

# STATE OF NEW YORK

4783--A

2021-2022 Regular Sessions

## IN SENATE

February 12, 2021

Introduced by Sens. BRISPORT, ADDABBO, BENJAMIN, BROUK, COMRIE, COONEY, GIANARIS, HOYLMAN, JACKSON, KRUEGER, MAY, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged and said bill committed to the Committee on Civil Service and Pensions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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'  
2 fossil fuel divestment act".  
3 § 2. Legislative findings. 1. a. Climate change is a real and serious  
4 threat to the health, welfare, and prosperity of all New Yorkers, now  
5 and in the future. Maintaining the status quo of fossil fuel energy  
6 production will lead to catastrophic results.  
7 b. In July 2019, New York state passed the climate leadership and  
8 community protection act and committed to reducing statewide greenhouse  
9 gas emissions by eighty-five percent by 2050 and net zero emissions in  
10 all sectors of the economy. Other cities and states have chosen to  
11 pursue similar paths to reduce greenhouse gas emissions.  
12 c. The threat of climate change, and the transformation of the global  
13 energy system that will be necessary to mitigate it, will have a serious  
14 negative impact on investors whose assets are not aligned with the goal  
15 of keeping the global average temperature increase below 1.5 degrees  
16 Celsius, as determined by the United Nations Intergovernmental Panel on  
17 Climate Change.

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

LBD09701-02-1

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

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

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

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

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

33 d. According to the U.S. Department of Labor's interpretive bulletin  
34 2015-1, environmental issues "may have a direct relationship to the  
35 economic value of the plan's investment, and are not merely collateral  
36 considerations or tie-breakers, but rather are proper components of the  
37 fiduciary's primary analysis of the economic merits of competing invest-  
38 ment choices."

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

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

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

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

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

6 § 508-b. Fossil fuel divestment. 1. Definitions. As used in this  
7 section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 c. Divestment from coal producers pursuant to this subdivision shall  
37 be completed no later than one year from the effective date of this  
38 section. Divestment from coal producers returned to the exclusion list  
39 pursuant to paragraph c of subdivision two of this section shall be  
40 completed no later than one year from the date of return to the exclu-  
41 sion list.

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

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

51 6. Limitations on indirect investment. Notwithstanding any provisions  
52 in this section to the contrary, and in accordance with sound investment  
53 criteria and consistent with its fiduciary obligations, the retirement  
54 board shall be permitted to invest in index funds if the board is satis-  
55 fied on reasonable grounds and in good faith that such indirect invest-  
56 ment vehicle does not have in excess of one percent of its assets, aver-

1 aged annually, directly or indirectly invested in coal producers and oil  
2 and gas producers.

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

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

16 § 4. This act shall take effect immediately.