

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS15296-NJfp-59

Short Title: NC Public Finance Protection Act. (Public)

Sponsors: Senators Johnson, B. Newton, and Moffitt (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FIDUCIARY STANDARDS OF CARE, DELEGATION OF
3 AUTHORITY, AUTHORITY FOR VOTING ON SHARES, AND PROXY VOTING
4 REQUIREMENTS, PROHIBITING CONSIDERATION OF NON-PECUNIARY
5 FACTORS, AND AUTHORIZING THE ATTORNEY GENERAL TO ENFORCE THIS
6 ACT.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Chapter 143 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 84.

11 "North Carolina Public Finance Protection Act.

12 "§ 143-801. Short title.

13 This Article shall be known and may be cited as the "North Carolina Public Finance
14 Protection Act."

15 "§ 143-802. Definitions.

16 The following definitions apply in the Article:

17 (1) Fiduciary. – A person who, with respect to a pension benefit plan, does any of
18 the following:

19 a. Exercises any discretionary authority or discretionary control
20 respecting management of such plan or exercises any authority or
21 control respecting management or disposition of its assets.

22 b. Renders investment advice for a fee or other compensation, direct or
23 indirect, with respect to any monies or other property of such plan, or
24 has any authority or responsibility to do so.

25 c. Has any discretionary authority or discretionary responsibility in the
26 administration of such plan, including making recommendations or
27 voting a plan's shares or proxies.

28 (2) Material. – When used to qualify a risk or return, means a risk or return
29 regarding which there is a substantial likelihood that a reasonable investor
30 would attach importance when either (i) evaluating the potential financial
31 return and financial risks of an existing or prospective investment or (ii)
32 exercising, or declining to exercise, any rights appurtenant to securities, but
33 does not include any of the following:

34 a. Furthering non-pecuniary, environmental, social, political,
35 ideological, or other goals or objectives.



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1 b. Any portion of a risk or return that primarily relates to events that
2 involve a high degree of uncertainty regarding what may or may not
3 occur in the distant future and are systemic, general, or not
4 investment-specific in nature.

5 (3) Non-pecuniary. – Any action taken or factor considered by a fiduciary with
6 any purpose to further environmental, social, or political goals. A fiduciary
7 purpose may be reasonably determined by evidence, including, but not limited
8 to, a fiduciary's statements indicating its purpose in selecting investments,
9 engaging with portfolio companies, or voting shares or proxies, or any such
10 statements by any coalition, initiative, or organization that the fiduciary has
11 joined, participated in, or become a signatory to in its capacity as a fiduciary.

12 (4) Pecuniary factor. – A factor that has a material effect on the financial risk or
13 financial return of an investment based on appropriate investment horizons
14 consistent with the plan's investment objectives and the funding policy. The
15 term excludes non-pecuniary factors.

16 (5) Pension benefit plan or plan. – Any plan, fund, or program which was
17 heretofore or is hereafter established, maintained, or offered by the State of
18 North Carolina or any subdivision, county, municipality, agency, or
19 instrumentality thereof, or any school, college, university, administration,
20 authority, or other enterprise operated by the State of North Carolina, to the
21 extent that by its terms or as a result of surrounding circumstances either:

22 a. Provides retirement income or other retirement benefits to employees
23 or former employees.

24 b. Results in a deferral of income by such employees for a period
25 extending to the termination of covered employment or beyond.

26 **§ 143-803. Fiduciary duties and responsibilities.**

27 (a) A fiduciary shall discharge duties with respect to a plan solely in the pecuniary interest
28 of the participants and beneficiaries:

29 (1) For the exclusive purpose of providing pecuniary benefits to participants and
30 their beneficiaries and defraying reasonable expenses of administering the
31 plan.

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

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

38 (4) In accordance with the documents and instruments governing the plan insofar
39 as such documents and instruments are consistent with the provisions of this
40 act.

