



**Ohio
Retirement
Study
Council**

30 East Broad Street, Suite 219
Columbus, Ohio 43215
PHONE: 614-228-1346
FAX: 614-228-0118

Voting Members

Senators

Mark Romanchuk, Chair
Bill Blessing
Paula Hicks-Hudson

Representatives

Phil Plummer, Vice-Chair
Adam Bird
Beryl Brown Piccolantonio

Governor's Appointees

Lora Miller
Dr. Anthony Podojil
Gary Scherer

Non-Voting Members

Karen Carraher, *PERS*
Mary Beth Foley, *OP&F*
Aaron Hood, *STRS*
Dr. Carl Roark, *HPRS*
Richard Stensrud, *SERS*

Director/General Counsel

Bethany Rhodes

*S.B. 6 of the 135th General
Assembly
AM-135-2544 and
AM-135-2766
Sen. Schuring*

December 12, 2024

Staff Recommendation

Staff Contact
Jeffery A. Bernard
(614) 228-5644

Summary of Sub. S.B. 6 and ORSC Recommendation

Sub. S.B. 6 would prohibit the boards of the five state retirement systems¹ 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 also requires the boards to make investment decisions with the “sole purpose of maximizing return on its investments.” This analysis addresses only the provisions related to the state retirement systems.

In its analysis of Sub. S.B. 6, the ORSC recommended approval of the bill as it removes any remaining ambiguity that a retirement system may make an investment decision where the *primary purpose* is to influence an environmental, social, or governance policy. The ORSC found that this clarity is favorable in light of oscillating Department of Labor guidance and the U.S. Security and Exchange Commission’s lack of a firm definition of environmental, social, and governance (ESG) investing. This requirement aligns with the prudent person rule adopted by the General Assembly for over 26 years and its requirement that assets be invested in a manner that achieves reasonable income and preservation of capital.

The ORSC has shown concerns with legislatively mandated divestment in the past; however, this bill does not require divestment from funds that include ESG risk-related factors or alter the investment authority of the retirement systems. Instead, it further clarifies the requirements of the prudent person rule and allows investments with the consideration of ESG factors so long as the prudent person rule is followed. It is, therefore, consistent with both prior ORSC guidance and the policy of the General Assembly.

AM-135-2544 and AM-135-2766

The two amendments are largely the same, with AM-135-2766 adding additional language in **bold**.

AM-135-2544 would specify that the bill’s prohibitions that prevent the state retirement boards from making an investment decision with the primary purpose of influencing any social or environmental policy or the governance of any corporation apply “with respect to an investment decision regarding the mining, exploration, production, manufacturing, utilization, transportation, distribution, or sale of fossil fuel-based energy.”

AM-135-2766 would specify that the bill’s prohibitions that prevent the state retirement boards from making an investment decision with the primary purpose of influencing any social or environmental policy or the governance of any corporation

¹ The five state retirement systems are the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), Ohio Police and Fire Pension Fund (OP&F), School Employees Retirement System (SERS), and Highway Patrol Retirement System (HPRS).

apply “**including, but not limited to**, with respect to an investment decision regarding the mining, exploration, production, manufacturing, utilization, transportation, distribution, or sale of fossil fuel-based energy” (emphasis added).

Staff comments

Both amendments add considerable ambiguity to the bill’s provisions. Currently, the bill removes any remaining ambiguity that a retirement system may make an investment decision where the primary purpose is to influence an environmental, social, or governance policy. Sub. S.B. 6 currently applies uniformly across investments – there is no need to specify one specific industry. The bill’s provisions are uniform; nothing in the bill suggests otherwise.

By specifying one industry – and therefore leaving others out – the amendments cause ambiguity in its ESG provisions. Since one industry is specifically indicated, it results in administrative ambiguity on whether other industries are not covered by the bill’s provisions. Adding language under AM-135-2766 stating “including, but not limited to,” does not resolve the added ambiguity of the amendment.

Therefore, rather than reducing ambiguity on the requirements of prudent person as it relates to ESG investing, the amendment creates ambiguity on ESG investing.

Staff Recommendation

In recommending approval of Sub. S.B. 6, the ORSC indicated that the bill’s ESG related provisions comply with the prudent person policy of the General Assembly and ORSC guidance, and that greater clarity on this issue was desirable in light of federal action. Because both AM-135-2544 and AM-135-2766 increase ambiguity on ESG investing, staff recommend disapproval of the amendments. Should either amendment become part of the bill, ORSC staff would recommend disapproval of amended Sub. S.B. 6.