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

Relating to pension benefit plans offered by public bodies.

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

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

(1) “Fiduciary” means a person who with respect to a pension benefit plan:

(a) Exercises any discretionary authority or discretionary control respecting management of the plan or exercises any authority or control respecting management or disposition of the plan's assets;

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

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

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

(A) Evaluating the potential financial return and financial risks of an existing or prospective investment; or

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

(b) “Material” does not mean, with respect to a risk or return:

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

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

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

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

(3) “Nonpecuniary” means, with respect to any action taken or factor considered by a fiduciary, having any purpose to further environmental, social or political goals. A fiduciary purpose may be reasonably determined by evidence including, but not limited to, a fiduciary’s statements indicating its purpose in selecting investments, engaging with portfolio companies or voting shares or proxies, or any such statements by any coalition, initiative or organization that the fiduciary has joined, participated in or become a signatory to, in its...
capacity as a fiduciary.

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

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

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

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

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

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

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

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

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

(b) Defraying reasonable expenses of administering the plan;

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

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

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

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

SECTION 4. (1) All shares held directly or indirectly by or on behalf of a pension benefit plan or the beneficiaries of a plan shall be voted solely in the pecuniary interest of plan participants. Voting to further nonpecuniary, environmental, social, political, ideological or other benefits or goals is prohibited.
(2) Unless no economically practicable alternative is available, a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless such firm or service provider has a practice of following, and in writing commits to follow, proxy voting guidelines that are consistent with the fiduciary's obligation to act based only on pecuniary factors.

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

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

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