`STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By KRIS MAYES ATTORNEY GENERAL December 16, 2025	No. I25-008 (R25-014) Re: Senate Bill 1221's Applicability to the AZ529 Education Savings Plan Trust Fund

To: Hon. Kimberly Yee
Arizona State Treasurer

Questions Presented

Senate Bill 1221 ("SB 1221") prohibits publicly managed funds from holding certain investments in the Chinese government, the Chinese Communist Party, other "instrumental[ities]" of the Chinese government, companies "controlled" or "majority-owned" by any of those entities, and companies "domiciled, incorporated or headquartered" in China, with some specific exceptions, and subject to a 1% threshold when the cost of divesting is sufficiently high.

The State Treasurer administers the AZ529 Education Savings Plan Trust Fund ("AZ529 Fund"), which holds the assets of the AZ529 Plan, with the Board of Investment as trustee.

The Treasurer asked the following questions:

1. Does SB 1221 apply to investments of monies in the AZ529 Education Savings Plan Trust Fund, including those held on behalf of individual account owners?

If so:

2. Which investments are subject to, and which investments are exempt from, SB 1221's divesture requirements?

3. What constitutes initiating "immediate divestment" under SB 1221?

4. Does the 1% divestment threshold apply to the AZ529 Plan as a whole or at the individual holdings[1] level?

Summary Answers

1. SB 1221 applies to investments of monies held in the Plan on behalf of individual account owners. The State is the legal owner of those accounts, and selects the investment options available, and as a result the accounts are publicly managed and subject to the law.

2. All investment types are subject to the statute, except for pre-existing private equity and venture capital investments entered into or renewed before the law's effective date.

3. Fund managers must immediately begin identifying prohibited investments. Divestment, however, must be achieved only as speedily as prudent financial management practices allow, but in any event in no longer than one year. Divestment may not be delayed unless prudence so directs.

4. The 1% divestment threshold applies to the AZ529 Fund as a whole, not individual accounts.

Background

I. The AZ529 Fund holds the assets of the AZ529 Plan, and all individual accounts are held in the name of and for the benefit of the Fund and this State.

Section 529 of the Internal Revenue Code provides for tax-advantaged tuition savings programs. Such programs are "established and maintained by a State or agency or instrumentality

[1] For purposes of this Opinion, "holdings" refers to the investment funds held in an individual account, while the term "portfolio" refers to a specific investment fund option available for purchase to account holders.

thereof or by 1 or more eligible educational institutions." 26 U.S.C. § 529(b)(1). The relevant type here is an account in which the account owner (or other contributor) saves money for a designated beneficiary's education. *Id.* § 529 (b)(1)(A)(ii), (c)(1)(A). The account owner retains ownership, can change the beneficiary at any time, and can close the account (albeit with tax consequences and penalties). *Id.* § 529 (c)(3)(A), (c)(3)(C).

Arizona has established such a plan, the AZ529 Plan. *See* A.R.S. §§ 15-1871–1879. The relevant component of the Plan is a trust fund, the AZ529 Fund, holding the assets of the Plan. A.R.S. § 15-1873(B). The Board of Investment is the trustee. *Id.*; *see* A.R.S. § 15-1871(3). Within that trust fund, each account owner holds an account, which the owner places with one of the "one or more financial institutions" that "act as the depositories of the fund and managers of the plan." A.R.S. § 15-1874(A); *see* A.R.S. § 15-1871(1) (defining "[a]ccount" as "an individual trust account in the fund"); A.R.S. § 15-1871(2) (defining "[a]ccount owner" as "the person who enters into a tuition savings agreement pursuant to this article, who is an account owner within the meaning of section 529 of the internal revenue code … and who is designated at the time an account is opened as having the right to withdraw monies from the account before the account is disbursed to or for the benefit of the designated beneficiary" (footnote omitted)). The Treasurer selects those institutions, A.R.S. § 15-1874(B), which are then approved by the Board, A.R.S. § 15-1872(A).

Money deposited with any of the designated financial institutions "shall be paid to the financial institution as an agent of the fund," and is "being paid to the fund." A.R.S. § 15-1874(A). Accordingly, the financial institution acting as manager "shall … [h]old all accounts in the name of and for the benefit of the fund and this state." A.R.S. § 15-1874(F)(6). The separate accounts, however, are "segregated." *Id.* (F)(2).

II. The Legislature passed SB 1221 to divest the State from what it declares are prohibited investments.

In its 2025 First Regular Session, the legislature passed, and the Governor signed, SB 1221. That bill amended the Arizona Revised Statutes by adding Title 35, Section 395, titled "Publicly managed funds; Chinese companies and investments; divestment; immunity; severability; definitions."

