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OPPONENT TESTIMONY TO SENATE BILL 6 ESG POLICIES

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Robert A. Davis, Political & Legislative Director

Good Afternoon Dolan, Vice Chair Cirino, Ranking Member Sykes, and members of the Senate Finance Committee. My name is Robert Davis and I'm the Political & Legislative Director of AFSCME Ohio Council 8. AFSCME Ohio Council 8 is the organization that represents public and non-profit workers in our state. With more than 32,000 members in nearly 400 local unions, Council 8 represents employees in cities, counties, townships, hospitals, universities, boards of education, non-profit and other public service providers. AFSCME Ohio Council 8 appreciates the opportunity to provide testimony on S.B. 6, a bill described as designed to prevent environmental, social or corporate governance policies from influencing state public investments.

We oppose this bill because it could expose our pension funds to unnecessary risk and result in overly burdensome regulations and additional costs to our funds at the expense of Ohio taxpayers. Our concern is that this type of legislation could negatively impact Ohio pension funds and their ability to maximize their risk-adjusted investment returns while incurring the lowest possible fees on behalf of Ohio's public servants and retirees.

Limiting our pension funds' freedom to make prudent investment choices could lead to lower returns, higher employer contribution rates and a less robust retirement for thousands of Ohioans. The Fiscal Note reviewing this bill echoes these concerns, noting, "The bill may increase administrative costs of the state retirement systems and the Bureau of Workers' Compensation, with the magnitude of any such increases depending on their boards' interpretations of bill provisions." Further, the Fiscal Note states,

> The bill's costs to the other affected boards depend in part on how the boards interpret the bill language. Some boards may interpret the requirements as requiring divestment of some current investments. Any potential increase in administrative costs of the five state retirement systems and BWC would depend on such interpretations. The bill may not affect their ability to maximize returns, but if the applicable public investors are required to divest their current investments, there may be an undetermined loss of investment income.[1]

This legislation could have the unintended consequence of costing the state millions. So called "anti-ESG" legislation is already costing other states' taxpayers hundreds of millions of dollars. For example, in the first eight months since the passage of the 'fossil fuel boycott' law in Texas, cities are estimated to have paid an additional $303 million to $532 million in interest on $32 billion in bonds.[2] In Kansas, proposed ESG legislation could have cost the pension systems $3.2 billion over 10 years if passed.[3]

The boards and other fiduciaries of Ohio's pension funds are already subjected to longstanding, well understood statutory fiduciary duties that require them to act "solely in the interest of the participants and beneficiaries," "for the exclusive purpose of providing benefits to participants and beneficiaries" and "with care, skill, prudence and diligence," among other requirements. If S.B. 6 makes no substantial changes to existing legal fiduciary duty requirements, as some have suggested, we question why this legislation is even being considered. Further, we are greatly concerned that this legislation will create confusion among plan decisionmakers, leading them to refrain from

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[1] "SB 6 Fiscal Note & Local Impact Statement," Ohio Legislative Service Commission, March 6, 2023.

[2] "Texas Fought Against ESG. Here's What It Cost," Knowledge at Wharton, July 22, 2022, available at: https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/texas-fought-against-esg-heres-what-it-cost/

[3] "Business backlash pushing GOP to weaken anti-ESG proposals," AP, March 9, 2023, at: https://apnews.com/article/esg-woke-investing-big-business-backlash-be6dac7d7d25d823645525597b6f1782.

making otherwise permitted investments that would maximize Ohio pension funds' risk-adjusted returns.

Consideration of ESG factors has become a mainstream practice in the assessment of risk and return. A collection of empirical research from the Council of Institutional Investors, to which four of our Ohio pension funds belong, finds the use of ESG factors in investment decisions to be connected to improved firm performance and risk mitigation.[4] Recent events such as the FirstEnergy bribery scandal and the East Palestine tragedy caused by the Norfolk Southern derailment underscore why ESG issues like political spending transparency, worker sick leave and train safety are critically important factors to consider for prudent investors.

S.B. 6 is not only a bill in search of a problem, it also threatens to create new costs and risks for Ohio's public service workers and retirees, their pension funds and their employers. Trillions of dollars in assets in the U.S. and around the world are already invested successfully by taking ESG factors into consideration. Ohio should continue to leave the decision whether to consider ESG factors to pension boards and other investment fiduciaries, not politicians. We appreciate the opportunity to comment on this legislation.

Chair Dolan and members of the committee, thank you for your time and attention and I'm happy to answer any questions you may have.

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[4] "Empirical Research on ESG Factors and Engaged Ownership," Council of Institutional Investors, August, 2021, available at: https://www.cii.org/files/publications/July%202021%20update%20bibliography%20final%20(3).pdf.