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S.B. 6
135th General Assembly

Final Analysis

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Primary Sponsor: Sen. Schuring

Effective date:*

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SUMMARY

- Prohibits the state retirement system boards, Administrator of Workers' Compensation, and boards of trustees of state institutions of higher education from making an investment decision with the primary purpose of influencing any social or environmental policy or the governance of any corporation (ESG).
- Requires the state retirement system boards, Administrator, and boards of trustees of state institutions of higher education to make investment decisions solely to maximize the return on investments.
- Specifies that a board of trustees is not required to accept a bequest made by a decedent to an endowment because the bequest specifically requests that the donation be used for the primary purpose of influencing ESG.
- Requires, if a board of trustees accepts such a bequest, the board of trustees to comply with any conditions of that bequest regarding that purpose.
- Encourages a state retirement system, if the system offers a defined contribution plan, to offer multiple investment choices for members who are under that plan.

DETAILED ANALYSIS

Environmental, social, and corporate governance policies

The act prohibits the state retirement system boards, state institutions of higher education boards of trustees (subject to the exception described below), and Administrator of Workers' Compensation from making an investment decision with the primary purpose of

* The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.

influencing any social or environmental policy or the governance of any corporation (ESG), and specifically prohibits the Administrator from investing funds with a primary purpose of ESG. It additionally prohibits the boards, boards of trustees, Bureau of Workers' Compensation (BWC) Board of Directors, and Administrator from adopting or promoting a policy under which the board, board of trustees, or Administrator makes investment decisions with the primary purpose of ESG.¹ The act does not define ESG. Thus, it is not clear how to determine whether an investment decision could influence social or environmental policy or the governance of a corporation under the act.²

Fiduciary duties

The act requires the retirement boards, state institutions of higher education boards of trustees, Administrator, and other workers' compensation system fiduciaries to make investment decisions with the sole purpose of maximizing the return on investments in accordance with their fiduciary duties under continuing law.³ Additionally, the Administrator and other fiduciaries must make investment decisions that are consistent with any of their other fiduciary responsibilities under the Workers' Compensation Law.⁴ Under continuing law, each state retirement system board has full authority to invest the system's funds, and the board and other fiduciaries must discharge their duties with respect to the funds solely in the interest of the system's participants and beneficiaries. A board of trustees may invest money held in trust for the benefit of a state institution of higher education as a portion of the holdings in its endowment portfolio. The Administrator may invest the surplus and reserve of the State Insurance Fund as well as other funds of the workers' compensation system.

Continuing law requires the boards, boards of trustees, and Administrator to make investment decisions following the "prudent expert standard," which requires each board, board of trustees, and the Administrator to act:

[W]ith care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

The boards, boards of trustees for some investments, and the Administrator also must diversify the investments to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

¹ R.C. 145.11, 742.11, 3307.15, 3309.15, 3345.161, 4123.44, 4123.442, and 5505.06.

² See [Managing ESG Data and Rating Risk](#), which may be accessed by conducting a keyword "managing ESG data and rating risk" search on the Harvard Law School Forum on Corporate Governance website: corpgov.law.harvard.edu.

³ R.C. 145.11(A), 742.11(A), 3307.15(A), 3309.15(A), 3345.161(A), 4123.44, and 5505.06(A), by reference to R.C. 3345.05, 3354.10, 3357.10, and 3358.06, not in the act.

⁴ R.C. 4123.44, by reference to R.C. chapters 4121, 4123, 4127, and 4131.

The Administrator also is specifically prohibited from investing funds in certain types of investments, such as coins and antiques, as well as any other class of investments specifically prohibited by the BWC Board of Directors.⁵

State institution of higher education endowments

The act includes an exception to the prohibition against a board of trustees making investment decisions for the primary purpose of influencing ESG. Beginning on the act's effective date, a board of trustees is not required to accept a bequest made by a decedent because the bequest specifically requests that the donation be used with the primary purpose of influencing ESG. The board, however, must comply with any conditions of a bequest regarding that purpose if the board accepts such a bequest.⁶

Defined contribution plan investment options

The act encourages a state retirement system to offer multiple investment choices for members who are participating in a defined contribution plan, if the system offers such a plan.⁷ Under a defined contribution plan, members choose the investments into which their retirement system contributions are placed, and the investment earnings of the contributions determine the amount of the benefit the member receives.⁸ The Public Employees Retirement System and State Teachers Retirement System currently offer a defined contribution plan.⁹ The School Employees Retirement System is statutorily authorized to establish a defined contribution plan, but has chosen not to do so.¹⁰

⁵ R.C. 145.11, 742.11, 3307.15, 3309.15, 3345.16, 4123.44, 4123.442, and 5505.06 and R.C. 1715.52 and 3345.05, not in the act.

⁶ R.C. 3345.161(C).

⁷ Section 3.

⁸ [Pensions 101](#), which may be accessed by conducting a keyword "Pensions 101" search on the Public Employees Retirement System website: [opers.org](#), and [Plan Options](#), which may be accessed by conducting a keyword "Plan options" search on the State Teachers Retirement System website: [strsoh.org](#).

⁹ R.C. 145.80 to 145.98 and 3307.81 to 3307.89, not in the act.

¹⁰ R.C. 3309.81 to 3309.98, not in the act.

HISTORY

Action	Date
Introduced	01-11-23
Reported, S. Finance	04-19-23
Passed Senate (26-7)	05-10-23
Reported, H. Financial Institutions	12-04-24
Passed House (62-27)	12-10-24
Senate concurred in House amendments (24-7)	12-11-24