41 (b) A fiduciary's evaluation of an investment, or evaluation or exercise of any right
42 appurtenant to an investment, must take into account only pecuniary factors. Plan fiduciaries are
43 not permitted to promote non-pecuniary benefits or any other non-pecuniary goals.
44 Environmental, social, corporate governance, or other similarly oriented considerations are
45 pecuniary factors only if they present economic risks or opportunities that qualified investment
46 professionals would treat as material economic considerations under generally accepted
47 investment theories. The weight given to those factors should solely reflect a prudent assessment
48 of their impact on risk and return. Fiduciaries considering environmental, social, corporate
49 governance, or other similarly oriented factors as pecuniary factors are also required to examine
50 the level of diversification, degree of liquidity, and the potential risk-return in comparison with
51 other available alternative investments that would play a similar role in their plans' portfolios.

1 Any pecuniary consideration of environmental, social, or governance factors must necessarily
2 include evaluating whether greater returns can be achieved through investments that rank poorly
3 on such factors.

4 (c) All shares held directly or indirectly by or on behalf of a pension benefit plan or the
5 beneficiaries thereof shall be voted solely in the pecuniary interest of plan participants. Voting
6 to further non-pecuniary, environmental, social, political, ideological, or other benefits or goals
7 is prohibited.

8 (d) Unless no economically practicable alternative is available, a fiduciary may not adopt
9 a practice of following the recommendations of a proxy advisory firm or other service provider
10 unless such firm or service provider has a practice of, and in writing commits to, following proxy
11 voting guidelines that are consistent with the fiduciary's obligation to act based only on pecuniary
12 factors.

13 (e) Unless no economically practicable alternative is available, plan assets shall not be
14 entrusted to a fiduciary, unless that fiduciary has a practice of, and in writing commits to,
15 following guidelines, when engaging with portfolio companies and voting shares or proxies, that
16 match the plan's obligation to act based only on pecuniary factors.

17 (f) Authority to vote such shares should be in the hands of a State official politically
18 accountable to the people of the State of North Carolina. As such, all current proxy voting
19 authority with respect to any and all shares held directly or indirectly by or on behalf of a pension
20 benefit plan or the plan participants is hereby revoked. With respect to the pension benefit plans,
21 all such voting authority shall reside with the respective Board of Trustees, except that the Board
22 of Trustees may delegate such authority to a person who has a practice of, and in writing commits
23 to, following guidelines that match the plan's obligation to act based only on pecuniary factors.
24 With respect to all statewide or local governing authority, all such voting authority shall reside
25 with the respective governing officer, except that the governing officer may delegate such
26 authority to a person who has a practice of, and in writing commits to, following guidelines that
27 match the governing officer's obligation to act based only on pecuniary factors.

28 (g) All proxy votes shall be tabulated and reported annually to the respective Board of
29 Trustees or governing officer. For each vote, the report shall contain a vote caption, the plan's
30 vote, the recommendation of company management, and, if applicable, the proxy advisor's
31 recommendation. These reports shall be posted on a publicly available webpage.

32 **"§ 143-804. Enforcement.**

33 (a) This act may be enforced by the Attorney General.

34 (b) If the Attorney General has reasonable cause to believe that a person has engaged in,
35 is engaging in, or is about to engage in a violation of this Article, he or she may take any of the
36 following actions:

37 (1) Require such person to file on such forms as he or she prescribes a statement
38 or report in writing, under oath, as to all the facts and circumstances
39 concerning the violation, and such other data and information as he or she may
40 deem necessary.

41 (2) Examine under oath any person in connection with the violation.

42 (3) Examine any record, book, document, account, or paper as he or she may
43 deem necessary.

44 (4) Pursuant to an order of the Supreme Court of North Carolina, impound any
45 record, book, document, account, paper, or sample or material relating to such
46 practice and retain the same in his or her possession until the completion of
47 all proceedings undertaken under this act or in the courts."

48 **SECTION 2.** If any section or provision of this act is declared unconstitutional or
49 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
50 the part declared to be unconstitutional or invalid.

51 **SECTION 3.** This act becomes effective October 1, 2023.