



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 4
(1_135_0099-8)
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 4's Bill Analysis](#)

Version: In House Financial Institutions

Primary Sponsors: Reps. Young and King

Local Impact Statement Procedure Required: No

Ruhaiza Ridzwan, Senior Economist, and other LBO staff

Highlights

Treasurer of State

- Requiring the Treasurer of State to identify all companies and financial institutions that conduct an economic boycott against a protected entity or consumer and create a list of such companies and institutions would increase the Treasurer's administrative costs. Any increase in such costs would be paid from a new GRF line item created under the bill.
- The bill creates a new GRF line item under the Treasurer's budget, GRF line item 090410, Economic Boycott List, and appropriates \$250,000 each in FY 2024 and FY 2025 to be used by the Treasurer to pay for its administrative costs associated with the bill's provisions.

State and Local Government entities

- Prohibiting a government entity¹ from acquiring direct holdings or indirect holdings in, or entering into a contract with, a company or financial institution that appears on the Treasurer's list and requiring such entities to sell, redeem, or divest all such holdings would increase such entities' administrative costs to comply with the bill's requirements and prohibitions and may potentially reduce such entities' investment income associated

¹ Under the bill, a government entity includes (1) the Public Employees Retirement System (PERS), (2) the Ohio Police and Fire Pension Fund (OP&F), (3) the State Teachers Retirement System (STRS), (4) the School Employees Retirement System (SERS), (5) the State Highway Patrol Retirement System (HPRS), (6) an organized body, office, or agency established by the laws of the state for the exercise of any function of state government, (7) a board of trustees of a state institution of higher education, and (8) a political subdivision of this state.

with any holdings that such entities must sell, redeem, or divest. However, the magnitude of any such costs and any potential reduction in investment income are undetermined.

- Requiring the Attorney General or an official with the government entity in charge of enforcing contracts to enforce the bill's contract provisions would increase the Attorney General's and such official's administrative costs to ensure compliance with the provisions.
- Prohibiting each board of the state retirement systems, the Bureau of Workers' Compensation (BWC) Administrator, and each board of trustee of a public university from making an investment decision with the primary purpose of influencing any social or environmental policy or the governance of any corporation would increase such entities' administrative costs to divest any existing investments that are not consistent with the bill's requirements. The bill may not affect their ability to maximize returns, but there may be an undetermined loss of investment income to comply with the bill's requirements.

Superintendents of Financial Institutions and Insurance

- Requiring certain financial institutions to disclose specified information to the Superintendent of Financial Institutions, or in the case of insurers the Superintendent of Insurance, or any state agency that oversee such institutions would increase the Superintendent of Financial Institutions', the Superintendent of Insurance's, or such agencies' administrative costs to ensure compliance with the bill's provisions. Any increase in such costs may be fully or partially defrayed by fines and penalties that may be collected by such superintendents or agencies under existing law.

Detailed Analysis

The bill requires the Treasurer of State to make the best efforts in identifying all companies and financial institutions that conduct an economic boycott against a protected entity or consumer and create a list of such companies and financial institutions.² The bill specifies activities that are considered an "economic boycott." The bill specifies requirements and prohibitions related to government entities' contracts and direct or indirect holdings with a company or financial institution. The bill also specifies requirements and prohibitions related to investment authorities and fiduciary duties of boards of the five state retirement systems, the Bureau of Workers' Compensation (BWC) Administrator, and board of trustees of a state institution of higher education. The bill specifies requirements and prohibitions for financial institutions and insurers. Provisions with fiscal effects are specified below. Please refer to the LSC bill analysis for information on provisions with no fiscal effect.

