**South Carolina General Assembly**

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**S. 583**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Bennett, M. Johnson, Cromer, Gustafson, Hembree, Turner, Young and Rice

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Summary: ESG Investing

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/2/2023 Senate Introduced and read first time ([Senate Journal‑page 4](h:\sj\20230302.docx))

3/2/2023 Senate Referred to Committee on **Finance** ([Senate Journal‑page 4](h:\sj\20230302.docx))

3/8/2023 Scrivener's error corrected

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**VERSIONS OF THIS BILL**

[03/02/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/583_20230302.docx)

[03/08/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/583_20230308.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 9‑16‑10, RELATING TO DEFINITIONS CONCERNING THE STATE RETIREMENT INVESTMENT COMMISSION, SO AS TO PROVIDE DEFINITIONS For “Material”, “Non‑Pecuniary Factor” and “Pecuniary Factor”; BY AMENDING SECTION 9‑16‑30, RELATING TO THE DELEGATION OF FUNCTIONS BY the COMMISSION, SO AS TO PROVIDE GUIDELINES FOR SHAREHOLDER ENGAGEMENT; BY AMENDING SECTION 9‑16‑50, RELATING TO INVESTMENT AND MANAGEMENT CONSIDERATIONS BY the retirement systems investment TRUSTEE, SO AS TO REQUIRE CONSIDERATION OF PECUNIARY FACTORS AND PROHIBIT PROMOTION OF NON‑PECUNIARY BENEFITS OR OUTCOMES WHEN MAKING AN INVESTMENT; BY AMENDING SECTION 9‑16‑320, RELATING TO the ADOPTION OF AN ANNUAL INVESTMENT PLAN, QUARTERLY REVIEWS, DELIBERATIONS IN EXECUTIVE SESSION, AND INDEPENDENT ADVISORS, SO AS TO PROVIDE GUIDELINES FOR MEETINGS OF THE COMMISSION; BY AMENDING SECTION 9‑16‑330, RELATING TO STATEMENTS OF ACTUARIAL ASSUMPTIONS AND INVESTMENT OBJECTIVES, THE DELEGATION OF FINAL AUTHORITY TO INVEST, COMPONENTS OF PLANS, DIVERSIFICATION, VERIFICATION OF INVESTMENT FACTS, ANALYSIS, AND RECOMMENDATIONS, SO AS TO PROVIDE THAT CLOSING DOCUMENTATION FOR INVESTMENTS MUST CONTAIN CERTIFICATION THAT THE INVESTMENT WAS BASED SOLELY ON PECUNIARY FACTORS; BY ADDING SECTION 9‑16‑110 SO AS TO PROVIDE THAT THE ATTORNEY GENERAL SHALL ENFORCE THE PROVISIONS CONTAINED IN CHAPTER 16, TITLE 9 OF THE S.C. CODE; BY AMENDING SECTION 38‑1‑20, RELATING TO DEFINITIONS RELATING TO INSURANCE SO AS TO DEFINE NON‑PECUNIARY OBJECTIVE FOR INSURANCE COMPANIES; BY ADDING SECTION 38‑5‑300 SO AS TO REQUIRE DISCLOSURE IF AN INSURANCE COMPANY USES NON‑PECUNIARY OBJECTIVES AND TO REQUIRE DISCLOSURE AS TO HOW AN INSURANCE COMPANY’S PURSUIT OF NON‑PECUNIARY OBJECTIVES MAY AFFECT ITS CONSIDERATION OF AN APPLICATION FOR COVERAGE; BY ADDING SECTION 34‑3‑120 SO AS TO DEFINE NON‑PECUNIARY OBJECTIVE FOR BANKING INSTITUTIONS, REQUIRE DISCLOSURE IF A BANKING INSTITUTION USES NON‑PECUNIARY OBJECTIVES, AND TO REQUIRE DISCLOSURE AS TO HOW A BANKING CORPORATION’S PURSUIT OF NON‑PECUNIARY OBJECTIVES MAY AFFECT ITS CONSIDERATION OF AN APPLICATION FOR LOANS OR SERVICES; BY ADDING SECTION 34‑21‑80 SO AS TO DEFINE NON‑PECUNIARY OBJECTIVE FOR TRUST INSTITUTIONS, REQUIRE DISCLOSURE IF A TRUST INSTITUTION USES NON‑PECUNIARY OBJECTIVES, AND TO REQUIRE DISCLOSURE AS TO HOW A TRUST INSTITUTION’S PURSUIT OF NON‑PECUNIARY OBJECTIVES MAY AFFECT ITS CONSIDERATION OF AN APPLICATION FOR LOANS OR SERVICES; AND BY ADDING SECTION 34‑26‑895 SO AS TO DEFINE NON‑PECUNIARY OBJECTIVE FOR CREDIT UNIONS, REQUIRE DISCLOSURE IF A CREDIT UNION USES NON‑PECUNIARY OBJECTIVES, AND TO REQUIRE DISCLOSURE AS TO HOW A CREDIT UNION’S PURSUIT OF NON‑PECUNIARY OBJECTIVES MAY AFFECT ITS CONSIDERATION OF AN APPLICATION FOR LOANS OR SERVICES.

