



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 4*
135th General Assembly

Bill Analysis

Version: I_135_0099-8

Primary Sponsors: Reps. T. Young and King

Carla Napolitano, Attorney, and Chris Edwards, Attorney

SUMMARY

- Requires the Treasurer of State to identify companies and financial institutions that engage in economic boycotts.
- Describes economic boycott as when a company or financial institution takes an action that negatively impacts a company or consumer because the company or consumer engage in certain specified industries, including fossil fuel-based energy, timber, mining, lumber, agriculture, knives, firearms, and immigration enforcement.
- Requires the Treasurer to create a list of companies and financial institutions that engage in economic boycotts and make the list available to the public.
- Requires the Treasurer to send a written notice to each company and financial institution that their name will be included on the public list prior to making the list public.
- Allows the company or financial institution to avoid placement on, or secure removal from, the list by demonstrating that it does not conduct economic boycotts against a protected entity or consumer or providing written assurance that it will not undertake acts constituting an economic boycott in the future.
- Requires the Treasurer to electronically distribute the list to each governmental entity, the Governor, the President of the Senate, and the Speaker of the House of Representatives, and to publicly post the list on the Treasurer's website.
- Requires the Treasurer to update the list every 90 days, or more often as the Treasurer considers necessary.

* This analysis addresses Sub. H.B. 4 (I_135_0099-8). The Introduced version includes only placeholder language.

- Allows a company or financial institution to appeal placement on the list no sooner than one year after such placement by following the appeals process described in the Administrative Procedure Act.
- Prohibits a governmental entity from acquiring direct or indirect holdings in, or entering into a contract with, a company or financial institution that is on the Treasurer's public list.
- Requires all contracts entered into or renewed by a government entity to include a written verification from the contracted company or financial institution that it does not and will not conduct an economic boycott.
- Authorizes the Attorney General or an official with the governmental entity in charge of enforcing contracts to enforce compliance with the required contract provisions.
- Prohibits any person from taking action or threatening to penalize any company or financial institution for complying with a commitment in a government contract to refrain from economic boycotts.
- Requires financial institutions to offer financial services on a nondiscriminatory basis that differentiates between consumers only on quantitative, impartial, risk-based financial standards established in advance.
- Requires financial institutions to disclose standards and guidelines based on nonpecuniary measures (i.e., factors that do not have a material effect on the financial risk or financial return of an investment) to customers and to the Superintendent of Financial Institutions, Superintendent of Insurance, or other state regulatory authority.
- Prohibits an insurer from refusing to insure a customer or charging a different rate based solely on environmental, social, or governance (ESG) criteria.
- Prohibits a credit union from denying membership, a loan, or access to services based solely on ESG criteria.
- Prohibits the state retirement boards, state institutions of higher education boards of trustees, and Administrator of Workers' Compensation from making an investment decision primarily for ESG purposes.
- Requires the retirement boards, boards of trustees, and the Administrator to make investment decisions with the sole purpose of maximizing the return on investments in accordance with their fiduciary duties.
- Prohibits the retirement boards, boards of trustees, and the Administrator 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.
- Requires the retirement boards, boards of trustees, and the Administrator, in making an investment decision, to evaluate an investment based solely on certain pecuniary

factors, and prescribes the circumstances under which an ESG or other similar oriented factor may be considered a pecuniary factor.

- Makes an appropriation.

TABLE OF CONTENTS

General overview	4
Economic boycotts and protected entities	4
Government contracts	5
Investigation by the Treasurer of State	5
Notice to company prior to publishing public list	5
Public list of companies and financial institutions that economically boycott.....	6
Appeal.....	6
Government entity holdings and contracts	7
Holdings	7
Contracts.....	8
Immunity	8
Enforcement.....	9
Investigation and evidence.....	9
Corrective action	9
Evidence of economic boycott	9
Actions inhibiting compliance	10
Appropriation	10
Financial institutions	10
Provision of financial services	11
Disclosure of nonpecuniary standards.....	11
Provision of insurance	12
Credit union memberships, loans, and services	12
Enforcement.....	12
Environmental, social, and corporate governance (ESG)	12
Fiduciary and investment powers and duties.....	13
Investment programs.....	14
Proxies.....	14
Pecuniary factors	15
Investment decisions.....	15
Determining violations	15
ESG as pecuniary factors	16

