

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

A BILL FOR

1 An Act relating to actions regarding the economic interest
2 of enterprise shareholders and participants in and
3 beneficiaries of public pension benefit plans, and providing
4 penalties.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 12L.1 **Definitions.**

2 For purposes of this chapter:

3 1. "*Best economic interest*" means investment pursuant to the
4 objective of maximizing risk-adjusted investment returns of the
5 participants and beneficiaries of a plan over a time horizon
6 consistent with the risk management profile of the plan.

7 2. "*Consumer*" means a person who is a resident of this state
8 and to which any of the following apply:

9 a. The person has an interest in an investment company,
10 including but not limited to mutual funds and exchange-traded
11 funds, registered with the federal securities and exchange
12 commission that directly or indirectly owns shares of an
13 enterprise regulated by the state.

14 b. The person is a beneficiary or participant in a plan.

15 3. "*Economic analysis*" means a written analysis
16 demonstrating the factors considered in evaluating the economic
17 impact of a shareholder-sponsored proposal. At a minimum, the
18 analysis must address all of the following factors:

19 a. The subject matter of the shareholder-sponsored proposal.

20 b. An evaluation of the investment company's stated reasons
21 for opposition to the shareholder-sponsored proposal.

22 c. An evaluation of whether the shareholder-sponsored
23 proposal reflects the investment objectives and risk management
24 profile of the plan in which the participants and beneficiaries
25 are invested.

26 d. An evaluation of the economic benefits and costs of
27 implementing the proposal, as written, over a time horizon that
28 reflects the investment objectives and risk management profile
29 of the plan.

30 e. The quantifiable impact of the shareholder-sponsored
31 proposal, as written, on the investment returns of the
32 participants and beneficiaries of the plan.

33 f. An explanation of modeling, procedures, or processes used
34 to complete the economic analysis.

35 4. "*Fiduciary*" means a person who, with respect to a pension

1 benefit plan, does any of the following:

2 *a.* Exercises discretionary authority or discretionary
3 control with respect to management of the plan or exercises
4 authority or control with respect to acquisition, management,
5 or disposition of the plan's assets.

6 *b.* Renders investment advice for a fee or other
7 compensation, direct or indirect, with respect to moneys or
8 other assets of the plan or has authority or responsibility to
9 do so.

10 *c.* Has discretionary authority or discretionary
11 responsibility in the administration of the plan.

12 5. "*Investment company*" means the same as defined in 15
13 U.S.C. §80a-3.

14 6. "*Pension benefit plan*" or "*plan*" means a plan, fund, or
15 program established, maintained, or offered by a public entity,
16 including but not limited to a public retirement system as
17 defined in section 97D.5, if by its terms or as a result of
18 surrounding circumstances the plan, fund, or program does any
19 of the following:

20 *a.* Provides retirement income or other retirement benefits
21 to employees or former employees.

22 *b.* Results in a deferral of income by employees for a period
23 extending to the termination of covered employment or beyond.

24 7. "*Proxy advisory firm*" means a person who is engaged
25 in the business of providing proxy voting advice, research,
26 analysis, ratings, or recommendations to a fiduciary,
27 shareholder, or investor, including institutional investors.

28 8. "*Public entity*" means the state or a political
29 subdivision of the state, including any agency, authority,
30 department, enterprise, instrumentality, school, college,
31 university, or other subunit operated by the state or a
32 political subdivision of the state.

33 9. "*Shareholder-sponsored proposal*" means a proposal
34 submitted to an issuer of securities by a shareholder under 17
35 C.F.R. §240.14a-8.

1 Sec. 2. NEW SECTION. 12L.2 **Fiduciary voting**
2 **responsibilities.**

3 1. A fiduciary shall vote all shares held directly or
4 indirectly by, subject to, or on behalf of a plan for the
5 benefit of the plan's participants and beneficiaries solely
6 in the best economic interest of the plan participants and
7 beneficiaries.

8 2. For purposes of this section, with respect to a
9 shareholder-sponsored proposal, there is a rebuttable
10 presumption that a fiduciary votes its shares solely
11 in the best economic interest of the plan participants
12 and beneficiaries if the fiduciary's vote follows the
13 recommendation of the board of directors of the issuer of
14 the shares, as long as such board includes a majority of
15 independent directors.

16 3. With respect to a shareholder-sponsored proposal,
17 a fiduciary's vote in a manner inconsistent with the
18 recommendation of the board of directors of the issuer of the
19 shares is presumed to be in the best economic interest of the
20 plan participants and beneficiaries if any of the following
21 criteria are met:

22 *a.* The fiduciary conducts and documents an economic analysis
23 demonstrating that such a vote is in the best economic interest
24 of the plan participants and beneficiaries.

