

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 737

Short Title: Address ESG Factors. (Public)

Sponsors: Senators Craven, Daniel, and Overcash (Primary Sponsors).

Referred to: Rules and Operations of the Senate

April 10, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ADDRESS THE USE OF ENVIRONMENTAL, SOCIAL, AND GOVERNANCE
3 CRITERIA BY STATE AGENCIES AND STATE PENSION PLAN FIDUCIARIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** Article 10 of Chapter 143 of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 143-162.6. Use of ESG and ETI prohibited in employment decisions.**

8 (a) As used in this section, "environmental, social, and governance (ESG) criteria" or
9 "economically targeted investments (ETI) requirements" means using a set of standards to screen
10 potential investments based upon the perceived impact to the environment and the social
11 relationships between a company's employees and the community. The term also includes how a
12 company's leadership is structured in support of those standards.

13 (b) No State agency, political subdivision of the State, trust, committee, or commission
14 of any political subdivision of the State shall use, enforce, provide data for use in, or otherwise
15 participate in the creation or use of ESG or ETI policies related to hiring, firing, or evaluating
16 employees.

17 (c) Except as allowed by law, ESG, ETI, or related criteria shall not be considered in the
18 awarding of State contracts."

19 **SECTION 1.(b)** This section is effective when it becomes law.

20 **SECTION 2.(a)** Chapter 143 of the General Statutes is amended by adding a new
21 Article to read:

22 "Article 85.

23 "State Employee Retirement Protection Act.

24 **"§ 143-811. Short title.**

25 This Article may be cited as the "State Employee Retirement Protection Act."

26 **"§ 143-812. Definitions.**

27 The following definitions apply in this Article:

28 (1) Fiduciary. – A person that, with respect to a pension benefit plan, does any of
29 the following:

30 a. Exercises any discretionary authority or discretionary control
31 respecting management of the plan or exercises any authority or
32 control respecting management or disposition of its assets.

33 b. Renders investment advice for a fee or other compensation, direct or
34 indirect, with respect to any monies or other property of the plan or
35 has any authority or responsibility to do so.



- 1 c. Has any discretionary authority or discretionary responsibility in the
2 administration of the plan, including making recommendations or
3 voting a plan's shares or proxies.
- 4 (2) Material. – When used to qualify a risk or return, means a risk or return
5 regarding which there is a substantial likelihood that a reasonable investor
6 would attach importance when either (i) evaluating the potential financial
7 return and financial risks of an existing or prospective investment or (ii)
8 exercising, or declining to exercise, any rights appurtenant to securities. When
9 used to qualify a risk or return, the term does not include either of the
10 following:
- 11 a. Furthering non-pecuniary, environmental, social, political,
12 ideological, or other goals or objectives.
- 13 b. Any portion of a risk or return that primarily relates to events that (i)
14 involve a high degree of uncertainty regarding what may or may not
15 occur in the distant future and (ii) are systemic, general, or not
16 investment-specific in nature.
- 17 (3) Non-pecuniary. – Any action taken or factor considered by a fiduciary with
18 any purpose to further environmental, social, or political goals. A fiduciary
19 purpose may be reasonably determined by evidence, including a fiduciary's
20 statements indicating its purpose in selecting investments, engaging with
21 portfolio companies, or voting shares or proxies, or any statements by any
22 coalition, initiative, or organization that the fiduciary has joined, participated
23 in, or become a signatory to, in its capacity as a fiduciary.
- 24 (4) Pecuniary factor. – A factor that has a material effect on the financial risk or
25 financial return of an investment based on appropriate investment horizons
26 consistent with the plan's investment objectives and funding policy.
- 27 (5) Pension benefit plan or plan. – Any plan, fund, or program established,
28 maintained, or offered by the State of North Carolina or any subdivision,
29 county, municipality, agency, or instrumentality thereof, or any school,
30 college, university, administration, authority, or other enterprise operated by
31 the State of North Carolina, to the extent that by its terms or as a result of
32 surrounding circumstances does either of the following:
- 33 a. Provides retirement income or other retirement benefits to employees
34 or former employees.
- 35 b. Results in a deferral of income by employees for a period extending to
36 the termination of covered employment or beyond.

37 **"§ 143-813. Sole interest and standard of care.**

38 (a) A fiduciary shall discharge duties with respect to a plan solely in the pecuniary interest
39 of the participants and beneficiaries for the exclusive purpose of both of the following:

- 40 (1) Providing pecuniary benefits to participants and their beneficiaries.
41 (2) Defraying reasonable expenses of administering the plan.

