

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2862**

By Delegates Jeffries, Householder, Hardy, Worrell,

Phillips, W. Hall, Kimble, Gearheart and Keaton

[Introduced January 20, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §12-6-11a; and to amend and reenact §12-6C-13 of said code, all relating  
 3 generally to requirements for shareholder voting by the West Virginia Investment  
 4 Management Board and the Board of Treasury Investments; defining terms; setting forth  
 5 applicability of new requirements; establishing the standard of care for shareholder voting;  
 6 prohibiting the boards from relying on proxy advisory services unless the service provider  
 7 agrees to make recommendations according to the standard of care; prohibiting the  
 8 boards from entrusting direct holdings to any manager unless the manager agrees to cast  
 9 proxy votes according to the standard of care; requiring a contractual agreement between  
 10 the boards and their fiduciaries that the boards be provided advance notice and the  
 11 opportunity to advise fiduciaries with respect to certain shareholder votes; prohibiting the  
 12 boards' fiduciaries from casting the shareholder votes for the purpose of furthering  
 13 non-pecuniary interests; requiring the boards to exercise any proxy voting choice options  
 14 for indirect holdings according to the standard of care; and establishing reporting  
 15 requirements related to shareholder voting.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.**

**§12-6-11a. Standard of care for shareholder voting; restrictions and requirements.**

1 (a) Definitions. – For the purposes of this section:

2 (1) "Beneficiaries" refers to the entities or individuals entitled to benefit from an investment  
 3 or pool of investments held, administered, or managed by the board pursuant to this code.

4 (2) "Direct holdings" means all publicly traded securities of a company that are held directly  
 5 by the board in an actively managed account or fund, when the board owns all shares or interests  
 6 in said actively managed account or fund.

7 (3) "Fiduciary" refers to a fund manager or other entity that the board authorizes or  
 8 otherwise entrusts to cast shareholder votes, by proxy or otherwise, on behalf of the board or the

9 beneficiaries.

10 (4) "Indirect holdings" means all securities of a company that are held in an account or  
11 fund, such as a mutual fund, managed by one or more persons not employed by the board, when  
12 the board owns shares or interests together with other investors or that are held in an account or  
13 fund.

14 (5) "Pecuniary factor" means a factor that has a direct and material effect on the financial  
15 risk or financial return to beneficiaries based on appropriate investment horizons consistent with  
16 an investment pool's objectives and funding policy. Environmental, social, corporate governance,  
17 or other similarly oriented considerations are not pecuniary factors, unless a prudent investor  
18 would determine that such a consideration directly and materially affects the financial risk or  
19 financial return to beneficiaries based on appropriate investment horizons consistent with an  
20 investment pool's objectives and funding policy. Any factor that does not meet the definition of  
21 "pecuniary factor" according to this subdivision is a "non-pecuniary factor".

22 (6) "Pecuniary interests" means the interests of minimizing financial risk and maximizing  
23 financial return to beneficiaries. Any interest that does not meet the definition of "pecuniary  
24 interests" is a "non-pecuniary interest".

25 (7) "Proxy vote" means a shareholder vote cast by a fiduciary on behalf of the shareholder.

26 (8) "Proxy voting choice options" refers to options offered by fiduciaries, which allow  
27 shareholders with indirect holdings to:

28 (A) Directly vote and transmit proxy votes;

29 (B) Select a third-party proxy voting policy and direct the fiduciary to cast proxy votes  
30 according to said policy;

31 (C) Direct proxy votes on individual resolutions or companies; or

32 (D) Otherwise exercise control over how proxy votes are cast.

33 (9) "Shareholder votes" refers to all shareholder votes that the board is authorized to cast  
34 or to entrust a fiduciary to cast, by proxy or otherwise, on behalf of the board with respect to shares

35 in securities held directly or indirectly by the board.

36 (b) *Applicability.* – The requirements of this section apply to all investments and pools of  
37 investments that the board is authorized to hold, administer, or manage pursuant to this code.