Treasurer of State

The bill requires the Treasurer of State to identify all companies and financial institutions that conduct an economic boycott against a protected entity or consumer and create a list of such companies and financial institutions no later than 270 days after the bill's effective date. The bill specifies that the Treasurer must not rely solely on certain statements, complaints, or media

² Please see the bill for definitions of "company," "financial institution," "economic boycott," "consumer," "direct holdings," and "indirect holdings."

reports when identifying companies and financial institutions that conduct such boycotts. The bill requires the Treasurer to electronically distribute the list and any updates to the list to each government entity, the Governor, President of the Senate, and Speaker of the House of Representatives, including posting the list on a website maintained by the Treasurer and updating the list every 90 days or earlier if the Treasurer considers necessary. The bill also specifies actions that must be taken by the Treasurer before including a company or financial institution on or removing from the list, including providing a written notice prior to publishing the list.

The bill specifies ways for such companies and financial institutions to avoid placement on the Treasurer's list, including appeal and removal procedures. The bill specifies that the Treasurer is not liable for breach of a government entity's fiduciary duty to the fund for which that government entity has the authority to invest assets, if the government entity and the Treasurer comply with the requirements of the bill. The Treasurer is not liable in an action for libel or slander, if the Treasurer makes determinations about the status of a particular company or financial institution in good faith.

The bill's requirements would increase the Treasurer's administrative costs. Any increase in such cost would be paid from a new GRF appropriation described below.

Treasurer of State appropriation

The bill creates a new GRF line item under the Treasurer's budget, line item 090410, Economic Boycott List, and appropriates \$250,000 each in FY 2024 and FY 2025 to pay for the Treasurer's administrative costs associated with the bill's provisions.

Government entities

Under the bill, a government entity includes (1) the Public Employees Retirement System (PERS), (2) the Ohio Police and Fire Pension Fund (OP&F), (3) the State Teachers Retirement System (STRS), (4) the School Employees Retirement System (SERS), (5) the State Highway Patrol Retirement System (HPRS), (6) an organized body, office, or agency established by the laws of the state for the exercise of any function of state government, (7) a board of trustees of a state institution of higher education, and (8) a political subdivision of this state.

The bill prohibits government entities from acquiring direct holdings or indirect holdings in a company or financial institution that conducts economic boycotts of a protected entity or consumer, as determined by the Treasurer. Under the bill, each government entity is required to identify companies and financial institutions on the Treasurer's list in which the government entity has direct or indirect holdings. If the government entity has direct or indirect holdings with a listed company or financial institution, the government entity is required to sell, redeem, or divest any of the government entity's holdings in a manner that is orderly and consistent with its fiduciary duties.

The bill requires each government entity to provide information regarding any investments sold, redeemed, divested, or withdrawn pursuant to the bill to the Treasurer no later than two years after the bill's effective date, and annually no later than the fifth day of January thereafter, or on request of the Treasurer. The bill specifies that if the Treasurer requested such information and the government entity fails, after a period of 30 days, to provide the requested information, such order of the Treasurer may be enforced by a writ of mandamus issued by any court authorized to issue such writ.

The bill prohibits government entities from entering into, extending, or renewing a contract with companies and financial institutions that are on the Treasurer's list. The bill also prohibits government entities from entering into, extending, or renewing a contract with any company or financial institution, unless the contract contains a written verification that the company or financial institution does not engage in economic boycotts against a protected entity or consumer and that the company or financial institution will not engage in economic boycotts of a protected entity or consumer during the term of the contract. The bill specifies that the verification requirement does not apply to a government entity that determines either of the following: (1) the requirements are inconsistent with the government entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds, or (2) the requirements prevent the government entity from obtaining the supplies or services to be provided in an economically practicable manner.

The requirements and prohibitions would increase such entities' administrative costs associated with their holdings and contracts and may potentially reduce such entities' investment income associated with any holdings that such entities must sell, redeem, or divest. However, the magnitude of any such costs and loss of investment income are undetermined.

Investment authorities and fiduciary duties of certain boards

The bill specifies requirements and prohibitions related to investment decisions made by (1) boards of the five state retirement systems – OPERS, OP&F, STRS, SERS, and HPRS, (2) the BWC Administrator, and (3) the board of trustees of a state institution of higher education.

