

Senate Study Bill 1094 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR BILL)

A BILL FOR

1 An Act concerning public contracts with companies that boycott
2 certain companies or that engage in nonpecuniary social
3 investment policies.

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

1 Section 1. Section 12.8, subsection 1, Code 2023, is amended
2 to read as follows:

3 1. The treasurer of state shall invest or deposit, subject
4 to chapters 12F, 12H, and 12J, and 12K and as provided by law,
5 any of the public funds not currently needed for operating
6 expenses and shall do so upon receipt of monthly notice from
7 the director of the department of administrative services of
8 the amount not so needed. In the event of loss on redemption
9 or sale of securities invested as prescribed by law, and if
10 the transaction is reported to the executive council, neither
11 the treasurer nor director of the department of administrative
12 services is personally liable but the loss shall be charged
13 against the funds which would have received the profits or
14 interest of the investment and there is appropriated from the
15 funds the amount so required.

16 Sec. 2. NEW SECTION. 12K.1 Legislative findings and intent.

17 The general assembly is deeply concerned over the increased
18 prevalence of investing based on social and environmental
19 factors, known as environmental, social, and governance
20 investing, rather than pecuniary factors. Therefore, the
21 general assembly intends to ensure that state funds and funds
22 administered by the state, including public employee retirement
23 funds, are protected from political influence detrimental to
24 the financial health of the state and its citizens and promote
25 the general assembly's goal of protecting free enterprise.

26 Sec. 3. NEW SECTION. 12K.2 Definitions.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. "*Boycott of certain companies*" means, except as otherwise
30 provided in chapters 12F, 12H, and 12J or without a reasonable
31 business purpose, refusal to invest in a company, termination
32 of business activities with a company, or another action that
33 is intended to penalize, inflict economic harm on, or limit
34 commercial relations with a company because the company does
35 any of the following:

1 *a.* Engages in, or does business with a company that engages
2 in, the exploration, production, utilization, transportation,
3 or sale of fossil fuel-based energy, timber, mining, or
4 production agriculture.

5 *b.* Engages in, or does business with a company that engages
6 in, the manufacturing, distribution, sale, import, export, or
7 lawful use of firearms, firearm parts, firearm accessories, or
8 ammunition.

9 2. "*Company*" means any business or business entity, bank,
10 national banking association, nonbank financial institution,
11 financial services company, investment company, bank and trust
12 company, trust company, savings and loan association, building
13 and loan association, mutual savings bank, credit union, or
14 savings bank, including a wholly owned subsidiary, majority-
15 owned subsidiary, parent company, or affiliate of such business
16 or business entity, that exists for the purpose of making a
17 profit.

18 3. "*Nonpecuniary social investment*" means, except as
19 otherwise provided in this chapter and chapters 12F, 12H,
20 and 12J, investment or commitment of public funds to further
21 environmental, social, governance, political, or ideological
22 interests and for the purpose of obtaining an effect other than
23 a maximized return to the public fund without a reasonable
24 business purpose.

25 4. "*Public entity*" means the state, political subdivisions
26 of the state, public school corporations, and all public
27 officers, boards, commissions, departments, agencies, and
28 authorities empowered by law to enter into public contracts for
29 the expenditure of public funds, including the state board of
30 regents and institutions under the control of the state board
31 of regents. "*Public entity*" includes a public fund.

32 5. "*Public fund*" means the treasurer of state, the state
33 board of regents, the public safety peace officers' retirement
34 system created in chapter 97A, the Iowa public employees'
35 retirement system created in chapter 97B, the statewide fire

1 and police retirement system created in chapter 411, or the
2 judicial retirement system created in chapter 602.

3 6. "*Reasonable business purpose*" means includes any purpose
4 directly related to any of the following:

5 a. Promoting the financial success or stability of a
6 company.

7 b. Mitigating risk to a company.

8 c. Complying with legal or regulatory requirements.

9 d. Limiting liability of a company.

10 7. "*Scrutinized company*" means any company that engages in
11 nonpecuniary social investment on behalf of a public entity or
12 a boycott of certain companies on behalf of a public entity.

