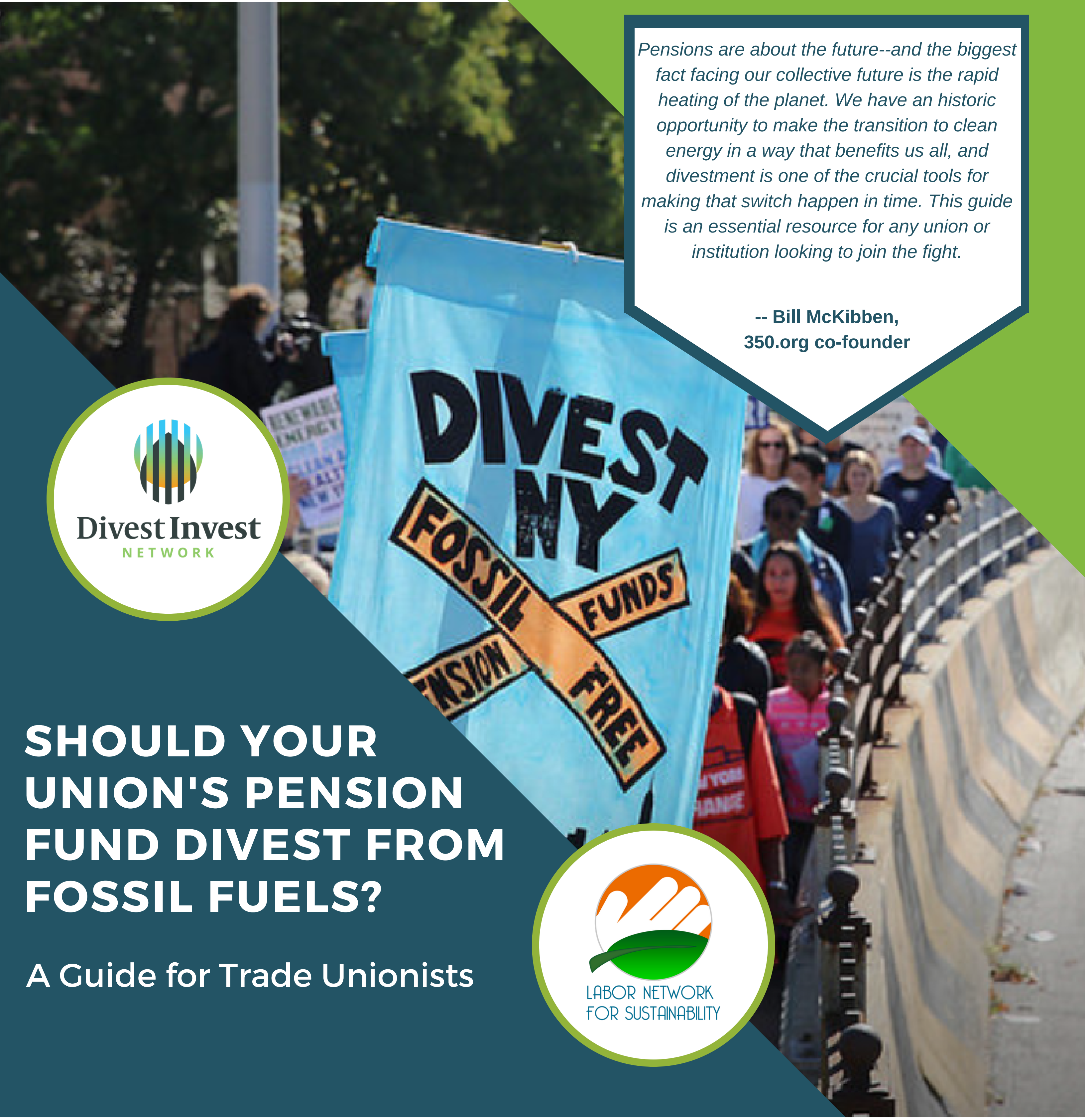


Pensions are about the future--and the biggest fact facing our collective future is the rapid heating of the planet. We have an historic opportunity to make the transition to clean energy in a way that benefits us all, and divestment is one of the crucial tools for making that switch happen in time. This guide is an essential resource for any union or institution looking to join the fight.

-- Bill McKibben, 350.org co-founder

Divest Invest
NETWORK

SHOULD YOUR UNION'S PENSION FUND DIVEST FROM FOSSIL FUELS?

A Guide for Trade Unionists

LABOR NETWORK FOR SUSTAINABILITY

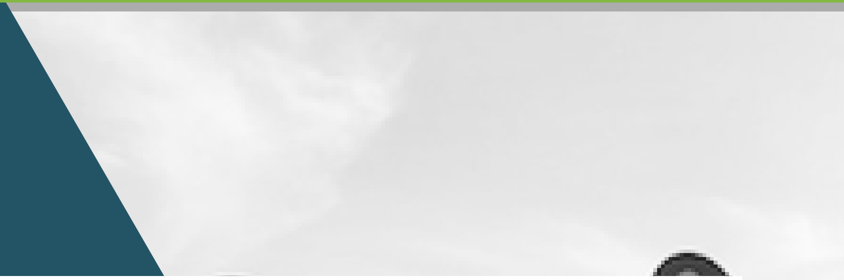
BY

DivestInvest Network

Labor Network for Sustainability

TABLE OF CONTENTS

A Guide for Trade Unionists



INTRODUCTION

This guide is designed to help you and your union consider whether you should divest from fossil fuels.

Working people collectively own an enormous amount of capital in our pensions. As a sector, pensions are the largest source of investment in financial holdings, even larger than standard investment houses and banks! Pensions constitute over $40 trillion! Our pension funds are invested in stocks and bonds that may not be serving our interests as working people and may be harming our families' futures. Imagine what we might be able to support and build, imagine the great jobs we could create, if we use more of our pension funds to directly benefit our members and our families.

Some 25 million Americans are members of pension plans that are negotiated by their unions. These funds are intended to provide for the economic security of retired union members. They also supply funds for investment in everything from factories to highways to hospitals.

Recently some of the largest corporations, universities, and non-profits have begun deliberately withdrawing their investments from fossil fuel companies – more than five trillion dollars so far.1 They are doing so for two principal reasons:

> They are concerned that fossil fuel companies are producing the carbon and other greenhouse gas (GHG) emissions that are warming the earth and destroying its climate and our future.
>
> They are concerned that companies that make and use fossil fuels are an increasingly risky investment whose economic value is falling, jeopardizing our retirement income.

Until recently, investing in coal, oil, and gas companies seemed like a no-brainer for union pension funds. They paid regular high dividends; their value always seemed to go up; they appeared to have an unlimited market for their product; and they claimed that their reserves of coal, oil, and gas in the ground were worth tens of trillions of dollars.

1 Arabella Advisors, "Global Fossil Fuel Divestment and Clean Energy Investment Movement." December, 2016. https://www.arabellaadvisors.com/wp-content/uploads/2016/12/Global_Divestment_Report_2016.pdf

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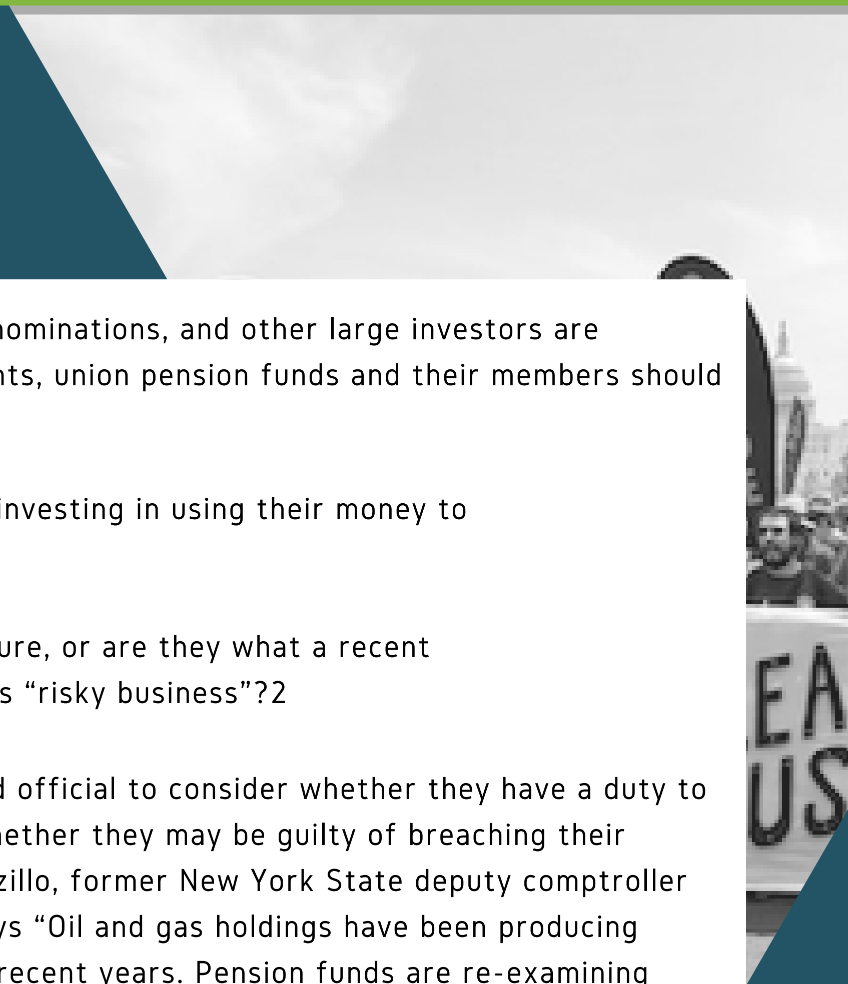
INTRODUCTION