DETAILED ANALYSIS

General overview

The bill establishes Ohio's Fair Access to Financial Services Act.¹ Under the Act the Treasurer of State is required to identify companies and financial institutions that engage in economic boycotts. Furthermore, the Treasurer is required to create a list of these companies and financial institutions and make the list available to the public. Government entities must consult the list before contracting with companies or financial institutions. The bill prohibits a governmental entity from acquiring direct or indirect holdings in, or entering into a contract with, a company or financial institution that is included on the Treasurer's list. It also requires companies and financial institutions that contract with a governmental entity to affirm in that contract that the company or financial institution does not, and will not, engage in an economic boycott.

The bill requires financial institutions to follow certain standards when offering financial services to customers.

Economic boycotts and protected entities

The bill describes an "economic boycott" as when a company or financial institution refuses to deal with, terminates business activities with, or otherwise takes any action that is intended to penalize, inflict economic harm on, limit commercial relations with, or change or limit the activities of another company or a consumer. Specifically, when the other company or consumer engages in (directly or indirectly) any of the following:

- The legal exploration, production, utilization, transportation, distribution, sale, or manufacturing of fossil fuel-based energy, timber, mining, lumber, or agriculture;
- The utilization of the ordinary business purposes of a knife entity, firearm entity, or trade association;
- A contract with the U.S. Immigration and Customs Enforcement (ICE).

If the company or financial institution has an "ordinary business purpose" to not engage in business with a consumer or a protected entity, then according to the bill, an economic boycott is not committed. However, "ordinary business person" does not include any purpose to further environmental, social, or governance goals or objectives (commonly known as ESG).

The bill further specifies that "economic boycott" includes taking any of the actions described above because the company or consumer directly or indirectly engages with a person that does not, is not expected to, or does not commit to meet:

- Environmental standards or disclosure criteria, in particular criteria intended to eliminate, reduce, offset, or disclose greenhouse gas emissions; or

¹ Section 3 of the bill.

- Employment, composition, compensation, or disclosure criteria that incorporates characteristics that exceed applicable requirements under state or federal law relating to employment discrimination.

The bill defines “protected entity” as a fossil fuel company, timber company, mining company, agricultural production company, lumber production company, knife entity, firearm entity, trade association, or company that contracts with ICE.²

Government contracts

Investigation by the Treasurer of State

The bill requires the Treasurer of State to make the Treasurer’s best effort to identify all companies and financial institutions that conduct economic boycotts against a protected entity or consumer. The bill defines “financial institution” broadly, to include a wide range of banks, credit unions, insurance companies, nonbank lenders, and money transmitters (see “**Financial institutions**,” below). “Consumer” means an individual who obtains, from a financial institution, financial products or services that are to be used primarily for personal, family, or household purposes.

The bill explicitly authorizes the Treasurer to take any action the Treasurer considers appropriate to identify economic boycotts against protected entities and consumers, but specifies that the efforts must not rely solely on media reports or statements or complaints by an energy company. The investigation efforts may include a company’s certification that it does not, or a statement that it does, conduct economic boycotts against a protected entity or consumer. The Treasurer may also retain an independent research firm, or review and rely on publicly available information and information provided by nonprofit organizations, research firms, and any government, or similarly reliable source.³

Notice to company prior to publishing public list

After identifying companies and financial institutions that conduct economic boycotts against protected entities or consumers, the Treasurer must send a written notice to each such company and financial institution. The notice must be sent at least 45 days before including the company or financial institution on the public list. The notice must inform the company of all of the following:

- The specific reason the Treasurer has determined the company or financial institution conducts economic boycotts against a protected entity or consumer;
- That the company or financial institution is subject to divestment by governmental entities with direct holdings in the company or financial institution;

² R.C. 137.01(C), (L), (M), and (E).

