

HOUSE BILL NO. 228

INTRODUCED BY T. MOORE, T. MCGILLVRAY, D. LENZ, F. MANDEVILLE, J. TREBAS, S. VINTON, N. DURAM, B. MERCER, L. BREWSTER, S. GIST, S. ESSMANN, C. SPRUNGER, T. FALK, L. HELLEGAARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PUBLIC INVESTMENTS BY PROHIBITING THE CONSIDERATION OF NONPECUNIARY FACTORS; PROVIDING DEFINITIONS; PROVIDING ENFORCEMENT BY THE ATTORNEY GENERAL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Definitions. For the purposes of [sections 1 through 3]:

(1) (a) "Material" means a risk or return regarding which there is a substantial likelihood that a reasonable investor would attach importance when:

(i) evaluating the potential financial return and financial risks of an existing or prospective investment; or

(ii) exercising, or declining to exercise, any rights appurtenant to securities.

(b) When used to qualify a risk or return, the term does not include furthering nonpecuniary, environmental, social, governance, or other similarly oriented considerations, or any portion of a risk or return that primarily relates to events that involve a high degree of uncertainty regarding what may or may not occur in the distant future and are systemic, general, or not investment-specific in nature.

(2) "Nonpecuniary" includes any action taken or factor considered by a fiduciary with any purpose to further environmental, social, governance, or other similarly oriented considerations.

(3) (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 the plan's investment objectives and funding policy.

(b) The term does not include nonpecuniary factors.

NEW SECTION. Section 2. Consideration of nonpecuniary factors prohibited. (1) The evaluation

1 by the board of investments or the evaluation or exercise of any right appurtenant to an investment must take
2 into account only pecuniary factors.

3 (2) Environmental, social, governance, or other similarly oriented considerations are pecuniary
4 factors only if they present economic risks or opportunities that qualified investment professionals would treat
5 as material economic considerations under generally accepted investment theories. The weight given to those
6 factors must solely reflect a prudent assessment of their impact on risk and return.

7 (3) The board, when considering environmental, social, governance, or other similarly oriented
8 factors as pecuniary factors, is also required to examine the level of diversification, the degree of liquidity, and
9 the potential risk-return in comparison with other available investment alternatives that would play a similar role
10 in their plans' portfolios.

11 (4) Any pecuniary consideration of environmental, social, governance, or other similarly oriented
12 factors must necessarily include evaluating whether greater returns can be achieved through investments that
13 rank poorly on these factors.

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15 **NEW SECTION. Section 3. Voting ownership interests.** (1) All shares held directly or indirectly by
16 or on behalf of the board must be voted solely in the pecuniary interest of the beneficiaries of the funds.

17 (2) Voting to further nonpecuniary, environmental, social, governance, or other similarly oriented
18 considerations is prohibited.

19 (3) The board may not follow the recommendations of a proxy advisory firm or other service
20 providers unless the firm or service provider commits to follow proxy voting guidelines that are consistent with
21 the board's obligation to act based solely on pecuniary factors unless no economically practicable alternative is
22 available.

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24 **NEW SECTION. Section 4. Enforcement by attorney general.** The attorney general may bring an
25 action in the appropriate Montana district court to prevent or restrain violations of [sections 1 through 3].

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27 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
28 codified as an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply

1 to [sections 1 through 4].

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3 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
4 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
5 the part remains in effect in all valid applications that are severable from the invalid applications.

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7 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

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