



Legislation Details (With Text)

File #: 21-0066 **Version:** 0 **Name:** Retirement Systems - Precluded Investment and Divestment - Fossil Fuel Companies

Type: Ordinance **Status:** Enacted

File created: 4/19/2021 **In control:** Baltimore City Council

On agenda: **Final action:** 10/1/2021

Enactment date: **Enactment #:** 21-043

Title: Retirement Systems - Precluded Investment and Divestment - Fossil Fuel Companies
For the purpose of prohibiting the new investment of certain retirement funds in fossil fuel companies; requiring the divestment of certain retirement funds in fossil fuel companies within a certain timeframe; requiring certain reviews; specifying a certain procedure for the divestiture of investments; authorizing certain exemptions; defining certain terms; and providing for a special effective date.

Sponsors: Mark Conway, Eric T. Costello, Robert Stokes, Sr., Sharon Green Middleton, James Torrence, Odette Ramos, Kristerfer Burnett, Phylcia Porter, John Bullock, President Nicholas J. Mosby

Indexes: Fossil Fuel Companies, Retirement Systems

Code sections:

Attachments: 1. 21-0066~1st Reader, 2. Law 21-0066, 3. RSP 21-0066, 4. ERS 21-0066, 5. DHR 21-0066, 6. Hearing Agenda - 21-0066, 7. F&PERS 21-0066, 8. Comptroller's Office 21-0066, 9. Finance 21-0066, 10. PSGO - Hearing Notes - 21-0066, 11. Hearing Minutes - 21-0066, 12. Hearing Agenda - 21-0066 (2), 13. PSGO - Hearing Notes - 21-0066 (2), 14. Hearing Minutes - 21-0066 (2), 15. cc21-0066(2)~1st (Conway), 16. Hearing Packet - Bill 21-0066 - Retirement Systems - Precluded Investment and Divestment, 17. 2nd Reader Amendments 21-0066(1)~1st (comm), 18. 21-0066~3rd Reader, 19. 21-0066 Signed, 20. Completed Ordinance 21-0066

Date	Ver.	Action By	Action	Result
10/4/2021	0	Mayor	Signed by Mayor	
7/19/2021	0	Baltimore City Council	Approved and Sent to the Mayor	
6/21/2021	0	Baltimore City Council	3rd Reader, for final passage	
6/21/2021	0	Public Safety and Government Operations	Recommended Favorably with Amendment	
6/16/2021	0	Public Safety and Government Operations	Recommended Favorably with Amendment	Pass
6/14/2021	0	Public Safety and Government Operations	Worksession	
5/17/2021	0	Public Safety and Government Operations	Scheduled for a Public Hearing	
4/22/2021	0	Baltimore City Council	Refer to City Solicitor	
4/22/2021	0	Baltimore City Council	Refer to Employees' Retirement System	
4/22/2021	0	Baltimore City Council	Refer to Dept. of Finance	
4/22/2021	0	Baltimore City Council	Refer to Office of the Comptroller	
4/22/2021	0	Baltimore City Council	Refer to Labor Commissioner	
4/22/2021	0	Baltimore City Council	Refer to Dept. of Human Resources	
4/22/2021	0	Baltimore City Council	Refer to Fire and Police Employees' Retirement System	

4/22/2021	0	Baltimore City Council	Refer to Retirement Savings Plan Board of Trustees
4/19/2021	0	Baltimore City Council	Assigned
4/19/2021	0	Baltimore City Council	Introduced

Explanation: Capitals indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

* **Warning:** This is an unofficial, introductory copy of the bill.
The official copy considered by the City Council is the first reader copy.

Introductory*

City of Baltimore Council Bill

Introduced by: Councilmember Conway

A Bill Entitled

An Ordinance concerning

Retirement Systems - Precluded Investment and Divestment - Fossil Fuel Companies

For the purpose of prohibiting the new investment of certain retirement funds in fossil fuel companies; requiring the divestment of certain retirement funds in fossil fuel companies within a certain timeframe; requiring certain reviews; specifying a certain procedure for the divestiture of investments; authorizing certain exemptions; defining certain terms; and providing for a special effective date.

