State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4790

03/11/2024 Authored by Cha; Berg; Nelson, M., and Kraft
The bill was read for the first time and referred to the Committee on State and Local Government Finance and Policy

A bill for an act

relating to the State Board of Investment; modifying investment standards to require sustainable investing; amending Minnesota Statutes 2022, section 11A.02, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 11A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **MINNESOTA SUSTAINABLE INVESTING ACT; FINDINGS AND PURPOSE.**

(a) The legislature finds that considering sustainability factors, such as corporate governance and leadership, and environmental, social, and human capital factors relating to investments is vital for evaluating risk and maximizing the performance of public funds. Sustainability factors are indicative of the overall performance of an investment and are strong indicators of the investment's long-term value. Public agencies and governments have a duty to recognize, evaluate, and address sustainability factors that may affect investment performance.

(b) The legislature finds that a substantial proportion of the returns generated by diversified portfolios are attributable to overall market performance and that sustainability factors contribute to the long-term value of individual investments and the performance of portfolios of public funds. Public agencies and governmental subdivisions have a duty to recognize, evaluate, and address the risks that may affect overall market performance.

(c) It is the purpose of this act to ensure that public entities prudently consider sustainability factors when making investment decisions for public funds to maximize financial returns, minimize risks, and contribute to a just, accountable, and sustainable state.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2022, section 11A.02, subdivision 1, is amended to read:

Subdivision 1. **Applicability.** For the purposes of ~~sections 11A.01 to 11A.25~~ <u>this chapter</u>, the terms defined in this section shall have the meanings given ~~them~~.

<u>**EFFECTIVE DATE.** This section is effective the day following final enactment.</u>

Sec. 3. <u>**[11A.28] SUSTAINABLE INVESTING.**</u>

<u>Subdivision 1.</u> <u>**Definitions.**</u> <u>(a) For purposes of this section, the terms defined in this subdivision have the meanings given, unless the context clearly indicates another meaning is intended.</u>

<u>(b) "Financial institution" means a bank, savings bank, or credit union established under state law, another state's law, or federal law.</u>

<u>(c) "Investment decision-making" means investment analysis, security and fund selection, portfolio construction, due diligence, selection and retention of external investment managers, and investment stewardship activities, including proxy voting.</u>

<u>(d) "Investment manager" means an individual or entity that has the power to manage, acquire, or dispose of any fund asset and is:</u>

<u>(1) registered as an investment adviser under the federal Investment Advisers Act of 1940, United States Code, title 15, section 80b;</u>

<u>(2) a bank, as defined under the federal Investment Advisers Act of 1940; or</u>

<u>(3) an insurance company authorized to transact business in this state.</u>

<u>(e) "Investment policy" means a written investment policy that addresses the safety of principal, the liquidity of funds, investment stewardship, the return on an investment, and providing sufficient liquidity to pay any obligations.</u>

<u>(f) "Sustainability factor" means a factor that may have a financial impact on the safety or performance of a fund and that supplements traditional financial accounting factors.</u>

<u>Subd. 2.</u> <u>**Development of sustainable investment policy.**</u> <u>(a) By no later than ...., the state board must develop, publish, and implement a sustainable investment policy to manage the fund. The sustainable investment policy may be incorporated in existing investment policies developed, published, and implemented by the state board.</u>

<u>(b) A sustainable investment policy must identify any sustainability factor that may impact the performance of individual investments and any sustainability factor that may impact the performance of the fund as a whole. The state board must consider the</u>

sustainability investment policy when evaluating any investment decision. A sustainability factor may include a factor related to:

(1) corporate governance and leadership;

(2) the environment;

(3) social capital; and

(4) human capital.

Subd. 3. **Consideration of sustainability factors in investment decision-making.** (a) By no later than ...., the state board must prudently consider sustainability factors that may impact the performance of individual investments and any sustainability factors that the board identifies under subdivision 2 that may impact the performance of the fund as a whole when making investment decisions to maximize financial returns, minimize risk, and effectively execute the board's fiduciary duty.

