

SB151 INTRODUCED



1 SB151
2 3U6CVZE-1
3 By Senators Orr, Roberts, Shelnut
4 RFD: Finance and Taxation Education
5 First Read: 20-Feb-24



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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



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29
30 Relating to public monies; to establish a state
31 investment policy for the State Treasurer; to amend Section
32 16-25-20, Code of Alabama 1975, to establish a state
33 investment policy for the Board of Control of the Teachers'
34 Retirement System of Alabama; and to amend Section 36-27-25 to
35 establish an investment policy for the Board of Control for
36 the Employees' Retirement System of Alabama; and to establish
37 a policy for expenditure of all state funds.

38 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

56 (b) The State Treasurer shall discharge his or her



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57 duties solely in the interest of the taxpayers of the state
58 and for the exclusive purpose of providing benefits to the
59 taxpayers. The State Treasurer may consider pecuniary factors
60 and, as a secondary factor, the impact of an investment on the
61 well-being of the State of Alabama but may not subordinate the
62 interests of the taxpayers to other objectives and may not
63 sacrifice investment returns nor take an additional investment
64 risk to promote any other non-pecuniary factors.

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

67 "§16-25-20

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



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85 ~~moneys~~ monies belonging to the funds.

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

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



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113 (4) The Board of Control may appoint and employ as
114 consultant to the Secretary-Treasurer, in the purchase, sale,
115 and review of investments of the funds, to the extent the
116 board may designate, a bank having its principal office in the
117 State of Alabama, having capital, surplus, and undivided
118 profits of not less than three hundred million dollars
119 (\$300,000,000), and having an organized investment department.
120 The bank so appointed shall not sell securities to the
121 retirement system, other than United States government
122 securities, or repurchase agreements for which no commission
123 shall be charged.

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

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



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141 percent.

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

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



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

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

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

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

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

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



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

199 "§36-27-25

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

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



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225 Investment Committee Place No. 1.

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

243 (d) The Board of Control shall provide for an
244 investment committee which shall consist of three members of
245 the board, one of whom shall be the Director of Finance. At
246 the first board meeting held after April 26, 1994, two members
247 of the board, who individually have at least three years of
248 service experience on the board, shall be elected to serve on
249 the Investment Committee in positions designated as Places No.
250 1 and No. 2. The person elected to serve in Place No. 1 shall
251 serve for an initial term of one year while the person elected
252 to serve in Place No. 2 shall serve for an initial term of two



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253 years. Successor terms for both places on the committee shall
254 be for two years and successor candidates for the elected
255 places shall meet the aforementioned board service experience
256 requirement. The Investment Committee shall act as agent for
257 the board and shall consider all investment recommendations
258 made by the Secretary-Treasurer and shall either approve or
259 disapprove the same in accordance with policies set by the
260 board. The Investment Committee may act through the
261 affirmative vote of any two of its members. Approvals may be
262 secured informally in advance but shall ~~in any event~~ be
263 confirmed by written authorization to be attached to the
264 invoice for the transaction.

265 (e) The Board of Control may appoint and employ as
266 consultant to the Secretary-Treasurer in the purchase, sale,
267 and review of investments of the funds, to the extent as the
268 board may designate, a bank having its principal office in the
269 State of Alabama, having capital, surplus, and undivided
270 profits of not less than three hundred million dollars
271 (\$300,000,000) and having an organized investment department.
272 The bank so appointed shall not sell securities to the
273 retirement system other than U.S. government securities, or
274 repurchase agreements for which no commission shall be
275 charged.

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

279 (g) The Board of Control shall allow annually regular
280 interest on the mean amount for the preceding year in each of



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281 the funds, with the exception of the Expense Fund. The amounts
282 so allowed shall be due and payable to the funds and shall be
283 credited annually to the funds by the Board of Control from
284 interest and other earnings on the ~~moneys~~monies of the
285 retirement system. Any additional amount required to meet the
286 interest on the funds of the retirement system shall be paid
287 from the Pension Accumulation Fund, and any excess of earnings
288 over the amount required shall be paid to the Pension
289 Accumulation Fund. Regular interest shall mean the percentage
290 rate or rates to be compounded annually as shall be set by the
291 Board of Control, the rate or rates to be limited to a minimum
292 of three percent and a maximum of four and three-fourths
293 percent.

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



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309 upon the voucher.

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

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

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

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

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



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

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

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

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

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

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

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



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

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

377 Section 5. This act shall become effective on October
378 1, 2024.