SB151

3U6CVZE-1

By Senators Orr, Roberts, Shelnutt

RFD: Finance and Taxation Education

First Read: 20-Feb-24

SYNOPSIS:

State law does not articulate an investment policy for the state, although state law does impose a fiduciary duty upon the Board of Control of the Retirement Systems of Alabama.

This bill would establish an investment policy for the State Treasurer and the Board of Control of the Retirement System of Alabama and the Teachers' Retirement System of Alabama prohibit investments and business transactions with any financial institutions that prioritize environmental, social, and governance (ESG) criteria above or in concert with the traditional fiduciary duty to maximize financial benefit.

This bill would also prohibit any state entity from considering environmental, social, and governance (ESG) criteria when awarding a public contract wholly funded by state funds for the procurement of goods and services and the purchase of professional services and would require state entities to only consider pecuniary factors.

A BILL

TO BE ENTITLED

AN ACT

Relating to public monies; to establish a state investment policy for the State Treasurer; to amend Section 16-25-20, Code of Alabama 1975, to establish a state investment policy for the Board of Control of the Teachers' Retirement System of Alabama; and to amend Section 36-27-25 to establish an investment policy for the Board of Control for the Employees' Retirement System of Alabama; and to establish a policy for expenditure of all state funds.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) As used in this section, the following terms have the following meanings:

(1) ENVIRONMENTAL. Energy efficiency, carbon footprint, greenhouse gas emissions, waste management, and water usage.

(2) GOVERNANCE. Corporate board diversity, composition and structure, strategic sustainability and compliance, executive compensation, political contributions and lobbying, tax transparency, and bribery and corruption.

(3) PECUNIARY FACTOR. A factor that the State Treasurer prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the furtherance of any environmental, social, or governance interests.

(4) SOCIAL. Diversity, racial justice, pay equity, or social justice issues.

(b) The State Treasurer shall discharge his or her duties solely in the interest of the taxpayers of the state and for the exclusive purpose of providing benefits to the taxpayers. The State Treasurer may consider pecuniary factors and, as a secondary factor, the impact of an investment on the well-being of the State of Alabama but may not subordinate the interests of the taxpayers to other objectives and may not sacrifice investment returns nor take an additional investment risk to promote any other non-pecuniary factors.

Section 2. Section 16-25-20, Code of Alabama 1975, is amended to read as follows:

"§16-25-20

(a)(1) The Board of Control shall be the trustees of the several funds of the Teachers' Retirement System created by this chapter as provided in Section 16-25-21, and shall have full power to invest and reinvest the funds, through its Secretary-Treasurer, in the classes of bonds, mortgages, common and preferred stocks, shares of investment companies or mutual funds, or other investments as the Board of Control may approve, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent ~~man~~ person acting in a like capacity and familiar with the matters would use in the conduct of an enterprise of a like character and with like aims; and, subject to like terms, conditions, limitations, and restrictions, the Board of Control, through its Secretary-Treasurer, shall have full power to hold, purchase, sell, assign, transfer, and dispose of any investments in which the funds created herein ~~shall~~ have been invested, as well as the proceeds of the investments and any

~~moneys~~ monies belonging to the funds.

(2) The Secretary-Treasurer shall have the authority and it shall be his or her duty to carry out the investment policies fixed by the Board of Control, and pursuant thereto he or she shall examine all offers of investments made to the funds, shall initiate inquiries as to available investments therefor, shall review periodically the investment quality and desirability of retention of investments held, and shall make purchases and sales of investments as he or she shall deem to the best interests of the funds and as the investment committee hereinafter provided for, and as the consultant to the Secretary-Treasurer, if any, appointed by the Board of Control ~~hereunder~~, to the extent of the purpose for which it is appointed, shall approve. The Teachers' Retirement System shall have full authority to employ its own legal counsel and to conduct and control any litigation in which it is involved through such counsel.

(3) The Board of Control shall elect an investment committee which shall consist of three members of the board, one of whom shall be the Director of Finance. The investment committee shall act as agent for the board and shall consider all investment recommendations made by the Secretary-Treasurer and shall either approve or disapprove the same in accordance with policies set by the board. The investment committee may act through the affirmative vote of any two of its members. Approvals may be secured informally in advance but shall in any event be confirmed by written authorization to be attached to the invoice of the transaction.

(4) The Board of Control may appoint and employ as consultant to the Secretary-Treasurer, in the purchase, sale, and review of investments of the funds, to the extent the board may designate, a bank having its principal office in the State of Alabama, having capital, surplus, and undivided profits of not less than three hundred million dollars ($300,000,000), and having an organized investment department. The bank so appointed shall not sell securities to the retirement system, other than United States government securities, or repurchase agreements for which no commission shall be charged.

(5) The Secretary-Treasurer shall report to the Board of Control all purchases and sales of investments made by him or her ~~pursuant hereto~~ at least once semiannually.

