

SENATE FILE NO. SF0172

Stop ESG-State funds fiduciary duty act.

Sponsored by: Senator(s) Biteman, Bouchard, Driskill,  
French, Hicks, Hutchings, Ide, Laursen, D,  
McKeown and Salazar and Representative(s)  
Haroldson, Jennings, Ottman, Pendergraft,  
Singh, Tarver and Ward

A BILL

for

1 AN ACT relating to the administration of government;  
2 specifying requirements for the hiring and retention of  
3 investment managers, trustees and fiduciaries who invest  
4 state funds as specified; specifying proxy voting  
5 requirements for investment managers, trustees and  
6 fiduciaries who invest state funds; providing definitions;  
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

1           **9-4-722. Investment of state funds; consideration of**  
2 **only financial purposes.**

3

4           (a) As used in this section:

5

6                   (i) "Fiduciary" means as defined by W.S.  
7 9-3-434(a)(xi) and includes any investment trustee, manager  
8 or other person responsible for making investment decisions  
9 or investment policies concerning state funds;

10

11                   (ii) "Fiduciary commitment" means any evidence  
12 of a fiduciary's or trustee's purpose in managing the  
13 investment of state funds, including but not limited to any  
14 of the following in a fiduciary's capacity as a fiduciary  
15 or in a trustee's capacity as a trustee:

16

17                           (A) Advertising, statements, explanations,  
18 reports, letters to clients, communications with portfolio  
19 companies, statements of principles or commitments; or

20

21                           (B) Participation in, affiliation with or  
22 status as a signatory to any coalition, initiative, joint  
23 statement of principles or agreement.

1

2 (iii) "Financial" means having been prudently  
3 determined by a fiduciary or trustee to have a material  
4 effect on the financial risk or the financial return of an  
5 investment. "Financial" shall not include any action taken,  
6 or factor considered, by a fiduciary or trustee with any  
7 purpose whatsoever to further social, political or  
8 ideological interests. A fiduciary may reasonably be  
9 determined to have taken an action, or considered a factor,  
10 with a purpose to further social, political or ideological  
11 interests based upon evidence showing a fiduciary  
12 commitment to further, through portfolio company  
13 engagement, board or shareholder votes or other actions as  
14 a fiduciary or a trustee, any of the following actions  
15 beyond what state or federal law requires:

16

17 (A) Eliminating, reducing, offsetting or  
18 disclosing greenhouse gas emissions;

19

20 (B) Instituting or assessing corporate  
21 board or employment, composition, compensation or  
22 disclosure criteria that incorporates characteristics

1 protected in this state as specified in W.S.  
2 27-9-105(a)(i);

3

4 (C) Divesting from, limiting investment in  
5 or limiting the activities or investments of any company  
6 for failing or not committing to meet environmental  
7 standards or disclosures;

8

9 (D) Access to abortion, sex or gender  
10 changes or transgender surgery;

11

12 (E) Divesting from, limiting investment in  
13 or limiting the activities of any company that engages in,  
14 facilitates or supports the manufacture, import,  
15 distribution, marketing, advertising, sale or lawful use of  
16 firearms, ammunition, components, parts or accessories of  
17 firearms or ammunition.

18

19 (iv) "Investment entity" means the state  
20 treasurer, the state loan and investment board, the Wyoming  
21 retirement board, the Wyoming retirement system and any  
22 other entity responsible for the investment or management  
23 of the investment of state funds;

1

2           (v) "State funds" means permanent funds as  
3 defined by W.S. 9-4-714(a)(v), the retirement account  
4 established in W.S. 9-3-407(a), any other funds invested by  
5 the Wyoming retirement system and any other funds invested  
6 by the state treasurer.

7

8           (b) In making and supervising investments of state  
9 funds, each investment entity shall discharge its  
10 investment duties solely in the financial interest of the  
11 beneficiaries of the applicable state funds for the  
12 exclusive purposes of:

13

14           (i) Providing financial benefits to the  
15 beneficiaries of the state funds;

16

17           (ii) Defraying reasonable expenses of  
18 administering the investment of state funds;

19

20           (iii) Meeting other purposes required by law and  
21 not related to the actions and considerations prohibited by  
22 this section.

23

1           (c) Any person or fiduciary designated as a custodian  
2 of any state funds and any person or fiduciary retained to  
3 invest state funds shall be subject to the same fiduciary  
4 duties as an investment entity has under this section.

5

6           (d) Each fiduciary shall take into account only  
7 financial factors when discharging its duties in investing  
8 state funds.

9

10           (e) All shares of stock held directly or indirectly  
11 by or on behalf of an investment entity or on behalf of the  
12 investment entity's beneficiaries shall be voted solely in  
13 the financial interest of the beneficiaries.