That statute provides that:

> A publicly managed fund may not hold an investment in any of the following:
>
> 1. The People's Republic of China.
> 2. A company that is owned by the People's Republic of China.
> 3. A company that is domiciled, incorporated, or headquartered within the People's Republic of China.
> 4. A company that is controlled by the government of the People's Republic of China, the Chinese Communist Party, the Chinese military or any instrumentality of the government of the People's Republic of China, the Chinese Communist Party or the Chinese military.
> 5. A company that is majority-owned by an entity controlled by the government of the People's Republic of China, the Chinese Communist Party, the Chinese military or any instrumentality of the government of the People's Republic of China, the Chinese Communist Party or the Chinese military.

A.R.S. § 35-395(A).

The bill contains a statement of purpose, stating that the new statute is intended to:

> 1. Stop funding companies connected to the People's Republic of China, the Chinese Communist Party and the Chinese military.
> 2. Divest all state and local assets from companies connected to the People's Republic of China, the Chinese Communist Party and the Chinese military.
> 3. Prohibit state and local funds from being invested in any Chinese companies or investments.

SB 1221 § 2.

The bill also states that the new law "applies to any private equity or venture capital investments entered into or renewed from and after the effective date of this act." *Id.* § 3.

The effective date was September 26, 2025, which was 90 days after adjournment sine die. *See* Ariz. Const. art. IV, Pt. 1, § 1(3).

Analysis

A.R.S. § 35-395 prohibits "publicly managed fund[s]" from holding certain investments, and requires those funds to divestment those investments. The Treasurer asked if the AZ529 Trust Fund is a "publicly managed fund" for this purpose, requiring divestment and prohibiting those investments moving forward. The Treasurer also asked, if the answer is yes, several questions about the divestment process.

We conclude that the AZ529 Fund is "publicly managed" in the sense of A.R.S. § 35-395 and so is subject to that statute. *See* Section I, below. In response to the Treasurer's follow-up questions, we also conclude that the statute applies to all types of equity and debt investments meeting the description in A.R.S. § 35-395(A)(1)–(5) as modified by subsequent subsections, with the exception that private equity and venture capital investments are exempt if held prior to the law's effective date. That exception falls away if the investments are subsequently renewed within the Fund. *See* Section II, below. We further conclude that funds and their managers have one year to divest, and within that year may exercise their professional judgment to minimize loss or maximize gain for account owners but must immediately identify the investments to be divested and must divest as quickly as their professional obligations allow. *See* Section III, below. Finally, we conclude that the law's 1% threshold, exempting funds that hold less than 1% of their total assets in prohibited investments where the cost of divestment would exceed 1% of the value of the prohibited investments, applies to AZ529 at the fund level, not at the level of the individual account owner's holdings. *See* Section IV, below.

I. A.R.S. § 35-395 applies to investments held in the AZ529 Fund, including those held on behalf of an individual account owner.

The AZ529 Fund is a "publicly managed fund" as defined by A.R.S. § 35-395 and so is subject to that statute's requirements. Therefore, no account owner may hold the prohibited investments in an account, either (subject to the same exceptions as apply to any fund).

A "publicly managed fund" is "a short-term or long-term investment structure that is managed, run, controlled or otherwise overseen by this state or a political subdivision of this state." A.R.S. § 35-395(H)(5). This is a broad definition, clearly intended to prohibit a wide range of state investment schema from holding prohibited investments.

The AZ529 Plan is such a scheme. As described above, the Plan holds money in a trust. A.R.S. § 15-1873(B). The Board of Investment is the trustee. *Id.*; *see* A.R.S. § 15-1871(3) (defining "[b]oard" as Board of Investment). The trust is "a public instrumentality of this state." A.R.S. § 15-1873(B). Each account, held by an account owner, is "an individual trust account in the fund that is established as prescribed in this article." A.R.S. § 15-1871(1), (2).

"[O]ne or more financial institutions" hold the money as depositories, and each manages the money deposited with it. A.R.S. § 15-1874(A). But each is an "agent of the fund" in accepting deposits, deposits are "paid to the fund," and the money and investments are held "in the name of and for the benefit of the fund." *Id.*; *id.* (F)(6). That is, legally speaking, money and investments in an account are held by the Fund. *See* A.R.S. § 15-1871(1), (2).

Equitable ownership in the trust accounts is held either by the account owner (in an individual 529 account) or the beneficiary (in a custodial 529 account). But given that a State entity (the Board) is the trustee, the Treasurer administers the Fund, and the State holds some sort of title in the Fund, the State at least "otherwise oversee[s]" the Fund. A.R.S. § 35-395(H)(5); *see* Restatement (Second) of Trusts § 2 Comment (d) (trustee holds legal title while beneficiary holds

equitable title); *see also* A.R.S. § 14-10106(B) ("The court shall look to the restatement (second) of trusts for interpretation of the common law[.]"). Therefore, the Fund is a publicly managed fund, so it may not hold prohibited investments. An account cannot hold those investments without the Fund holding them, so it may not hold them, either.

