**South Carolina General Assembly**

125th Session, 2023-2024

**A103, R104, H3690**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Taylor, G.M. Smith, Thayer, Bradley, Hiott, Bannister, W. Newton, Sandifer, West, Davis, Erickson, J.E. Johnson, Jordan, Whitmire, Hixon, Elliott, Forrest, Wooten, Bustos, Willis, Yow, Carter, Hartnett, Moss, McCravy, B.J. Cox, Haddon, Burns, Chumley, Oremus, Hardee, Ligon, Long, Gilliam, Magnuson, Lawson, Nutt, Brewer, Guffey, Hager, Mitchell, Neese, Sessions, Vaughan, Robbins, Kilmartin, M.M. Smith, B. Newton, Hewitt, Leber, Pope, Blackwell, Caskey and Landing

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Introduced in the House on January 12, 2023

Introduced in the Senate on April 6, 2023

Last Amended on April 5, 2023

Currently residing in the House

Governor's Action: February 5, 2024, Signed

Summary: ESG

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 1/12/2023 House Introduced and read first time (House Journal‑page 338)

 1/12/2023 House Referred to Committee on **Labor, Commerce and Industry** (House Journal‑page 338)

 1/18/2023 House Member(s) request name added as sponsor: Robbins

 1/19/2023 House Member(s) request name added as sponsor:
 Kilmartin, M.M. Smith

 3/8/2023 House Member(s) request name added as sponsor: B.
 Newton, Hewitt

 3/28/2023 House Member(s) request name added as sponsor: Leber, Pope

 3/29/2023 House Member(s) request name added as sponsor:
 Blackwell, Caskey

 3/30/2023 House Committee report: Favorable with amendment **Labor, Commerce and Industry** (House Journal‑page 2)

 4/3/2023 Scrivener's error corrected

 4/4/2023 House Member(s) request name added as sponsor: Landing

 4/4/2023 House Requests for debate-Rep(s). Hiott, Taylor, Carter, B Newton, Guffey, McCravy, Guest, BL Cox, Pace, Magnuson, Harris, Hixon, Oremus, Blackwell, Henegan, Williams, Beach, Cromer, Anderson, Kirby, Hosey, Hewitt, King, Bernstein, Bauer, Robbins, Garvin, White, S Jones, Moss, Mitchell, Sandifer, Whitmire, May, McCabe, Vaughan, BJ Cox, Elliott (House Journal‑page 40)

 4/5/2023 House Amended (House Journal‑page 119)

 4/5/2023 House Read second time (House Journal‑page 119)

 4/5/2023 House Roll call Yeas-103 Nays-5 (House Journal‑page 119)

 4/6/2023 House Read third time and sent to Senate (House Journal‑page 37)

 4/6/2023 Senate Introduced and read first time (Senate Journal‑page 36)

 4/6/2023 Senate Referred to Committee on **Finance** (Senate Journal‑page 36)

 5/3/2023 Senate Committee report: Favorable **Finance** (Senate Journal‑page 12)

 5/8/2023 Scrivener's error corrected

 1/11/2024 Senate Special order, set for January 11. 2024 (Senate Journal‑page 16)

 1/16/2024 Senate Read second time (Senate Journal‑page 13)

 1/16/2024 Senate Roll call Ayes-43 Nays-0 (Senate Journal‑page 13)

 1/17/2024 Senate Read third time and enrolled (Senate Journal‑page 16)

 1/17/2024 Senate Roll call Ayes-45 Nays-0 (Senate Journal‑page 16)

 1/30/2024 Ratified R 104

 2/5/2024 Signed By Governor

 2/9/2024 Effective date 02/05/24

 2/9/2024 Act No. 103

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=3690&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[01/12/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230112.docx)

[03/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230330.docx)

[04/03/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230403.docx)

[04/05/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230405.docx)

[05/04/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230504.docx)

[05/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3690_20230508.docx)

(A103, R104, H3690)