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

SECTION 1. Section 9‑16‑10 of the S.C. Code is amended to read:

Section 9‑16‑10. As used in this chapter, unless a different meaning is plainly required by the context:

(1) “Assets” means all funds, investments, and similar property of the retirement system.

(2) “Beneficiary” means a person, other than the participant, who is designated by a participant or by a retirement program to receive a benefit under the program.

(3) “Board” means the Board of Directors of the South Carolina Public Employee Benefit Authority acting as trustee of the retirement system.

(3.5)(4) “Commission” means the Retirement System Investment Commission.

(4)(5) “Fiduciary” means a person who:

(a) exercises any authority to invest or manage assets of a system;

(b) provides investment advice for a fee or other direct or indirect compensation with respect to assets of a system or has any authority or responsibility to do so;

(c) is a member of the commission;

(d) is the commission's chief investment officer; or

(e) is the commission's chief executive officer.

(6) “Material” means a level of importance, relevance, or emphasis that a reasonably prudent investor would consider necessary when evaluating the potential risk and return of an existing or prospective investment, or exercising, or declining to exercise, any rights appurtenant to securities. The term does not include a consideration that primarily relates to events that involve a high degree of uncertainty of what may or may not occur in the distant future or are systematic, general, or not investment specific in nature.

(7) “Non‑pecuniary factor” means any factor or consideration that is collateral to or not likely to have a material effect or impact on the financial risk and return of an investment including, but not limited to, the promotion, furtherance, or achievement of environmental, social, or political goals, objectives, or outcomes.

(5)(8) “Participant” means an individual who is or has been an employee enrolled in a retirement program and who is or may become eligible to receive or is currently receiving a benefit under the program. The term does not include an individual who is no longer an employee of an employer as defined by laws governing the retirement system and who has withdrawn his contributions from the retirement system.

(6)(9) [Reserved] “Pecuniary factor” means a factor that has a material effect or impact on the financial risk or return of an investment based on an appropriate investment horizon consistent with a retirement system’s investment objectives and funding policy. This term does not include non‑pecuniary factors.

(7)(10) “Retirement program” means a program of rights and obligations which a retirement system establishes or maintains and which, by its express terms or as a result of surrounding circumstances:

(a) provides retirement benefits to qualifying employees and beneficiaries; or

(b) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond.

(8)(11) “Retirement system” means the South Carolina Retirement System, Retirement System for Judges and Solicitors, Retirement System for Members of the General Assembly, National Guard Retirement System, and Police Officers Retirement System established pursuant to Chapters 1, 8, 9, 10 and 11 of this title.

(9)(12) “Trustee” means the Board of Directors of the South Carolina Public Employee Benefit Authority.

SECTION 2. 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 and most likely to maximize shareholder value. The commission shall not cast shareholder proxy votes to further a nonpecuniary objective or outcome, including, but not limited to, the promotion, furtherance, or achievement of environmental, social, or political goals, objectives, or outcomes. The commission shall base any shareholder engagement with a company only on pecuniary factors and for the sole purpose of maximizing shareholder value.

(2) The commission may only retain a proxy firm or advisory service to assist the commission in exercising shareholder proxy rights if the proxy advisor has a practice of and commits in writing to follow proxy voting guidelines that are consistent with the requirements of item (1).

(3) The commission may only allocate capital to an external investment manager to implement a public equity investment strategy if the external investment manager has a practice of and commits in writing to vote proxies and engage with companies as a shareholder in a manner consistent with the requirements of item (1), unless is not economically practicable to do so or it is necessary to avoid the concentration of assets in any one or more external investment managers.

SECTION 3. 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) may shall only consider benefits created by an investment in addition to investment return only if the commission determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.pecuniary factors in making an investment decision when allocating capital to an external investment manager or when exercising a right appurtenant to an investment; and

(6) shall not promote a non‑pecuniary benefit or outcome when making an investment, including, but not limited to, the promotion, furtherance, or achievement of environmental, social, or political goals, objectives, or outcomes.