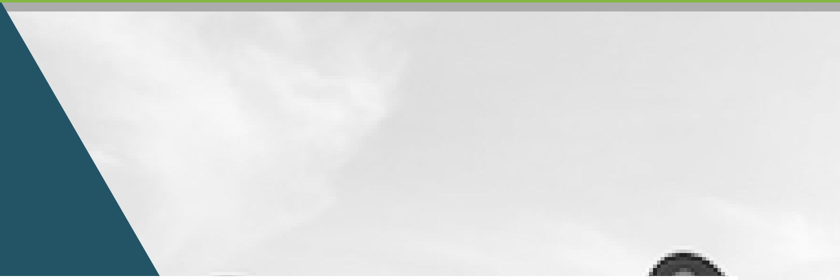
But as corporations, universities, religious denominations, and other large investors are beginning to unload their fossil fuel investments, union pension funds and their members should be asking the same questions:

> Are the companies workers are investing in using their money to destroy our own future?
>
> Are these investments truly secure, or are they what a recent corporate-sponsored report calls “risky business”?2

Indeed, it is time for every union pension fund official to consider whether they have a duty to explore divestment from fossil fuels – and whether they may be guilty of breaching their fiduciary responsibility if they don't. Tom Sanzillo, former New York State deputy comptroller who oversaw its $156 billion pension fund, says “Oil and gas holdings have been producing substantially less value for pension funds” in recent years. Pension funds are re-examining their exposure to oil and gas “because of the environmental issues, but also because of weak financial performance over the past three years.” He says the risk of remaining invested in fossil fuel companies outweighs the potential gains. Any fund that is not having internal discussions about fossil fuel exposure “is not doing its fiduciary duty.”3

Even if your union has never considered pension fund divestment, the question may soon come to you. City and state governments are increasingly debating divestment. New York City and New York State have recently announced that they plan to divest their pension funds from fossil fuels. Divestment advocates are reaching out to unions for their input and support. You may well be asked to consider whether your pension fund investments are truly protecting your future.

This guide is designed to give trade unionists an introduction to pension fund divestment and links to further information about it. It will help you and your union decide whether you should explore divesting from fossil fuels; how you should respond to proposals that you do so; and what questions you need to answer to reach a decision.



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INTRODUCTION

If you decide you should divest, it will tell you how to start a campaign to do so. It will provide answers to many of the questions you are likely to be asked by other union members and divestment opponents.

This guide was prepared by Jeremy Brecher with input and guidance from Bob Muehlenkamp, Denise Patel, Nancy Romer, and Steven Feit. Denise Patel of the DivestInvest Network and Steven Feit of the Center for International Environmental Law contributed research. The guide is co-published by the Labor Network for Sustainability and the DivestInvest Network. The Labor Network for Sustainability www.labor4sustainability.org is devoted to helping organized labor become a leader in promoting economic, social, and environmental sustainability; its slogan is “Making a Living on a Living Planet.” The DivestInvest Network https://www.divestinvest.org is a diverse, global network of individuals and organizations united in the belief that by using our collective influence as investors to divest from fossil fuels, and invest in climate solutions, we can accelerate the transition to a zero-carbon economy.

Part 1 of this guide describes the various kinds of union pension plans and how they originated. Part 2 explains how pension funds are governed and the legal and administrative safeguards designed to protect members’money. Part 3 recounts the role of union pension fund divestment in the struggle against the institutionalized racism of South African Apartheid. Part 4 describes the current global campaign for divestment from fossil fuels. Part 5 tells how unions are now joining the fossil fuel divestment movement. Part 6 offers the arguments why unions should divest fossil fuel companies from their pension funds. Part 7 provides guidelines for union divestment campaigns.

Three end-of-report boxes provide more specialized information. “Fiduciary responsibility”: Is divestment legally barred – or legally required?” explores the legal questions around divestment. “Divestment nuts and bolts” addresses how, what, and how fast to divest and where to reinvest. “Resources for reinvestment” provides links to information on what to do with disinvested funds.

UNION PENSION PLANS

From the earliest days of labor organizing, workers created mutual aid funds, sickness benefits, pension plans, burial societies, and other programs designed to provide for workers and their families in the event they were too old, sick, disabled, or otherwise unable to work for their livelihood. In the late 19th century, some large employers began offering some of their workers pensions, largely as an incentive for them not to leave their jobs for others elsewhere.[4] As unions expanded in the 1930s and ‘40s, one of their principal demands was to expand these pension plans to all workers. After World War II the Taft-Hartley Act created a legal framework for what came to be known as Taft-Harley multiemployer plans negotiated between unions and management. During the 1950s and 1960s, as unions grew in the public sector, most government employees gained the right to negotiate pensions with their employer – the government. Union-negotiated pension plans became a cornerstone for the economic security of American workers.

4 Katherine Stone, “The Origins of Job Structures in the Steel Industry,” in Root and Branch: The Rise of the Workers’Movements (Greenwich CT: Fawcett, 1975).

UNION PENSION PLANS

Today in the private sector there are 1,400 multiemployer defined benefit pension plans covering about 10 million participants, a large proportion of which are in small building and construction companies. Others are in retail trade, service, manufacturing, mining, transportation, and entertainment industries.5 Theses pension funds are deferred income of workers – we and our employers give money to our pension funds instead of getting that money in our paychecks. Most plans are jointly administered and governed by a board of trustees, with labor and management equally represented. A trustee is required to act in the sole and exclusive interest of the plan and its participants, regardless of who elects or appoints them. The bargaining parties negotiate a contribution rate and the trustees translate that rate into a benefit. Multiemployer plans are regulated by a US agency called the Pension Benefit Guarantee Corporation (PBCG) under the Employee Retirement Income Security Act (ERISA) and subsequent amendments. Plan assets must be invested prudently and solely in the interests of participants.6

Public sector pensions originated with promises made to veterans of the American Revolution and the Civil War. Starting in the late 19th century they were gradually expanded for government employees. Today the Federal Employees Retirement System covers about 2.5 million federal employees. Each state has its own retirement system, frequently known as Public Employee Retirement Systems (PERS), for their employees, who total about five million. The 13 million local-government employees may be eligible for state pension plans or in some large cities have their own.7 Some of the plans, like the California's Cal-PERS and New York State and City Public Worker Pension Funds, are huge and powerful institutions.

In all these plans, employers and employees negotiate the rules as part of the collective bargaining process. Both employers and employees regularly pay a negotiated amount into the fund. In the traditional pension plans -- so-called “defined benefit” plans – employees receive a defined amount per month when they retire. Such plans have increasingly been replaced by “defined contribution plans” in which employees are not guaranteed a pension; rather, they and their employers pay a negotiated amount into an Individual Retirement Account like a 401k or other savings device.

5 Pension Benefit Guarantee Corporation, “Introduction to Multiemployer Plans.” https://www.pbgc.gov/prac/multiemployer/introduction-to-multiemployer-plans
6 https://www.pbgc.gov/prac/multiemployer/introduction-to-multiemployer-plans
7 https://en.wikipedia.org/wiki/Public_employee_pension_plans_in_the_United_States

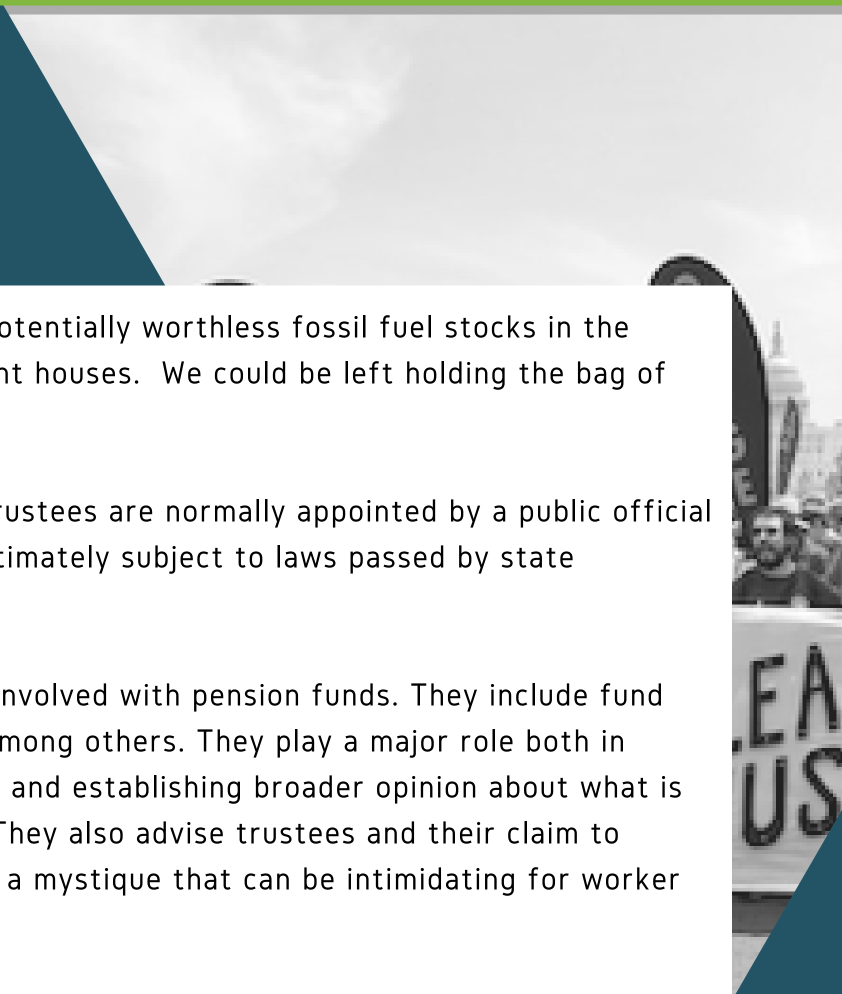
GOVERNING PENSION PLANS: PROTECTING YOUR MONEY

Legally all pension plans are trusts. They are governed by federal, state, and municipal laws and court decisions. The trusts are controlled by trustees. Often employers and employees appoint an equal number of trustees.