14

15           (f) Unless no economically practicable alternative is  
16 available:

17

18           (i) The investment entity shall not grant proxy  
19 voting authority to any person who is not part of the  
20 investment entity or who is not employed by the investment  
21 entity, except that the investment entity may grant proxy  
22 voting authority to a person who has a practice of, and  
23 commits in writing to, follow guidelines that match the

1 investment entity's obligation to act solely upon financial  
2 factors as required by this section;

3

4 (ii) State funds shall not be entrusted to a  
5 fiduciary unless the fiduciary has a practice of, and  
6 commits in writing to, follow guidelines when engaging with  
7 portfolio companies and voting shares or proxies that match  
8 the investment entity's obligation to act solely upon  
9 financial factors as required by this section;

10

11 (iii) No fiduciary shall adopt a practice of  
12 following the recommendations of a proxy advisor or other  
13 service provider unless the advisor or service provider has  
14 a practice of, and commits in writing to, following proxy  
15 voting guidelines that match the investment entity's  
16 obligation to act solely upon financial factors as required  
17 by this section.

18

19 (g) Each investment entity may use not more than one  
20 (1) basis point from annual investment returns, with each  
21 invested fund's share calculated in proportion to the  
22 magnitude of aggregate investment earnings of each fund  
23 invested, including interest and dividends, for purposes of

1 implementing the proxy voting requirements of subsection  
2 (f) of this section. Funds authorized under this subsection  
3 shall be continuously appropriated to the investment entity  
4 for use as authorized by this subsection.

5

6 (h) The investment entity may terminate or not renew  
7 the contract of any fiduciary violating the provisions of  
8 this section.

9

10 **Section 2.** W.S. 9-3-405(a)(v), 9-3-408(b)(intro),  
11 9-3-436(a), 9-3-440(a)(intro) and (b), 9-4-714(a)(viii),  
12 9-4-715(a)(intro) and (b) and 9-4-716(a)(intro) are amended  
13 to read:

14

15 **9-3-405. Retirement board duties and powers.**

16

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

19

20 (v) Serve as investment trustee of the funds of  
21 the system. In serving as investment trustee under this  
22 paragraph, the board shall comply with the requirements of  
23 W.S. 9-4-722;



1

2           **9-3-408. Designated custodian of retirement account;**  
3 **disbursements; investment of account monies.**

4

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

20

21           **9-3-436. Establishment of trust.**

22

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

8  
9           **9-3-440. Duties of trustee in investing and managing**  
10 **assets of retirement system.**

11  
12           (a) In investing and managing assets of a retirement  
13 system pursuant to W.S. 9-3-439 and subject to W.S.  
14 9-4-722, a trustee with authority to invest and manage  
15 assets:

16  
17           (b) A trustee with authority to invest and manage  
18 assets of a retirement system shall adopt a statement of  
19 investment objectives and policies for each retirement  
20 program or appropriate grouping of programs, subject to the  
21 requirements of W.S. 9-4-722. The statement shall include  
22 the desired rate of return on assets overall, the desired  
23 rates of return and acceptable levels of risk for each

1 asset class, asset-allocation goals, guidelines for the  
2 delegation of authority and information on the types of  
3 reports to be used to evaluate investment performance. At  
4 least annually, the trustee shall review the statement and  
5 change or reaffirm it.

6

7 **9-4-714. Definitions.**

8

9 (a) As used in this act:

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11 (viii) "This act" means W.S. 9-4-714 through  
12 ~~9-4-721~~ 9-4-722.

13

14 **9-4-715. Permissible investments.**

15

16 (a) The state treasurer, in consultation with the  
17 investment funds committee, shall employ a designated chief  
18 investment officer who shall have minimum qualifications  
19 including at least ten (10) years of experience managing  
20 institutional investment portfolios of in excess of five  
21 hundred million dollars (\$500,000,000.00), experience with  
22 hiring and managing internal and external investment  
23 managers and extensive experience in any two (2) or more of

1 the following areas: domestic equity, fixed income  
2 securities, international equity or alternative  
3 investments. The designated chief investment officer shall  
4 provide the state treasurer with information and  
5 recommendations regarding the investment of state funds and  
6 additional information as requested by the state treasurer.  
7 The state treasurer shall compile an annual report which  
8 shall include investment, income, individual and aggregate  
9 gains and losses by fund and the extent to which the state  
10 investment policy is being implemented. Subject to  
11 requirements of W.S. 9-4-722 and subsection (c) of this  
12 section, state funds may be invested in any investment:

13

14 (b) The state treasurer, or his designee, which shall  
15 be registered under the Investment Advisor's Act of 1940 as  
16 amended if required to be registered by the terms of that  
17 act as amended, may invest the permanent funds in equities,  
18 including stocks of corporations in accordance with  
19 subsections (a) through (e) of this section, ~~and~~ W.S.  
20 9-4-716 and 9-4-722. The state treasurer shall report at  
21 least annually to the select committee on capital financing  
22 and investments, the joint appropriations committee and the  
23 investment funds committee on the analysis conducted

1 pursuant to paragraph (d)(ii) of this section and W.S.  
2 9-4-716(b)(ix) and (e).

3

4 **9-4-716. State investment policy; investment**  
5 **consultant.**

6

7 (a) The board, in consultation with the investment  
8 funds committee, shall adopt investment policy statements  
9 for state funds and shall review those policy statements at  
10 least annually. These policy statements shall be subject to  
11 W.S. 9-4-722 and to the following:

12

13 **Section 3.** Nothing in this act shall be construed to  
14 impair or otherwise modify any contract entered into before  
15 the effective date of this act.

16

17 **Section 4.** This act is effective July 1, 2023.

18

19 (END)