

SENATE BILL NO. 827

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOENIG.

4203S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 30.260 and 105.688, RSMo, and to enact in lieu thereof six new sections relating to social objective scoring standards.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 30.260 and 105.688, RSMo, are repealed
2 and six new sections enacted in lieu thereof, to be known as
3 sections 30.260, 34.715, 105.688, 105.692, 409.115, and
4 409.117, to read as follows:

30.260. 1. The state treasurer shall prepare,
2 maintain and adhere to a written investment policy which
3 shall include an asset allocation plan which limits the
4 total amount of state moneys which may be invested in any
5 particular investment authorized by Section 15, Article IV
6 of the Missouri Constitution. Such asset allocation plan
7 shall also set diversification limits, as applicable, which
8 shall include a restriction limiting the total amount of
9 time deposits of state moneys, not including linked
10 deposits, placed with any one single banking institution to
11 be no greater than fifteen percent of all time deposits of
12 state moneys authorized under the asset allocation plan.
13 The state treasurer shall present a copy of such policy to
14 the governor, commissioner of administration, state auditor
15 and general assembly at the commencement of each regular
16 session of the general assembly or at any time the written
17 investment policy is amended.

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 2. (1) The written investment policy shall include
19 provisions prohibiting the investment of state, United
20 States, or nonstate funds in any particular investment held
21 by any entity that prioritizes a social objective or other
22 nonfinancial objective into its discretionary business or
23 investment decisions.

24 (2) For purposes of this subsection, the following
25 terms mean:

26 (a) "Nonfinancial objective", the material fact to
27 consider criteria in the investment or commitment of client
28 funds for the purpose of seeking to obtain an effect other
29 than the maximization of financial return to the client;

30 (b) "Prioritizes a social objective", the material
31 fact to consider socially responsible criteria in the
32 investment or commitment of client funds for the purpose of
33 seeking to obtain an effect other than the maximization of
34 financial return to the client;

35 (c) "Socially responsible criteria", any criterion
36 that is intended to further, or is branded, advertised, or
37 otherwise publicly described as furthering any of the
38 following:

39 a. International, domestic, or industry agreements
40 relating to environmental or social goals;

41 b. Corporate governance structures based on social
42 characteristics; or

43 c. Social or environmental goals.

44 3. The state treasurer shall determine by the exercise
45 of the treasurer's best judgment the amount of state moneys
46 that are not needed for current operating expenses of the
47 state government and shall keep on demand deposit in banking
48 institutions in this state selected by the treasurer and
49 approved by the governor and state auditor the amount of

50 state moneys which the treasurer has so determined are
51 needed for current operating expenses of the state
52 government and disburse the same as authorized by law.

53 [3.] 4. Within the parameters of the state treasurer's
54 written investment policy, the state treasurer shall place
55 the state moneys which the treasurer has determined are not
56 needed for current operations of the state government on
57 time deposit drawing interest in banking institutions in
58 this state selected by the treasurer and approved by the
59 governor and the state auditor, or place them outright or,
60 if applicable, by repurchase agreement in obligations
61 described in Section 15, Article IV, Constitution of
62 Missouri, as the treasurer in the exercise of the
63 treasurer's best judgment determines to be in the best
64 overall interest of the people of the state of Missouri,
65 giving due consideration to:

- 66 (1) The preservation of such state moneys;
- 67 (2) The benefits to the economy and welfare of the
68 people of Missouri when such state money is invested in
69 banking institutions in this state that, in turn, provide
70 additional loans and investments in the Missouri economy and
71 generate state taxes from such initial investments and the
72 loans and investments created by the banking institutions,
73 compared to the removal or withholding from banking
74 institutions in the state of all or some such state moneys
75 and investing same in obligations authorized in Section 15,
76 Article IV of the Missouri Constitution;
- 77 (3) The liquidity needs of the state;
- 78 (4) The aggregate return in earnings and taxes on the
79 deposits and the investment to be derived therefrom; and
- 80 (5) All other factors which to the treasurer as a
81 prudent state treasurer seem to be relevant to the general

82 public welfare in the light of the circumstances at the time
83 prevailing. The state treasurer may also place state moneys
84 which are determined not needed for current operations of
85 the state government in linked deposits as provided in
86 sections 30.750 to 30.765.

