

HB0803/603025/1

BY: Delegate Adams

AMENDMENTS TO HOUSE BILL 803
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike line 2 in its entirety and substitute “**Pension Benefit Plans – Fees and State Employee Retirement Protections**”; strike beginning with “and” in line 7 down through the period in line 9 and substitute “requiring a fiduciary of a pension benefit plan to perform all duties solely in the pecuniary interest of participants and beneficiaries and to exercise certain care, skill, prudence, and diligence in protecting the pecuniary interest of participants and beneficiaries; requiring a fiduciary to consider only pecuniary factors in making investment decisions; prohibiting a fiduciary from promoting nonpecuniary benefits or goals; requiring a fiduciary to weigh environmental, social, and corporate governance factors solely based on the impact on risk and return; and generally relating to pension benefit plans, fees, and state employee retirement protections.”; and after line 14, insert:

“BY adding to

Article - State Personnel and Pensions

Section 41–101 through 41–105 to be under the new title “Title 41. State Employee Retirement Protections”

Annotated Code of Maryland

(2015 Replacement Volume and 2022 Supplement)”.

AMENDMENT NO. 2

On page 5, after line 18, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – State Personnel and Pensions

TITLE 41. STATE EMPLOYEE RETIREMENT PROTECTIONS.

41-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BOARD" MEANS THE FIDUCIARIES WHO, ACTING AS A GROUP, EXERCISE ULTIMATE AUTHORITY AND CONTROL OVER A PENSION BENEFIT PLAN.

(C) "FIDUCIARY" MEANS A PERSON WHO WITH RESPECT TO A PENSION BENEFIT PLAN:

(1) 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;

(2) RENDERS INVESTMENT ADVICE FOR A FEE OR OTHER COMPENSATION, DIRECT OR INDIRECT, WITH RESPECT TO ANY MONEY OR OTHER PROPERTY OF THE PLAN, OR HAS ANY AUTHORITY OR RESPONSIBILITY TO RENDER INVESTMENT ADVICE; OR

(3) HAS ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITY IN THE ADMINISTRATION OF THE PLAN, INCLUDING MAKING RECOMMENDATIONS OR VOTING A PLAN'S SHARES OR PROXIES.

(D) (1) "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 PERTINENT TO SECURITIES.

(2) "MATERIAL" DOES NOT INCLUDE:

(I) FURTHERING NONPECUNIARY, ENVIRONMENTAL, SOCIAL, POLITICAL, IDEOLOGICAL, OR OTHER GOALS OR OBJECTIVES; OR

(II) ANY PORTION OF A RISK OR RETURN THAT PRIMARILY RELATES TO EVENTS THAT:

1. INVOLVE A HIGH DEGREE OF UNCERTAINTY REGARDING WHAT MAY OR MAY NOT OCCUR IN THE DISTANT FUTURE; AND

2. ARE SYSTEMIC, GENERAL, OR NOT INVESTMENT-SPECIFIC IN NATURE.

(E) "NONPECUNIARY" INCLUDES ANY ACTION TAKEN OR FACTOR CONSIDERED BY A FIDUCIARY WITH A PURPOSE TO FURTHER ENVIRONMENTAL, SOCIAL, OR POLITICAL GOALS.

(F) “PECUNIARY” MEANS ANY ACTION TAKEN OR FACTOR THAT HAS A MATERIAL EFFECT ON THE FINANCIAL RISK OR RETURN OF AN INVESTMENT BASED ON APPROPRIATE INVESTMENT HORIZONS CONSISTENT WITH THE PENSION BENEFIT PLAN’S INVESTMENT OBJECTIVES AND THE FUNDING POLICY.

(G) “PENSION BENEFIT PLAN” MEANS ANY PLAN, FUND, OR PROGRAM WHICH THAT IS ESTABLISHED, MAINTAINED, OR OFFERED BY THE STATE OR ANY SUBDIVISION, COUNTY, MUNICIPALITY, AGENCY, SCHOOL, COLLEGE, UNIVERSITY, INSTRUMENTALITY, OR OTHER ENTERPRISE OPERATED BY THE STATE THAT:

(1) PROVIDES RETIREMENT INCOME OR OTHER RETIREMENT BENEFITS TO EMPLOYEES OR FORMER EMPLOYEES; OR

(2) RESULTS IN A DEFERRAL OF INCOME BY EMPLOYEES FOR A PERIOD EXTENDING TO THE TERMINATION OF COVERED EMPLOYMENT OR BEYOND.

41-102.

(A) A FIDUCIARY SHALL PERFORM ALL DUTIES SOLELY IN THE PECUNIARY INTEREST OF PARTICIPANTS AND BENEFICIARIES FOR THE PURPOSE OF:

(1) PROVIDING PECUNIARY BENEFITS TO PARTICIPANTS AND THEIR BENEFICIARIES; AND

(2) DEFRAYING REASONABLE EXPENSES OF ADMINISTERING THE PENSION BENEFIT PLAN.