42 (b) A fiduciary shall discharge duties as follows:

- 43 (1) With the care, skill, prudence, and diligence under the circumstances then
44 prevailing that a prudent person acting in a like capacity and familiar with the
45 relevant matters would use in the conduct of an enterprise of a like character
46 and with like aims.
- 47 (2) By diversifying the investments of the plan so as to minimize the risk of large
48 losses, unless under the circumstances it is clearly prudent not to do so.
- 49 (3) In accordance with the documents and instruments governing the plan insofar
50 as the documents and instruments are consistent with this Article.

51 **"§ 143-814. Consideration of non-pecuniary factors prohibited.**

1 A fiduciary's evaluation of an investment, or evaluation or exercise of any right appurtenant
2 to an investment, shall take into account only pecuniary factors. Plan fiduciaries are not permitted
3 to promote non-pecuniary benefits or any other non-pecuniary goals. Environmental, social,
4 corporate governance, or other similarly oriented considerations are pecuniary factors only if
5 they present economic risks or opportunities that qualified investment professionals would treat
6 as material economic considerations under generally accepted investment theories. The weight
7 given to those factors shall solely reflect a prudent assessment of their impact on risk and return.
8 Fiduciaries considering environmental, social, corporate governance, or other similarly oriented
9 factors as pecuniary factors are also required to examine the level of diversification, degree of
10 liquidity, and the potential risk-return in comparison with other available alternative investments
11 that would play a similar role in their plans' portfolios. Any pecuniary consideration of
12 environmental, social, or governance factors shall necessarily include evaluating whether greater
13 returns can be achieved through investments that rank poorly on these factors.

14 **"§ 143-815. Voting ownership interests.**

15 (a) All shares held directly or indirectly by or on behalf of a pension benefit plan or the
16 beneficiaries thereof shall be voted solely in the pecuniary interest of plan participants. Voting
17 to further non-pecuniary, environmental, social, political, ideological, or other benefits or goals
18 is prohibited.

19 (b) Unless no economically practicable alternative is available, a fiduciary shall not adopt
20 a practice of following the recommendations of a proxy advisory firm or other service provider
21 unless the firm or service provider has a practice of, and in writing commits to, following proxy
22 voting guidelines that are consistent with the fiduciary's obligation to act based only on pecuniary
23 factors.

24 (c) Unless no economically practicable alternative is available, plan assets shall not be
25 entrusted to a fiduciary, unless that fiduciary has a practice of, and in writing commits to,
26 following guidelines, when engaging with portfolio companies and voting shares or proxies, that
27 match the plan's obligation to act based only on pecuniary factors.

28 (e) Authority to vote shares shall be in the hands of a State official politically accountable
29 to the people of the State of North Carolina. All current proxy voting authority with respect to
30 any and all shares held directly or indirectly by or on behalf of a pension benefit plan or the plan
31 participants is hereby revoked. All voting authority shall reside with the State Treasurer or
32 appropriate board or committee, except that the State official or board may delegate authority to
33 a person that has a practice of, and in writing commits to, follow guidelines that match the State's
34 obligation to act based only on pecuniary factors.

35 (f) All proxy votes shall be tabulated and reported annually to the respective board of
36 trustees or governing officer. For each vote, the report shall contain a vote caption, the plan's
37 vote, the recommendation of company management, and, if applicable, the proxy advisor's
38 recommendation. These reports shall be posted on the board's website.

39 **"§ 143-816. Enforcement.**

40 (a) This Article may be enforced by the Attorney General.

41 (b) If the Attorney General has reasonable cause to believe that a person has engaged in,
42 is engaging in, or is about to engage in a violation of this Article, the Attorney General may take
43 any of the following actions:

44 (1) Require the person to file on a form prescribed by the Attorney General a
45 statement or report in writing, under oath, as to all of the facts and
46 circumstances concerning the violation and any other data or information.

47 (2) Examine under oath any person in connection with the violation.

48 (3) Examine any record, book, document, account, or paper.

49 (4) Pursuant to a court order, impound any record, book, document, account,
50 paper, or sample or material relating to the violation and retain it until the
51 completion of a proceeding commenced under this Article."

1 **SECTION 2.(b)** This section becomes effective October 1, 2023.

2 **SECTION 3.** If any section or provision of this act is declared unconstitutional or
3 invalid by the courts, it does not affect the validity of this act as a whole or any part other than
4 the part declared to be unconstitutional or invalid.

5 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
6 law.