A fiduciary’s evaluation of an investment, or evaluation or exercise of any
29 right appurtenant to an investment, must take into account only pecuniary factors. A
30 fiduciary may not promote nonpecuniary benefits or any other nonpecuniary goals. Envi-
31 ronmental, social, corporate governance and other similarly oriented considerations are
32 pecuniary factors only if they present economic risks or opportunities that qualified invest-
33 ment professionals would treat as material economic considerations under generally accepted
34 investment theories. The weight given to those factors must solely reflect a prudent as-
35 sessment of the factors’ impact on risk and return. A fiduciary considering environmental,
36 social, corporate governance or other similarly oriented factors as pecuniary factors shall
37 examine the level of diversification, the degree of liquidity and the potential risk-return in
38 comparison with other available alternative investments that would play a similar role in the
39 plans’ portfolios. Any pecuniary consideration of environmental, social or corporate
40 governance factors must necessarily include evaluating whether greater returns can be
41 achieved through investments that rank poorly on such factors.

42 **SECTION 4.** (1) All shares held directly or indirectly by or on behalf of a pension benefit
43 plan or the beneficiaries of a plan shall be voted solely in the pecuniary interest of plan
44 participants. Voting to further nonpecuniary, environmental, social, political, ideological or
45 other benefits or goals is prohibited.

1 (2) Unless no economically practicable alternative is available, a fiduciary may not adopt
2 a practice of following the recommendations of a proxy advisory firm or other service pro-
3 vider unless such firm or service provider has a practice of following, and in writing commits
4 to follow, proxy voting guidelines that are consistent with the fiduciary's obligation to act
5 based only on pecuniary factors.

6 (3) Unless no economically practicable alternative is available, pension benefit plan assets
7 may not be entrusted to a fiduciary unless that fiduciary has a practice of following, and in
8 writing commits to follow, guidelines, when engaging with portfolio companies and voting
9 shares or proxies, that match the public body's obligation to act based only on pecuniary
10 factors.

11 (4) Authority to vote shares held by a pension benefit plan must be in the hands of a
12 politically accountable official of the public body responsible for the plan.

13 SECTION 5. The Attorney General may enforce violations of sections 1 to 5 of this 2023
14 Act.

15