(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 requiring adherence to the requirements contained in subsections (A)(5) and (6), 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.

SECTION 4. Section 9‑16‑320(E) of the S.C. Code is amended to read:

(E) [Reserved] 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 case 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.

SECTION 5. Section 9‑16‑330(B)(2) of the S.C. Code is amended to read:

(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 for any investment must also contain the chief executive officer’s certification that the decision to make the investment was based solely on pecuniary factors and not intended to promote a non‑pecuniary objective or outcome, including, but not limited to, the promotion, furtherance, or achievement of environmental, social, or political goals, objectives, or outcomes. 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.

SECTION 6. Chapter 16, Title 9 of the S.C. Code is amended by adding:

Section 9‑16‑110. The Attorney General shall enforce the provisions contained in this chapter. If the Attorney General believes that a person has engaged in, is engaging in, or is about to engage in an act, practice, or course of conduct constituting a violation of this chapter, then he may maintain an action in the Richland County Court of Common Pleas to enjoin the act, practice, or course of conduct and to enforce compliance with this chapter.

SECTION 7. Section 38‑1‑20 of the S.C. Code is amended by adding:

(64) “Non‑pecuniary objective” means a goal, outcome, or practice adopted by an insurance company that requires or encourages the insurer to decline coverage, reduce coverage, or nonrenew a policy for a person who is engaged in a business or other activity that is not otherwise prohibited or limited by law or regulation. A non‑pecuniary objective includes, but is not limited to, an environment, social, or political goal, outcome, or practice. An insurance company may reasonably be determined to be pursuing a non‑pecuniary objective by the specific adoption of the goal, outcome, or practice, the statements of the insurance company’s board members and executive officers indicating adoption of or support for the goal, outcome, or practice, or any such statements by any coalition, initiative, or organization that the fiduciary has joined, participated in, or to which it has become a signatory.

SECTION 8. Chapter 5, Title 38 of the S.C. Code is amended by adding:

Section 38‑5‑300. (A) Every insurance company licensed to transact business in this State must disclose to a person applying for insurance coverage, or to a person who the insurance company is going to reduce coverage or nonrenew an insurance policy, any non‑pecuniary objective that the insurance company has adopted, provide a description of the non‑pecuniary objective, and disclose that the pursuit of the objective may affect the insurance company’s consideration of the person’s insurance application if the person is engaged in a business or other activity that the non‑pecuniary objective seeks to prohibit or limit.

(B)(1) Every insurance company licensed to transact business in this State must include with any rate filing a disclosure of its use of non‑pecuniary objectives in establishing rates and making decisions concerning coverage. Individual insurers must justify, with appropriate actuarial data, the use of these factors as part of a rating or establishing rating tiers. Any filer may request that this actuarial data remain proprietary as a commercially valuable trade secret. The department, absent a court order, may not release information which is filed on a proprietary basis.

(2) If an insurer considers non‑pecuniary objectives when it declines to offer coverage, reduces coverage, or nonrenews a policy, then it must provide a conspicuous disclosure in fourteen‑point, bold font substantially similar to the following:

“This declination, reduction, or nonrenewal of coverage has been determined based upon a number of non‑pecuniary factors including environmental, social, and governance scores, or diversity, equity, and inclusion policies. Information about [insurance company’s] rating and insurance practices related to these factors was disclosed to you and is available in the most recent rate filing for [insurance company].”

SECTION 9. Chapter 3, Title 34 of the S.C. Code is amended by adding:

Section 34‑3‑120. (A) For the purposes of this section, “non‑pecuniary objective” means a goal, outcome, or practice adopted by a banking corporation that requires or encourages the banking corporation to take into account a business or other activity that is not otherwise prohibited or limited by law or regulation when setting interest rates, offering or providing services, and making lending determinations to potential borrowers. A non‑pecuniary objective includes, but is not limited to, an environment, social, or political goal, outcome, or practice. A banking corporation may be reasonably determined to be pursuing a non‑pecuniary objective by the specific adoption of the goal, outcome, or practice, the statements of the banking corporation’s board members and executive officers indicating adoption of or support for the goal, outcome, or practice, or any such statements by any coalition, initiative, or organization that the fiduciary has joined, participated in, or to which it has become a signatory.

(B) Every banking corporation that is authorized to transact business in this State must disclose in a prominent position on its website and in communications with customers if it uses non‑pecuniary objectives in establishing interest rates, offering or providing services, and making lending determinations.