38 (c) *Standard of Care.* – Consistent with the requirements of §12-6-11 and §44-6C-1 *et seq.*  
39 of this code, the board has a duty to ensure that all shareholder votes are cast solely in the  
40 pecuniary interests of the beneficiaries, based on a consideration of only pecuniary factors. The  
41 board may not cast, nor permit a fiduciary to cast, any shareholder vote for the purpose of  
42 furthering non-pecuniary interests.

43 (d) *Direct holdings.* – The following restrictions and requirements apply to the board's  
44 direct holdings:

45 (1) The board may not adopt a practice or policy of casting shareholder votes or permitting  
46 a fiduciary to cast shareholder votes according to the recommendations of a proxy advisory firm or  
47 other similar service provider unless such firm or service provider commits, in writing, to make all  
48 shareholder voting recommendations to the board or the board's fiduciary according to the  
49 standard of care established in subsection (c) of this section.

50 (2) The board may not entrust fund assets to a fiduciary, unless the fiduciary commits, in  
51 writing, to cast all shareholder votes according to the standard of care established in subsection  
52 (c) of this section.

53 (3) As a term of any contract with a fiduciary, the board shall require the fiduciary to provide  
54 advance notice to the board of any shareholder vote concerning non-pecuniary interests and to  
55 provide the board with a reasonable opportunity to instruct the fiduciary, in writing, how the vote  
56 must be cast.

57 (4) A fiduciary is prohibited from casting any shareholder vote for the purpose of furthering  
58 non-pecuniary interests.

59 (e) *Indirect holdings.* – The board shall deliver a letter to the fiduciary managing each  
60 investment fund in which the board has indirect holdings, inquiring whether the fiduciary offers

61 proxy voting choice options that are available to the board. If the fiduciary offers proxy voting  
62 choice options, the board shall exercise those options according to the standard of care  
63 established in subsection (c) of this section. Nothing in this section requires the board to divest  
64 from any private market funds or from indirect holdings in actively or passively managed  
65 investment funds.

66 (f) Reporting. –

67 (1) The board shall produce an annual report tabulating and describing all shareholder  
68 votes cast by the board or the board’s fiduciaries.

69 (2) For each shareholder vote cast during a calendar year, the report required by this  
70 subsection shall contain a vote caption, the board’s or the fiduciary’s vote, the recommendation of  
71 company management, and, if applicable, the proxy advisor or other service provider’s  
72 recommendation.

73 (3) The board shall publish the report required by this subsection on the board’s website no  
74 later than March 1 of the calendar year following the calendar year addressed in the report.

## **ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.**

### **§12-6C-13. Standard of care.**

1 (a) The Uniform Prudent Investor Act, codified in §44-6C-1 *et seq.* of this code, is the  
2 standard for any investments made under this article. Investments are further subject to the  
3 following:

4 (1) The directors shall diversify fund investment so as to minimize the risk of large losses  
5 unless, under the circumstances, it is clearly prudent not to do so;

6 (2) The directors shall defray reasonable expenses of investing and managing the  
7 Consolidated Fund by charging fees as provided in this article; and

8 (3) The directors shall discharge their duties in accordance with the documents and  
9 instruments consistent with the provisions of this article.

10 (b) The duties of the directors apply only with respect to those assets deposited with or

- 11 otherwise held by the ~~Board~~ board.
- 12 (c) For any shareholder voting rights held by the board, the standard of care provided in in
- 13 §12-6-11a of this code shall apply to the board, its directors, and its fiduciaries. The board shall
- 14 exercise all shareholder voting rights according to the requirements, restrictions, and procedures
- 15 set forth in that section.

NOTE: The purpose of this bill is to ensure that all shareholder votes by or on behalf of the West Virginia Investment Management Board and the Board of Treasury Investments are cast according to the pecuniary interests of investment beneficiaries.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.