AN ACT TO AMEND THE SOUTH CAROLINA CODE OF LAWS by ENACTing THE “ESG PENSION PROTECTION ACT” BY AMENDING SECTION 9‑16‑10, RELATING TO RETIREMENT SYSTEM FUNDS DEFINITIONS, SO AS TO ADD A DEFINITION OF “PECUNIARY FACTOR”; BY AMENDING SECTION 9‑16‑30, RELATING TO DELEGATION OF FUNCTIONS BY THE COMMISSION, SO AS TO PROVIDE THAT PROXY VOTING DECISIONS MUST BE BASED ON PECUNIARY FACTORS; BY AMENDING SECTION 9‑16‑50, RELATING TO INVESTMENT AND MANAGEMENT CONSIDERATIONS BY TRUSTEES, SO AS TO PROVIDE THAT THE COMMISSION MAY ONLY CONSIDER PECUNIARY FACTORS IN MAKING CERTAIN INVESTMENT DECISIONS; BY AMENDING SECTION 9‑16‑320, RELATING TO ANNUAL INVESTMENT PLANS, SO AS TO REQUIRE CERTAIN MEETINGS; BY AMENDING SECTION 9‑16‑330, RELATING TO STATEMENT OF ACTUARIAL ASSUMPTIONS AND INVESTMENT OBJECTIVES, SO AS TO REQUIRE CERTAIN CERTIFICATIONS; AND BY ADDING SECTION 9‑16‑110 SO AS TO PROVIDE THAT THE ATTORNEY GENERAL MAY BRING AN ACTION TO ENFORCE CERTAIN PROVISIONS.

Be it enacted by the General Assembly of the State of South Carolina:

Citation

SECTION 1. This act may be cited as the “ESG Pension Protection Act”.

“Pecuniary factor” definition

SECTION 2. Section 9‑16‑10 of the S.C. Code is amended by adding:

 (10) “Pecuniary factor” means a factor that a prudent person in a like capacity would reasonably believe has a material effect or impact on the financial risk or return on an investment, including factors material to assessing an investment manager’s operational capability, based on an appropriate investment horizon consistent with a retirement system’s investment objectives and funding policy. The term excludes “nonpecuniary factors” which is any factor or consideration that is collateral to or not reasonably likely to effect or impact the financial risk and return of the investment and include, but are not limited to, the promotion, furtherance, or achievement of environmental, social, or political goals, objectives, or outcomes.

Shareholder proxy votes

SECTION 3. Section 9‑16‑30(G) of the S.C. Code is amended to read:

 (G)(1) The commission shall cast shareholder proxy votes that are in keeping with its fiduciary duties that are consistent with the best interest of the trust fund, based on pecuniary factors, and most likely to maximize shareholder value over an appropriate investment horizon consistent with a retirement system’s investment objectives and funding policy. Any commission engagement with a company regarding the exercise of shareholder proxy votes or the proposal of a proxy question must be based solely on pecuniary factors and for the sole purpose of maximizing shareholder value, except that the commission may engage with a company to express opposition to the proposal of or the merits of a proxy question that does not have a pecuniary impact.

 (2) To the extent that it is economically practicable, the commission must retain the authority to exercise shareholder proxy rights for shares that are owned directly or indirectly on behalf of a system. The commission may retain a proxy firm or advisory service to assist the commission in exercising shareholder proxy rights, but only if the proxy advisor has a practice of and commits in writing to follow proxy guidelines that are consistent with the requirements of item (1).

 (3)The commission only may allocate capital to a public equity investment strategy if the manager of the investment strategy has a practice of and commits in writing to meet the requirements of item (1) and Section 9‑16‑50(A)(5), unless it is not economically practicable for the commission to do so, or it is necessary for the commission to avoid the concentration of assets with any one or more investment managers. For any public equity investment strategy for which the manager does not have a practice of and does not commit in writing to meet the requirements of item (1), the commission must include a summary of the terms, fees, and performance of the investment in the commission’s annual investment report and publish the summary in a conspicuous location on the commission’s website.

