

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.