13 8. "*Scrutinized company list*" means the list of scrutinized
14 companies prepared, maintained, and published by a public fund
15 pursuant to section 12K.3.

16 Sec. 4. NEW SECTION. 12K.3 **Identification of scrutinized**
17 **companies — notice.**

18 1. a. By March 1, 2024, a public fund shall make its best
19 efforts to identify or have identified any scrutinized company
20 that the public fund has entered into a contract with to
21 provide investment or management of securities services for the
22 public fund. The public fund shall create and make available
23 to the public a scrutinized company list for that public fund.
24 The public fund shall review on an annual basis and update, if
25 necessary, the scrutinized company list.

26 b. In making its best efforts to identify or have identified
27 a scrutinized company, the public fund shall consider and may
28 rely upon any of the following information:

29 (1) A company's certification that it is not engaged
30 in nonpecuniary social investment or a boycott of certain
31 companies.

32 (2) Publicly available information made by the company,
33 including information that may be provided by nonprofit
34 organizations, research firms, and international organizations,
35 or publicly available statements by a member of a company's

1 governing body, an executive director of a company, or any
2 other officer or employee of the company with the authority to
3 issue policy statements on behalf of the company.

4 (3) Information published by the state or federal
5 government.

6 c. The Iowa public employees' retirement system, acting
7 on behalf of the system and other public funds subject to
8 this section, may develop and issue a request for proposals
9 for third-party services to complete the identification of
10 any scrutinized company and the compilation of a scrutinized
11 company list. The Iowa public employees' retirement system
12 shall consult with all other public funds on the development of
13 the request for proposals. However, selection of a successful
14 proposal and the final scope of services to be provided shall
15 be determined only by those public funds that have agreed to
16 utilize the third-party services. If more than one public fund
17 decides to utilize the third-party services, the participating
18 public funds shall equally share the costs of such services.

19 2. a. For each company on the scrutinized company list, the
20 public fund shall send or have sent a written notice informing
21 the company of its status as a scrutinized company and that
22 it may become subject to contract termination with the public
23 fund.

24 b. If, following notice as provided by this section, a
25 company ceases activity that designates it as a scrutinized
26 company and submits a written statement to the public fund that
27 it has ceased engaging in nonpecuniary social investment or a
28 boycott of certain companies, the company shall be removed from
29 the scrutinized company list.

30 Sec. 5. NEW SECTION. 12K.4 Public funds — contract and
31 investment requirements.

32 1. A public fund shall not enter into a contract with a
33 company to provide investment or management of securities
34 services to the public fund so long as such company remains on
35 the public fund's scrutinized company list as provided in this

1 chapter or if the company would engage in nonpecuniary social
2 investment or a boycott of certain companies on behalf of the
3 public fund.

4 2. a. In accordance with sound investment criteria and
5 consistent with fiduciary obligations, a public fund shall
6 terminate a contract to provide investment or management
7 of securities services with a company on the public fund's
8 scrutinized company list, so long as the company remains on
9 that list, within eighteen months following the first written
10 notice sent to the scrutinized company as required by section
11 12K.3.

12 b. This subsection shall not be construed to require the
13 premature or otherwise imprudent termination of a contract, but
14 any termination of a contract shall be completed as provided
15 by this subsection.

16 Sec. 6. NEW SECTION. 12K.5 Reports.

17 1. *Scrutinized companies list.* Each public fund shall,
18 within thirty days after the scrutinized company list is
19 created or updated as required by section 12K.3, make the list
20 available to the public.

21 2. *Annual report.* On October 1, 2024, and each October
22 1 thereafter, each public fund shall make available to the
23 public, and file with the general assembly, an annual report
24 covering the prior fiscal year that includes the following:

25 a. The scrutinized company list as of the end of the fiscal
26 year.

27 b. A summary of all written notices sent as required by
28 section 12K.3 during the fiscal year.

29 c. All contracts terminated as provided in section 12K.4
30 during the fiscal year.

31 Sec. 7. NEW SECTION. 12K.6 Public entities — contract
32 requirements.

33 A public entity shall not enter into a contract of one
34 thousand dollars or more with a scrutinized company included on
35 a scrutinized company list created by a public fund pursuant

1 to section 12K.3 for services including but not limited to the
2 investment or management of securities in which any public
3 funds are invested.

