STATE OF NEW YORK

1101

2023-2024 Regular Sessions

IN ASSEMBLY

January 13, 2023

Introduced by M. of A. KELLES, MITAYNES, THIELE, BICHOTTE HERMELYN, EPSTEIN, PAULIN, GONZALEZ-ROJAS, CARROLL, SIMON, MAMDANI, REYES, FAHY, LUPARDO, GALLAGHER, STECK, D. ROSENTHAL, CLARK, SEAWRIGHT, L. ROSENTHAL, KIM, FORREST, ZEBROWSKI, CRUZ, JACKSON, BURGOS, WALKER, ZINERMAN, DICKENS, SEPTIMO, DAVILA, BURDICK, STERN, STIRPE, ANDERSON, DARLING, PRETLOW, CONRAD, JACOBSON, McMAHON, LUNSFORD, SAYEGH, RAMOS, COLTON, LAVINE, GLICK, GIBBS, HEVESI, BRONSON, BURKE, TAYLOR, JEAN-PIERRE, OTIS, DINOWITZ -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Governmental Employees

AN ACT to amend the education law, in relation to requiring the New York state teachers' retirement system to divest the retirement system of any investments in corporations or companies included on an exclusion list of coal producers and oil and gas producers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "teachers' fossil fuel divestment act".

§ 2. Legislative findings. 1. a. Climate change is a real and serious threat to the health, welfare, and prosperity of all New Yorkers, now and in the future. Maintaining the status quo of fossil fuel energy production will lead to catastrophic results.

b. In July 2019, New York state passed the climate leadership and community protection act and committed to reducing statewide greenhouse gas emissions by eighty-five percent by 2050 and net zero emissions in all sectors of the economy. Other cities and states have chosen to pursue similar paths to reduce greenhouse gas emissions.

c. The threat of climate change, and the transformation of the global energy system that will be necessary to mitigate it, will have a serious negative impact on investors whose assets are not aligned with the goal of keeping the global average temperature increase below 1.5 degrees

EXPLANATION--Matter in ***italics*** (underscored) is new; matter in brackets [-] is old law to be omitted.

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Celsius, as determined by the United Nations Intergovernmental Panel on Climate Change.

d. There are no existing legal or fiduciary duties that require New York state's pension funds to invest in energy sources that are harmful to the environment, or in contradiction to the goals of the climate leadership and community protection act. Rather, there are alternative investments that are available to our pension funds that do not present such harms.

e. Many cities and states have recognized the harmful effects of pension and investment funds investing in fossil fuels and have committed to divesting those funds. Over 1,100 institutional investors representing more than $11 trillion in holdings have chosen to pursue full or partial divestment from fossil fuel producers, including the New York city employees retirement system, the endowment and pension funds of the University of California system, and the sovereign wealth funds of Norway and Ireland.

2. a. Continued investment in fossil fuel producers poses unacceptable risks to the people of the state of New York, as well as the long-term sustainability of the New York state teachers' retirement system.

b. Investment in dangerous and harmful fossil fuels is not mandated by law. The New York state common retirement fund, consistent with its fiduciary duties, has committed to complete reviews of all fossil fuel investments by 2025 and to divest from companies that fail to meet minimum standards. It has also set a precedent by choosing to divest from certain industries in the past due to the moral implications of their business models, including private prisons, firearms manufacturers, and companies doing business with Sudan, all while complying with the comptroller's fiduciary obligations.

c. New York owes duties to its residents, and the New York state teachers' retirement system owes duties to future beneficiaries. These duties can and should reasonably include considerations of human interests, quality of life, public safety and security, and ultimately require a shift away from fossil fuels to help mitigate the future adverse effects of climate change.

d. According to the U.S. Department of Labor's interpretive bulletin 2015-1, environmental issues "may have a direct relationship to the economic value of the plan's investment, and are not merely collateral considerations or tie-breakers, but rather are proper components of the fiduciary's primary analysis of the economic merits of competing investment choices."

e. Attempting to profit from investments in companies whose business models, public relations campaigns, and lobbying efforts not only fail to comply with New York's statutory climate goals, but also put the stability of our society and the safety of our citizens at risk, is neither morally acceptable nor in compliance with the legislature's responsibility to protect the financial security of current and future pension beneficiaries.

f. Currently, the majority of fossil fuel producers are not adjusting their business models to take into account the changing energy market, investing billions of dollars in exploring and extracting new reserves, creating stranded asset risk and the potential for rapid, unexpected, and significant loss of value.

g. Attempting to beat the market by holding these investments until the last possible moment is a high-risk strategy that could result in the loss of investment principal. In the words of the decarbonization advisory panel for the New York state common retirement fund, "being too early in the avoidance of the risk of permanent loss is much less of a danger than being too late."

h. In addition to the risks regarding retirement security, continued investment in the fossil fuel industry is counterproductive to the goals set forth in the climate leadership and community protection act.

