

2024 Regular Session

SENATE BILL NO. 5

BY SENATOR MIGUEZ

RETIREMENT SYSTEMS. Requires fiduciaries for public retirement systems to make investment decisions based solely on financial factors. (8/1/24)

1 AN ACT

2 To enact Subpart P of Part II of Chapter 4 of Subtitle I of Title 11 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 11:331 through 333, relative to requiring
4 a fiduciary to take into account only financial factors when discharging its duties
5 with respect to a retirement plan; to provide that financial factors do not include any
6 action taken, or factor considered, by a fiduciary with any purpose to further social,
7 political or governance policies; to provide for enforcement by the attorney general;
8 to provide penalties; to provide definitions; and to provide for related matters.

9 Notice of intention to introduce this Act has been published.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Subpart P of Part II of Chapter 4 of Subtitle I of Title 11 of the Louisiana
12 Revised Statutes of 1950, to be comprised of R.S. 11:331 through 333 is hereby enacted to
13 read as follows:

14 **SUBPART P. PUBLIC PENSION FIDUCIARY DUTY ACT**

15 **§331. Definitions**

16 **A. For the purposes of this Subpart, the following terms shall have the**
17 **following meanings unless the context clearly indicates otherwise:**

1 **(1) "Fiduciary" means any person acting on behalf of a public retirement**
2 **or pension systems, funds, and plans as an investment manager or advisor**
3 **responsible for making investment decisions or investment policies.**

4 **(2) "Fiduciary Commitment" means any evidence of a fiduciary's**
5 **purpose in managing the investment of state funds, but not limited to, any of the**
6 **following in a fiduciary's capacity as a fiduciary:**

7 **(a) Advertising.**

8 **(b) Statements.**

9 **(c) Explanations.**

10 **(d) Reports.**

11 **(e) Letters to clients.**

12 **(f) Communications with portfolio companies.**

13 **(g) Statements of principles or commitments.**

14 **(f) Participation in, affiliation with, or status as a signatory to any**
15 **coalition, initiative, joint statement of principles, or agreement.**

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

19 **(a) The term "financial" shall 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 **(b) A fiduciary may reasonably be determined to have taken an action,**
23 **or considered a factor, with a purpose to further social, political, or ideological**
24 **interests based upon evidence indicating such a purpose, including but not**
25 **limited to any fiduciary commitment to further, through portfolio company**
26 **engagement, board or shareholder votes, or otherwise as a fiduciary, any of the**
27 **following beyond what controlling federal or state law requires:**

28 **(i) Eliminating, reducing, offsetting, or disclosing greenhouse gas**
29 **emissions.**

1 (ii) Instituting or assessing corporate board, or employment,
2 composition, compensation, or disclosure criteria that incorporates
3 characteristics protected in this state.

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

7 (iv) Access to abortion, sex or gender change or transgender surgery.

8 (v) Divesting from, limiting investment in, or limiting the activities or
9 investments of, any company that engages in, facilitates, or supports the
10 manufacture, import, distribution, marketing or advertising, sale, or lawful use
11 of firearms, ammunition or components parts and accessories of firearms or
12 ammunition.

13 (4) "Public Retirement System", "system", or "plan", shall have the
14 same meaning as any public retirement or pension systems, funds, or plans
15 maintained, provided or offered primarily for officers and employees of the
16 State of Louisiana or any political subdivision thereof, or of any district, board,
17 commission, or other agency of either, or of any other such public entity.

18 §332. Investment of state funds; consideration of only financial purposes.

19 A. In making and supervising investments of the reserve fund of a public
20 retirement system, a fiduciary or the board shall discharge its duties solely in
21 the financial interest of the participants and beneficiaries of the plan for the
22 exclusive purposes of:

23 (1) Providing financial benefits to participants and their beneficiaries.

24 (2) Defraying reasonable expenses of administering the system.

25 B. An investment manager retained by the board shall be subject to the
26 same fiduciary duties as the board.

27 C. A fiduciary shall take into account only financial factors when
28 discharging its duties with respect to a plan.

29 D. All shares held directly or indirectly by or on behalf of a public

1 retirement system or the participants and their beneficiaries shall be voted
2 solely in the financial interest of plan participants and their beneficiaries.

3 E. Unless no economically practicable alternative is available, the
4 governmental entity that establishes or maintains a public retirement system
5 may not grant proxy voting authority to any person who is not a part of the
6 governmental entity, unless that person has a practice of, and in writing
7 commits to following guidelines that match the governmental entity's obligation
8 to act solely upon financial factors.

9 F. Assets of the public retirement system shall not be entrusted to a
10 fiduciary, unless that fiduciary has a practice of, and in writing commits to
11 following guidelines when engaging with portfolio companies and voting shares,
12 that match the governmental entity's obligation to act solely upon financial
13 factors.

14 G. Unless no economically practicable alternative is available, a fiduciary
15 or the board may not adopt a practice of following the recommendations of a
16 proxy advisor or other service provider, unless such advisor or service provider
17 has a practice of, and in writing commits to following proxy voting guidelines
18 that match the governmental entity's and the board's obligation to act solely
19 upon financial factors.

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

25 §333. Enforcement

26 A. This Subpart, or any contract subject to this Subpart, may be
27 enforced by the attorney general of this state.

28 B. If the attorney general has reasonable cause to believe that a person
29 has engaged in, is engaging in, or is about to engage in, a violation of this

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Subpart, he may:

(1) Require the person to file in writing, on forms as he prescribes, a statement or report, under oath, as to all the facts and circumstances concerning the violation.

(2) Request data and information as he may deem necessary.

C. In addition to any other remedies available at law or equity, a company who serves as a fiduciary and who violates R.S. 11:332 shall be obligated to pay damages to the public retirement system in an amount equal to three times all monies paid to the person or company by the system for the services of the person or company.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alana M. Perrin.

DIGEST

SB 5 Original

2024 Regular Session

Miguez

Proposed law requires for any public retirement system a fiduciary, in making and supervising investments for the systems, to discharge its duties solely in the financial interest of the participants and beneficiaries for the exclusive purposes of providing financial benefits to participants and their beneficiaries and defraying reasonable expenses of administrating the system.

Proposed law requires a fiduciary to take into account only financial factors when discharging its duties with respect to a retirement plan and prohibits financial factors that include any action taken, or factor considered, by a fiduciary with any purpose to further social, political, or governance agendas.

Proposed law requires that an investment manager retained by the governing board must be subject to the same fiduciary duties as the board.

Proposed law provides that the provisions of proposed law may be enforced by the attorney general. Proposed law shall further require that a fiduciary who violates his duty be obligated to pay damages.

Effective August 1, 2024.

(Adds R.S. 11:331 through 333)