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## SENATE BILL NO. 213

Offered January 12, 2022

Prefiled January 10, 2022

A *BILL to amend and reenact §§ 51.1-124.30, 51.1-803, and 51.1-1003 of the Code of Virginia and to amend the Code of Virginia by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.41, relating to Virginia Retirement System and local retirement systems; fossil fuel divestment; report.*

Patron—McPike

Referred to Committee on Finance and Appropriations

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.1-124.30, 51.1-803, and 51.1-1003 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 3.1 of Chapter 1 of Title 51.1 a section numbered 51.1-124.41 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.

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. *The Board's compliance with § 51.1-124.41 shall satisfy the standard of care described in this subsection.*

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)~~ 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 U.S. Department of Labor for this purpose.

**§ 51.1-124.41. Limitation on investment in fossil fuel companies; divestment; report.**

A. As used in this section:

"Fossil fuel" means coal, petroleum, natural gas, or any derivative of coal, petroleum, or natural gas that is used for fuel.

"Fossil fuel company" means any company that:

1. Is among the 200 publicly traded companies with the largest fossil fuel reserves in the world;
2. Is among the 30 largest public company owners in the world of coal-fired power plants;
3. Has as its core business the construction or operation of fossil fuel infrastructure;
4. Has as its core business the exploration, extraction, refining, processing, or distribution of fossil

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59 fuels; or

60 5. Receives more than 50 percent of its gross revenue from companies that meet the definition under  
61 subdivisions 1 through 4.

62 "Fossil fuel infrastructure" means oil or gas wells; oil or gas pipelines and refineries; oil, coal, or  
63 gas-fired power plants; oil and gas storage tanks; fossil fuel export terminals; and any other  
64 infrastructure used exclusively for fossil fuels.

65 B. The Board shall not invest any assets in the stocks, securities, or other obligations of any fossil  
66 fuel company or any subsidiary, affiliate, or parent of any fossil fuel company.

67 C. The Board shall review the extent to which its holdings are invested in the stocks, securities, or  
68 other obligations of any fossil fuel company or any subsidiary, affiliate, or parent of any fossil fuel  
69 company. The Board shall divest any such holdings by January 1, 2027.

70 D. The Board's compliance with this section shall satisfy the standard of care described in subsection  
71 C of § 51.1-124.30.

72 E. Nothing in this section precludes de minimis exposure of any funds held by the Board to the  
73 stocks, securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or parent  
74 of any fossil fuel company.

75 F. Beginning January 1, 2023, and until January 1, 2027, the Board shall report annually to the  
76 General Assembly regarding the progress of divestment and the implementation of this section. The  
77 report shall include the information received by the Board pursuant to the provisions of §§ 51.1-803 and  
78 51.1-1003. The Board shall make a final report to the General Assembly by January 1, 2027, regarding  
79 completion of the divestment pursuant to this section.

80 **§ 51.1-803. Investments of retirement systems.**

81 A. If the governing body of any county, city, or town establishes a retirement system pursuant to the  
82 provisions of this article, any funds that may be allocated, segregated, or otherwise designated for the  
83 retirement system, which are on hand at any time and are not necessary for immediate payment of  
84 pensions or benefits, shall be invested with the care, skill, prudence, and diligence under the  
85 circumstances then prevailing that a prudent person acting in a like capacity and familiar with such  
86 matters would use in the conduct of an enterprise of like character and with the same aims. Such  
87 investments shall be diversified so as to minimize the risk of large losses unless under the circumstances  
88 it is clearly prudent not to do so.

89 B. The selection of services related to the management, purchase, or sale of investments authorized  
90 by this section, including but not limited to actuarial services, shall be governed by the standard of care  
91 set forth in this section and shall not be subject to the provisions of the Virginia Public Procurement Act  
92 (§ 2.2-4300 et seq.) of Title 2.2.

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

100 D. 1. Any retirement system established pursuant to the provisions of this article shall not invest any  
101 assets in the stocks, securities, or other obligations of any fossil fuel company, as defined in  
102 § 51.1-124.41, or any subsidiary, affiliate, or parent of any fossil fuel company.

103 2. Each retirement system shall review the extent to which its holdings are invested in the stocks,  
104 securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or parent of any  
105 fossil fuel company. It shall divest any such holdings by January 1, 2027.

106 3. Each retirement system's compliance with this subsection shall satisfy the standard of care  
107 described in subsection A.

108 4. Nothing in this subsection precludes de minimis exposure of any funds held by a retirement system  
109 to the stocks, securities, or other obligations of any fossil fuel company or any subsidiary, affiliate, or  
110 parent of any fossil fuel company.

111 5. Until July 1, 2026, each retirement system shall report annually to the Board of Trustees of the  
112 Virginia Retirement System regarding the progress of divestment and the implementation of this  
113 subsection. It shall make a final report to the Board of Trustees of the Virginia Retirement System by  
114 July 1, 2026, regarding the completion, or anticipated completion, of the divestment pursuant to this  
115 subsection.

116 **§ 51.1-1003. Financial reports by retirement systems; auditor to promulgate standards.**

117 A. Every retirement system shall publish an annual report, which shall contain statements prepared in  
118 conformance with the standards for public employee retirement systems issued by the Governmental  
119 Accounting Standards Board. Such annual report need not contain the disclosure document reporting soft  
120 dollar transactions as provided in subdivision 3 of § 51.1-1000, which may be provided as a separate

121 annual supplemental document, but the annual report shall include a certification that such system is in  
122 compliance with criterion (i) of subsection A of § 51.1-800 *and information on such system's progress*  
123 *toward divestment as required by § 51.1-803*. Every retirement system shall transmit its annual report to  
124 the Virginia Retirement System at the same time such report is made available to members and  
125 beneficiaries.

126 B. The Auditor of Public Accounts shall incorporate GASB standards for financial reporting by  
127 public employee retirement systems into the Uniform Financial Reporting Manual and such incorporation  
128 of standards shall be implemented on or before July 1, 1991. All retirement systems' annual reports for  
129 retirement system plan years beginning on and after January 1, 1992, shall comply with the Auditor's  
130 Uniform Financial Reporting Manual. As GASB standards are modified or changed, the Auditor and the  
131 retirement systems shall update their standards and reports as may be necessary to ensure accurate and  
132 complete disclosure to members and beneficiaries.