87 [4.] 5. Except for state moneys deposited in linked
88 deposits as provided in sections 30.750 to 30.860, the rate
89 of interest payable by all banking institutions on time
90 deposits of state moneys shall be set under subdivisions (1)
91 to (5) of this subsection and subsections [6 and] 7 and 8 of
92 this section. The rate shall never exceed the maximum rate
93 of interest which by federal law or regulation a bank which
94 is a member of the Federal Reserve System may from time to
95 time pay on a time deposit of the same size and maturity.
96 The rate of interest payable by all banking institutions on
97 time deposits of state moneys is as follows:

98 (1) Beginning January 1, 2010, the rate of interest
99 payable by a banking institution on up to seven million
100 dollars of time deposits of state moneys shall be the same
101 as the average rate paid during the week next preceding the
102 week in which the deposit was made for United States of
103 America treasury securities maturing and becoming payable
104 closest to the time of termination of the deposit, as
105 determined by the state treasurer, adjusted to the nearest
106 one-tenth of a percent. In the case of a banking
107 institution that holds more than seven million dollars of
108 time deposits of state moneys, the rate of interest payable
109 on deposits in excess of seven million dollars of time
110 deposits of state moneys shall be set at the market rate as
111 determined in subsection 6 of this section;

112 (2) Beginning January 1, 2011, the rate of interest
113 payable by a banking institution on up to five million

114 dollars of time deposits of state moneys shall be the same
115 as the average rate paid during the week next preceding the
116 week in which the deposit was made for United States of
117 America treasury securities maturing and becoming payable
118 closest to the time of termination of the deposit, as
119 determined by the state treasurer, adjusted to the nearest
120 one-tenth of a percent. In the case of a banking
121 institution that holds more than five million dollars of
122 time deposits of state moneys, the rate of interest payable
123 on deposits in excess of five million dollars of time
124 deposits of state moneys shall be set at the market rate as
125 determined in subsection 6 of this section;

126 (3) Beginning January 1, 2012, the rate of interest
127 payable by a banking institution on up to three million
128 dollars of time deposits of state moneys shall be the same
129 as the average rate paid during the week next preceding the
130 week in which the deposit was made for United States of
131 America treasury securities maturing and becoming payable
132 closest to the time of termination of the deposit, as
133 determined by the state treasurer, adjusted to the nearest
134 one-tenth of a percent. In the case of a banking
135 institution that holds more than three million dollars of
136 time deposits of state moneys, the rate of interest payable
137 on deposits in excess of three million dollars of time
138 deposits of state moneys shall be set at the market rate as
139 determined in subsection 6 of this section;

140 (4) Beginning January 1, 2013, the rate of interest
141 payable by a banking institution on up to one million
142 dollars of time deposits of state moneys shall be the same
143 as the average rate paid during the week next preceding the
144 week in which the deposit was made for United States of
145 America treasury securities maturing and becoming payable

146 closest to the time of termination of the deposit, as
147 determined by the state treasurer, adjusted to the nearest
148 one-tenth of a percent. In the case of a banking
149 institution that holds more than one million dollars of time
150 deposits of state moneys, the rate of interest payable on
151 deposits in excess of one million dollars of time deposits
152 of state moneys shall be set at the market rate as
153 determined in subsection [6] 7 of this section;

154 (5) Beginning January 1, 2014, the rate of interest
155 payable by a banking institution on all time deposits of
156 state moneys shall be set at the market rate as determined
157 in subsection [6] 7 of this section.