³ R.C. 137.02(A)(1), 137.01(B) and (F), and 1349.86(A).

- That the company or financial institution will be placed on the list in 45 days unless, within 30 days following receipt of the notice, the company demonstrates that it does not conduct economic boycotts against a protected entity or consumer, or offers the Treasurer written assurance that it will not undertake acts constituting an economic boycott in the future;
- That the list is or will be posted on the Treasurer of State's website;
- That the company's inclusion on the list may render the company ineligible to enter into contracts with a governmental entity or to provide banking goods or services to a governmental entity.⁴

As referenced above, a company or financial institution can avoid placement on the public list if it (1) demonstrates to the satisfaction of the Treasurer that it does not conduct economic boycotts against a protected entity or consumer, or (2) offers the Treasurer written assurance that it will not undertake acts constituting an economic boycott in the future. If the company or financial institution provides such a demonstration or written assurance within 30 days after receiving notice from the Treasurer, the Treasurer must refrain from adding the company or financial institution to the public list. If the company provides such a demonstration or written assurance more than 30 days, but not more than 90 days, after receiving notice from the Treasurer, the Treasurer must remove the company from the list. Either way, the Treasurer must maintain the company's or financial institution's evidence or written assurance.⁵

Public list of companies and financial institutions that economically boycott

Not later than 270 days after the effective date of the bill, the Treasurer must create a list of companies and financial institutions identified as having conducted economic boycotts against a protected entity or consumer. The Treasurer must then (1) electronically distribute the list to each governmental entity, the Governor, President of the Senate, and Speaker of the House of Representatives, and (2) publicly post the list on the Treasurer's website. The list must include a citation to R.C. Chapter 137 and a brief summary of the purpose of the list, including that it is not an indication of a risk to consumer deposits or of unsafe or unsound operating conditions of any company or financial institution. The Treasurer must update the list every 90 days, or more often as the Treasurer considers necessary, and redistribute the updates in the same manner as the original list.⁶

Appeal

No sooner than one year after a company or financial institution is placed on the list, the company or financial institution may appeal the Treasurer's determination or apply to be

⁴ R.C. 137.02(B)(1).

⁵ R.C. 137.02(B)(2), (3), and (4).

⁶ R.C. 137.02(A)(2).

removed, following the administrative appeals process. If the company or financial institution provides sufficient evidence to the Treasurer that the company or financial institution is not, at the time of appeal, conducting an economic boycott against a protected entity or consumer and will not conduct an economic boycott against a protected entity or consumer in the future, the bill requires the Treasurer to remove the company or financial institution from the list. Companies and financial institutions are not required to produce or disclose any data or information that is considered confidential, privileged, or otherwise protected from disclosure under state or federal law.⁷

Government entity holdings and contracts

The bill prohibits a governmental entity 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 public list. The bill defines "governmental entity" as all of the following:

- The Public Employees Retirement System;
- The Ohio Police and Fire Pension Fund;
- The State Teachers Retirement System;
- The School Employees Retirement System;
- The State Highway Patrol Retirement System;
- An organized body, office, or agency established by state law for the exercise of any function of state government;
- A board of trustees of a state institution of higher education;
- A political subdivision of Ohio.⁸

Holdings

If the government entity has direct or indirect holdings with a listed company or financial institution, the governmental entity is required to sell, redeem, or divest all such holdings in a manner that is orderly and consistent with its fiduciary duties. "Direct holdings" is defined as all publicly traded securities of a company that are held directly by a governmental entity in an actively managed account or fund in which the governmental entity owns all shares or interests. "Indirect holdings" is defined as all securities of a company that are held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a governmental entity, in which the governmental entity owns shares or interests together with other investors not subject to the bill, or that are held in an index fund.⁹

⁷ R.C. 137.02(C) and (D).

⁸ R.C. 137.01(I), 137.03(A), and 137.06(A).

⁹ R.C. 137.01(D) and (J) and 137.03(B).