4 Sec. 8. NEW SECTION. 12K.7 Public funds — legal
5 obligations.

6 1. With respect to actions taken in compliance with this
7 chapter, including all good-faith determinations regarding
8 companies as required by this chapter, the public fund shall
9 be immune from any liability and exempt from any conflicting
10 statutory or common law obligations, including any such
11 obligations in respect to choice of asset managers, investment
12 funds, or investments for the public fund's securities
13 portfolios.

14 2. This chapter shall not limit the ability of a public fund
15 to terminate the contract of an investment manager or other
16 vendor at any time and for any reason in the exercise of the
17 public fund's fiduciary duties.

18 Sec. 9. Section 35A.13, subsection 4, paragraph a, Code
19 2023, is amended to read as follows:

20 a. Notwithstanding [subsection 5](#), moneys in the fund, except
21 so much of the fund as may be necessary to be kept on hand
22 for the making of disbursements under [this section](#), shall
23 be invested by the treasurer of state, in consultation with
24 the commission and the public retirement systems committee
25 established by [section 97D.4](#), in any investments authorized for
26 the Iowa public employees' retirement system in [section 97B.7A](#),
27 including common stock, and subject to the requirements of
28 chapters 12F, [12H](#), ~~and~~ [12J](#), and 12K, and the earnings therefrom
29 shall be credited to the fund. The treasurer of state may
30 execute contracts and agreements with investment advisors,
31 consultants, and investment management and benefit consultant
32 firms in the administration of investments of moneys in the
33 fund.

34 Sec. 10. Section 97A.7, subsection 1, Code 2023, is amended
35 to read as follows:

1 1. The board of trustees shall be the trustees of the
2 retirement fund created by [this chapter](#) as provided in section
3 97A.8 and shall have full power to invest and reinvest funds
4 subject to the terms, conditions, limitations, and restrictions
5 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
6 [12K](#) and subject to like terms, conditions, limitations, and
7 restrictions said trustees shall have full power to hold,
8 purchase, sell, assign, transfer, or dispose of any of the
9 securities and investments of the retirement fund which have
10 been invested, as well as of the proceeds of said investments
11 and any moneys belonging to the retirement fund. The board
12 of trustees may authorize the treasurer of state to exercise
13 any of the duties of [this section](#). When so authorized the
14 treasurer of state shall report any transactions to the board
15 of trustees at its next monthly meeting.

16 Sec. 11. Section 97B.4, subsection 5, Code 2023, is amended
17 to read as follows:

18 5. *Investments.* The system, through the chief investment
19 officer, shall invest, subject to [chapters 12F, 12H, and 12J](#),
20 [and 12K](#) and in accordance with the investment policy and
21 goal statement established by the board, the portion of the
22 retirement fund which, in the judgment of the system, is not
23 needed for current payment of benefits under [this chapter](#)
24 subject to the requirements of [section 97B.7A](#).

25 Sec. 12. Section 262.14, unnumbered paragraph 1, Code 2023,
26 is amended to read as follows:

27 The board may invest funds belonging to the institutions,
28 subject to [chapters 12F, 12H, and 12J](#), and [12K](#) and the
29 following regulations:

30 Sec. 13. Section 411.7, subsection 1, Code 2023, is amended
31 to read as follows:

32 1. The board of trustees is the trustee of the fire
33 and police retirement fund created in [section 411.8](#) and
34 shall annually establish an investment policy to govern the
35 investment and reinvestment of the moneys in the fund, subject

1 to the terms, conditions, limitations, and restrictions
2 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
3 [12K](#). Subject to like terms, conditions, limitations, and
4 restrictions the system has full power to hold, purchase, sell,
5 assign, transfer, or dispose of any of the securities and
6 investments in which the fund has been invested, as well as of
7 the proceeds of the investments and any moneys belonging to the
8 fund.