II. A.R.S. § 35-395 applies to all types of investments other than certain investments held prior to its effective date.

The Applicability section of the bill that created A.R.S. § 35-395 states that the statute "applies to any private equity or venture capital investments entered into or renewed from and after the effective date of this act." SB 1221, § 3. The Treasurer asks if this means a) that only private equity or venture capital investments are prohibited, and only when entered into or renewed after the statute became effective, or b) that all investment types are prohibited regardless when entered into, except that private equity or venture capital investments are only prohibited if entered into after the statute became effective.

"When interpreting a statute, our primary goal is to find and give effect to legislative intent." *Secure Ventures, L.L.C. v. Gerlach in and for Cnty. of Maricopa*, 249 Ariz. 97, 99 ¶ 5 (App. 2020). We begin with the text, applying the ordinary meaning of the language the legislature chose, "unless the legislature clearly intended a different meaning." *Roubos v. Miller*, 214 Ariz. 416, 417–18 (2007). Importantly, "[w]ords in statutes should be read in context in determining their meaning." *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7 (2017). "In construing a specific provision, we look to the statute as a whole and we may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved." *Id.*

If we were to look only at the cited provision without considering the words in context, we might read it to bear meaning (a) above. The argument goes as follows: under the negative

implication canon (also known as expressio unius), because this section says that the statute applies to certain types of investments, the statute does not apply to other types of investments not mentioned. *See Sw. Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79 (1979) ("The principle of Expressio unius … as used in statutory … construction means that the expression of one or more items of a class and the exclusion of other items of the same class implies the legislative intent to exclude those items not so included."). But the negative-implication canon "must be applied with great caution, since its application depends so much on context." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 107 (2012). Not all lists are intended to be exclusive. Whether a particular list is intended to be exclusive depends on its specifics and its context. *Id.* at 107–08; *see also Stambaugh*, 242 Ariz. at 509 ¶ 7 ("[w]ords in statutes should be read in context").

Here, the context makes clear that the Act is intended to apply to investments broadly, not merely to investments through private equity or venture capital. The stated purpose of the bill is to "stop funding companies connected to the People's Republic of China, the Chinese Community Party and the Chinese military," to "[d]ivest all state and local assets from [such] companies," and to "[p]rohibit state and local funds from being invested in any Chinese companies or investments." SB 1221, § 2. Limiting the bill to a narrow class of investments would be contrary to this express purpose. The state and municipalities could maintain their investments in China (or even make new ones) merely by changing the form of their investments. We do not interpret ambiguous language to undermine a clear legislative purpose. *See State v. Estrada*, 201 Ariz. 247, 251 ¶ 19 (2001) (courts will "not employ a 'plain meaning interpretation that would lead to a result at odds with the legislature's intent" (cleaned up)); A.R.S. § 1-211(B) ("Statutes shall be liberally construed to effect their objects and to promote justice.").

In addition, if section 3 limited the Act to private equity and venture capital investments, and exempted private equity and venture capital investments held at the time the law took effect, it would not apply to any investments held at the time the law took effect. That would make the Act's detailed discussion of the divestment process surplusage. *See* A.R.S. § 35-395(C), (D). But "[a] cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019); *see also Roberto F. v. Dep't of Child Safety*, 237 Ariz. 440, 440 ¶ 6 (2015) (making use of "the consequences of differing interpretations").

Limiting the statute's application only to after-entered private equity and venture capital investments would therefore conflict with legislative intent, as made explicit in the text of other provisions of the Act. So, we conclude that "the legislature clearly intended a different meaning." *Roubos*, 214 Ariz. at 417–18. That meaning is that the law is applicable to all investments *other* than private equity or venture capital whenever entered into or renewed, *and* to private equity or venture capital investments entered into or renewed after the passage of the law. Funds must divest from these investment types beginning on the effective date, as explained below.

III. Divestment may be accomplished on a time frame dictated by reasonable prudence, within one year.

Upon A.R.S. § 35-395 taking effect, "a publicly managed fund shall immediately begin divestment of any holdings or investments prohibited" by the law. A.R.S. § 35-395 (C). But "total divestment" need not be accomplished until "one year" later (September 26, 2026), although it should be completed "as soon as financially prudent." *Id.*

The Treasurer asks how to reconcile the statutory command to begin divestment "immediately" with the fact that fund managers may take up to one year to divest.