The bill requires the government entity to provide the Treasurer with information regarding any investments sold, redeemed, divested, or withdrawn within two years after the effective date of the bill, and annually thereafter not later than January 5. In addition, the Treasurer may request information about such investments at other times. If a governmental entity fails to comply with a request for such information by the Treasurer within 30 days, the Treasurer may obtain a writ of mandamus to enforce the request from any court of competent jurisdiction.¹⁰

Contracts

The bill prohibits government entities from entering into, extending, or renewing a contract with a listed company or financial institution to acquire, provide, or dispose of services, supplies, or information technology to the governmental entity, or conduct construction projects for the governmental entity. Furthermore, the bill requires any contract between a governmental entity and a company or financial institution that does not appear on the Treasurer's list to include a written verification from the company or financial institution:

- That the company or financial institution does not engage in economic boycotts against a protected entity or consumer;
- That the company or financial institution will not engage in economic boycotts of a protected entity or consumer during the term of the contract.

This verification requirement does not apply if the government entity determines that it (1) is inconsistent with the governmental 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) prevents the governmental entity from obtaining the supplies or services to be provided in an economically practicable manner. These exceptions apply only to the contract verification requirement. They do not allow a governmental entity to contract with a financial institution or company that appears on the Treasurer's list.¹¹

Immunity

The bill specifies that the Treasurer is not liable for breach of a governmental entity's fiduciary duty to the fund for which that governmental entity has the authority to invest assets if the governmental entity and the Treasurer comply with the requirements of the bill. In addition, if the Treasurer makes determinations about the status of a particular company or financial institution in good faith, the Treasurer is not liable in an action for libel or slander.¹²

¹⁰ R.C. 137.03.

¹¹ R.C. 137.06(A), (B), and (C).

¹² R.C. 137.05.

Enforcement

Investigation and evidence

Under the bill, the Attorney General or an official with the governmental entity in charge of enforcing contracts may enforce compliance with the contract's economic boycott provisions. If the Attorney General or the official has reasonable cause to believe that a company or financial institution has engaged in, is engaging in, or is about to engage in, an economic boycott in violation of a contract with a governmental entity, the Attorney General or official may require a representative of the company or financial institution to file a written statement or report, under oath, as to all the facts and circumstances concerning the violation or impending violation, and any other necessary data and information. The Attorney General or official may also examine under oath any person or records in connection with the violation and pursuant to a court order, obtain any record and retain it in the Attorney General's or official's possession until the completion of the proceedings. The Attorney General or official may also require that the company or financial institution take corrective action.¹³

Corrective action

If a company or financial institution engages in an economic boycott during the term of a contract with a government entity that contains a verification, the Attorney General must send a written notice directing the company or financial institution to take corrective action. The company or financial institution must determine whether to take corrective action based on what the company or financial institution discerns is in the best interest of the health, safety, and welfare of the citizens of Ohio. If the company does not take corrective action within 60 days from the date of written notice from the Attorney General then, in addition to any other available remedies, the contract between the company and a governmental entity becomes void. If a contract becomes void, the company or financial institution must do both of the following:

- Stop collecting any fee, such as an advisory fee, for any services under the voided contract;
- Pay all costs associated with unwinding business with the governmental entity.¹⁴

Evidence of economic boycott

When determining whether a company or financial institution engaged in an economic boycott, the governmental entity, Treasurer of State, Attorney General, official, or court may reasonably determine a company or financial institution to have taken an action, or considered a factor, with a purpose to further ESG goals or objectives, based upon evidence indicating such a purpose, including any of the following:

¹³ R.C. 137.06(D).

¹⁴ R.C. 137.06(E).

