



131st MAINE LEGISLATURE

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Legislative Document

No. 1562

H.P. 1007

House of Representatives, April 11, 2023

**An Act to Protect the Retirement of State Employees and Teachers
by Establishing Standards for Fiduciary Responsibility**

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PERKINS of Dover-Foxcroft.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: ANDREWS of Paris, ARDELL of Monticello, FAULKINGHAM of Winter
Harbor, HYMES of Waldo, PAUL of Winterport, QUINT of Hodgdon, SOBOLESKI of
Phillips, WHITE of Guilford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §17063** is enacted to read:

3 **§17063. Fiduciary responsibility**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Fiduciary" means a person that:

7 (1) Exercises any discretionary authority or discretionary control relating to
8 management of a plan;

9 (2) Exercises any authority or control relating to management or disposition of a
10 plan's assets;

11 (3) Has authority to render investment advice for a fee or other compensation,
12 direct or indirect, with respect to any money or other property of a plan; or

13 (4) Has any discretionary authority or discretionary responsibility in the
14 administration of a plan, including making recommendations or voting a plan's
15 shares or proxies.

16 B. "Material" means, with respect to a risk or return, that there is a substantial
17 likelihood that a reasonable investor would attach importance when evaluating the
18 potential financial return and financial risks of an existing or prospective investment
19 or exercising or declining to exercise any rights appurtenant to securities. "Material"
20 does not include furthering nonpecuniary goals or objectives or any portion of a risk or
21 return that primarily relates to events that involve a high degree of uncertainty
22 regarding what may or may not occur in the distant future and are systemic, general or
23 not investment-specific in nature.

24 C. "Nonpecuniary" means, with respect to a factor considered by a fiduciary, that the
25 factor has a purpose to further environmental, social, corporate governance, ideological
26 or political goals.

27 D. "Pecuniary" means, with respect to a factor, that the factor has a material effect on
28 the financial risk or financial return of an investment based on appropriate investment
29 horizons consistent with the plan's investment objectives and the funding policy.

30 E. "Plan" means any plan, fund or program that is established, maintained or offered
31 by the retirement system and that, by its terms or as a result of surrounding
32 circumstances, provides retirement benefits to employees or former employees or
33 results in a deferral of income by such employees for a period extending to the
34 termination of covered employment or beyond.

35 **2. Fiduciary standard.** A fiduciary shall discharge its duties with respect to a plan in
36 the pecuniary interest of the participants and beneficiaries and in accordance with this
37 subsection. A fiduciary shall discharge its duties:

38 A. For the purposes of:

39 (1) Providing pecuniary benefits to participants and their beneficiaries; and

40 (2) Defraying reasonable expenses of administering the plan.

1 A fiduciary purpose may be reasonably determined by evidence, including, but not
2 limited to, a fiduciary's statements indicating its purpose in selecting investments,
3 engaging with portfolio companies or voting shares or proxies, or any such statements
4 by any coalition, initiative or organization that the fiduciary has joined, participated in
5 or become a signatory to, in its capacity as a fiduciary;

6 B. With the care, skill, prudence and diligence under the circumstances then prevailing
7 that a prudent person acting in a like capacity and familiar with such matters would use
8 in the conduct of an enterprise of a like character and with like aims;

9 C. By diversifying the investments of the plan in order to minimize the risk of large
10 losses, unless under the circumstances it is clearly prudent not to do so; and

11 D. In accordance with the documents and instruments governing the plan that are
12 consistent with the provisions of this section.

13 **3. Consideration of nonpecuniary factors prohibited.** A fiduciary's evaluation of
14 an investment, or evaluation or exercise of any right appurtenant to an investment, must
15 take into account only pecuniary factors. A fiduciary:

16 A. May not promote nonpecuniary benefits or any other nonpecuniary goals; and

17 B. May consider nonpecuniary benefits only if the factors present economic risks or
18 opportunities that qualified investment professionals would treat as material economic
19 considerations under generally accepted investment theories. A fiduciary shall
20 evaluate those factors to:

21 (1) Prudently assess the impact of the factors on risk and return;

22 (2) Examine the level of diversification, degree of liquidity and the potential return
23 or risk in comparison with other available alternative investments that would play
24 a similar role in the plans' portfolios; and

25 (3) Determine whether greater returns can be achieved through investments that
26 rank poorly on environmental, social or governance factors.

27 **4. Voting ownership interests.** This subsection governs voting ownership interests.

28 A. All shares held directly or indirectly by or on behalf of a plan or the beneficiaries
29 thereof must be voted solely in the pecuniary interest of plan participants. Voting to
30 further nonpecuniary benefits is prohibited.

31 B. A fiduciary may not adopt a practice of following the recommendations of a proxy
32 advisory firm or other service provider unless the firm or service provider has a practice
33 of, and in writing commits to, following proxy voting guidelines that are consistent
34 with the fiduciary's obligation to act based only on pecuniary factors.

35 C. Plan assets may not be entrusted to a fiduciary unless that fiduciary has a practice
36 of, and in writing commits to, following guidelines when engaging with portfolio
37 companies and voting shares or proxies that match the State's obligation to act based
38 only on pecuniary factors.

39 D. Authority to vote shares under this subsection resides with the board, whose
40 members must have a practice of, and in writing commit to, following guidelines that
41 match the State's obligation to act based only on pecuniary factors.

1 E. All proxy votes must be tabulated and reported annually to the Treasurer of State.
2 For each vote, the report must contain a vote caption, the plan's vote, the
3 recommendation of company management and, if applicable, the proxy advisor's
4 recommendation. These reports must be posted on a publicly available webpage on the
5 board's website.

6 **5. Enforcement.** This section is enforced by the Attorney General. If the Attorney
7 General has reasonable cause to believe that a person has engaged in, is engaging in or is
8 about to engage in a violation of this section, the Attorney General may:

9 A. Require the person to file on such forms as the Attorney General prescribes a
10 statement or report in writing, under oath, as to all the facts and circumstances
11 concerning the suspected violation, and any other data and information considered
12 necessary by the Attorney General;

13 B. Examine under oath any person in connection with the suspected violation;

14 C. Examine any record, book, document, account or paper as considered necessary by
15 the Attorney General; and

16 D. Pursuant to an order of the Superior Court, impound any record, book, document,
17 account, paper or sample or material relating to the suspected violation and retain the
18 same in the Attorney General's possession until the completion of all proceedings
19 undertaken under this section or in the courts.

20 **SUMMARY**

21 This bill establishes certain standards of care for fiduciaries of the Maine Public
22 Employees Retirement System and generally prohibits decision making with regard to
23 investments in the retirement system based on certain nonpecuniary factors such as
24 environmental, social, corporate governance, ideological or political factors.