Because the divestment must begin "immediately," fund managers must act promptly, limited only by financial prudence. In other words, fund managers are not at liberty to wait one year before acting if financial prudence does not so dictate.

Under the statute, the first step in divestment is determining which investments must be divested by carrying out "at least one of" the steps listed in A.R.S. § 35-395(C)(1)–(4) and making the determinations required for compliance with subsection (D) (discussed below). Because the process must begin "immediately," and because it is never imprudent to make this determination, fund managers should not delay these steps.

To determine what is required with respect to further, substantive steps, we consider two additional provisions. First, the statute "does not inhibit, conflict with, impede or otherwise interfere with any required financial safeguards, fiduciary requirements or other sound investment criteria that a publicly managed fund is subject to, including any obligations with respect to choice of asset managers, investment funds or investments for fund investment portfolios." A.R.S. § 35-395(E). Second, "[w]ith respect to any action performed pursuant to this section, each publicly managed fund and any person acting on [its] behalf … are exempt from any conflicting statutory or common law obligation or fiduciary duties with respect to the choice of asset managers, investment funds or investments." *Id.* (F), (F)(1).

Putting these together, we infer that unless the statute explicitly requires a specific course of action, it permits the Fund and its managers the space to carry out their fiduciary and professional responsibilities. But where the statute requires acting contrary to what those duties would otherwise require, no (state law) fiduciary liability attaches. And, further, the State indemnifies and holds harmless the fund and its managers for such actions, as well as providing

certain protections normally associated with actions against public entities or employees. *Id.* (F)(2)–(3).

It follows that the fund managers must move as swiftly as possible to divest unless they can point to a specific fiduciary duty or financial consideration requiring them to wait. Even though the statute permits up to a year to divest, the managers may not simply wait out that period (or a shorter period) without good reason. Absent good reason, they must act "immediately." However, where a specific fiduciary duty requires them to wait, they are permitted to wait, so long as they act as soon as financially prudent and no later than September 26, 2026.

IV. The cut-off for the small holdings exception is 1% of total assets held in the Fund, not 1% of an individual's holdings.

The Fund is "not required to divest" prohibited holdings "if less than one percent of the value of the total holdings or investments of the fund are made up of" prohibited holdings and "the cost … of divesting from the prohibited holdings or investments over the next five years is more than one percent of the total holdings or investments otherwise prohibited." A.R.S. § 35-395(D).

The Treasurer asks whether this means that a) if the investments form more than 1% of the total assets of the Fund, they must be divested from the entire Fund; or b) if the investments form more than 1% of any individual account, they must be divested from that account. The latter would make it possible that an investment would be removed from some, but not all, accounts, a possibility not envisioned by the former. We conclude that the law requires the former.

Although money in the Fund is currently spread across multiple financial institutions and accounts, it forms one publicly managed fund. Individual accounts are not, in themselves, "publicly managed fund[s]" as defined in the statute. The relevant statutes establish one fund "consisting of the assets of AZ529." A.R.S. § 15-1873(B). The law directs the Treasurer to "implement the operation of *the plan* through the use of one or more financial institutions to act as

the depositories of *the fund* and managers of the plan." A.R.S. § 15-1874(A) (emphases added). Each prospective account owner chooses one of those institutions, and then deposits money with that institution. Each such deposit is "paid to the financial institution as an agent of *the fund*." *Id.* (emphasis added). "[A]ll monies paid by account owners to fund accounts held at financial institutions are being paid to *the fund*." *Id.* (emphasis added). These repeated statutory references to *the fund* make clear that there is one fund for the purposes of the statute's use of that term. Furthermore, they state that deposits are to that singular fund, not just the individual accounts. An account balance is a claim against the Fund.

It follows that the Fund is the appropriate level of analysis for applying the exception. It is, at base, the publicly managed fund at issue, and its physical division into accounts is not legally relevant here. The accounts are simply "'[t]rust interest[s]' … in the fund." A.R.S. § 15-1871(16). They are not themselves "investment structure[s]," *see* A.R.S. § 35-395(H)(5) (defining "publicly managed fund"). Nor are they "managed, run, controlled or otherwise overseen by this State or a political subdivision." *Id.* Rather, each account is controlled, within the available options, by the account owner. Accordingly, the 1% exception must be applied at the Fund level.

Conclusion

Under the terms of A.R.S. § 35-395, the AZ529 Fund is a publicly managed fund and must be divested of prohibited investments as speedily as financial prudence allows but within one year in any event. This applies to all holdings other than private equity or venture capital whenever entered into or renewed, and to private equity or venture capital investments entered into or renewed after the passage of the law. Lastly, the Fund, not the individual account, is the appropriate level of analysis for applying the exception for small holdings.

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Kris Mayes
Attorney General