- Branding, advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principles, or commitments;
- Participation in, affiliation with, or status as a signatory to any coalition, initiative, joint statement of principles, or agreement.¹⁵

Actions inhibiting compliance

The bill prohibits any person from taking action or threatening to penalize any company or financial institution for compliance with the bill's provisions, including the verification clause in a contract with a governmental entity. Any person taking such an action or making such a threat is considered to have caused harm to the state, including by interfering with the state's sovereign interests in administering its programs and with the state's commercial relationships with its financial institutions. If a company or financial institution believes a person is interfering with its ability to comply with the bill's requirements, the company or financial institution must report this to the Attorney General.¹⁶

Appropriation

The bill appropriates \$250,000 to the Treasurer for the purposes of compiling and updating the economic boycott list.¹⁷

Financial institutions

The bill sets certain requirements for financial institutions and the persons they serve. Under the bill, "financial institution" is defined broadly to include any institution that holds and receives deposits, savings, or share accounts, issues certificates of deposit, or provides to its customers any deposit accounts subject to withdrawal by check, instrument, order, or electronic means to effect third party payments, provide insurance services, or provide investment services. The term expressly includes all of the following:

- A state-chartered bank or credit union, or a holding company, subsidiary, or affiliate of a state-chartered bank or credit union;
- A money transmitter, or a parent company, subsidiary, or affiliate of a money transmitter;
- A nonbank consumer lender, or a parent company, subsidiary, or affiliate of a nonbank consumer lender;
- A nonbank mortgage broker, originator, or lender, and any parent company, subsidiary, or affiliate of those entities;

¹⁵ R.C. 137.06(F).

¹⁶ R.C. 137.06(G).

¹⁷ Section 413.10 of H.B. 33 of the 135th General Assembly.

- A trust company, insurance or reinsurance company, bond rating agency, insurance or reinsurance underwriter, or credit rating agency.¹⁸

Provision of financial services

Under the bill, financial institutions are required to do all of the following:

- Make each financial service it offers available to all persons in the geographic market it serves on a nondiscriminatory basis;
- Not deny any person a financial service the financial institution offers except to the extent justified by the person's documented failure to meet quantitative, impartial, risk-based financial standards established in advance by the financial institution;
- Not deny any person a financial service the financial institution offers when the effect of the denial is to prevent, limit, or otherwise disadvantage the person from entering or competing in a market or business segment in such a way that benefits another person or business activity in which the financial institution has a financial interest;
- Not deny, in coordination with another person, any person a financial service the financial institution offers.¹⁹

Disclosure of nonpecuniary standards

If a financial institution utilizes standards or guidelines based on nonpecuniary measures, the bill requires it to disclose those measures 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. Such disclosure must include the specific standards, guidelines, and criteria the financial institution uses to determine access or denial of a financial service to a person in Ohio. The financial institution must also disclose this same information to a customer or potential customer before entering into a contract.

“Nonpecuniary” includes any action taken or factor considered by a fiduciary with any purpose to further ESG goals. A fiduciary purpose may be reasonably determined by evidence, including: (1) a fiduciary's statements indicating its purpose in selecting companies, or (2) voting shares or proxies or any such statements by any coalition, initiative, or organization that the fiduciary has joined, participated in, or become a signatory to, in its capacity as a fiduciary. “Pecuniary” means a factor that has a material effect on the financial risk or financial return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy. “Pecuniary” excludes nonpecuniary factors.²⁰

¹⁸ R.C. 1349.86(A).

¹⁹ R.C. 1349.86(B).

²⁰ R.C. 1349.86(A)(4), (A)(5), and (C).

Provision of insurance

Similarly, 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.²¹

Credit union memberships, loans, and services

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 credit union is not required to provide financial services to any person that is outside the scope of the credit union's charter or field of membership.²²

Enforcement

The bill sets a rebuttable presumption that any denial of access to financial services is based on legitimate criteria. Any violation of these requirements is considered an unsound practice that misleads consumers and may be subject to civil enforcement by the Superintendent of Financial Institutions or the Superintendent of Insurance for having committed an unfair and deceptive practice. In addition, the financial institution may be subject to civil enforcement from any other state authority that oversees the financial institution. The Superintendent of Financial Institutions, the Superintendent of Insurance, or any other state authority that oversees the financial institution, may request the Attorney General to commence and prosecute an action to completion. No private action is allowed under the bill.²³

Environmental, social, and corporate governance (ESG)

The bill prohibits each state retirement system board, state institution of higher education board of trustees, and the Administrator of Workers' Compensation from making an investment decision primarily for ESG purposes.²⁴ The bill does not define ESG. Many different ESG rating systems and methodologies exist.²⁵ 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.

