

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 2862

By Delegates Jeffries, Householder, Hardy, Worrell,

Phillips, W. Hall, Kimble, Gearheart and Keaton

[Originating in the Committee on the Judiciary;

Reported on February 15, 2023]

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; creating certain waivers of the
15 requirements after reasonable efforts; establishing reporting requirements related to
16 shareholder voting; and creating effective dates.

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, all shareholder votes must be cast solely in the pecuniary interests of the
40 beneficiaries, based on a consideration of only pecuniary factors. The board may not cast, nor
41 authorize a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary
42 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
46 authorizing a fiduciary to cast shareholder votes according to the recommendations of a proxy
47 advisory firm or other similar service provider unless such firm or service provider commits, in
48 writing, to make all shareholder voting recommendations to the board or the board's fiduciary
49 according to the 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.

75 (g) Waiver after reasonable efforts. –

76 (1) If the board is unable to comply with the provisions of subsection (d) of this section
77 without significantly increasing costs or limiting the quality of investment options or services
78 available to the board, the board may waive the requirements of said subsection with regard to a
79 particular fiduciary, upon a finding that:

80 (A) The board has made reasonable and good faith efforts to obtain fiduciary services
81 meeting the requirements of subsection (d) of this section and has included said requirements in
82 the board’s minimum selection criteria for said services;

83 (B) Based on objective information available to the board, the cost of fiduciary services
84 appears significantly higher than the fiduciary services available to similarly situated boards or

85 funds not subject to similar requirements, or the quality of fiduciary services or investment options
86 appears significantly lower than the quality of fiduciary services available to similarly situated
87 boards or funds not subject to similar requirements; and

88 (C) The board determines that waiving subsection (d) of this section is clearly in the best
89 pecuniary interests of the relevant fund's or funds' beneficiaries.

90 (2) A waiver authorized by this section must be adopted by a majority vote of board
91 members serving at the time the vote is taken.

92 (h) Effective date. – The requirements of this section are effective July 1, 2024.

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. The requirements of this subsection are effective July 1, 2024.

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.