158 [5.] 6. Notwithstanding subdivisions (1) to (5) of
159 subsection [4] 5 of this section, for any new time deposits
160 of state moneys placed after January 1, 2010, with a term
161 longer than eighteen months, the rate of interest payable by
162 a banking institution shall be set at the market rate as
163 determined in subsection [6] 7 of this section.

164 [6.] 7. Market rate shall be determined no less
165 frequently than once a month by the director of investments
166 in the office of state treasurer. The process for
167 determining a market rate shall include due consideration of
168 prevailing rates offered for certificates of deposit by well-
169 capitalized Missouri financial institutions, the advance
170 rate established by the Federal Home Loan Bank of Des Moines
171 for member institutions and the costs of collateralization,
172 as well as an evaluation of the credit risk associated with
173 other authorized securities under Section 15, Article IV, of
174 the Missouri Constitution, or any other calculation
175 determined by the state treasurer based on current market
176 investment indicators. Banking institutions may also offer
177 a higher rate than the market rate for any time deposit

178 placed with the state treasurer in excess of the total
179 amount of state moneys set at the United States of America
180 treasury securities maturing and becoming payable closest to
181 the time of termination of the deposit indicated in
182 subdivisions (1) to (5) of subsection [4] 5 of this section.

183 [7.] 8. Within the parameters of the state treasurer's
184 written investment policy, the state treasurer may subscribe
185 for or purchase outright or by repurchase agreement
186 investments of the character described in subsection 3 of
187 this section which the treasurer, in the exercise of the
188 treasurer's best judgment, believes to be the best for
189 investment of state moneys at the time and in payment
190 therefor may withdraw moneys from any bank account, demand
191 or time, maintained by the treasurer without having any
192 supporting warrant of the commissioner of administration.
193 The state treasurer may bid on subscriptions for such
194 obligations in accordance with the treasurer's best
195 judgment. The state treasurer shall provide for the
196 safekeeping of all such obligations so acquired in the same
197 manner that securities pledged to secure the repayment of
198 state moneys deposited in banking institutions are kept by
199 the treasurer pursuant to law. The state treasurer may hold
200 any such obligation so acquired by the treasurer until its
201 maturity or prior thereto may sell the same outright or by
202 reverse repurchase agreement provided the state's security
203 interest in the underlying security is perfected or
204 temporarily exchange such obligation for cash or other
205 authorized securities of at least equal market value with no
206 maturity more than one year beyond the maturity of any of
207 the traded obligations, for a negotiated fee as the
208 treasurer, in the exercise of the treasurer's best judgment,
209 deems necessary or advisable for the best interest of the

210 people of the state of Missouri in the light of the
211 circumstances at the time prevailing. The state treasurer
212 may pay all costs and expenses reasonably incurred by the
213 treasurer in connection with the subscription, purchase,
214 sale, collection, safekeeping or delivery of all such
215 obligations at any time acquired by the treasurer.

216 [8.] 9. As used in this chapter, except as more
217 particularly specified in section 30.270, obligations of the
218 United States shall include securities of the United States
219 Treasury, and United States agencies or instrumentalities as
220 described in Section 15, Article IV, Constitution of
221 Missouri. The word "temporarily" as used in this section
222 shall mean no more than six months.

**34.715. 1. The state, any agency of the state, any
2 political subdivision of the state, or any instrumentality
3 thereof, when engaged in procuring or letting contracts for
4 any purpose shall ensure that bidders, offerors,
5 contractors, or subcontractors are not given preferential
6 treatment or discriminated against based on an
7 environmental, social, and governance score or based on the
8 prioritization or lack of prioritization of any socially
9 responsible criteria by the bidder, offeror, contractor, or
10 subcontractor.**

11 **2. For purposes of this section, the following terms
12 mean:**

13 **(1) "Environmental, social, and governance score", an
14 evaluation conducted by an entity that takes into
15 consideration one or more of the following:**

16 **(a) Whether the bidder, offeror, contractor, or
17 subcontractor engages in the exploration, production,
18 utilization, transportation, sale, or manufacturing of
19 fossil fuel-based energy and does not commit or pledge to**