§ 3. The education law is amended by adding a new section 508-b to read as follows:

§ 508-b. Fossil fuel divestment. 1. Definitions. As used in this section:

a. "coal producer" means any corporation or company, or any subsidiary or parent of any corporation or company or partnership or other legal entity, that derives at least ten percent of annual revenue from thermal coal production, or accounts for more than one percent of global production of thermal coal, or whose reported coal reserves contain more than 0.3 gigatons of potential carbon dioxide emissions;

b. "exclusion list" means the list created pursuant to paragraph a of subdivision two of this section;

c. "oil and gas producer" means any corporation or company, or any subsidiary or parent of any corporation or company or partnership or other legal entity, that derives at least twenty percent of annual revenue from oil or gas production, or accounts for more than one percent of global oil or gas production, or whose reported combined oil and gas reserves contain more than 0.1 gigatons of potential carbon dioxide emissions;

d. "oil or gas production" means exploration, extraction, drilling, production, refining, processing, or distribution activities related to oil or gas;

e. "thermal coal production" means mining, transport, processing, or exploration activities related to thermal coal;

f. "oil and gas equipment, services, transportation and storage" means services, transportation or storage activities related to oil and gas; and

g. "index fund" means a passive investment strategy that tracks a market index.

2. Fossil fuel company exclusion list. a. Within six months of the effective date of this section, the retirement board shall create an exclusion list of all coal producers and oil and gas producers in whose stocks, securities, equities, fixed income, assets, or other obligations the retirement system has any monies or assets directly invested.

b. Upon completion of the exclusion list, it shall be made publicly available and a copy shall be sent to the temporary president of the senate and the speaker of the assembly.

c. The retirement board shall submit notification to any corporation or company that has been included in the exclusion list informing them of their inclusion on such list, as well as the requirements of this section.

d. At the retirement board's discretion, but no later than two years after the completion of the exclusion list, and no less frequently than biennially thereafter, the retirement board shall update the exclusion list to remove any corporation or company that is no longer a coal producer or an oil and gas producer and add any corporation or company necessary to comply with paragraph a of this subdivision.

3. Removal from the exclusion list. a. At any time following the publication of the exclusion list, any corporation or company included in the list may submit to the retirement board a request for removal on the basis of clear and convincing evidence that they are not currently a

coal producer or an oil and gas producer as defined in subdivision one of this section.

b. Upon satisfaction that a corporation or company has met the requirements of paragraph a of this subdivision, the retirement board shall remove such corporation or company from the exclusion list and provide a written explanation for such removal to the temporary president of the senate and the speaker of the assembly.

4. Compliance with fiduciary duties. a. Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board under the New York state constitution. Any new investments must comply with the fiduciary obligations and the prudent investor rule as defined by section 11-2.3 of the estates, powers and trusts law.

b. No private right of action shall be available against the retirement system, any of its employees, or any present, future, and former board member of the retirement system for divesting retirement system assets pursuant to this section in good faith.

c. No private right of action shall be available against the state pursuant to this section.

5. Divestment. a. Commencing one year after the effective date of this section, and in accordance with sound investment criteria and consistent with its fiduciary obligations, the retirement board and any investment managers under contract with the retirement system shall: (i) divest the retirement system of any stocks, securities, equities, assets, or other obligations of corporations or companies on the exclusion list in which any monies or assets of the retirement system are invested; and (ii) cease new investments of any monies or assets of the retirement system in any stocks, securities, or other obligations of any corporation or company that is a coal producer or oil and gas producer as defined herein.

b. Divestment from oil and gas producers pursuant to this subdivision shall be completed no later than two years from the effective date of this section. Divestment from oil and gas producers returned to the exclusion list pursuant to paragraph c of subdivision four of this section shall be completed no later than two years from the date of return to the exclusion list.

c. Divestment from coal producers pursuant to this subdivision shall be completed no later than one year from the effective date of this section. Divestment from coal producers returned to the exclusion list pursuant to paragraph c of subdivision two of this section shall be completed no later than one year from the date of return to the exclusion list.

d. Divestment from private equity and private debt investments pursuant to this subdivision shall occur expeditiously in a good faith attempt to comply with the provisions of paragraphs b and c of this subdivision, but no later than five years from the effective date of this section.

e. The retirement system shall have the discretion to divest from any other entities that it in good faith believes are directly or indirectly financing oil and gas producers, or coal producers, regardless of whether such entity otherwise meets the criteria of this subdivision.

6. Limitations on indirect investment. Notwithstanding any provisions in this section to the contrary, and in accordance with sound investment criteria and consistent with its fiduciary obligations, the retirement board shall be permitted to invest in index funds if the board is satis-

fied on reasonable grounds and in good faith that such indirect investment vehicle does not have in excess of one percent of its assets, averaged annually, directly or indirectly invested in coal producers and oil and gas producers.

7. Reporting. a. Commencing one year after the effective date of this section and annually thereafter the retirement board shall issue a report to the temporary president of the senate and the speaker of the assembly and shall make such report publicly available, outlining all actions taken to comply with this section.

b. To the extent that the retirement system has remaining private equity or private debt investments in any oil and gas producers, or coal producers, the retirement board shall prominently make note of such investments and all attempts that have been made to expeditiously complete its divestment obligations to date. The board shall provide public notice of this annual report and an opportunity for public comment on the retirement system's divestments pursuant to this act of at least sixty days.

§ 4. This act shall take effect immediately.