²¹ R.C. 1349.86(D).

²² R.C. 1349.86(E).

²³ R.C. 1349.86(F) through (J).

²⁴ R.C. 145.11, 742.11, 3307.15, 3309.15, 3345.161, 4123.44, and 5505.06.

²⁵ 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.

Fiduciary and investment powers and duties

The bill requires the retirement boards, state institutions of higher education boards of trustees, and the Administrator to make investment decisions with the sole purpose of maximizing the return on investments in accordance with their fiduciary and investment duties prescribed under the bill and continuing law.²⁶ 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 bill adds that the retirement boards must discharge their duties with respect to the funds in the pecuniary (monetary) interest of 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. A board of trustees may invest a college or university endowment portfolio and other funds the board of trustees receives (the bill's requirements apply specifically to the investment of endowment portfolios).

Continuing law requires the retirement boards, boards of trustees, 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.²⁷ The bill also specifies that, with respect to the Administrator and other workers' compensation system fiduciaries exercising investment authority, "fiduciary" has the same meaning as under the law governing prohibited transactions involving a conflict of interest (current law, with respect to the investment duties, does not define "fiduciary"). A fiduciary is a person who does any of the following:

- Exercises discretionary authority or control with respect to the management of the Bureau of Workers' Compensation (BWC) or with respect to the management or disposition of its assets;
- Renders investment advice for a fee, directly or indirectly, with respect to BWC money or property;

²⁶ R.C. 145.11(A), 742.11(A), 3307.15(A), 3309.15(A), 3345.161(B), 4123.44, and 5505.06(A).

²⁷ R.C. 145.11, 742.11, 3307.15, 3309.15, 3345.16, 4123.44, and 5505.06; R.C. 3345.05 and 4123.442, not in the bill; and Black's Law Dictionary, 11 ed. (2019).

- Has discretionary authority or responsibility in BWC administration.²⁸

Investment programs

Under the bill, each retirement system board must discharge its duties with respect to the investment of the assets of the system's funds in accordance with the law governing the system and the policies, objectives, and criteria the board must adopt under continuing law regarding its investment program. Continuing law requires each board to adopt policies, objectives, or criteria for the operation of its investment program that include asset allocation targets and ranges, risk factors, asset class benchmarks, time horizons, total return objectives, and performance evaluation guidelines. The bill similarly requires each state institution of higher education board of trustees to manage its endowment portfolio in accordance with the policies, objectives, or criteria, if any, governing the board of trustees' investment program. Continuing law prohibits the Administrator and the BWC Chief Investment Officer from deviating from the investment policy approved by the BWC Board of Directors.

The bill makes each retirement board, board of trustees, and the Administrator subject to the requirements and prohibitions described under "**Government entity holdings and contracts**," above. It specifies that compliance with those requirements is not a breach of investment duties prescribed under the bill or continuing law.²⁹

Proxies

The bill prohibits, on and after its effective date, each retirement board, state institution of higher education board of trustees, and the Administrator from appointing a proxy to vote with regard to any shareholder matters on behalf of the retirement board, board of trustees, or Administrator with respect to any voting shares unless the retirement board, board of trustees, or Administrator adopts a proxy voting policy that:

- Requires proxies to make all voting decisions with the sole purpose of maximizing the return on investments; and
- Prohibits proxies from making voting decisions with the primary purpose of influencing ESG.

If a retirement board, board of trustees, or the Administrator adopts a proxy voting policy as described above, each proxy appointed must make all voting decisions in accordance with that policy.³⁰

In general, a proxy vote is a ballot cast by a person or firm on behalf of a corporation's shareholder who may not be able to attend a shareholder meeting.³¹ The federal Securities and

²⁸ R.C. 4123.44, by reference to R.C. 4121.127, not in the bill.