9 Sec. 14. Section 602.9111, subsection 1, Code 2023, is
10 amended to read as follows:

11 1. So much of the judicial retirement fund as may not be
12 necessary to be kept on hand for the making of disbursements
13 under [this article](#) shall be invested by the treasurer of
14 state in any investments authorized for the Iowa public
15 employees' retirement system in [section 97B.7A](#) and subject to
16 the requirements of [chapters 12F, 12H, and 12J](#), and [12K](#), and
17 the earnings therefrom shall be credited to the fund. The
18 treasurer of state may execute contracts and agreements with
19 investment advisors, consultants, and investment management and
20 benefit consultant firms in the administration of the judicial
21 retirement fund.

22 EXPLANATION

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

25 This bill creates new Code chapter 12K, which restricts
26 public funds, defined as the treasurer of state, the state
27 board of regents, the Iowa public employees' retirement system
28 (IPERS), the public safety peace officers' retirement system,
29 the statewide fire and police retirement system, and the
30 judicial retirement system, and public entities, defined to
31 include a public fund and the state and political subdivisions
32 of the state, from generally entering into a contract with
33 certain companies engaged in nonpecuniary social investment or
34 a boycott of certain companies.

35 The bill defines "boycott of certain companies" as, without

1 a reasonable business purpose or as otherwise required under
2 Code chapters 12F, 12H, and 12J, to take any adverse action to
3 penalize or limit business opportunities for companies engaging
4 or doing business with fossil fuel-based energy, timber,
5 mining, production agriculture, firearms, firearm parts,
6 firearm accessories, or ammunition companies. "Nonpecuniary
7 social investment" is defined to mean, except as otherwise
8 provided in new Code chapter 12K in this bill and Code chapters
9 12F, 12H, and 12J, investment or commitment of public funds
10 to further environmental, social, governance, political, or
11 ideological interests without a reasonable business purpose.
12 The bill also defines "scrutinized company" as any company that
13 engages in nonpecuniary social investment on behalf of a public
14 entity or a boycott of certain companies on behalf of a public
15 entity.

16 Concerning public funds, the bill requires each public fund
17 to develop and maintain a list of scrutinized companies that
18 the public fund has entered into a contract with to provide
19 investment or management of securities services for the public
20 fund. Each public fund shall determine this list by March 1,
21 2024, and update it on an annual basis. Once a company is
22 listed on the scrutinized companies list of a public fund, the
23 bill requires the public fund to send a notice to that company
24 relative to the requirements of the bill, to include notice
25 that the company may qualify for termination of a contract for
26 investment or management of securities services by the public
27 fund.

28 New Code section 12K.4 requires that a public fund shall
29 not enter into a contract with a company to provide investment
30 or management of securities services to the public fund of a
31 company on the public fund's most recent scrutinized company
32 list or of a company that would engage in nonpecuniary social
33 investment or boycott of certain companies on behalf of the
34 public fund. If the public fund has a contract for investment
35 services with a scrutinized company, the public fund shall

1 proceed to terminate the contract with that company in 18
2 months, as applicable, so long as the company remains a
3 scrutinized company.

4 The bill further requires each public fund to prepare
5 and make available to the public, and file with the general
6 assembly, an annual report, beginning October 1, 2024,
7 concerning actions taken by the public fund relative to the
8 requirements of new Code chapter 12K in the previous fiscal
9 year.

10 New Code section 12K.6 provides that a public entity shall
11 not enter into a contract of \$1,000 or more with a scrutinized
12 company included on a scrutinized company list for services
13 including but not limited to the investment or management of
14 securities in which any public funds are invested.

15 The bill further provides that with respect to actions
16 taken in compliance with the bill, including all good-faith
17 determinations regarding companies as required, the public
18 fund shall be immune from any liability and exempt from any
19 conflicting statutory or common law obligations, including
20 any such obligations in respect to choice of asset managers,
21 investment funds, or investments for the public fund. In
22 addition, the bill provides that the requirements of the bill
23 shall not limit the ability of a public fund to terminate
24 any contract of an investment manager or other vendor in the
25 exercise of the public fund's fiduciary duties.

26 The bill makes conforming changes to Code sections 12.8,
27 35A.13, 97A.7, 97B.4, 262.14, 411.7, and 602.9111.