25 *b.* On behalf of the fiduciary, a third party conducts and
26 documents an economic analysis demonstrating that such a vote
27 is in the best economic interest of the plan participants
28 and beneficiaries, and the fiduciary determines that the
29 economic analysis adequately demonstrates that such a vote is
30 in the best economic interest of the plan participants and
31 beneficiaries.

32 4. A fiduciary shall not vote in a manner that does any of
33 the following:

34 *a.* Subordinates the economic interest of the plan's
35 participants and beneficiaries to any environmental, social,

1 policy, governance, or ideological goal.

2 *b.* Promotes any environmental, social, policy, governance,
3 or ideological goal, unless, based on an economic analysis, it
4 is determined that the vote is in the best economic interest of
5 the plan participants and beneficiaries.

6 5. With respect to shareholder-sponsored proposals, a
7 fiduciary shall annually disclose in a report to the treasurer
8 of state all of the following:

9 *a.* Each vote that was inconsistent with the recommendation
10 of an issuer's board of directors composed of a majority of
11 independent directors.

12 *b.* The economic analysis conducted and documented with
13 respect to each vote described in subsection 3 to determine
14 that the vote was in the best economic interest of the plan's
15 participants and beneficiaries.

16 6. The report required under subsection 5 must be certified
17 by the chief executive officer and chief financial officer, or
18 an individual acting in each capacity, of the fiduciary.

19 7. At least once every three years, a fiduciary shall
20 back test its economic analysis to ensure that the models,
21 procedures, and processes it uses predict the best economic
22 interest of the plan's participants and beneficiaries, and
23 shall deliver a report detailing such back testing to the
24 treasurer of state. Based on such back testing, the chief
25 executive officer and chief financial officer, or an individual
26 acting in each capacity, of the fiduciary shall certify that
27 the economic analysis performed by the fiduciary and included
28 in the report is effective.

29 8. The court may award court costs and reasonable attorney
30 fees to a party who prevails in an action brought under this
31 section.

32 **Sec. 3. NEW SECTION. 12L.3 Proxy advisory firms.**

33 1. A proxy advisory firm shall not provide proxy voting
34 advice with respect to shareholder-sponsored proposals
35 submitted to any enterprise that the state regulates, unless

1 the proxy advisory firm bases its voting recommendations
2 solely on the best economic interests of the enterprise's
3 shareholders.

4 2. For purposes of this section, with respect to a
5 shareholder-sponsored proposal submitted to an enterprise
6 regulated by the state, there is a presumption that a proxy
7 advisory firm's voting recommendation is based solely on the
8 best economic interest of the enterprise's shareholders if
9 the recommendation follows the recommendation of the board of
10 directors of the issuer of the shares, as long as the board
11 includes a majority of independent directors.

12 3. With respect to a shareholder-sponsored proposal
13 submitted to an enterprise regulated by the state, a proxy
14 advisory firm may recommend a vote that is inconsistent with
15 the recommendation of the board of directors of the issuer of
16 the shares if the proxy advisory firm conducts and documents an
17 economic analysis demonstrating that such a vote is in the best
18 economic interest of the enterprise's shareholders.

19 4. With respect to shareholder-sponsored proposals
20 submitted to an enterprise regulated by the state, a proxy
21 advisory firm shall annually disclose in a report to the
22 treasurer of state all of the following:

23 a. Each vote recommendation that was inconsistent with the
24 recommendation of an issuer's board of directors composed of a
25 majority of independent directors.

26 b. The economic analysis conducted and documented with
27 respect to each vote recommendation described in subsection
28 3 to determine that the vote recommendation was in the best
29 economic interest of the regulated enterprise's shareholders.

30 **Sec. 4. NEW SECTION. 12L.4 Consumer right to disclosure.**

31 1. a. If a consumer has reason to believe that the
32 requirements of section 12L.2 or 12L.3 have not been met, a
33 consumer may submit a request to any of the following to obtain
34 a copy of the documented economic analysis demonstrating that
35 such a vote is solely in the best economic interest of the

1 consumer:

2 (1) The investment company that owns shares of an enterprise
3 regulated by the state.

4 (2) The plan, in each case, in which the consumer is an
5 investor, beneficiary, or participant.

6 *b.* There is a presumption that a vote is solely in the
7 best economic interest of the consumer if the vote follows the
8 recommendation of the board of directors of the issuer of the
9 shares, as long as the board includes a majority of independent
10 directors.

11 2. *a.* The investment company or plan shall respond in
12 writing to the consumer within ninety days of receipt of
13 a request described in subsection 1 by doing one of the
14 following:

15 (1) Providing the consumer with the requested economic
16 analysis.

17 (2) Informing the consumer that no economic analysis is
18 available, if the investment company did not conduct and
19 document an economic analysis.

20 (3) Informing the consumer that the vote at issue was
21 consistent with the recommendation of the board of directors
22 of the issuer of the shares and such board is composed of a
23 majority of independent directors.

24 *b.* The investment company or plan shall provide information
25 in response to a consumer request at no cost up to twice
26 annually per consumer.