(b) Depending on the investment or asset class, sustainability factors may include the following:

(1) corporate governance and leadership factors that may impact the performance of an investment or the fund as a whole, such as the independence of boards and auditors, the qualifications and diversity of corporate directors and executives, risk management and oversight practices, executive compensation structures, transparency and reporting, regulatory and legal compliance, governance and disclosure of political and lobbying expenditures, shareholder rights, and ethical conduct;

(2) environmental factors that may impact the performance of an investment or the fund as a whole, such as greenhouse gas emissions, air quality, energy management, water and wastewater management, waste and hazardous materials management, and the impact on nature and biodiversity. Environmental factors include any specific company environmental commitments, including the strength of targets and whether the targets align with the goal of limiting global temperature rise to 1.5 degrees Celsius above preindustrial levels, the credibility of energy transition plans, and the quality of climate risk disclosure;

(3) social factors that impact relationships with key stakeholders, such as customers, local communities, the public, and the government, and that may impact the performance of an investment or the fund as a whole. Social factors include human rights, customer welfare, customer privacy, data security, the social impact of technology, access to and affordability of basic needs such as health care and housing, selling practices and product labeling, tax practices, the impact of company business and other activities on racial and

gender inequality and public health, community reinvestment, incorporating stakeholder interests into energy transition plans, and community relations;

(4) human capital factors recognizing that the workforce creates long-term value, and that may impact the performance of an investment or the fund as a whole, including factors such as labor practices, the use of temporary and contingent labor, responsible contractor and responsible bidder policies, employee health and safety, employee engagement, diversity and inclusion, incentives and compensation, job loss and the impact of technology on job quality, and compliance with the fundamental labor rights of freedom of association and collective bargaining, and the elimination of forced labor, child labor, and employment discrimination.

(c) Sustainability factors may be considered by analyzing:

(1) financial impacts and risks to individual investments;

(2) financial impacts and risks to the fund as a whole;

(3) legal, regulatory, and policy impacts and risks; and

(4) consistency with industry norms, best practices, and competitive drivers.

(d) The state board must not engage an investment manager to manage fund assets unless the investment manager discloses before entering into an initial investment management contract and agrees to disclose annually thereafter:

(1) how the investment manager considers sustainability factors relating to impacts on the performance of both individual investments and the fund as a whole in each decision related to investment decision-making under subdivision 1; and

(2) any sustainability factors included in the state board's sustainable investment policy that the investment manager has not considered for an investment decision during the preceding 12 months and an explanation for the investment manager's decision not to consider the factor.

The state board must make each disclosure under this paragraph publicly available on the board's website no more than 30 days after receipt.

(e) Nothing in this section prohibits the state board or any investment manager managing the board's assets from considering additional sustainability factors not included in paragraph (b), or the board's sustainable investment policy when engaging in investment decision-making.

(f) This section does not apply to financial institution time deposits or financial institution processing services.

Subd. 4. **Climate risk assessment.** (a) By no later than January 1, 2025, the state board must include, as part of the board's annual report or a report regarding the state board's investments, a description of:

(1) the state board's process for identifying climate change-related risks and assessing the financial impact that those risks have on the state board's operations;

(2) the current or anticipated future risks that climate change poses to the state board's investment portfolio, the impact that climate change has on the state board's investment strategies, and any strategy changes that the state board is implementing in response to the impact;

(3) the potential magnitude of the long-term risks and opportunities of multiple scenarios and related regulatory developments in industry sectors, asset classes, and the total portfolio, including the physical, transition, and liability risks related to climate change;

(4) actions that the state board is taking to manage the risks that climate change poses to the state board's operations; and

(5) the state board's use and consideration of any reporting on the climate that the federal Securities and Exchange Commission requires.

(b) By no later than January 1, 2025, the state board must:

(1) identify environmentally sustainable investment opportunities to support a low-carbon economy;

(2) develop transition assessments relating to investments in high-impact sectors;

(3) evaluate whether internal and external investment managers are transitioning to a more sustainable business model with a goal of a low-carbon economy; and

(4) work with managers, data providers, index providers, or consultants to identify, analyze, define, and prioritize asset-class specific metrics and minimum standards to evaluate transition readiness and resiliency for companies in high-impact sectors.

(c) By no later than January 1, 2025, the policies of the state board must address and mitigate climate change risk by investing fund assets through:

(1) directly engaging with managers, brokers, or other entities;

(2) proxy voting;

(3) periodically reviewing and assessing the effectiveness of procedures that the state board uses for direct engagement and proxy voting; and

(4) to the extent practicable, establishing an advisory panel of experts in the analysis of climate change risk to provide the state board with the most current scientific data available.

Subd. 5. **Proxy voting practices.** By no later than ...., the state board must develop and publish proxy voting guidelines that:

(1) recognize climate change as both a business and systemic risk and use ownership authority to mitigate these risks; and

(2) commit the state board to using all relevant voting opportunities to support shareholder resolutions calling for entities to reduce direct and indirect greenhouse gas emissions and to promote stronger climate accountability.

Subd. 6. **Fiduciary duty.** Notwithstanding section 356A.04, subdivision 2, or any other state law to the contrary, the state board must invest and manage fund assets with reasonable care, skill, prudence, and diligence under circumstances that a prudent person acting in a similar capacity and familiar with such matters would use when conducting similar activity.

EFFECTIVE DATE. This section is effective the day following final enactment.