The bill requires the boards, the Administrator, and board of trustees to make investment decisions with the sole purpose of maximizing the return on investments in accordance with their fiduciary duties. The bill prohibits the boards, the Administrator, and board of trustees from making an investment decision with the primary purpose of influencing any social or environmental policy or the governance of any corporation (ESG). The bill also prohibits the boards, the Administrator, and board of trustees from appointing a proxy to vote on shareholder matters unless each adopts a policy requiring the proxy to vote solely to maximize the return on investments and prohibiting the proxy from voting with the primary purpose of influencing ESG. The bill requires each board and the Administrator to evaluate an investment based solely on pecuniary factors that have a material effect on the investment's potential risk and return based on appropriate investment horizons and consistent with the its funding policy and investment objectives.

The bill's prohibitions and requirements associated with the state retirement systems, the BWC Administrator, and public universities investment authorities and fiduciary duties would increase their administrative costs to divest any existing investments that are not consistent with the bill's requirements. The bill may not affect their ability to maximize returns, but there may be an undetermined loss of investment income to comply with the bill's provisions.

Enforcement

The bill authorizes the Attorney General or an official with the government entity in charge of enforcing contracts to enforce compliance with the bill's contract provisions. If the Attorney General or official has reasonable cause to believe that a company or financial institution has engaged in, is engaging in, or is about to engage in, a violation of the bill's contract

provisions, those officials are permitted to take certain measures. The bill also specifies certain corrective actions that must be taken by the Attorney General if a company or financial institution engages in an economic boycott during the term of a contract with a government entity that contains the verification requirement. The bill requires a company or financial institution that believes a person is interfering with the company's or financial institution's ability to comply with the bill's provisions to report such action to the Attorney General.

The bill's requirements would increase the Attorney General's and applicable official with the government entity's administrative costs to ensure compliance with the bill's contract provisions. Any increase in such costs would likely be paid from a mix of state funds (GRF and non-GRF sources).

Financial institutions and insurers

The bill specifies requirements for financial institutions and insurers and the persons they serve. The bill requires a financial institution that utilizes standards or guidelines based on nonpecuniary measures to disclose such standards and guidelines, including certain information to the Superintendent of Financial Institutions, the Superintendent of Insurance in the case of an insurance company, or any other state authority that oversees the financial institution, in the manner and form prescribed by the applicable superintendents or the state authority. The bill also requires the financial institution to disclose the same information to a customer or potential customer before entering into a contract. The bill specifies that if the financial institution is a credit union, then within the scope of the credit union's charter, the credit union is prohibited from denying membership, a loan, or services to a person that meets the field of membership for that credit union, if the denial is based solely on measures such as ESG criteria.

The bill prohibits an insurer from refusing to insure a customer or charging a different rate solely in consideration of the risks to ESG criteria, unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience. The bill specifies that any financial institution that violates the bill's provisions is considered committing an unsound practice that misleads consumers and may be subject to civil enforcement by the Superintendent of Financial Institutions. The bill also specifies that an insurer that violates the bill's provisions is considered having committed an unfair and deceptive practice in the business of insurance and subject to civil enforcement by the Superintendent of Insurance.

The bill's requirements would increase the Superintendent of Financial Institutions', the Superintendent of Insurance's, or other applicable state agencies' administrative costs to ensure compliance with the bill's provisions. Any increase in the Superintendent of Financial Institutions', the Superintendent of Insurance's, or other applicable state agencies' costs would be paid from applicable GRF or non-GRF line items. Any increase in such costs may be fully or partially defrayed by fines and penalties that such superintendents or applicable state agencies are allowed to impose under existing law.

Synopsis of Fiscal Effect Changes

The substitute bill has fiscal effects described above whereas the As Introduced version of the bill has no direct fiscal effect on the state or political subdivisions.