

# STATE OF NEW YORK

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6331

2021-2022 Regular Sessions

## IN ASSEMBLY

March 16, 2021

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Introduced by M. of A. KELLES -- 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:

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

2 § 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.

3 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.

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

5 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.

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

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1 e. Many cities and states have recognized the harmful effects of  
2 pension and investment funds investing in fossil fuels and have commit-  
3 ted to divesting those funds. Over 1,100 institutional investors repres-  
4 enting more than \$11 trillion in holdings have chosen to pursue full or  
5 partial divestment from fossil fuel producers, including the New York  
6 city employees retirement system, the endowment and pension funds of the  
7 University of California system, and the sovereign wealth funds of  
8 Norway and Ireland.

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

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

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

27 d. According to the U.S. Department of Labor's interpretive bulletin  
28 2015-1, environmental issues "may have a direct relationship to the  
29 economic value of the plan's investment, and are not merely collateral  
30 considerations or tie-breakers, but rather are proper components of the  
31 fiduciary's primary analysis of the economic merits of competing invest-  
32 ment choices."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46     3. Removal from the exclusion list. a. At any time following the  
47 publication of the exclusion list, any corporation or company included  
48 in the list may submit to the retirement board a request for removal on  
49 the basis of clear and convincing evidence that they are not currently a  
50 coal producer or an oil and gas producer as defined in subdivision one  
51 of this section.

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

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

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

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

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

28 c. Divestment from coal producers pursuant to this subdivision shall  
29 be completed no later than one year from the effective date of this  
30 section. Divestment from coal producers returned to the exclusion list  
31 pursuant to paragraph c of subdivision two of this section shall be  
32 completed no later than one year from the date of return to the exclu-  
33 sion list.

34 6. Limitations on indirect investment. Notwithstanding any provisions  
35 in this section to the contrary, and in accordance with sound investment  
36 criteria and consistent with its fiduciary obligations, the retirement  
37 board shall be permitted to invest in index funds if the board is satis-  
38 fied on reasonable grounds and in good faith that such indirect invest-  
39 ment vehicle does not have in excess of one percent of its assets, aver-  
40 aged annually, directly or indirectly invested in coal producers and oil  
41 and gas producers.

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

47 § 4. This act shall take effect immediately.