OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

S.B. 6
135th General Assembly

Fiscal Note & Local Impact Statement

Click here for S.B. 6's Bill Analysis

Version: As Reported by Senate Finance

Primary Sponsor: Sen. Schuring

Local Impact Statement Procedure Required: No

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Highlights

- The bill has no direct fiscal effect on the state or political subdivisions. It does not, for example, change employer contribution rates under any of the five state retirement systems.
- Prohibiting boards of trustees of public universities and community colleges from using asset managers to manage their endowment portfolios if the asset managers engage in or promote policies regarding environmental, social, or corporate governance (ESG) policies would likely increase investment management costs for such an institution to select, replace, and ensure all of its asset managers meet the bill's provisions.
- The bill may increase administrative costs of the state retirement systems and the Bureau of Workers' Compensation, with the magnitude of any such increases depending on their boards' interpretations of bill provisions.

Detailed Analysis

The bill specifies requirements and prohibitions related to investment decisions made by (1) boards of trustees of the five state retirement systems – the Ohio Public Employee Retirement System (OPERS), the School Employee Retirement System (SERS), the State Teachers Retirement System (STRS), the Ohio Police and Fire Pension Fund (OP&F), and the State Highway Patrol Retirement System (HPRS), (2) the Administrator of the Bureau of Workers' Compensation (BWC), and (3) the board of trustees of a state institution of higher education.

Public universities and community colleges

The bill requires the board of trustees of each state institution of higher education to manage its endowment portfolio with the goal of maximizing the return on its investments and in accordance with its fiduciary duties under existing law. The bill also prohibits such board of trustees from doing either of the following: (1) making investment decisions or adopting investment policies regarding its endowment portfolio with the primary purpose of influencing any social or environmental policy, or influencing the governance of any corporation (though with an exception for certain bequests – see next sentence), or (2) permitting any person or entity to which it delegates the management of part or all of its endowment portfolio to engage in or promote such decisions or policies. The bill specifies that a board of trustees cannot deny a bequest made by a decedent to an endowment in that portfolio because the bequest specifically requests the donation be used primarily for influencing any social or environmental policy, including by attempting to influence the governance of any corporation. If the board accepts such a bequest, the board must comply with any conditions of the bequest regarding that purpose.

State retirement systems

The bill requires the board of each of the five state retirement systems in accordance with their fiduciary duties, to make investment decisions with the sole purpose of maximizing the return on their investments. The bill also prohibits them from making an investment decision with the primary purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation.

The bill encourages each of the five state retirement systems, if the system offers a defined contribution (DC) plan, to offer multiple investment choices for members who are under the DC plan.

Bureau of Workers' Compensation

The bill requires the BWC Administrator and other fiduciaries, in making investment decisions, to do so with the sole purpose of maximizing the return on investments and consistent with any other fiduciary duties under the Workers' Compensation Law.

Fiscal effect

The bill does not have any direct fiscal effect on the state or local governments. It does not, for example, affect employer contribution rates under the retirement systems.

The bill prohibits investment decisions by the affected entities "with the primary purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation," but the wording apparently allows such investments if those making the investment decision believe that it would provide the highest investment return. The bill also does not specifically require the retirement systems' boards or the BWC Administrator to divest any existing investments that are not consistent with the bill's requirements.

But on the bill's effective date, a board of trustees of a public university or community college that has any contracts related to its endowments with any person or entity (i.e., asset managers) that are engaging in or promoting the prohibited decisions or policies apparently would be required to terminate such contracts; thus increasing investment management costs for such trustees to select, replace, and ensure all asset managers associated with its endowments meet the bill's provisions. As of June 30, 2022, the total value of endowment assets of all public universities and community colleges was about $11.91 billion. Approximately 67% of those endowments are managed by a person or entity not directly employed by the institution (e.g., external asset manager or firm).

The bill's costs to the other affected boards depend in part on how the boards interpret the bill language. Some boards may interpret the requirements as requiring divestment of some current investments. Any potential increase in administrative costs of the five state retirement systems and BWC would depend on such interpretations. The bill may not affect their ability to maximize returns,[1] but if the applicable public investors are required to divest their current investments, there may be an undetermined loss of investment income.[2]

Related information

Generally, environmental, social, and governance (ESG) investing criteria may be used by certain investors when picking potential investments. There have been academic studies of whether ESG criteria are consistent with seeking the highest investment return, but LBO staff are not aware that a consensus on the question has emerged.[3]

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[1] According to results in one study, Do Investors Value Sustainability? A Natural Experiment Examining Ranking and Fund Flows, and additional supporting information, published in the *Journal of Finance*, ESG investing does not provide better performance. The authors concluded that ". . . sustainability is viewed as positively predicting future performance, but we do not find evidence that high-sustainability funds outperform low-sustainability funds."

[2] According to the latest Annual Comprehensive Financial Report for each system, each invested billions of dollars in assets in 2022; for example STRS had about $89 billion in total investments as of June 30, 2022. The report also includes each system's investment policies. Based on the latest FY 2022 BWC Annual Report, its investment portfolio totaled about $20 billion as of June 30, 2022. The latest BWC Investment Policy Statement is available on its website.

[3] In addition to the paper mentioned above, these are other studies related to performance of ESG investing: Raghunandan, Aneesh and Rajgopal, Shivaram, Do ESG Funds Make Stakeholder-Friendly Investments? (May 27, 2022), *Review of Accounting Studies*, and Gibson, Rajna and Glossner, Simon and Krueger, Philipp and Matos, Pedro and Steffen, Tom, Do Responsible Investors Invest Responsibly? (May 25, 2021), *Review of Finance (Forthcoming), Swiss Finance Institute Research Paper No. 20-13, European Corporate Governance Institute – Finance Working Paper 712/2020*. Furthermore, this paper examines research papers related to ESG and financial performance since 2015: Tensie Whelan, Ulrich Atz, Tracy Van Holt and Casey Clark, CFA, ESG AND FINANCIAL PERFORMANCE: Uncovering the Relationship by Aggregating Evidence from 1,000 Plus Studies Published between 2015-2020 (PDF), *NYU Stern Center for Sustainable Business*.