By adding

Article 22 - Retirement Systems
Section(s) 7(a)(2), 23(c), and 35(a)(3)
Baltimore City Code
(Edition 2000)

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 22. Retirement Systems

Subtitle - Employees' Retirement System

§ 7. Management of funds.

(a) *Trustee of funds.*

...

(2) *Fossil fuel investments.*

(i) *Definitions.*

1. In this paragraph (2), the following terms have the meanings indicated.

2. A. "Actively managed separate account" means assets of the System that are actively

managed at the direction of the Board of Trustees and held in a separate account.

B. “Actively managed separate account” does not include:

1. an indexed fund;
 2. a private equity fund;
 3. a hedge fund;
 4. a real estate fund; or
 5. any other commingled or passively managed fund.
3. “Company” means any sole proprietorship, organization, association, corporation, limited liability company, utility, partnership, joint venture, or any other entity or business association, including any wholly-owned subsidiary, majority-owned subsidiary, or parent entity of any company.
 4. “Divest” or “divestment action” means selling, redeeming, transferring, exchanging, or otherwise disposing or refraining from further investment in certain investments.
 5. “Fossil fuel company” means a company listed in the 200 publicly traded coal, oil, and gas companies that hold reported fossil fuel reserves with the largest potential carbon emissions, as ranked and updated annually in the Fossil Free Indexes US (“FFIUS”) or any successor index.

(ii) *New investments prohibited.*

Except as otherwise provided in this paragraph (2), the Board of Trustees may not make any new investments in any fossil fuel company within an actively managed separate account.

(iii) *Periodic review.*

At least every 6 months, the Board of Trustees shall review the investment holdings in each actively managed separate account and identify each investment in any fossil fuel company.

(iv) *Divestment.*

Except as otherwise provided in this paragraph (2), the Board of Trustees shall:

1. by July 1, 2022, divest at least 20% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
2. by July 1, 2023, divest at least 40% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
3. by July 1, 2024, divest at least 60% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
4. by July 1, 2025, divest at least 80% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022; and
5. by July 1, 2026, divest at least 100% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022.

(v) *Fiduciary duty; Divestment delay.*

1. Nothing in this paragraph (2) requires the Board of Trustees to take any action described in this paragraph (2) that the Board determines in good faith to be inconsistent with the fiduciary responsibilities of the Board under this Article 22.
2. If the Board of Trustees finds that a delay in divesting from a fossil fuel company is necessary due to its fiduciary duty, the Board shall, within 30 days of that finding, report the delay to the Mayor, the Board of Estimates, and the City Council and report an estimated timeline for the resumption of divestment.

(vi) *Notice.*

1. Before divesting from a fossil fuel company under this paragraph (2), the Board shall provide written notice and an opportunity to respond in writing to each company subject to the divestment action.
2. No divestment action may occur until 90 days from the date of the notice described in subparagraph 1. of this subparagraph (vi).
3. No divestment action may occur if the company demonstrates to the Board of Trustees that it is exempt from divestment under subparagraph (vii) of this paragraph (2).

(vii) *Exemption.*

The divestment requirements and investment prohibitions of this paragraph (2) do not apply to any company that can demonstrate to the Board of Trustees that the company:

1. has stopped exploring for new hydrocarbons;
2. contractually agrees not to develop or sell 80% of its current proven fossil fuel reserves; and
3. has ceased lobbying or attempting to influence City, state, or federal government officials to preserve fossil fuel subsidies, tax breaks, or the company's competitive advantage with respect to clean, renewable energy.

(vii) *Annual report.*

On or before June 30 of each year, the Board of Trustees shall submit a report to the Mayor and City Council detailing the operation and compliance with this paragraph (2). The report shall include:

1. identification of each investment in a fossil fuel company held in an actively managed separate account;
2. a list of each divestment action taken under this paragraph (2) in the prior fiscal year;
3. a description of each decision to delay divestment; and
4. a calculation of the administrative cost of compliance with this paragraph (2).

Subtitle - Elected Officials' Retirement System

§ 23. Management of Funds.

