**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3565**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Gilliam, Burns, Pace and Leber

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Introduced in the House on January 10, 2023

Currently residing in the House

Summary: State Pension Fiduciary Duty Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/15/2022 House Prefiled

12/15/2022 House Referred to Committee on **Ways and Means**

1/10/2023 House Introduced and read first time ([House Journal‑page 212](h:\hj\20230110.docx))

1/10/2023 House Referred to Committee on **Ways and Means** ([House Journal‑page 212](h:\hj\20230110.docx))

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

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**VERSIONS OF THIS BILL**

[12/15/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3565_20221215.docx)

A bill

to amend the South Carolina Code of Laws BY enactING the “State Pension Fiduciary Duty Act”; and by adding Section 9-16-110 so as to provide that state retirement funds must be invested solely to achieve a return for pension plan beneficiaries and not to achieve certain political and social objectives.

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

SECTION 1. This act may be cited as the “State Pension Fiduciary Duty Act”.

SECTION 2. Article 1, Chapter 16, Title 9 of the S.C. Code is amended by adding:

Section 9-16-110. (A) As used in this section:

(1) “Fiduciary commitment” means any evidence of a fiduciary’s purpose in managing assets as a fiduciary including, but not limited to, any of the following in a fiduciary’s capacity as a fiduciary:

(a) advertising, statements, explanations, reports, letters to clients, communications with portfolio companies, statements of principles, or commitments; or

(b) participation in, affiliation with, or status as a signatory to, any coalition, initiative, joint statement of principles, or agreement.

(2) “Financial” means having been prudently determined by a fiduciary to have a material effect on the financial risk or the financial return of an investment.

(a) Financial does not include any action taken, or factor considered, by a fiduciary with any purpose whatsoever to further social, political, or ideological interests.

(b) A fiduciary may reasonably be determined to have taken an action, or considered a factor, with a purpose to further social, political, or ideological interests based upon evidence indicating such a purpose including, but not limited to, any fiduciary commitment to further, through portfolio company engagement, board or shareholder votes, or otherwise as a fiduciary, any of the following beyond what controlling federal or state law requires:

(i) eliminating, reducing, offsetting, or disclosing greenhouse gas emissions;

(ii) instituting or assessing corporate board or employment, composition, compensation, or disclosure criteria that incorporates characteristics protected in this State by law;

(iii) divesting from, limiting investment in, or limiting the activities or investments of, any company, for failing, or not committing, to meet environmental standards or disclosures; or

(iv) access to abortion, sex or gender change, or transgender surgery; or

(v) divesting from, limiting investment in, or limiting the activities or investments of, any company, for engaging in, facilitating, or supporting the manufacture, distribution, sale, or use of firearms.

(B)(1) In making and supervising investments of the reserve fund of a retirement system, the commission and any of its fiduciaries shall discharge its duties solely in the financial interest of the participants and beneficiaries for the exclusive purposes of:

(a) providing financial benefits to participants and their beneficiaries; and

(b) defraying reasonable expenses of administering the system.

(2) Any investment manager of any retirement system funds is subject to the same fiduciary duties as set forth in item (1) when investing such funds.

(3) A fiduciary shall take into account only financial factors when discharging its duties with respect to a plan and may not consider environmental, social, and governance (ESG) standards.

(4) All shares held directly or indirectly by or on behalf of a retirement system or the participants and their beneficiaries must be voted solely in the financial interest of plan participants and their beneficiaries.

(5) Unless no economically practicable alternative is available, the commission may not grant proxy voting authority to any person who is not a part of the commission, unless that person has a practice of, and in writing commits to, follow guidelines that match the commission’s obligation to act solely upon financial factors.

(6) Unless no economically practicable alternative is available, retirement system assets may not be entrusted to a fiduciary, unless that fiduciary has a practice of, and in writing commits to, follow guidelines, when engaging with portfolio companies and voting shares or proxies, that match the commission’s obligation to act solely upon financial factors.

(7) Unless no economically practicable alternative is available, the commission or any of its fiduciaries may not adopt a practice of following the recommendations of a proxy advisor or other service provider, unless such advisor or service provider has a practice of, and in writing commits to, follow proxy voting guidelines that match the commission’s obligation to act solely upon financial factors.

(8) All proxy votes must be tabulated and reported annually to the board. For each vote, the report must contain a vote caption, the plan’s vote, the recommendation of company management, and, if applicable, the proxy advisor’s recommendation. These reports must be posted on a publicly available webpage on the board’s website.

(C)(1) This section, or any contract subject to this section, may be enforced by the Attorney General.

(2) If the Attorney General has reasonable cause to believe that a person has engaged in, is engaging in, or is about to engage in, a violation of this section, he may:

(a) require such person to file on such forms as he prescribes a statement or report in writing, under oath, as to all the facts and circumstances concerning the violation and such other data and information as he considers necessary;

(b) examine under oath any person in connection with the violation;

(c) examine any record, book, document, account, or paper as he considers necessary; and

(d) pursuant to an order of the circuit court, impound any record, book, document, account, paper, sample, or material relating to such practice and retain the same in his possession until the completion of all proceedings undertaken under this section or in the courts.

SECTION 3. This act takes effect upon approval by the Governor.

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