20 meet environmental standards beyond applicable state and
21 federal law;

22 (b) Whether the bidder, offeror, contractor, or
23 subcontractor engages in production agriculture;

24 (c) Whether the bidder, offeror, contractor, or
25 subcontractor spends funds on social welfare;

26 (d) The wages and working hours of the employees of
27 the bidder, offeror, contractor, or subcontractor; and

28 (e) The environmental policies of the bidder, offeror,
29 contractor, or subcontractor;

30 (2) "Socially responsible criteria", any criterion
31 that is intended to further, or is branded, advertised, or
32 otherwise publicly described as furthering any of the
33 following:

34 a. International, domestic, or industry agreements
35 relating to environmental or social goals;

36 b. Corporate governance structures based on social
37 characteristics; or

38 c. Social or environmental goals.

105.688. The assets of a system may be invested,
2 reinvested and managed by an investment fiduciary subject to
3 the terms, conditions and limitations provided in sections
4 105.687 to 105.689. An investment fiduciary shall discharge
5 his or her duties in the interest of the participants in the
6 system and their beneficiaries and shall:

7 (1) Act with the same care, skill, prudence, and
8 diligence under the circumstances then prevailing that a
9 prudent person acting in a similar capacity and familiar
10 with those matters would use in the conduct of a similar
11 enterprise with similar aims;

12 (2) Act with due regard for the management,
13 reputation, and stability of the issuer and the character of
14 the particular investments being considered;

15 (3) Make investments for the purposes of providing
16 benefits to participants and participants' beneficiaries,
17 and of defraying reasonable expenses of investing the assets
18 of the system;

19 (4) Give appropriate consideration to those facts and
20 circumstances that the investment fiduciary knows or should
21 know are relevant to the particular investment or investment
22 course of action involved, including the role of the
23 investment or investment course of action plays in that
24 portion of the system's investments for which the investment
25 fiduciary has responsibility. For purposes of this
26 subdivision, "appropriate consideration" shall include, but
27 is not necessarily limited to a determination by the
28 investment fiduciary that a particular investment or
29 investment course of action is reasonably designed, as part
30 of the investments of the system, to further the purposes of
31 the system, taking into consideration the risk of loss and
32 the opportunity for gain or other return associated with the
33 investment or investment course of action; and consideration
34 of the following factors as they relate to the investment or
35 investment course of action:

36 (a) The diversification of the investments of the
37 system;

38 (b) The liquidity and current return of the
39 investments of the system relative to the anticipated cash
40 flow requirements of the system; and

41 (c) The projected return of the investments of the
42 system relative to the funding objectives of the system;

43 (5) Give appropriate consideration to investments
44 which would enhance the general welfare of this state and
45 its citizens if those investments offer the safety and rate
46 of return comparable to other investments available to the
47 investment fiduciary at the time the investment decision is
48 made;

49 (6) Not consider environmental, social, or governance
50 characteristics in a manner that would override his or her
51 fiduciary duties as defined in this section;

52 (7) Not be subject to any legislative, regulatory, or
53 other mandates to invest with environmentally, socially, or
54 other noneconomically motivated influence unless they are
55 consistent with the fiduciary's responsibility as provided
56 in this section or as provided in the system's governing
57 statutes with respect to the investment of system assets or
58 other duties imposed by law relating to the investment,
59 management, deposit, or custody of system assets; and

60 (8) Not be subject to any legislative, regulatory, or
61 other mandates for divestment from any indirect holdings in
62 actively or passively managed investment funds or in private
63 assets.

 105.692. 1. All shares of common stock held directly
2 by a system, as defined under section 105.687, shall be
3 voted solely in the economic interest of plan participants.
4 Voting shares for the purposes of furthering noneconomic
5 environmental, social, political, ideological, or other
6 goals is prohibited.