(c) *Fossil fuel company investments.*

The provisions of § 7(a)(2) of this article, concerning the investment of funds in fossil fuel companies, apply to all funds of the Elected Officials' Retirement System.

Subtitle - Fire and Police Employees' Retirement System

§ 35. Management of Funds.

(a) *Trustee of funds.*

...

(3) *Fossil fuel investments.*

(i) *Definitions.*

1. In this paragraph (3), the following terms have the meanings indicated.
2. A. "Actively managed separate account" means assets of the System that are actively managed at the direction of the Board of Trustees and held in a separate account.
B. "Actively managed separate account" does not include:
 1. an indexed fund;
 2. a private equity fund;
 3. a hedge fund;
 4. a real estate fund; or
 5. any other commingled or passively managed fund.
3. "Company" means any sole proprietorship, organization, association, corporation, limited liability company, utility, partnership, joint venture, or any other entity or business association, including any wholly-owned subsidiary, majority-owned subsidiary, or parent entity of any company.
4. "Divest" or "divestment action" means selling, redeeming, transferring, exchanging, or otherwise disposing or refraining from further investment in certain investments.
5. "Fossil fuel company" means a company listed in the 200 publicly traded coal, oil, and gas companies that hold reported fossil fuel reserves with the largest potential carbon emissions, as ranked and updated annually in the Fossil Free Indexes US ("FFIUS") or any successor index.

(ii) *New investments prohibited.*

Except as otherwise provided in this paragraph (3), the Board of Trustees may not make any new investments in any fossil fuel company within an actively managed separate account.

(iii) *Periodic review.*

At least every 6 months, the Board of Trustees shall review the investment holdings in each actively managed separate account and identify each investment in any fossil fuel company.

(iv) *Divestment.*

Except as otherwise provided in this paragraph (3), the Board of Trustees shall:

1. by July 1, 2022, divest at least 20% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
2. by July 1, 2023, divest at least 40% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
3. by July 1, 2024, divest at least 60% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022;
4. by July 1, 2025, divest at least 80% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022; and
5. by July 1, 2026, divest at least 100% of its investments in fossil fuel companies held in any actively managed separate account as of January 1, 2022.

(v) *Fiduciary duty; Divestment delay.*

1. Nothing in this paragraph (3) requires the Board of Trustees to take any action described in this paragraph (3) that the Board determines in good faith to be inconsistent with the fiduciary responsibilities of the Board under this Article 22.
2. If the Board of Trustees finds that a delay in divesting from a fossil fuel company is necessary due to its fiduciary duty, the Board shall, within 30 days of that finding, report the delay to the Mayor, the Board of Estimates, and the City Council and report an estimated timeline for the resumption of divestment.

(vi) *Notice.*

1. Before divesting from a fossil fuel company under this paragraph (3), the Board shall provide written notice and an opportunity to respond in writing to each company subject to the divestment action.
2. No divestment action may occur until 90 days from the date of the notice described in subparagraph 1. of this subparagraph (vi).
3. No divestment action may occur if the company demonstrates to the Board of Trustees that it is exempt from divestment under subparagraph (vii) of this paragraph (3).

(vii) *Exemption.*

The divestment requirements and investment prohibitions of this paragraph (3) do not apply to any company that can demonstrate to the Board of Trustees that the company:

1. has stopped exploring for new hydrocarbons;

2. contractually agrees not to develop or sell 80% of its current proven fossil fuel reserves; and
3. has ceased lobbying or attempting to influence City, state, or federal government officials to preserve fossil fuel subsidies, tax breaks, or the company's competitive advantage with respect to clean, renewable energy.

(vii) *Annual report.*

On or before June 30 of each year, the Board of Trustees shall submit a report to the Mayor and City Council detailing the operation and compliance with this paragraph (3). The report shall include:

1. identification of each investment in a fossil fuel company held in an actively managed separate account;
2. a list of each divestment action taken under this paragraph (3) in the prior fiscal year;
3. a description of each decision to delay divestment; and
4. a calculation of the administrative cost of compliance with this paragraph (3).

Section 2. And be it further ordained, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

Section 3. And be it further ordained, That this Ordinance takes effect on January 1, 2022.