Pension plan trustees control “other people's money.” To prevent abuses, trustees are governed by strict rules. They have “fiduciary responsibility,” a legal term meaning they have to act entirely in the interest of the fund rather than their own personal interest, and that they have to take as good care of the fund's resources as they would of their own.

While the rules governing pension funds are intended to protect workers they may also make it harder to sell and buy stocks, bonds and other holdings when the value of a particular holding tanks. Fossil fuel values go up and down but they are in danger of plunging at a later date.

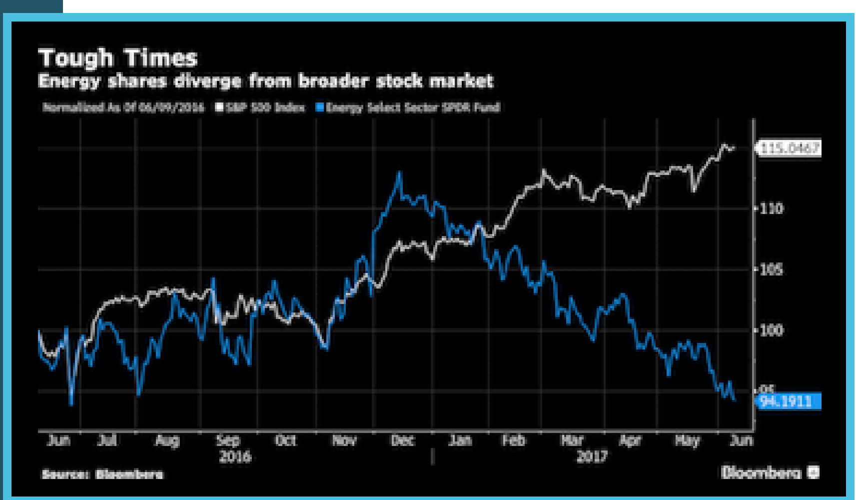
GOVERNING PENSION PLANS

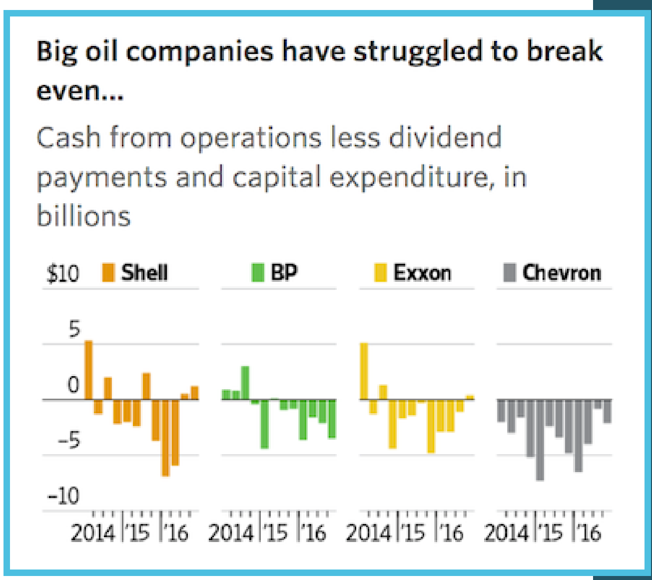


Union pension funds could be the last to sell potentially worthless fossil fuel stocks in the future compared with more “nimble” investment houses. We could be left holding the bag of fossil fuel stocks.

In trusts for public employees, the employer trustees are normally appointed by a public official like the state treasurer. Their decisions are ultimately subject to laws passed by state legislatures and city and county councils.

There is a small industry of technical experts involved with pension funds. They include fund managers, investment advisors, and lawyers, among others. They play a major role both in setting the policies of individual pension funds and establishing broader opinion about what is acceptable and legal for pension funds to do. They also advise trustees and their claim to specialized technical knowledge can give them a mystique that can be intimidating for worker trustees.





UNION DIVESTMENT - A PROUD HISTORY

Using divestment from union pension funds for a social purpose is not a newfangled idea. In fact, starting in the 1970s it played a significant role in the overthrow of the Apartheid regime of legally-sanctioned racism in South Africa.

Public employee unions in Massachusetts, Connecticut, Chicago, New York City, Detroit and elsewhere campaigned to divest their members' pension funds from companies doing business in South Africa. New York city municipal workers led a successful fight to divest city pension funds. Locals from AFSCME and other unions supported divestment.10 Together with other anti-Apartheid allies, they persuaded state, county, and municipal governments to divest their pension funds from companies with investments in South Africa. By the end of 1989 26 states, 22 counties and over 90 cities had taken some form of binding economic action against companies doing business in South Africa, including divestment by public pension funds of stocks of companies doing business in South Africa.11 In 1986 Congress passed -- over the veto of President Ronald Reagan -- the Comprehensive Anti-Apartheid Act that prohibited further U.S. investment in South Africa. Many historians consider the divestment campaign as a critical part of the defeat of Apartheid.

10 U.S. Campaign to End the Israeli Occupation, “The Role of Unions in Ending Apartheid,” https://uscpr.org/archive/downloads/AAFUnions.pdf
11 Richard Knight, “Sanctions, Divestment, and U.S. Corporations in South Africa,” https://richardknight.homestead.com/files/uscorporations.htm

FOSSIL FUEL DIVESTMENT

In 2010, a group of college students asked their colleges to divest from coal. Soon universities, foundations, and faith-based organizations were divesting not only from coal but from all fossil fuels. From colleges the movement spread to new sectors, including large insurers, pension funds, and banking institutions. By the end of 2016, institutions and individuals with assets over $5 trillion were divesting from fossil fuels.

According to Arabella Advisors' study of fossil fuel divestment, the divestment movement was initially sparked by "mission-driven institutions acting out of a moral imperative to confront the climate crisis." But a second wave of divestment is driven by "financial concerns about economic risk from stranded fossil fuel assets." Now, "diverse legal scholars, businesses, and investors" are warning that "fiduciaries who fail to consider climate change risks in their investment analyses and decisions" may be at risk of "breaching their legal duty as fiduciaries."13 Pension funds and insurance companies are now the largest fossil fuel divestment sectors.14

12 Arabella Advisors, p. 5. https://www.arabellaadvisors.com/wp-content/uploads/2016/12/Global_Divestment_Report_2016.pdf
13 Arabella, p. 2.
14 Arabella, p. 1

THE UNION DIVESTMENT MOVEMENT

The divestment movement has reached public employee pension funds. As of 2017, 43 U.S cities and states had committed to some form of divestment from fossil fuels. U.S. cities have committed to divesting from fossil fuels.   Most of the city resolutions “urge,” “request,” or “recommend” that their pension fund managers consider a path towards divestment. The Providence divestment resolution, for example, requests that the Board of Investment Commissioners “ensure that within five years” none of its assets include “holdings in fossil fuel public equities and corporate bonds” as determined by the Carbon Tracker list of the 200 largest fossil fuel corporations.16

In 2013 DC Divest, a grassroots coalition of 350.org and other groups, began campaigning for the City of Washington, DC to divest from fossil fuels. The next year the District of Columbia council voted to eliminate fossil fuel investments from the District of Columbia Retirement Board.

15 “Divestment Commitments,” www.gofossilfree.org/commitments
16 Nancy Schneider, “Revisiting Divestment,” Hastings Law Journal, February, 2015, p. 602. http://www.hastingslawjournal.org/wp-content/uploads/Schneider-66.2.pdf

THE UNION DIVESTMENT MOVEMENT

In June 2016 the Board announced it had sold all stocks listed in the Carbon Underground 200 stocks -- $6.5 million of its $6.4 billion holdings. DC council member Charles Allen told a press conference the decision was “morally and ethically the right thing” from a climate perspective and also “financially the right thing.”