7 2. A system shall vote all proxies associated with its
8 directly held shares of common stock by one of the following
9 methods:

10 (1) By internal system staff; or

11 (2) By an investment manager or proxy voting service
12 provider who has committed in writing to vote the shares
13 pursuant to proxy voting guidelines chosen by the system or
14 has committed in writing to vote the shares in a manner
15 consistent with the obligation to act solely in the economic
16 interest of plan participants.

 409.115. 1. As used in this section, the following
2 terms mean:

3 (1) "Agent", the same meaning as under section 409.1-
4 102;

5 (2) "Broker-dealer", the same meaning as under section
6 409.1-102;

7 (3) "Nonfinancial objective", the material fact to
8 consider criteria in the investment or commitment of
9 customer funds for the purpose of seeking to obtain an
10 effect other than the maximization of financial return to
11 the customer;

12 (4) "Prioritizes a social objective", the material
13 fact to consider socially responsible criteria in the
14 investment or commitment of customer funds for the purpose
15 of seeking to obtain an effect other than the maximization
16 of financial return to the customer;

17 (5) "Socially responsible criteria", any criterion
18 that is intended to further, or is branded, advertised, or
19 otherwise publicly described by the broker-dealer or agent,
20 as furthering any of the following:

21 (a) International, domestic, or industry agreements
22 relating to environmental or social goals;

23 (b) Corporate governance structures based on social
24 characteristics; or

25 (c) Social or environmental goals.

26 2. If a broker-dealer or agent on its own prioritizes
27 a social objective or other nonfinancial objective into a
28 discretionary investment decision to buy or sell a security
29 or commodity for a customer, a recommendation or
30 solicitation to a customer for the purchase or sale of a
31 security or commodity, or the selection, recommendation or
32 advice to a customer regarding the selection of a third-
33 party manager or subadviser to manage the investments in the
34 customer's account, then such broker-dealer or agent shall
35 disclose to such customer the existence of such
36 incorporation.

37 3. The disclosure obligation under subsection 2 of
38 this section is satisfied by providing clear and conspicuous
39 prior disclosure and obtaining written consent and
40 acknowledgment from the customer. Written consent shall be
41 obtained:

42 (1) At the establishment of the brokerage
43 relationship; or

44 (2) Prior to:

45 (a) Effecting the initial discretionary investment for
46 the customer's account;

47 (b) Providing the initial recommendation, advice, or
48 solicitation regarding the purchase or sale of a security or
49 commodity in a customer's account; or

50 (c) Selecting, or recommending or advising on the
51 selection, of a third-party manager or subadviser to manage
52 the investments in a customer's account.

53 (3) Thereafter, the disclosure shall be provided to
54 the customer on an annual basis, and no less than every
55 three years, the customer shall consent to the disclosure in
56 writing.

57 4. (1) Written consent required under subsection 3 of
58 this section shall be satisfied by language that is
59 substantially similar to the following:

60 "I, (NAME OF CUSTOMER), consent to (as
61 applicable, NAME OF BROKER-DEALER OR AGENT)
62 incorporating a social objective or other
63 nonfinancial objective into any discretionary
64 investment decision my (as applicable, broker-
65 dealer or agent) makes for my account; any
66 recommendation, advice, or solicitation my (as
67 applicable, broker-dealer or agent) makes to me
68 for the purchase or sale of a security or
69 commodity; or the selection my (as applicable,
70 broker-dealer or agent) makes, or recommendation
71 or advice my (as applicable, broker-dealer or
72 agent) makes to me regarding the selection, of a
73 third-party manager or subadviser to manage the
74 investments in my account. Also, I acknowledge
75 and understand that incorporating a social
76 objective or other nonfinancial objective into
77 discretionary investment decisions,
78 recommendations, advice, or the selection of a
79 third-party manager or subadviser to manage the
80 investments, in regards to my account, will
81 result in investments and recommendations or
82 advice that are not solely focused on maximizing
83 a financial return for me or my account."