(B) A FIDUCIARY SHALL EXERCISE CARE, SKILL, PRUDENCE, AND DILIGENCE IN A MANNER CONSISTENT WITH AN INDIVIDUAL FAMILIAR WITH PROTECTING THE PECUNIARY INTEREST OF PARTICIPANTS AND BENEFICIARIES:

(1) BY DIVERSIFYING THE INVESTMENTS OF THE PENSION BENEFIT PLAN TO MINIMIZE THE RISK OF LARGE LOSSES; AND

(2) IN ACCORDANCE WITH THE DOCUMENTS AND INSTRUMENTS GOVERNING THE PENSION BENEFIT PLAN CONSISTENT WITH THE PROVISIONS OF THIS TITLE.

41-103.

(A) A FIDUCIARY MAY NOT PROMOTE NONPECUNIARY BENEFITS OR GOALS.

(B) A FIDUCIARY SHALL CONSIDER ONLY PECUNIARY FACTORS IN THE EVALUATION OF AN INVESTMENT, OR EXERCISE OF ANY RIGHT PERTINENT TO AN INVESTMENT.

(C) A FIDUCIARY SHALL WEIGH ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE FACTORS SOLELY BASED ON THE IMPACT ON RISK AND RETURN.

(D) ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE CONSIDERATIONS ARE PECUNIARY FACTORS ONLY IF THEY PRESENT ECONOMIC RISKS OR OPPORTUNITIES UNDER GENERALLY ACCEPTED INVESTMENT PRINCIPLES.

(Over)

(E) A FIDUCIARY WHO IS CONSIDERING ENVIRONMENTAL, SOCIAL, OR CORPORATE GOVERNANCE AS PECUNIARY FACTORS SHALL:

(1) EXAMINE THE LEVEL OF DIVERSIFICATION, DEGREE OF LIQUIDITY, AND POTENTIAL RISK AND RETURN; AND

(2) WEIGH THE POTENTIAL FOR GREATER RETURNS THROUGH INVESTMENTS THAT RANK LOWER ON SUCH FACTORS.

41-104.

(A) VOTING ON SHARES HELD DIRECTLY OR INDIRECTLY BY A PENSION BENEFIT PLAN SHALL BE BASED SOLELY IN THE PECUNIARY INTEREST OF PLAN PARTICIPANTS.

(B) VOTING MAY NOT CONSIDER NONPECUNIARY, ENVIRONMENTAL, SOCIAL, POLITICAL, OR IDEOLOGICAL BENEFITS OR GOALS.

(C) A PROXY ADVISORY FIRM OR OTHER SERVICE PROVIDER SHALL CONFIRM, IN WRITING, ADHERENCE TO PROXY VOTING GUIDELINES CONSISTENT WITH THE FIDUCIARY'S OBLIGATION TO ACT BASED ON PECUNIARY FACTORS.

(D) A FIDUCIARY SHALL CONFIRM, IN WRITING, ADHERENCE TO PROXY VOTING GUIDELINES WITH PORTFOLIO COMPANIES, VOTING SHARES, OR PROXIES, CONSISTENT WITH OBLIGATIONS TO ACT BASED ON PECUNIARY FACTORS.

(E) THE STATE TREASURER SHALL HAVE PROXY VOTING AUTHORITY TO SHARES HELD DIRECTLY OR INDIRECTLY BY A PENSION BENEFIT PLAN.

(F) (1) PROXY VOTES SHALL BE TABULATED AND REPORTED ANNUALLY TO THE BOARD.

(2) FOR EACH VOTE, THE REPORT SHALL CONTAIN:

(I) A VOTE CAPTION;

(II) THE VOTE OF THE PENSION BENEFIT PLAN;

(III) A RECOMMENDATION OF COMPANY MANAGEMENT; AND

(IV) A RECOMMENDATION OF THE PROXY ADVISOR.

(3) THE BOARD SHALL POST THE REPORTS PUBLICLY ON THE BOARD'S WEBSITE.

41-105.

(A) THE ATTORNEY GENERAL MAY ENFORCE THE PROVISIONS OF THIS TITLE.

(B) ON REASONABLE BELIEF THAT A PERSON HAS ENGAGED OR MAY ENGAGE IN A VIOLATION, THE ATTORNEY GENERAL MAY REQUIRE AN INDIVIDUAL TO FILE WRITTEN A STATEMENT OR REPORT ON A FORM PRESCRIBED BY THE ATTORNEY GENERAL, UNDER OATH, THAT INCLUDES:

(Over)

(1) THE FACTS AND CIRCUMSTANCES CONCERNING THE VIOLATION; AND

(2) ANY OTHER DATA AND INFORMATION THE ATTORNEY GENERAL CONSIDERS NECESSARY.

(C) THE ATTORNEY GENERAL MAY:

(1) EXAMINE UNDER OATH AN INDIVIDUAL IN CONNECTION WITH A VIOLATION; AND

(2) EXAMINE ANY RECORD, BOOK, DOCUMENT, ACCOUNT, OR PAPER IN CONNECTION WITH A VIOLATION.

(D) IN ACCORDANCE WITH AN ORDER OF THE CIRCUIT COURT, THE ATTORNEY GENERAL MAY IMPOUND A RECORD, A BOOK, A DOCUMENT, AN ACCOUNT, OR A PAPER IN CONNECTION WITH A VIOLATION UNTIL THE COMPLETION OF ALL PROCEEDINGS.

SECTION 3. AND BE IT FURTHER ENACTED, That, if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act that can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.”;

and in line 19, strike “2.” and substitute “4.”.