In 2015, the California Assembly mandated its two pension funds to sell their investments in coal companies by July, 2017. The California Public Employees’ Retirement System (CalPERS) and the California State Teachers’ Retirement System (CalSTRS) are the two largest pension funds in the US, with 2.4 million retirees and assets of nearly $500 billion. By the end of 2017 CalPERS had sold its stock in 14 coal companies. In 2017, a bill in the legislature would have compelled CalPERS to divest from companies that do business with the Dakota Access Pipeline, opposed by the Standing Rock Sioux tribe and many supporters; it was watered down to simply require CalPERS to issue a report disclosing its pipeline-related investments.

Bills to divest California state pension plans from all fossil fuels are now under discussion. State government’s largest union, Service Employees International Local 1000, supports divestment. Local President Yvonne Walker says,

> We all understand the need to make profitable investments but fossil fuels pose a threat to everyone. We’ve learned this lesson before – placing dollars over principles is one of the key factors in today’s income inequality. We can’t change the past, but let’s make the right decisions for our future.

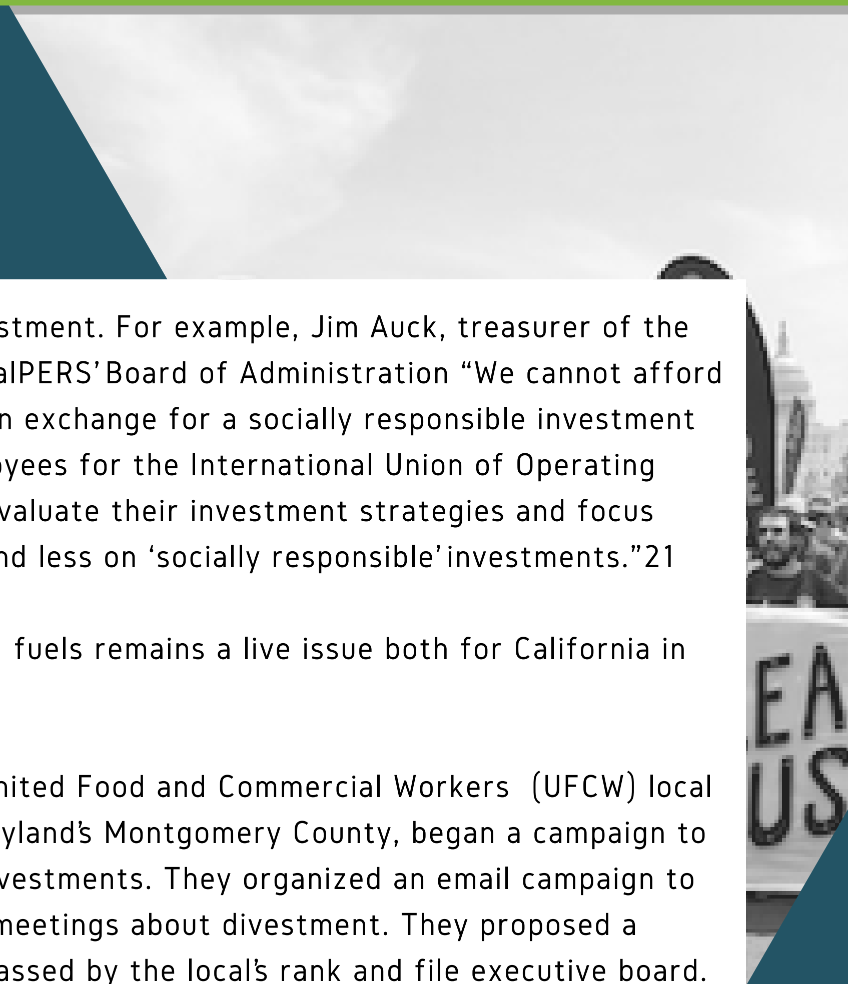
17 Zahra Hirji, “Washington D.C. Pension Fund Announces Full Fossil Fuel Divestment,” Inside Climate News, June 6, 2017. https://insideclimatenews.org/news/06062016/washington-dc-pension-fund-announces-divestment

18 Zahra Hirji, “California Passes Bill to Divest Largest Pension Funds from Coal,” Inside Climate News, September 3, 2015. https://insideclimatenews.org/news/03092015/california-bill-divest-largest-pension-funds-coal-fossil-fuel

19 Brad Bradford, “Can CalPERS Divestment Make a Difference in Controversial Projects?” KPBS, November 2, 2017. http://www.kpbs.org/news/2017/nov/02/can-calpers-divestment-make-difference-controversi/

20 Adam Ashton, “Before CalPERS can save the world, public workers want it to save their pensions,” Sacramento Bee, July 17, 2017. http://www.sacbee.com/news/politics-government/the-state-worker/article161772508.html

THE UNION DIVESTMENT MOVEMENT



Some California unions oppose fossil fuel divestment. For example, Jim Auck, treasurer of the Corona Police Officers Association, told the CalPERS' Board of Administration "We cannot afford to lose funding for law enforcement officers in exchange for a socially responsible investment policy." Steve Crouch, director of public employees for the International Union of Operating Engineers, says, "It's time for CalPERS to re-evaluate their investment strategies and focus more on improving their investment returns and less on 'socially responsible' investments."21

Divesting the state's pension funds from fossil fuels remains a live issue both for California in general and for its unions.

In 2014 climate protection advocates in the United Food and Commercial Workers (UFCW) local 1994, which represents county workers in Maryland's Montgomery County, began a campaign to divest the local's pension fund of fossil fuel investments. They organized an email campaign to the local president. They held shop stewards meetings about divestment. They proposed a resolution for the union. It was unanimously passed by the local's rank and file executive board. In May, 2017 the County Council passed a somewhat weakened version of the proposal which asked but did not require pension fund trustees to divest from fossil fuels.

In May, 2017 the Massachusetts Teachers Association, the largest union in the state representing 110,000 teachers, faculty, and staff at public school and colleges, endorsed a bill requiring the $65 billion state pension fund to divest from coal companies and establishing a commission to evaluate divestment from oil and gas companies.22

Five years ago, a coalition began pushing for New York City public pension funds to divest from fossil fuel. The DivestNY coalition, now joined by activists and leaders in AFSCME District Council 37, United Federation of Teachers, and the Professional Staff Congress of CUNY (AFT locals #2 and #2334 respectively), engaged in petition drives, leafleting, demonstrations outside of pension board meetings, and presentations and resolutions at union meetings.23

21 Adam Ashton, "Before CalPERS can save the world, public workers want it to save their pensions," Sacramento Bee, July 17, 2017. http://www.sacbee.com/news/politics-government/the-state-worker/article161772508.html
22 https://www.bostonglobe.com/business/2017/05/22/mass-teachers-union-pushes-state-pension-fund-divest/RLNP7SFRcZwE8YCeDbQFOO/story.html
23 Nancy Romer, "NYC Public Pension Funds Fossil Fuel Divestment Campaign," Labor Network for Sustainability. http://www.labor4sustainability.org/articles/nyc-public-pension-funds-fossil-fuels-divestment-campaign/

THE UNION DIVESTMENT MOVEMENT

On December 19, 2017 New York City Comptroller Scott Stringer and Governor Andrew Cuomo each released separate proposals to freeze all current fossil fuel investments, divest New York's public pension funds fossil fuel companies, and reinvest in renewable energy. On January 10, 2018, NYC Mayor Bill DeBlasio joined Controller Stringer and announced that not only will NYC's pension funds divest from all fossil fuels, but that the City is suing five major oil companies for past damages related to climate change. Mayor de Blasio and many other government, labor, and environmental speakers attested to this as a beginning of the war against fossil fuels and hoped that other unions, cities, states, and nations would follow suit and divest their funds from fossil fuels.

Together, New York's pension funds are among the largest in the world, representing a combined $390 billion.24 According to Nancy Romer of AFT local #2334 and DivestNY,

> For the last five years divestment activists have been met with consistent resistance from the NYC establishment, including the trustees of the five public worker pension boards. But all our efforts-- meeting with union leaders and rank and file, getting our champion NYC Public Advocate Letitia James on board, lots of demonstrations, meetings, public hearings, leafleting, showing evidence of the falling values of fossil fuel stocks-- have paid off.25

So far, most of the union divestment campaigns have been in the public sector. There are several reasons for this. Workers and unions have limited control over investment in Taft-Hartley plans – employers generally appoint half the trustees and decisions rest largely with professional managers and consultants. Many of these plans are underfunded and face uncertain futures. If you want to divest your Taft-Hartley plan from fossil fuels you will be pioneering – but there are compelling reasons to do so.