²⁹ R.C. 145.11, 742.11, 3307.15, 3309.15, 3345.161, 4123.44, and 5505.06, by reference to R.C. 137.03.

³⁰ R.C. 145.117, 742.117, 3307.155, 3309.151, 3345.161(D), 4123.447, and 5505.066.

³¹ See [What Is a Proxy Vote, and How Does It Work? With Examples](#), which may be accessed by conducting a keyword "proxy vote" on the Investopedia website: [investopedia.com](https://www.investopedia.com).

Exchange Commission has adopted federal regulations governing the use of proxies. With respect to each proxy that a shareholder solicits to act as a proxy, federal regulations require the shareholder to furnish certain information. A form of proxy indicates the matters on which the proxy is authorized to vote, how the proxy is to vote on each matter, and the matters on which the proxy cannot act.³² Ohio law similarly governs the use of proxies.³³

Pecuniary factors

Investment decisions

The bill requires each state retirement board, state institution of higher education board of trustees, and the Administrator, in making an investment decision, 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 funding policy and investment objectives adopted by the retirement board, board of trustees, or the Administrator.

Each must consider a pecuniary factor to have such a material effect if a substantial likelihood exists that a reasonable investor would attach importance to the factor under either of the following circumstances:

- When evaluating the investment's potential financial risk or return;
- When exercising or declining to exercise any rights related to securities.

The bill prohibits considering a pecuniary factor to have such a material effect if either of the following apply:

- The factor relates to furthering nonpecuniary or ESG goals or objectives, except as described under "**ESG as pecuniary factors**," below.
- Any part of the investment's potential financial risk or return relates to events that meet both of the following criteria:
 - The events involve a high degree of uncertainty regarding what may occur in the distant future.
 - The events are systematic, general, or by nature are not specific to investments.³⁴

Determining violations

In determining whether a member of a retirement board or board of trustees or the Administrator has considered a factor other than a pecuniary factor, certain evidence may be

³² See 17 Code of Federal Regulations 240.14a-3, 240.14a-4, 240.14a-5, and 240.14a-101 Schedule 14A.

³³ R.C. 1701.48, not in the bill.

³⁴ R.C. 145.118(A) to (C), 742.118(A) to (C), 3307.156(A) to (C), 3309.152(A) to (C), 3345.162(A) to (C), 4123.448(A) to (C), and 5505.0611(A) to (C).

examined. That evidence includes a statement made by either of the following indicating a member's or the Administrator's purpose in voting to select an investment:

- The member or Administrator;
- Any coalition, initiative, or organization the member or Administrator has joined, participated in, or become a signatory to, in the member's or Administrator's official capacity.

A statement cannot be used against a member or the Administrator unless additional evidence, other than that statement, exists indicating the board member's or Administrator's purpose in voting to select an investment.³⁵

The bill does not include an express remedy if a board member or the Administrator is determined to have considered a factor other than a pecuniary factor.

ESG as pecuniary factors

A retirement board, state institution of higher education board of trustees, or the Administrator may consider an ESG or other similarly oriented factor as a pecuniary factor in making an investment decision if each:

- Determines the factor presents an economic risk or opportunity for return that a qualified investment professional would consider as a material economic consideration under generally accepted investment practices; and
- Examines the level of diversification, degree of liquidity, and the investment's potential risk and return compared to available alternative investments that would have a similar role in the applicable investment portfolio.

If a retirement board, board of trustees, or the Administrator considers a factor described above as a pecuniary factor, the weight assigned to the factor must reflect a prudent assessment of the factor's impact on an investment's potential risk and return.³⁶

HISTORY

Action	Date
Introduced	02-15-23

ANHB0004IN-135/ks

³⁵ R.C. 145.118, 742.118, 3307.156, 3309.152, 3345.162, 4123.448, and 5505.0611.

³⁶ R.C. 145.119, 742.119, 3307.157, 3309.153, 3345.163, 4123.449, and 5505.0612.