# WEST VIRGINIA CODE: §12-6-11a

**§12-6-11a. Standard of care for shareholder voting; restrictions and requirements.**

(a) Definitions. – For the purposes of this section:

(1) "Beneficiaries" refers to the entities or individuals entitled to benefit from an investment or pool of investments held, administered, or managed by the board pursuant to this code.

(2) "Direct holdings" means all publicly traded securities of a company that are held directly by the board in an actively managed account or fund, when the board owns all shares or interests in said actively managed account or fund.

(3) "Fiduciary" refers to a fund manager or other entity that the board authorizes or otherwise entrusts to cast shareholder votes, by proxy or otherwise, on behalf of the board or the beneficiaries.

(4) "Indirect holdings" means all securities of a company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the board, when the board owns shares or interests together with other investors or that are held in an account or fund.

(5) "Pecuniary factor" means a factor that has a direct and material effect on the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool’s objectives and funding policy. Environmental, social, corporate governance, or other similarly oriented considerations are not pecuniary factors, unless a prudent investor would determine that such a consideration directly and materially affects the financial risk or financial return to beneficiaries based on appropriate investment horizons consistent with an investment pool’s objectives and funding policy. Any factor that does not meet the definition of "pecuniary factor" according to this subdivision is a "non-pecuniary factor".

(6) "Pecuniary interests" means the interests of minimizing financial risk and maximizing financial return to beneficiaries. Any interest that does not meet the definition of "pecuniary interests" is a "non-pecuniary interest".

(7) "Proxy vote" means a shareholder vote cast by a fiduciary on behalf of the shareholder.

(8) "Proxy voting choice options" refers to options offered by fiduciaries, which allow shareholders with indirect holdings to:

(A) Directly vote and transmit proxy votes;

(B) Select a third-party proxy voting policy and direct the fiduciary to cast proxy votes according to said policy;

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(C) Direct proxy votes on individual resolutions or companies; or

(D) Otherwise exercise control over how proxy votes are cast.

(9) "Shareholder votes" refers to all shareholder votes that the board is authorized to cast or to entrust a fiduciary to cast, by proxy or otherwise, on behalf of the board with respect to shares in securities held directly or indirectly by the board.

(b) Applicability. – The requirements of this section apply to all investments and pools of investments that the board is authorized to hold, administer, or manage pursuant to this code.

(c) Standard of Care. – Consistent with the requirements of §12-6-11 and §44-6C-1 *et seq*. of this code, all shareholder votes must be cast solely in the pecuniary interests of the beneficiaries, based on a consideration of only pecuniary factors. The board may not cast, nor authorize a fiduciary to cast, any shareholder vote for the purpose of furthering non-pecuniary interests.

(d) Direct holdings. – The following restrictions and requirements apply to the board's direct holdings:

(1) The board may not adopt a practice or policy of casting shareholder votes or authorizing a fiduciary to cast shareholder votes according to the recommendations of a proxy advisory firm or other similar service provider unless such firm or service provider commits, in writing, to make all shareholder voting recommendations to the board or the board's fiduciary according to the standard of care established in subsection (c) of this section.

(2) The board may not entrust fund assets to a fiduciary, unless the fiduciary commits, in writing, to cast all shareholder votes according to the standard of care established in subsection (c) of this section.

(3) As a term of any contract with a fiduciary, the board shall require the fiduciary to provide advance notice to the board of any shareholder vote concerning non-pecuniary interests and to provide the board with a reasonable opportunity to instruct the fiduciary, in writing, how the vote must be cast.

(4) A fiduciary is prohibited from casting any shareholder vote for the purpose of furthering non-pecuniary interests.

(e) Indirect holdings. – The board shall deliver a letter to the fiduciary managing each investment fund in which the board has indirect holdings, inquiring whether the fiduciary offers proxy voting choice options that are available to the board. If the fiduciary offers proxy voting choice options, the board shall exercise those options according to the standard of care established in subsection (c) of this section. Nothing in this section requires the board to divest from any private market funds or from indirect holdings in actively or passively managed investment funds.

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(f) Reporting. –

(1) The board shall produce an annual report tabulating and describing all shareholder votes cast by the board or the board's fiduciaries.

(2) For each shareholder vote cast during a calendar year, the report required by this subsection shall contain a vote caption, the board's or the fiduciary's vote, the recommendation of company management, and, if applicable, the proxy advisor or other service provider's recommendation.

(3) The board shall publish the report required by this subsection on the board's website no later than March 1 of the calendar year following the calendar year addressed in the report.

(g) Waiver after reasonable efforts. –

(1) If the board is unable to comply with the provisions of subsection (d) of this section without significantly increasing costs or limiting the quality of investment options or services available to the board, the board may waive the requirements of said subsection with regard to a particular fiduciary, upon a finding that:

(A) The board has made reasonable and good faith efforts to obtain fiduciary services meeting the requirements of subsection (d) of this section and has included said requirements in the board's minimum selection criteria for said services;

(B) Based on objective information available to the board, the cost of fiduciary services appears significantly higher than the fiduciary services available to similarly situated boards or funds not subject to similar requirements, or the quality of fiduciary services or investment options appears significantly lower than the quality of fiduciary services available to similarly situated boards or funds not subject to similar requirements; and

(C) The board determines that waiving subsection (d) of this section is clearly in the best pecuniary interests of the relevant fund's or funds' beneficiaries.

(2) A waiver authorized by this section must be adopted by a majority vote of board members serving at the time the vote is taken.

(h) Effective date. – The requirements of this section are effective July 1, 2024.

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