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S.B. 6
135th General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Schuring

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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.
- Prohibits a board of trustees from denying 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 bill prohibits the state retirement system boards and Administrator of Workers' Compensation from making an investment decision with the primary purpose of 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, Bureau of Workers' Compensation (BWC) Board of Directors, and

Administrator from adopting or promoting a policy under which the board or Administrator makes investment decisions with the primary purpose of ESG.[1] The bill 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 bill.[2]

Fiduciary duties

The bill requires the retirement boards, 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. 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 and Administrator to make investment decisions following the "prudent person standard," which requires each board 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 and the Administrator also must diversify the investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

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]

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[1] R.C. 145.11, 742.11, 3307.15, 3309.15, 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), 4123.44, and 5505.06(A).

[4] R.C. 4123.44, by reference to R.C. Chapters 4121, 4123, 4127, and 4131.

[5] R.C. 145.11, 742.11, 3307.15, 3309.15, 4123.44, 4123.442, and 5505.06.

State institution of higher education endowments

The bill requires a board of trustees of a state institution of higher education to manage its endowment portfolio to maximize the return on the board's investments in accordance with the board's fiduciary duties under continuing law (a board of trustees, like the retirement boards and the Administrator, is subject to the prudent person standard described above). It generally prohibits a board of trustees from making investment decisions or adopting investment policies regarding its endowment portfolio with the primary purpose of influencing ESG, or allowing a person or entity to which the board has delegated the management of part or all of its endowment portfolio from engaging in or promoting such decisions or policies. Beginning on the bill's effective date, a board of trustees cannot deny 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 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 bill 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]

[6] R.C. 3345.161, by reference to R.C. 3345.05, 3354.10, 3357.10, and 3358.06, not in the bill, with conforming changes in R.C. 3345.16.

[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 bill.

[10] R.C. 3309.81 to 3309.98, not in the bill.

HISTORY

Action	Date
Introduced	01-11-23
Reported, S. Finance	04-19-23
Passed Senate (26-7)	05-10-23

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