Pecuniary factors consideration

SECTION 4. Section 9‑16‑50 of the S.C. Code is amended to read:

 Section 9‑16‑50. (A) In investing and managing assets of a retirement system pursuant to Section 9‑16‑40, the commission:

 (1) shall consider among other circumstances:

 (a) general economic conditions;

 (b) the possible effect of inflation or deflation;

 (c) the role that each investment or course of action plays within the overall portfolio of the retirement system;

 (d) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

 (e) the adequacy of funding for the plan based on reasonable actuarial factors;

 (2) shall diversify the investments of the retirement system unless the commission reasonably determines that, because of special circumstances, it is clearly prudent not to do so;

 (3) shall make a reasonable effort to verify facts relevant to the investment and management of assets of a retirement system;

 (4) may invest in any kind of property or type of investment consistent with this chapter and Section 9‑1‑1310;

 (5) only shall consider pecuniary factors in making an investment decision or when allocating capital to an investment strategy.

 (B) The commission shall adopt a statement of investment objectives and policies for the retirement system. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset‑allocation goals, guidelines for the delegation of authority, an explicit statement that all investment decisions must be based only on the consideration of pecuniary factors, and information on the types of reports to be used to evaluate investment performance. At least annually, the commission shall review the statement and change or reaffirm it. The relevant portion of this statement may constitute parts of the annual investment plan required pursuant to Section 9‑16‑330.

Annual meeting

SECTION 5. Section 9‑16‑320 of the S.C. Code is amended by adding:

 (H) The commission shall meet no less than annually to review compliance with Section 9‑16‑30(G) regarding the exercise of shareholder proxy rights. The commission must review a report that summarizes the votes cast by or on the commission’s behalf or at the commission’s direction. The report must include a vote caption, the commission’s vote, the recommendation of company management, and the recommendation of any proxy advisor retained by the commission. The report required by this subsection must be posted in a conspicuous location on the commission’s website.

Closing documentation

SECTION 6. Section 9‑16‑330 (A) and (B) of the S.C. Code is amended to read:

 (A) The commission shall provide the chief executive officer and the chief investment officer with a statement of general investment objectives. The commission also shall provide the chief executive officer and the chief investment officer with a statement of actuarial assumptions developed by the system’s actuary and approved by the board. The commission shall review the statement of general investment objectives annually for the purpose of affirming or changing it and advise the chief executive officer and the chief investment officer of its actions. The retirement system shall provide the commission, its chief executive officer, and chief investment officer that data or other information needed to prepare the annual investment plan.

 (B)(1) Notwithstanding Section 9‑16‑30(A), the commission’s statement of general investment objectives may include a delegation to the chief investment officer of the final authority to invest an amount not to exceed:

 (a) two percent of the total value of portfolio assets for each investment, if the investment is in assets that are publicly tradeable and the investment provides for liquidity in ninety days or less; or

 (b) one percent of the total value of portfolio assets for each investment, if the investment is in assets that are not publicly tradeable or the investment’s liquidity provision is greater than ninety days.

 (2) Any final authority delegated to the chief investment officer pursuant to this subsection must be exercised subject to the oversight of the chief executive officer. The closing documentation of an investment made pursuant to this delegation must include the chief executive officer’s certification that the investment conforms to the amount and the extent of the delegation. The closing documentation of any investment also must include the chief executive officer’s certification that the decision to make the investment is based on pecuniary factors and is not being made to promote, further, or achieve any nonpecuniary goal, objective, or outcome. Any authority exercised pursuant to this section must be exercised in a manner consistent with the limitations imposed by this section and investments may not be divided into smaller amounts in order to avoid these limitations. The commission must be notified of an investment made pursuant to any delegated authority within three business days of the investment’s closing and the investment must be reviewed with the commission at its next regularly scheduled meeting. The commission may amend, suspend, or revoke the delegation of the final authority to invest at any time and may place stricter limits on any delegated authority than those provided in this subsection.

Enforcement

SECTION 7. Article 1, Chapter 16, Title 9 of the S.C. Code is amended by adding:

 Section 9‑16‑110. The Attorney General may bring an action in a court of competent jurisdiction to enforce this chapter.

Time effective

SECTION 8. This act takes effect upon approval by the Governor.

Ratified the 30th day of January, 2024.

Approved the 5th day of February, 2024.

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