(b) The Board of Control shall allow annually regular interest on the mean amount for the preceding year in each of the funds, with the exception of the Expense Fund. The amounts so allowed shall be due and payable to the funds and shall be credited annually thereto by the Board of Control from interest and other earnings on the ~~moneys~~ monies of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the Pension Accumulation Fund, and any excess of earnings over the amount required shall be paid to the Pension Accumulation Fund. Regular interest shall mean the percent rate or rates to be compounded annually as shall be set by the Board of Control, the rate or rates to be limited to a minimum of three percent and a maximum of four and three-fourths percent.

(c) ~~Moneys~~ Monies accruing to the Annuity Savings Fund, the Annuity Reserve Fund, the Pension Accumulation Fund, and the Pension Reserve Funds shall be certified by the Secretary-Treasurer for deposit in the State Treasury to the credit of the Teachers' Retirement System. All ~~moneys~~ monies provided in accordance with this chapter for administrative expense shall be certified for deposit in the State Treasury to the credit of the Teachers' Retirement System Expense Fund. All payments from the funds shall be made by the State Treasurer on warrants drawn by the ~~state~~ Comptroller upon vouchers signed by two persons designated by the Board of Control. A duly attested copy of a resolution of the Board of Control designating the persons and bearing on its face specimen signatures of the persons shall be filed with the ~~state~~ Comptroller as his or her authority for drawing warrants upon the vouchers.

(d) Except as otherwise herein provided, no member of the Board of Control and no employee of the board shall have any direct interest in the gains or profits of any investment made by the board, nor as such receive any pay or emolument for his or her services. No member or employee of the Board of Control shall, directly or indirectly, for himself or herself or as an agent, in any manner use the same, except to make the current and necessary payments as are authorized by the board; nor shall any member or employee of the Board of Control become an endorser or surety or in any manner an obligor for ~~moneys~~ monies loaned or borrowed from the board.

(e) As used in this subsection the following terms have the following meanings:

(1) ENVIRONMENTAL. Energy efficiency, carbon footprint, greenhouse gas emissions, waste management, and water usage.

(2) GOVERNANCE. Corporate board diversity, composition and structure, strategic sustainability and compliance, executive compensation, political contributions and lobbying, tax transparency, and bribery and corruption.

(3) PECUNIARY FACTOR. A factor that the Board of Control prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the furtherance of any environmental, social, or governance agenda.

(4) SOCIAL. Diversity, racial justice, pay equity, or social justice issues.

(f) The Board of Control of the Teachers' Retirement Systems of Alabama shall discharge their duties solely in the interest of their members and beneficiaries and for the exclusive purpose of providing benefits to their members and beneficiaries. The Boards of Control may consider, as a secondary factor, the impact of an investment on the well-being of the State of Alabama but may not subordinate the interests of their members and beneficiaries to other objectives and may not sacrifice investment returns nor take an additional investment risk to promote any other non-pecuniary factors."

Section 3. Section 36-27-25, Code of Alabama 1975, is amended to read as follows:

"§36-27-25

(a) The Board of Control shall be the trustees of the several funds of the Employees' Retirement System created by this article as provided in Section 36-27-24 and shall have full power to invest and reinvest the funds, through its Secretary-Treasurer in the classes of bonds, mortgages, common and preferred stocks, shares of investment companies or mutual funds, or other investments as the Board of Control may approve, with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Subject to like terms, conditions, limitations, and restrictions, the Board of Control, through its Secretary-Treasurer, shall have full power to hold, purchase, sell, assign, transfer, and dispose of any investments in which the funds created in Section 36-27-24 ~~shall~~ have been invested, as well as the proceeds of the investments and any ~~moneys~~ monies belonging to the funds.

(b) The Governor ex officio, shall be the Chair of the Board of Control. At the board meeting when the new positions created by Acts 1994, No. 94-616 are sworn into office, the Board of Control shall elect from its membership a ~~vice-chair~~vice chair who shall have at least three years of service experience on the board. The ~~vice-chair~~ vice chair shall serve a term concurrent with that of the position of

Investment Committee Place No. 1.

(c) The Secretary-Treasurer shall have the authority and it shall be his or her duty to carry out the investment policies fixed by the Board of Control and, pursuant thereto, he or she shall examine all offers of investments made to the funds, shall initiate inquiries as to available investments therefor, shall review periodically the investment quality and desirability of retention of investments held, and shall make purchases and sales of investments as he or she shall deem to the best interests of the funds and as the Investment Committee provided for in subsection (d) ~~of this section~~ and as the consultant to the Secretary-Treasurer, if any, appointed by the Board of Control under subsection (e) ~~of this section~~, to the extent of the purpose for which it is appointed, shall approve. The Employees' Retirement System shall have full authority to employ its own legal counsel and to conduct and control any litigation in which it is involved through such counsel.

(d) The Board of Control shall provide for an investment committee which shall consist of three members of the board, one of whom shall be the Director of Finance. At the first board meeting held after April 26, 1994, two members of the board, who individually have at least three years of service experience on the board, shall be elected to serve on the Investment Committee in positions designated as Places No. 1 and No. 2. The person elected to serve in Place No. 1 shall serve for an initial term of one year while the person elected to serve in Place No. 2 shall serve for an initial term of two years. Successor terms for both places on the committee shall be for two years and successor candidates for the elected places shall meet the aforementioned board service experience requirement. The Investment Committee shall act as agent for the board and shall consider all investment recommendations made by the Secretary-Treasurer and shall either approve or disapprove the same in accordance with policies set by the board. The Investment Committee may act through the affirmative vote of any two of its members. Approvals may be secured informally in advance but shall ~~in any event~~ be confirmed by written authorization to be attached to the invoice for the transaction.

