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SENATE BILL NO. 1437

Offered January 11, 2023

A *BILL to amend and reenact § 51.1-124.30 of the Code of Virginia, relating to Virginia Retirement System; investments; environmental, social, and governance investing restricted.*

Patrons—McDougle, Cosgrove, DeSteph, Dunnivant, Hackworth, Norment, Obenshain, Peake, Pillion, Ruff, Stanley, Stuart and Suetterlein

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That § 51.1-124.30 of the Code of Virginia is amended and reenacted as follows:

§ 51.1-124.30. Board as trustee of funds; investments; standard of care; liability for losses.

A. The Board shall be the trustee of the funds of the Retirement System that it administers and of those resulting from the abolished system. Subject to the provisions of this chapter, the Board shall have full power to invest and reinvest such funds as authorized by law. *Except as otherwise provided in a state investment policy and unless the Board can demonstrate that a social investment would provide a superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, neither the Board nor any external fiduciary utilized by the Board may invest or make recommendations regarding state funds for the purpose of social investment. For purposes of this section, "social investment" means an investment that is based on environmental, socially responsible, and governance criteria in the investment, commitment, voting of shares, or engagement with portfolio companies with public funds for a purpose of obtaining an effect other than a maximized return for the Retirement System.*

B. The Board shall have the power to borrow money in such amounts as may be necessary to discharge current obligations under this chapter whenever in its judgment it would be more advantageous to borrow money than to sell securities held by the Retirement System. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Board, but in no case is the due date of any note or other evidence of debt to be beyond the end of the biennium succeeding the biennium in which the debt is incurred. Securities held by the Retirement System may be hypothecated by the Board as security for the payment of any debt incurred under this section.

C. The Board shall discharge its duties with respect to the Retirement System solely in the interest of the beneficiaries thereof and shall invest the assets of the Retirement System with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The Board shall also diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

D. No officer, director, or member of the Board or of any advisory committee of the Retirement System or any of its tax exempt subsidiary corporations whose actions are within the standard of care in subsection C above shall be held personally liable for losses suffered by the Retirement System on investments made under the authority of this chapter.

E. In the case of a plan administered by the Board which provides individual accounts permitting an employee or beneficiary to exercise discretion over assets in his account, the Board shall not be liable for any loss resulting from such employee's or beneficiary's (i) exercise of discretion over the assets in his account or (ii) inaction with respect to the assets in his account that results in such assets being placed in a default investment option selected by the Board.

F. In the case of an automatic rollover of a mandatory cash-out, as that term is defined under I.R.C. § 401 (a)(31)(B) of the United States Internal Revenue Code of 1986 (including as such section is amended or renumbered, or any successor provision thereto) and regulations thereunder applicable to governmental plans, the Board shall not be liable for any loss resulting from the Board's selection of an individual retirement plan provider and investment product where the selection is made in accordance with guidelines to be adopted by the Board that are similar to the safe harbor guidelines adopted by the United States Department of Labor for this purpose.

2. That the provisions of this act shall only apply to the investment of state funds occurring on or after July 1, 2023.

INTRODUCED

SB1437