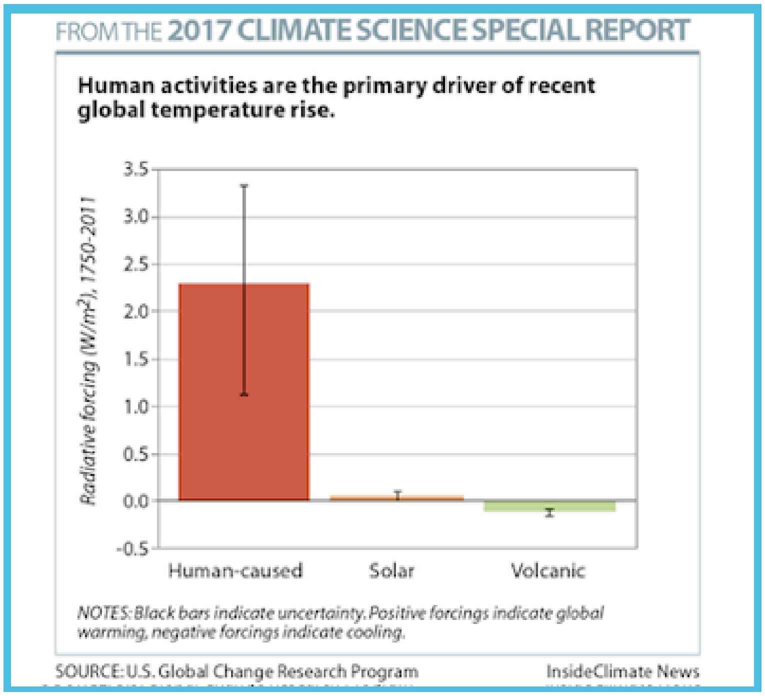
24 Nancy Romer, "NYC Public Pension Funds Fossil Fuel Divestment Campaign," Labor Network for Sustainability. http://www.labor4sustainability.org/articles/nyc-public-pension-funds-fossil-fuels-divestment-campaign/
DivestNY, release, https://gofossilfree.org/ny/divestnyvictory/
25 Labor Network for Sustainability, "Victory!: New York Pension Funds to Divest from Fossil Fuels," Making a Living on a Living Planet #15 (in press)

PART 6

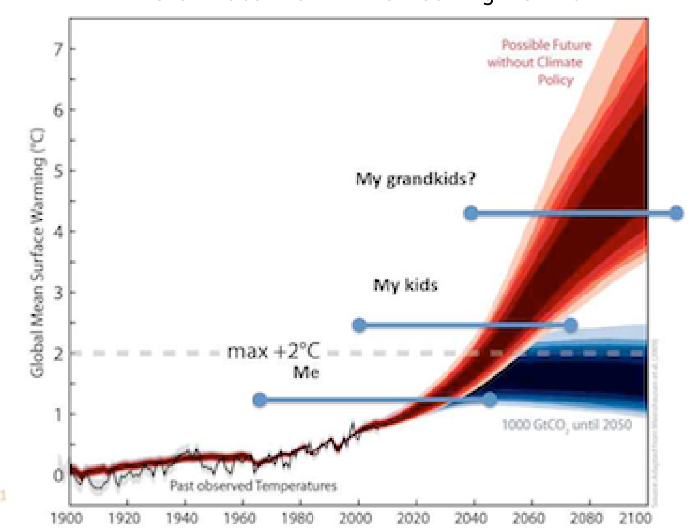
WHY DIVEST?

While the wording varies, the union resolutions calling for fossil fuel divestment have similar themes.26

The Climate We Are Making



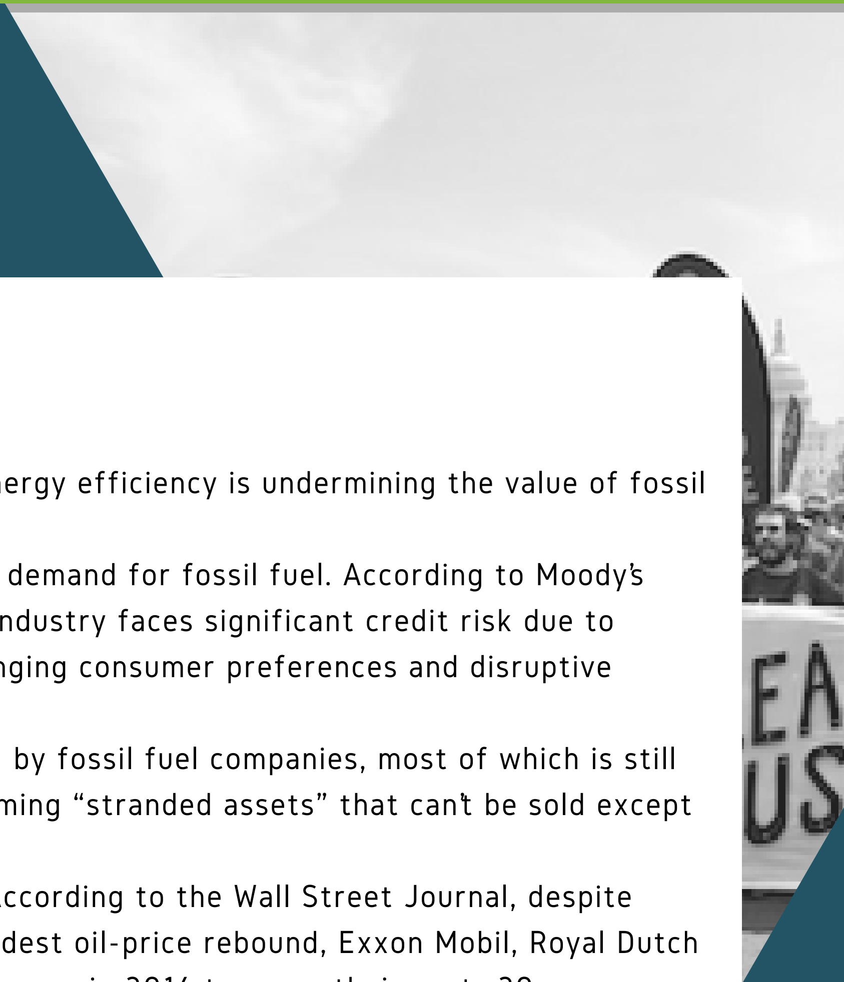
The Climate We Will Be Leaving Behind



Climate

WHY DIVEST?

- Global warming is a real and present danger. Montgomery County's MCGEO Local 1994's resolution, for example, starts off by recognizing the dangers of climate change, including "rising sea levels, extreme weather events, drought, desertification, reduced food production, spread of disease past historical boundaries, lessening of water supply, and massive adverse financial impacts."
- Global warming beyond 2 degrees Celsius will cause catastrophic harm.
- Global warming is caused by burning fossil fuels.
- To avoid catastrophic harm, 80% of the world's existing coal, oil and gas reserves must remain unburned.
- Fossil fuel companies plan to continue the destruction of the climate. They spend vast sums on lobbying to prevent governments from reducing greenhouse gas emissions.
- While some oppose divestment on the grounds that stockholders can use their clout to change the policies of fossil fuel companies, this strategy has had little or no effect in the past and is unlikely to be any more effective in the future. It is doubtful that fossil fuel corporations such as ExxonMobil will change their basic business plan and leave all fossil fuels in the ground, protecting the climate of the earth more than their direct profits.



Financial

WHY DIVEST?

- The falling cost of renewable energy and energy efficiency is undermining the value of fossil fuel investments.27
- Climate policies are likely to further reduce demand for fossil fuel. According to Moody's Investors Service, "The oil and natural gas industry faces significant credit risk due to carbon-related global policy initiatives, changing consumer preferences and disruptive technological advancement."28
- The coal, oil, and natural gas assets claimed by fossil fuel companies, most of which is still in the ground, are overvalued and risk becoming "stranded assets" that can't be sold except at fire-sale price.29
- The fossil fuel industry is in deep trouble. According to the Wall Street Journal, despite billions of dollars in spending cuts and a modest oil-price rebound, Exxon Mobil, Royal Dutch Shell, Chevron, and BP didn't make enough money in 2016 to cover their costs.30
- Historical data indicates that divesting from fossil fuel companies is very unlikely to lower the rate of return for pension funds. At present, fossil fuel stocks are providing a lower rate of return for investors compared with the overall stock index.
- Because of public policies and global agreements like the Paris Climate Agreement, fossil fuel values are likely to decline. Past performance for an industry that is being systematically phased out is no longer a good indicator of future performance. Such investments are likely to become increasingly volatile and continue to decline.
- The cost of eliminating fossil fuel investment from pension fund portfolios is negligible.

27 See "Levelized Cost of Energy 2017" https://www.lazard.com/perspective/levelized-cost-of-energy-2017/
28 "Moody's Investors Service, "Moody's: Significant credit risks arise for oil and gas industry from carbon transition," Global Credit Research, April 26, 2017. https://www.moodys.com/research/Moodys-Significant-credit-risks-arise-for-oil-and-gas-industry--PR_365728?mc_cid=5e155ae35d&mc_eid=5ef2f7e96f
29 Forecasting Failure: Why Investors Should Treat Oil Company Energy Forecasts with Caution," OilChange International/Greenpeace. http://priceofoil.org/content/uploads/2017/03/forecasting-failure.pdf
30 Sarah Kent, "Oil Companies' Modest Prize: Breaking Even," Wall Street Journal, April 2, 2017. https://www.wsj.com/articles/oil-companies-modest-prize-breaking-even-1491134405?mod=e2tw

Jobs

WHY DIVEST?

- Climate change is already threatening American workers' jobs, as seen in hurricanes, wildfires, and coastal flooding – and that is just a start.
- Building a climate-safe, fossil free economy will create millions of jobs for American workers. Renewable energy, retrofitting old buildings, creating "green" infrastructure, and other climate-protecting development will create many more jobs than the present fossil fuel-based economy.31
- Union leadership on climate can help ensure that climate protection policies protect the well-being of any workers whose livelihood they may threaten.