(e) The Board of Control may appoint and employ as consultant to the Secretary-Treasurer in the purchase, sale, and review of investments of the funds, to the extent as the board may designate, a bank having its principal office in the State of Alabama, having capital, surplus, and undivided profits of not less than three hundred million dollars ($300,000,000) and having an organized investment department. The bank so appointed shall not sell securities to the retirement system other than U.S. government securities, or repurchase agreements for which no commission shall be charged.

(f) The Secretary-Treasurer shall report to the Board of Control all purchases and sales of investments made by him or her pursuant to this section at least once semiannually.

(g) The Board of Control shall allow annually regular interest on the mean amount for the preceding year in each of the funds, with the exception of the Expense Fund. The amounts so allowed shall be due and payable to the funds and shall be credited annually to the funds by the Board of Control from interest and other earnings on the ~~moneys~~ monies of the retirement system. Any additional amount required to meet the interest on the funds of the retirement system shall be paid from the Pension Accumulation Fund, and any excess of earnings over the amount required shall be paid to the Pension Accumulation Fund. Regular interest shall mean the percentage rate or rates to be compounded annually as shall be set by the Board of Control, the rate or rates to be limited to a minimum of three percent and a maximum of four and three-fourths percent.

(h) Funds accruing to the Annuity Savings Fund, the Annuity Reserve Fund, the Pension Accumulation Fund, and the Pension Reserve Fund shall be certified by the Secretary-Treasurer for deposit in the State Treasury to the credit of the Employees' Retirement System. All ~~moneys~~monies provided in accordance with this chapter for administrative expenses shall be certified for deposit in the State Treasury to the credit of the Employees' Retirement System Expense Fund. All payments from the funds shall be made by the State Treasurer on warrants drawn by the ~~State~~ Comptroller upon vouchers signed by two persons designated by the Board of Control. A duly attested copy of the resolution of the Board of Control designating the persons and bearing on its face specimen signatures of the persons shall be filed with the ~~State~~ Comptroller as his or her authority for drawing warrants upon the voucher.

(i) Except as otherwise provided in this article, no member of the Board of Control and no employee of the board shall have any direct interest in the gains or profits of any investment made by the board nor as such receive any pay or emolument for his or her services. No member or employee of the Board of Control shall, directly or indirectly, for himself or herself or as an agent in any manner use the same, except to make the current and necessary payments authorized by the board, nor shall any member or employee of the Board of Control become an endorser or surety or in any manner an obligor for ~~moneys~~ monies loaned to or borrowed from the board.

(j) As used in this subsection the following terms have the following meanings:

(1) ENVIRONMENTAL. Energy efficiency, carbon footprint, greenhouse gas emissions, waste management, and water usage.

(2) GOVERNANCE. Corporate board diversity, composition and structure, strategic sustainability and compliance, executive compensation, political contributions and lobbying, tax transparency, and bribery and corruption.

(3) PECUNIARY FACTOR. A factor that the Board of Control prudently determines is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the furtherance of any environmental, social, or governance agenda.

(4) SOCIAL. Diversity, racial justice, pay equity, or social justice issues.

(k) The Board of Control of the Retirement Systems of Alabama shall discharge their duties solely in the interest of their members and beneficiaries and for the exclusive purpose of providing benefits to their members and beneficiaries. The Boards of Control may consider, as a secondary factor, the impact of an investment on the well-being of the State of Alabama but may not subordinate the interests of their members and beneficiaries to other objectives and may not sacrifice investment returns nor take an additional investment risk to promote any other non-pecuniary factors."

Section 4. (a) As used in this section the following terms have the following meanings:

(1) ENVIRONMENTAL. Energy efficiency, carbon footprint, greenhouse gas emissions, waste management, and water usage.

(2) GOVERNANCE. Corporate board diversity, composition and structure, strategic sustainability and compliance, executive compensation, political contributions and lobbying, tax transparency, and bribery and corruption.

(3) PECUNIARY FACTOR. A factor that the state agency, board, bureau, department or institution, or political subdivision thereof prudently determines is expected to have a material effect on the quality of the goods or services. The term does not include the furtherance of any environmental, social, or governance interests.

(4) SOCIAL. Diversity, racial justice, pay equity, or social justice issues.

(b) A state agency, board, bureau, commission, department, or institution or political subdivision thereof, when entering into a contract wholly funded by state funds for the procurement of goods and services and the purchase of professional services may not consider environmental, social, and governance (ESG) criteria, and shall only consider pecuniary factors.

(c) This section shall be construed in para materia with other state laws relating to public contracts for goods or services and specifically, this section shall not impact priority given to certain vendors under Section 41-4-131, Code of Alabama 1975.

Section 5. This act shall become effective on October 1, 2024.