84 (2) The language in subdivision (1) of this subsection
85 is not exhaustive of the form or manner in which written
86 consent required under subsection 3 of this section may be
87 obtained.

409.117. 1. As used in this section, the following
2 terms mean:

3 (1) "Investment adviser", the same meaning as under
4 section 409.1-102;

5 (2) "Investment adviser representative", the same
6 meaning as under section 409.1-102;

7 (3) "Nonfinancial objective", the material fact to
8 consider criteria in the investment or commitment of client
9 funds for the purpose of seeking to obtain an effect other
10 than the maximization of financial return to the client;

11 (4) "Prioritizes a social objective", the material
12 fact to consider socially responsible criteria in the
13 investment or commitment of client funds for the purpose of
14 seeking to obtain an effect other than the maximization of
15 financial return to the client;

16 (5) "Socially responsible criteria", any criterion
17 that is intended to further, or is branded, advertised, or
18 otherwise publicly described by the investment adviser or
19 investment adviser representative, as furthering any of the
20 following:

21 (a) International, domestic, or industry agreements
22 relating to environmental or social goals;

23 (b) Corporate governance structures based on social
24 characteristics; or

25 (c) Social or environmental goals.

26 2. If an investment adviser or investment adviser
27 representative on its own prioritizes a social objective or
28 other nonfinancial objective into a discretionary investment
29 decision to buy or sell a security or commodity for a
30 customer, advice or a recommendation to a customer for the
31 purchase or sale of a security or commodity, or the
32 selection, or advice or a recommendation to a customer

33 regarding the selection, of a third-party manager or
34 subadviser to manage the investments in the customer's
35 account, such investment adviser or investment adviser
36 representative shall disclose to such customer the existence
37 of such prioritization.

38 3. The disclosure obligation under subsection 2 of
39 this section is satisfied by providing clear and conspicuous
40 prior disclosure and obtaining written consent and
41 acknowledgment from the client. Written consent shall be
42 obtained either:

43 (1) At the establishment of the advisory relationship;

44 or

45 (2) Prior to:

46 (a) Effecting the initial discretionary investment for
47 the client's account;

48 (b) Providing the initial recommendation or advice
49 regarding the purchase or sale of a security or commodity in
50 a client's account; or

51 (c) Selecting, or recommending or advising on the
52 selection, of a third-party manager or subadviser to manage
53 the investments in a client's account;

54 (3) Thereafter, the disclosure shall be provided to
55 the client on an annual basis, and no less than every three
56 years, the client shall consent to the disclosure in writing.

57 4. (1) Written consent required under subsection 3 of
58 this section shall be satisfied by language that is
59 substantially similar to the following:

60 "I, (NAME OF CUSTOMER), consent to (as
61 applicable, NAME OF INVESTMENT ADVISER OR
62 INVESTMENT ADVISER REPRESENTATIVE) incorporating
63 a social objective or other nonfinancial
64 objective into any discretionary investment

65 decision my (as applicable, investment adviser
66 or investment adviser representative) makes for
67 my account; any recommendation or advice my (as
68 applicable, investment adviser or investment
69 adviser representative) makes to me for the
70 purchase or sale of a security or commodity; or
71 the selection my (as applicable, investment
72 adviser or investment adviser representative)
73 makes, or recommendation or advice my (as
74 applicable, investment adviser or investment
75 adviser representative) makes to me regarding
76 the selection, of a third-party manager or
77 subadviser to manage the investments in my
78 account. Also, I acknowledge and understand
79 that incorporating a social objective or other
80 nonfinancial objective into discretionary
81 investment decisions, recommendations, advice,
82 or the selection of a third-party manager or
83 subadviser to manage the investments, in regards
84 to my account, will result in investments and
85 recommendations or advice that are not solely
86 focused on maximizing a financial return for me
87 or my account."

88 (2) The language in subdivision (1) of this subsection
89 is not exhaustive of the form or manner in which written
90 consent required under subsection 3 of this section may be
91 obtained.

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