31 Kate Samuelson, "Renewable Energy Is Creating Jobs 12 Times Faster Than the Rest of the Economy," http://fortune.com/2017/01/27/solar-wind-renewable-jobs/

Moral

WHY DIVEST?

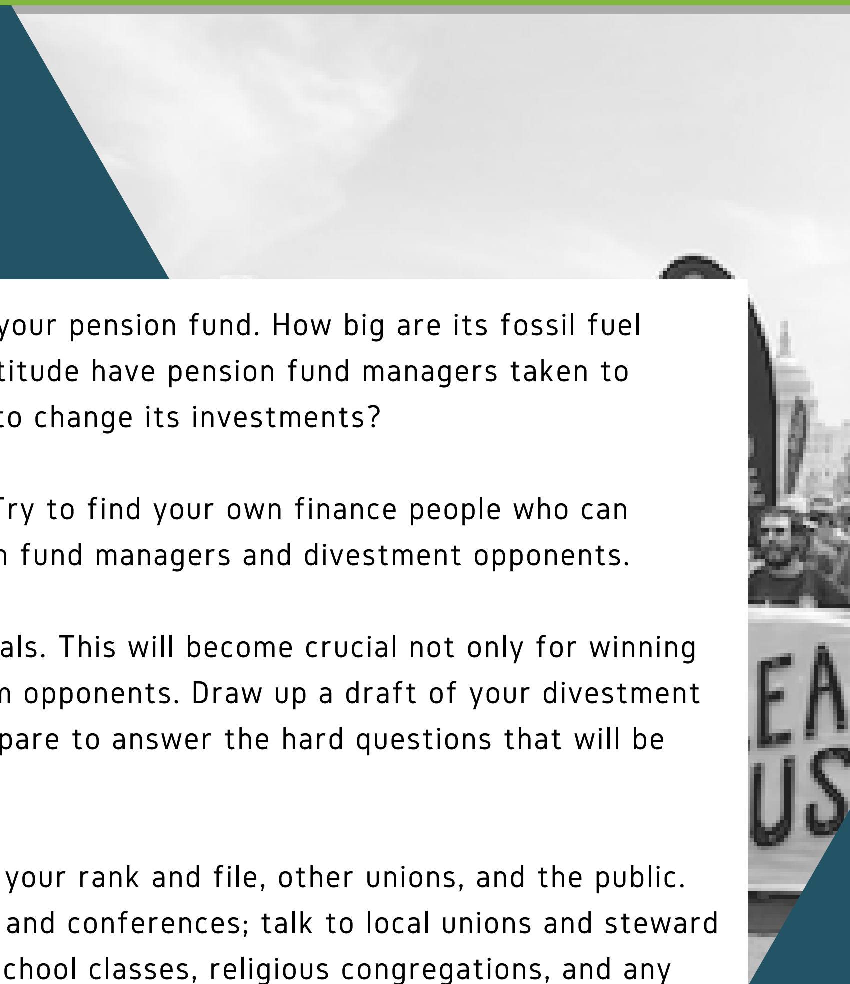
- As MCGEO local 1994's divestment resolution puts it, “It is immoral to seek to profit from companies whose business plans are based upon the destruction of our climate.”
- Unions have “a moral and financial responsibility” to protect the rights of its members' children and their following generations to enjoy “a planet that is sustainable and capable of producing good jobs and increasing economic opportunities.”
- Low-income people and people who have been historically discriminated against have contributed least to climate change and are most vulnerable to its effects.

GUIDELINES FOR A DIVESTMENT CAMPAIGN

If you decide to campaign to divest your union's pension fund from fossil fuels, you need to think carefully in advance about your strategy. While every situation is different, here are a few guidelines gleaned from past campaigns.

1. Workers whose retirement savings are in pension funds have a special legitimacy and a special responsibility in decisions about how their money is invested. They can play a critical role – pro or con – in divestment campaigns. Make sure your union brothers and sisters are involved and have a chance to learn about the issues early on.

2. Most pension divestment campaigns depend not just on the workers directly involved but on a wide range of allies. Many start not with unions but with climate protection groups in the community. Reach out early to potential allies. Work to build relations of mutual trust from the outset. Make sure that relevant parties are consulted and get to weigh in on decisions about the campaign from early on.



GUIDELINES FOR A DIVESTMENT PLAN

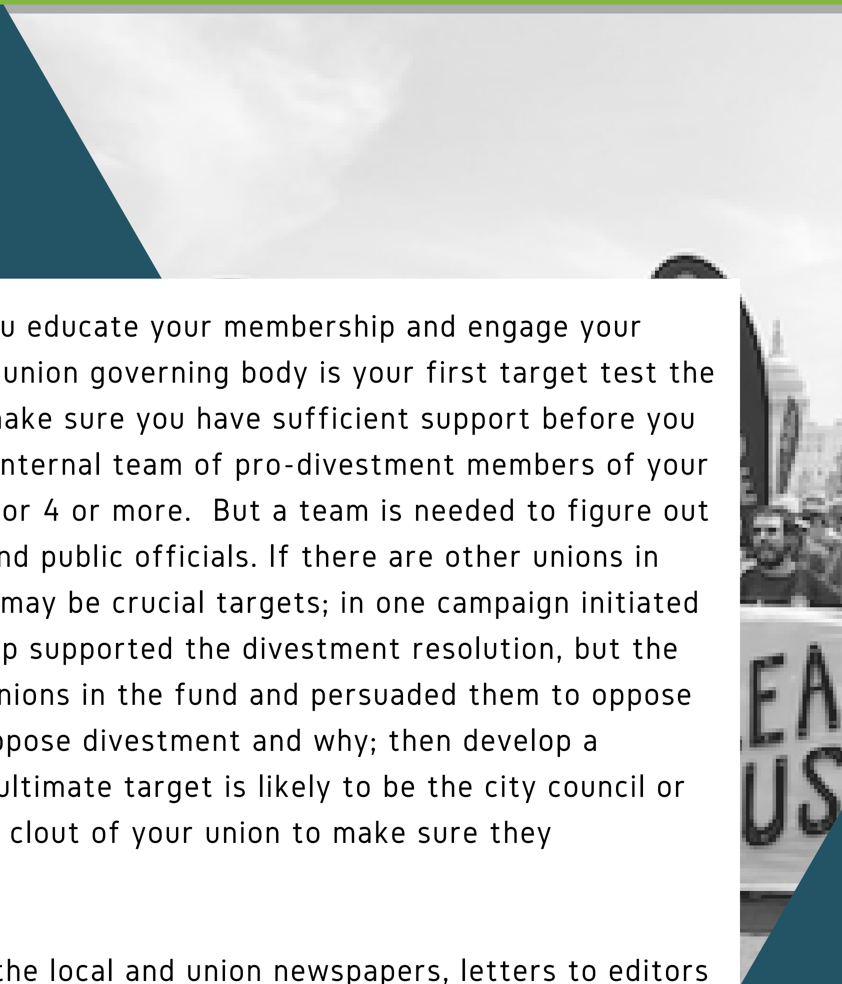
3. Research the finances and management of your pension fund. How big are its fossil fuel holdings? How have they performed? What attitude have pension fund managers taken to divestment? How much does it cost the fund to change its investments?

4. Look for allies in the financial community. Try to find your own finance people who can answer questions and counter arguments from fund managers and divestment opponents.

5. Carefully define the issues and your proposals. This will become crucial not only for winning public support, but for deflecting attacks from opponents. Draw up a draft of your divestment resolution that preempts likely criticisms. Prepare to answer the hard questions that will be raised about your divestment plan.

6. Make the case with your union's leadership, your rank and file, other unions, and the public. Prepare educational materials; run workshops and conferences; talk to local unions and steward training classes; give presentations at PTAs, school classes, religious congregations, and any place else you can get a hearing. This is a great opportunity not only to talk about your campaign, but to reach out and educate the entire community about the threat of climate change and the needs for climate justice.

7. Find political champions. The ultimate decisions on divestment from public pension plans are usually made by city councils and state legislatures. This requires a sponsor for a divestment bill who will not only sponsor but advocate and organize support for it. Some divestment campaigns have been aided by vigorous, committed champions; others have been slowed when political leaders grew inactive, backed down, or compromised prematurely. Look for champions who are personally committed; who have a track record of reliably working on similar campaigns; and who will collaborate frankly with you on strategy and tactics.



GUIDELINES FOR A DIVESTMENT PLAN

8. Select a strategy and targets. Make sure you educate your membership and engage your leadership in dialogue at an early time. If your union governing body is your first target test the waters, for example with a petition drive, to make sure you have sufficient support before you push for a vote. Make sure you have a strong internal team of pro-divestment members of your union. It can be a small, committed group of 3 or 4 or more. But a team is needed to figure out how to engage more members, other unions, and public officials. If there are other unions in your pension fund, their members and leaders may be crucial targets; in one campaign initiated by a local union, the membership and leadership supported the divestment resolution, but the managers of the pension fund went to other unions in the fund and persuaded them to oppose full divestment. Think about who is likely to oppose divestment and why; then develop a strategy to neutralize or win them over. Your ultimate target is likely to be the city council or state legislature; use all the political skills and clout of your union to make sure they understand the issue and vote the right way.

