

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 743

Introduced by Kauth, 31.

Read first time January 18, 2023

Committee:

- 1 A BILL FOR AN ACT relating to public funds; to adopt the Investment
- 2 Neutrality in Public Funds Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 5 of this act shall be known and may be
2 cited as the Investment Neutrality in Public Funds Act.

3 Sec. 2. For purposes of the Investment Neutrality in Public Funds
4 Act:

5 (1) Fiduciary includes the governing body of a political subdivision
6 acting as an investment manager or proxy advisor;

7 (2) Fiduciary commitment means any evidence of a fiduciary's purpose
8 in managing assets as a fiduciary, including any of the following in a
9 fiduciary's capacity as a fiduciary:

10 (a) Advertising, statements, explanations, reports, letters to
11 clients, communications with portfolio companies, statements of
12 principles, or commitments; or

13 (b) Participation in, affiliation with, or status as a signatory to,
14 any coalition, initiative, joint statement of principles, or agreement;
15 and

16 (3)(a) Financial means having been prudently determined by a
17 fiduciary to have a material effect on the financial risk or the
18 financial return of an investment; and

19 (b) Financial does not include any action taken, or factor
20 considered, by a fiduciary with any purpose whatsoever to further social,
21 political, or ideological interests.

22 Sec. 3. (1) In making and supervising investments of any public
23 fund, any investment manager, fiduciary, governing body, or financial
24 institution shall discharge his, her, or its duties solely in the
25 financial interest of the beneficiaries for the exclusive purposes of:

26 (a) Providing financial benefits to such beneficiaries; and

27 (b) Defraying reasonable expenses relating to administration of such
28 benefits.

29 (2) A fiduciary shall take into account only financial factors when
30 discharging its duties with respect to investments of public funds.

31 (3) All shares held directly or indirectly that contain public funds

1 shall be voted solely in the financial interest of the beneficiaries of
2 such shares.

3 (4) Unless no economically practicable alternative is available, any
4 investment manager, fiduciary, governing body, or financial institution
5 that manages shares that contain public funds shall not grant proxy
6 voting authority to any person, unless that person has a practice of
7 acting solely upon financial factors and commits in writing to act solely
8 upon financial factors.

9 (5) Unless no economically practicable alternative is available,
10 assets containing public funds shall not be entrusted to a fiduciary
11 unless that fiduciary has a practice of, and in writing commits to,
12 following guidelines, when engaging with portfolio companies and voting
13 shares or proxies, to act solely upon financial factors.

14 (6) Unless no economically practicable alternative is available, any
15 investment manager, fiduciary, governmental entity, or financial
16 institution shall not adopt a practice of following the recommendations
17 of a proxy advisor or other service provider, unless such advisor or
18 service provider has a practice of acting solely upon financial factors
19 and commits in writing to act solely upon financial factors.

20 (7) All proxy votes shall be tabulated and reported annually to the
21 State Treasurer. For each vote, the report shall contain a vote caption,
22 the plan's vote, the recommendation of company management, and, if
23 applicable, the proxy advisor's recommendation. These reports shall be
24 posted on a publicly available webpage on the website of the State
25 Treasurer.

26 Sec. 4. A fiduciary may reasonably be determined to have taken an
27 action, or considered a factor, with a purpose to further social,
28 political, or ideological interests based upon evidence indicating such a
29 purpose, including any fiduciary commitment to further, through portfolio
30 company engagement, board, or shareholder votes, or otherwise as a
31 fiduciary, any of the following beyond what controlling federal or state

1 law requires:

2 (1) Eliminating, reducing, offsetting, or disclosing greenhouse gas
3 emissions;

4 (2) Instituting or assessing corporate board, or employment,
5 composition, compensation, or disclosure criteria that incorporates
6 characteristics protected in this state under the Nebraska Fair
7 Employment Practice Act;

8 (3) Divesting from, limiting investment in, or limiting the
9 activities or investments of, any company, for failing, or not
10 committing, to meet environmental standards or disclosures;

11 (4) Access to abortion, sex or gender change, or transgender
12 surgery; or

13 (5) Divesting from, limiting investment in, or limiting the
14 activities or investments of, any company, for engaging in, facilitating,
15 or supporting the manufacture, distribution, sale, or use of firearms.

16 Sec. 5. (1) The Investment Neutrality in Public Funds Act, or any
17 contract subject to the act, may be enforced by the Attorney General.

18 (2) If the Attorney General has reasonable cause to believe that a
19 person has engaged in, is engaging in, or is about to engage in a
20 violation of the Investment Neutrality in Public Funds Act, the Attorney
21 General may:

22 (a) Require such person to file on such forms the Attorney General
23 prescribes a statement, or report in writing, under oath, as to all the
24 facts and circumstances concerning the violation and other data and
25 information as the Attorney General deems necessary;

26 (b) Examine under oath any person in connection with the violation;

27 (c) Examine any record, book, document, account, or paper as the
28 Attorney General deems necessary; and

29 (d) Pursuant to an order of the district court, impound any record,
30 book, document, account, paper, or sample or material relating to such
31 practice and retain possession of the same until the completion of all

- 1 proceedings undertaken under the Investment Neutrality in Public Funds
- 2 Act or in the courts.