27 Sec. 5. NEW SECTION. 12L.5 Enforcement.

28 1. This chapter may be enforced by the attorney general.

29 2. If the attorney general has reasonable cause to believe
30 that a person has engaged in, is engaging in, or is about to
31 engage in a violation of this chapter, the attorney general may
32 do any of the following:

33 *a.* Require the person to file on forms prescribed by the
34 attorney general a statement or report in writing, under oath,
35 as to all the circumstances surrounding the violation and

1 such other data and information as the attorney general deems
2 necessary.

3 *b.* Examine under oath any person in connection with the
4 violation.

5 *c.* Examine any record, book, document, account, or paper as
6 the attorney general deems necessary.

7 *d.* Issue civil investigatory demands consistent with
8 investigation into a potential enforcement action.

9 *e.* Under an order of the district court, impound any record,
10 book, document, account, paper, or sample or material relating
11 to the violation and retain the same in the attorney general's
12 possession until the completion of all proceedings undertaken
13 under this chapter or in court.

14 3. The attorney general may initiate an action in the
15 name of the state and may seek an injunction to restrain
16 any violations of this chapter. A violation of this chapter
17 shall constitute irreparable harm. Each share voted by a
18 fiduciary that is not voted in the best economic interest of
19 the shareholder constitutes a separate violation. The attorney
20 general may also seek civil penalties for each violation under
21 this chapter. All civil penalties issued shall be in equity.
22 Civil penalties shall not exceed one thousand dollars per
23 violation. Civil penalties collected under this chapter shall
24 be deposited in the general fund of the state.

25

EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill requires a fiduciary to vote all shares of a
29 pension benefit plan established, maintained, or offered by
30 a public entity solely in the best economic interest of the
31 plan participants and beneficiaries. The bill creates the
32 rebuttable presumption that, if a fiduciary's vote aligns with
33 the recommendation of the board of directors of the issuer
34 of the shares or if the fiduciary or a third party conducts
35 an economic analysis showing that the vote is

1 in the best economic interest of the plan participants and
2 beneficiaries, the vote is in the best interest of the plan
3 participants and beneficiaries. The bill prohibits a fiduciary
4 from voting shares of a plan based on any environmental,
5 social, policy, governance, or ideological goal that is
6 not in the best economic interest of plan participants and
7 beneficiaries.

8 The bill requires a fiduciary to annually report to
9 the treasurer of state any vote inconsistent with the
10 recommendation of an issuer's board of directors and the
11 economic analysis on which the fiduciary relied. This report
12 must be certified by the fiduciary's chief executive officer
13 and chief financial officer.

14 The bill also requires a fiduciary to review its economic
15 analysis every three years to ensure that the fiduciary's
16 models, procedures, and processes predict the best economic
17 interest of the plan participants and beneficiaries.

18 The bill permits a court to award court costs and reasonable
19 attorney fees to the prevailing party in a suit concerning
20 fiduciary voting responsibilities.

21 The bill prohibits a proxy advisory firm from providing
22 proxy voting advice regarding shareholder-sponsored proposals
23 to an entity that the state regulates unless the advice is
24 based solely on the best economic interests of the enterprise's
25 shareholders. If a proxy advisory firm's advice follows the
26 recommendation of the board of directors of the issuer of the
27 shares or if the proxy advisory firm conducts and documents an
28 economic analysis demonstrating that the vote is in the best
29 economic interest of the plan participants and beneficiaries,
30 then the advice is presumed to be based solely on the best
31 economic interest of the enterprise's shareholders. A proxy
32 advisory firm must submit an annual report to the treasurer of
33 state disclosing any vote inconsistent with the issuer's board
34 of directors' recommendations and the economic analysis on
35 which the proxy advisory firm relied.

1 The bill permits an investor, beneficiary, or participant of
2 a plan to submit a request for the economic analysis conducted
3 for a fiduciary's vote to the investment company that owns
4 shares of an enterprise regulated by the state or the plan if
5 the individual has reason to believe that shares of the plan
6 have not been voted in the best economic interest of the plan
7 participants and beneficiaries. The investment company or
8 plan must respond in writing within 90 days by providing the
9 requested economic analysis or informing the individual that no
10 economic analysis was conducted or the vote aligned with the
11 recommendation of the board of directors of the issuer of the
12 shares. The investment company or plan must provide such a
13 response without cost up to twice annually per consumer.

14 The bill allows the attorney general to investigate any
15 suspected violations of the bill and to enforce the bill's
16 provisions by initiating an action in the name of the state
17 and seeking civil penalties for each violation. Each share
18 not voted in the best economic interest of the shareholder
19 qualifies as a separate violation and constitutes irreparable
20 harm. The bill requires civil penalties to be in equity and
21 to not exceed \$1,000 per violation. Civil penalties collected
22 under the bill are deposited in the general fund of the state.