9. Reach out. Public hearings, op-ed pieces in the local and union newspapers, letters to editors of the above, public forums, “lunch for learning” opportunities for union members on lunch breaks, and petition drives are all tactics that have been used by divestment organizers to educate union members and the public as well as move the pension board trustees and/or decision-makers to vote for divestment.

CONCLUSION

Climate protection has been a difficult issue for unions. Some fear that climate policies may threaten their jobs or economic prosperity. But studies show that union members are even more likely than the general public to believe climate change is real, that it poses a real threat, and that measures must be taken to protect the climate by reducing the burning of fossil fuels.32

Late in 2017, in its first-ever resolution on climate change, the AFL-CIO acknowledged “the overwhelming scientific consensus” that climate warming is “due to human activities” and that higher global temperatures will trigger “irreversible changes in our climate,” causing “a rise in sea levels and storm surges, an increase in droughts and extreme weather events, a substantial threat of increased extinctions, decreased food security in some regions, and an increase in heat-induced health problems.” It said that the fastest and most equitable way to address climate change is for “labor to be at the center of creating solutions that reduce emissions while investing in our communities, maintaining and creating high-wage union jobs, and reducing poverty.”33

Divesting our pension funds of fossil fuel investments provides our labor movement a concrete way to get ourselves on the right side of the climate issue – and of history.

32 Todd Vachon and Jeremy Brecher, “Are Union Members More or Less Likely to be Environmentalists? Some Evidence from Two National Surveys.” Labor Studies Journal, April 13, 2016. http://journals.sagepub.com/doi/pdf/10.1177/0160449X16643323

33 Jeremy Brecher, “The New AFL-CIO Stand on Climate Change: What Does It Mean for Labor and for the Climate?” Common Dreams, November 3, 2017. https://www.commondreams.org/views/2017/11/03/new-afl-cio-stand-climate-change

Does it legally bar or legally require divestment?

FIDUCIARY RESPONSIBILITY

Pension funds are governed by a legal principle known as "fiduciary responsibility." That includes a "duty of loyalty" and a "duty of prudence."

The Uniform Prudent Investor Act of 1994 ("UPIA") defines Federal trustees' fiduciary responsibilities. State laws follow similar principles but may vary in details. The fiduciary duties of private funds are laid out in the Employee Retirement Income Security Act of 1974 (ERISA).34

UPIA's duty of loyalty states, "[a] trustee shall invest and manage the trust assets solely in the interest of the beneficiaries." Likewise, ERISA's duty of loyalty states that a fiduciary shall discharge their duties "solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing financial benefits to participants and their beneficiaries."35

Under UPIA, the duty of prudence is to "invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." This duty applies not to single assets but to the portfolio as a whole, and based on a wide array of factors including general economic conditions.36

At first, fiduciary responsibility was a stumbling block for fossil fuel divestment. However, there are strong arguments that fiduciary responsibility not only permits but may even require fossil fuel divestment.

34 Nancy Schneider, "Revisiting Divestment," Hastings Law Journal, February, 2015, p. 596. http://www.hastingslawjournal.org/wp-content/uploads/Schneider-66.2.pdf
35 Schneider, p. 597.
36 Schneider, p. 597.

THE BALTIMORE DECISION

“Revisiting Divestment,” an article by Nancy Schneider in the Hastings Law Journal, lays out the history and current legal status of divestment from union pension funds. It starts by reviewing the legal issues that arose around divesting pension funds from Apartheid South Africa. The primary case, Board of the Employee Retirement System of the City of Baltimore v. Mayor and City Council of Baltimore City grew from two Baltimore city ordinances that “no funds” shall remain or be invested in “banks or financial institutions that make loans to South Africa” or companies “doing business in or with” it.

A pension plan trustee challenged the ordinances on the grounds that they violated the duty of loyalty by mandating that trustees consider social factors rather than exclusively the interests of the beneficiaries. The court found that, consistent with their duty of loyalty, trustees could conclude that considering the ethical implications of the fund’s investment would properly serve the beneficiaries’ interests and effectively secure the provision of benefits in the future.

The trustee also charged that that the Baltimore ordinances altered the duty of prudence by prohibiting certain investments rather than leaving investment decisions to the trustees. The court dismissed this argument too. It ruled that the ordinances did not prevent the trustees from constructing “an almost perfectly diversified portfolio” with South Africa-free firms. It also found that safeguards like the two-year phase in for divestment and the power of fiduciaries to suspend the program if necessary to protect assets prevented the ordinances from violating the trustees’ duty of prudence.38

In short, Maryland’s highest court found that “legislation requiring public pension plan managers to divest from firms doing business in South Africa would not require pension plan managers to violate their fiduciary duties.”

38 Schneider, p. 599.

THE BALTIMORE DECISION

The court added that, "Given the vast power that pension trust funds exert in American society, it would be unwise to bar trustees from considering the social consequences of investment decisions in any case in which it would cost even a penny more to do so."39

"Revisiting Divestment" concludes,

> On its face, the duty of loyalty does not per se prohibit social or moral factors from entering into the investment calculus, but it does require that such considerations not have a negative impact on plan performance.
>
> Because there is evidence that fossil fuel-free portfolios perform similarly to other portfolios, plan managers may divest from fossil fuels without breaching their duty of loyalty. Those performance outcomes, the risk that fossil fuels will become stranded assets, and the risk that fossil fuel companies will become stigmatized are all factors properly considered in deciding to divest consistent with the duty of prudence.41

It concludes, disinvestment from fossil fuels "does not create a breach of fiduciary duties for public pension plan trustees."42

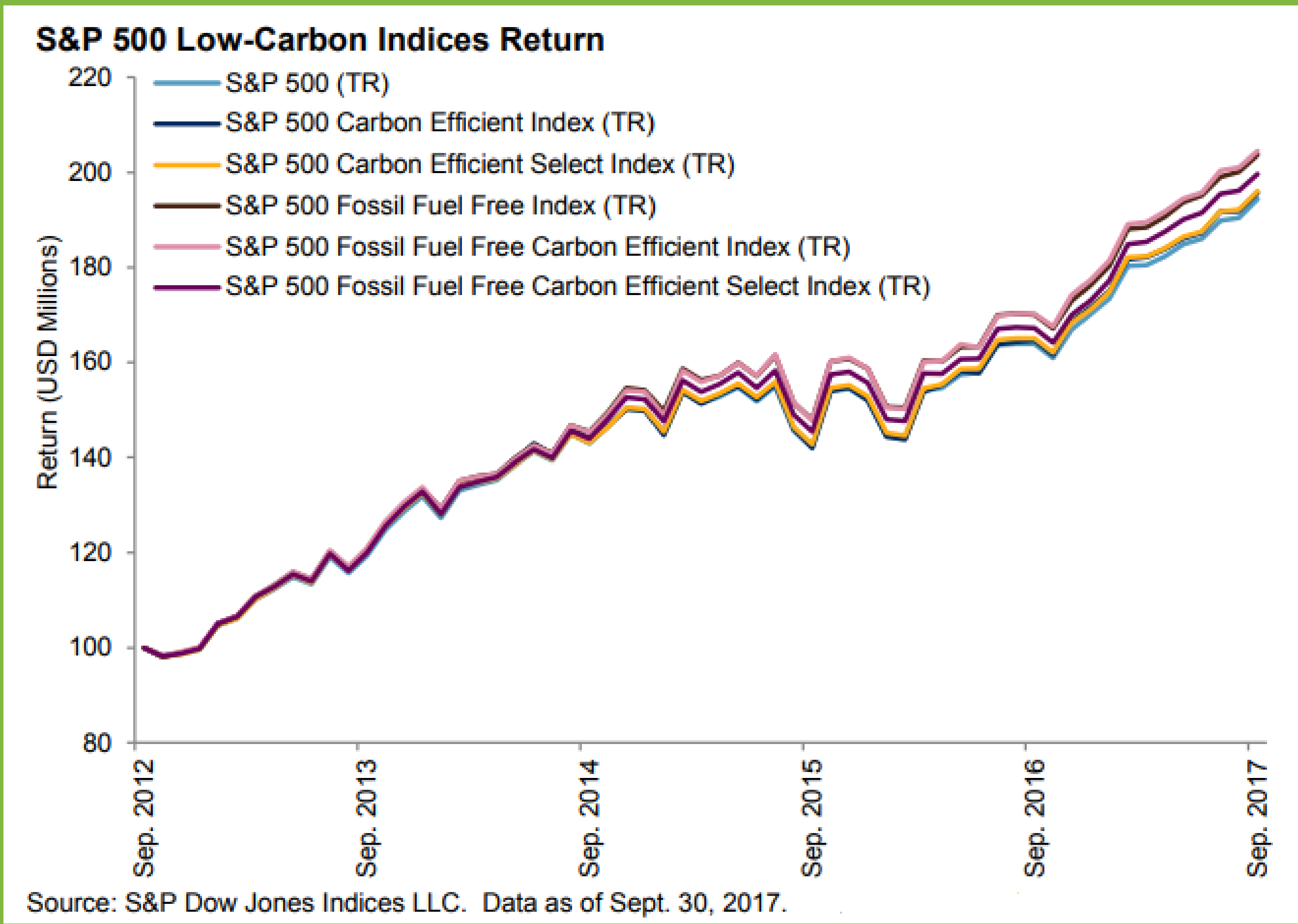
39 Schneider, p. 599.
40 Schneider, p. 592.
41 Schneider, p. 604.
42 Schneider, p. 592.