(C)(1) Every banking corporation that is authorized to transact business in this State must disclose to a potential borrower or person who is seeking services provided by the banking corporation any non‑pecuniary objective that it has adopted, provide a description of the non‑pecuniary objective, and disclose that the pursuit of the objective may affect its consideration of the borrower’s loan application or the person’s application for services if the potential borrower or person seeking services is engaged in a business or other activity that the non‑pecuniary objective seeks to prohibit or limit.

(2) If a banking corporation considers non‑pecuniary objectives when it declines a loan application or the provision of services, then it must provide a conspicuous disclosure in fourteen‑point, bold font substantially similar to the following:

“This declination or denial of services has been determined based upon a number of non‑pecuniary factors including environmental, social, and governance scores, or diversity, equity, and inclusion policies. Information about [banking corporation’s] rating and insurance practices related to these factors was disclosed to you and is available on the [banking corporation’s] website.”

SECTION 10. Chapter 21, Title 34 of the S.C. Code is amended by adding:

Section 34‑21‑80. (A) For the purposes of this section, “non‑pecuniary objective” means a goal, outcome, or practice adopted by a trust institution that requires or encourages the trust institution to take into account a business or other activity that is not otherwise prohibited or limited by law or regulation when setting interest rates, offering or providing services, and making lending determinations to potential borrowers. A non‑pecuniary objective includes, but is not limited to, an environment, social, or political goal, outcome, or practice. A trust institution may reasonably be determined to be pursuing a non‑pecuniary objective by the specific adoption of the goal, outcome, or practice, the statements of the trust institution’s board members and executive officers indicating adoption of or support for the goal, outcome, or practice, or any such statements by any coalition, initiative, or organization that the fiduciary has joined, participated in, or to which it has become a signatory.

(B) Every trust institution that is authorized to transact business in this State must disclose in a prominent position on its website and in communications with customers if it uses non‑pecuniary objectives in establishing interest rates, offering or providing services, and making lending determinations.

(C)(1) Every trust institution that is authorized to transact business in this State must disclose to a potential borrower or person who is seeking services provided by the trust institution any non‑pecuniary objective that it has adopted, provide a description of the non‑pecuniary objective, and disclose that the pursuit of the objective may affect its consideration of the borrower’s loan application or the person’s application for services if the potential borrower or person seeking services is engaged in a business or other activity that the non‑pecuniary objective seeks to prohibit or limit.

(2) If a trust institution considers non‑pecuniary objectives when it declines a loan application or the provision of services, then it must provide a conspicuous disclosure in fourteen‑point, bold font substantially similar to the following:

“This declination or denial of services has been determined based upon a number of non‑pecuniary factors including environmental, social, and governance scores, or diversity, equity, and inclusion policies. Information about [trust institution’s] rating and insurance practices related to these factors was disclosed to you and is available on the [trust institution’s] website.”

SECTION 11. Chapter 26, Title 34 of the S.C. Code is amended by adding:

Section 34‑26‑895. (A) For the purposes of this section, “non‑pecuniary objective” means a goal, outcome, or practice adopted by a credit union that requires or encourages the credit union to take into account a business or other activity that is not otherwise prohibited or limited by law or regulation when setting interest rates, offering or providing services, and make lending determinations to potential borrowers. A non‑pecuniary objective includes, but is not limited to, an environment, social, or political goal, outcome, or practice. A credit union may reasonably be determined to be pursuing a non‑pecuniary objective by the specific adoption of the goal, outcome, or practice, the statements of the credit union’s board members and executive officers indicating adoption of or support for the goal, outcome, or practice, or any such statements by any coalition, initiative, or organization that the fiduciary has joined, participated in, or to which it has become a signatory.

(B) Every credit union that is authorized to transact business in this State must disclose in a prominent position on its website and in communications with customers if it uses non‑pecuniary objectives in establishing interest rates, offering or providing services, and making lending determinations.

(C)(1) Every credit union that is authorized to transact business in this State must disclose to a potential borrower or person who is seeking services provided by the credit union any non‑pecuniary objective that it has adopted, provide a description of the non‑pecuniary objective, and disclose that the pursuit of the objective may affect its consideration of the borrower’s loan application or the person’s application for services if the potential borrower or person applying for services is engaged in a business or other activity that the non‑pecuniary objective seeks to prohibit or limit.

(2) If a credit union considers non‑pecuniary objectives when it declines a loan application or the provision of services, then it must provide a conspicuous disclosure in fourteen‑point, bold font substantially similar to the following:

“This declination or denial of services has been determined based upon a number of non‑pecuniary factors including environmental, social, and governance scores, or diversity, equity, and inclusion policies. Information about [credit union’s] rating and insurance practices related to these factors was disclosed to you and is available the [credit union’s] website.”

SECTION 12. This act takes effect upon approval by the Governor.

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