FOSSIL FUEL DIVESTMENT AND THE DUTY OF LOYALTY

"Divestment Revisited" states that under the Baltimore framework, localities that choose to divest their public pension plan holdings are unlikely to face successful legal challenges based on their duty of loyalty.

> Fiduciaries do not necessarily violate their duty of loyalty by considering the social impact of their investment decisions. So long as the costs of those considerations are de minimis, a pension plan manager is not likely to breach her duty of loyalty. The court in Baltimore reached this conclusion by finding that investing in "businesses with 'a proper sense of social obligation" will serve the long-term interests of plan beneficiaries. Thus, under the UPIA and Baltimore frameworks, the duty of loyalty permits divestment if: (1) plan managers believe that it will help them invest in "companies with a proper sense of social obligation"; and (2) divestment does not have more than a de minimis impact on plan performance.43
>
> Studies demonstrate that fossil-free portfolios closely track the performance of the major stock indices. For example, the Aperio Group, an investment management firm, produced a report on how two different portfolios (coal-free and fossil fuel-free) would perform compared to an average portfolio.44
>
> Because fossil fuel-free portfolios perform similarly to portfolios that include fossil fuel companies, divestment does not breach the fiduciary duty of loyalty, even if undertaken for social benefit.45

43 Schneider, p. 606.
44 Schneider, p. 607.
45 Schneider, p. 607



FOSSIL FUEL DIVESTMENT AND THE DUTY OF PRUDENCE

The UPIA includes a duty to diversify investments. It requires that trustees not retain a concentration in one particular asset. However, it does not say what defines a "diversified portfolio." The Baltimore decision held that if "social investment yields economically competitive returns at a comparable level of risk, the investment should not be deemed imprudent."

- "Divestment Revisited" concludes that the studies showing that fossil-free funds perform similarly to the market as a whole "provide sufficient support for the decision to divest in accordance with the duty of prudence."47

47 Schneider, p. 607

And Stranded Assets

FIDUCIARY RESPONSIBILITY

“Fossil fuels are at risk of becoming “stranded assets.” The Stranded Asset Program at the Smith School of Energy and the Environment at Oxford defines “stranded assets” as “environmentally unsustainable assets [that] suffer from unanticipated or premature write-offs, downward revaluations or are converted to liabilities.” In the fossil fuel context, this refers to investments in fossil fuels that will either never be extracted, or when they are, will be worth less than anticipated. Because the risk of assets becoming stranded is largely underappreciated, they are priced higher than their actual value, posing a risk to investors.

There are a number of commonly cited risks in the fossil fuel industry that may result in assets becoming stranded: (1) physical environmental challenges to resource-intensive industries, including the rising costs of new methods of extraction; (2) international greenhouse gas emissions regulation, extraction limits, or carbon taxes that may cap the amount of fossil fuel extracted; (3) the decreasing cost of competitive clean technology; (4) evolving social norms and consumer behavior that preference cleaner energy; and (5) the growing litigation risk faced by fossil fuel companies.”48

“Many scientists agree that to avoid the most catastrophic effects of climate change, the earth must not increase in mean temperature more than two degrees [Celsius, 3.6 degrees Fahrenheit.] To remain short of this threshold, between sixty and eighty percent of the world’s current fossil fuel reserves must remain unconsumed. Meaningful legislation to meet this goal could reduce the value of fossil fuels by requiring that most of the reserves that comprise the fossil fuel industry’s value remain in the ground. Legislation affecting share price could come in the form of carbon taxation, restrictions on the net permitted amount of fossil fuel extracted, renewable energy portfolio standards, or non-fossil fuel energy subsidies. Any one or combination of these regulations could cause a devaluation of the entire industry, and therefore pose a risk to share value and pension plan performance for those plans that remain invested.”49

48 Schneider, p. 608.
49 Schneider, p. 609.

(Cont.) And Stranded Assets

FIDUCIARY RESPONSIBILITY

“Because there is evidence that fossil fuel company stocks are at risk of stigmatization and of becoming “stranded assets,” pension plan managers divesting from fossil fuel companies do not breach their fiduciary duty of prudence. Indeed, pension plan managers who choose not to divest should take a close look at the risk fossil fuel assets pose to their portfolios. In light of the research presented above, pension plan managers who do not stay informed of these political and economic developments may find themselves in breach of their duty of prudence for failure to consider the extent of the risk of climate change.”50

“Though divestment from fossil fuels may be more financially complex than anti-apartheid divestment, it does not require pension plan managers to breach their fiduciary duties. Reversing climate change will take a global, cohesive effort that the U.S. government has so far resisted. However, as the strength of the fossil fuel divestment movement indicates, the public’s motivation for change could prove an alternative catalyst. Because fossil fuel-free portfolios perform similarly to other portfolios, divestment from fossil fuels does not breach a plan manager’s duty of loyalty, even if divestment is socially motivated. Furthermore, divestment does not require a breach of the duty of prudence. That fossil fuels are at risk of becoming stranded assets, and fossil fuel companies are at risk of being stigmatized, conveys valuable information about the future value of these stocks. Thus, divestment based on an evaluation of these risks is consistent with the duty of prudence. Consistent with their fiduciary duties, public pension plan managers may divest from fossil fuel companies, whether motivated by economic considerations, moral duty, or to signal their commitment to reversing climate change.”51

”Revisiting Divestment”
- Nancy Schneider
Hastings Law Journal 52

50 Schneider, p. 613.
51 615-16.
52 Nancy Schneider, “Revisiting Divestment,” Hastings Law Journal, February, 2015, p. 596. http://www.hastingslawjournal.org/wp-content/uploads/Schneider-66.2.pdf See original for references.

How to Divest

DIVESTMENT NUTS AND BOLTS

Divestment resolutions can range from ones that mandate pension trustees to take specific action to ones that ask, advise, or encourage them to do so. Explicit mandates help avoid efforts by pension fund managers to evade compliance with divestment. But "wiggle room" helps alleviate concerns that funds will lose money as a result of ill-considered divestment. Campaigns can seek to address both concerns. A Massachusetts proposal, for example, mandated divestment but allowed fund managers to cease divestment if the total value of the Public Fund drops in value by more than 0.5 due to the initiative.

Because so much retirement savings is now invested in individual retirement accounts, campaigns are also demanding that the companies that provide such accounts begin to divest. For example, the Professional Staff Council of the City University of New York is demanding that TIAA-CREF, which manages such accounts for the university's faculty, "provide an investment alternative free from fossil fuels among the options offered to PSC members."

53 Schneider, p. 603. Funds should provide detailed reporting on the impact of divestment to discourage manipulation of data designed to show that divestment is a failure.
54 "PSC-CUNY Resolution for Full Divestment from Fossil Fuels." http://www.psc-cuny.org/sites/default/files/Resolution%20CUNY%20Divest%202014%20rev_0.pdf

What to Divest?

DIVESTMENT NUTS AND BOLTS

Fossil Free Indexes, LLC issues an updated list of the top 200 publicly traded coal, oil, and gas-producing companies ranked by the carbon content of their proven fossil fuel reserves. This has become the standard list for fossil fuel divestment campaigns.55

How Fast to Divest?

Urgency is of the essence for climate protection. But a longer timeframe for divestment allows funds to minimize any losses from selling fossil fuel stocks at an inopportune time. Total divestment from fossil fuels within five years has become a common objective for divestment campaigns.

55 Fossil Free Indexes http://fossilfreeindexes.com

Where to Reinvest

DIVESTMENT NUTS AND BOLTS

Pension fund trustees will need to reinvest the money received from the sale of fossil fuel stocks somewhere else. In doing so, they will need to be sure they are meeting their fiduciary duty to their members, as well as meeting other social obligations.

The need for investment in the transition to a climate safe economy is huge. A recent Stanford report found that to keep the planet under 2 degrees Celsius warmer compared to pre-industrial levels, the global economy needs to triple its annual investment in low-emissions technology — from $750 billion per year between 2010 and 2015 to $2.3 trillion per year going forward until 2040.56 Pension assets worldwide now exceed $38 trillion – two thirds of them in the United States - so they could provide a significant source of investment for climate protection.57

Fortunately, there are now a variety of fossil free investment opportunities. A tool to identify them is at the website Fossil Free Funds.58 One of its founders says there were 10 funds when they started in 2015 that they identified as fossil-fuel free. "Now it's up to 31"59

Such funds can be illustrated by the SPDR® S&P® 500 Fossil Fuel Reserves Free ETF. According to Christopher C. McKnett, who leads environmental, social and governance strategy for State Street Global Advisors, "What this fund is doing is giving investors the S&P 500 minus companies that own reserves of crude oil, natural gas and thermal coal that are economically and technically recoverable."61 Studies show that both sustainable and fossil free investing have usually met, and often exceeded, the performance of comparable traditional investments.62

There are other possible investments that might have greater climate, environmental, and social benefits. A recent AFT resolution urged its local and state federation to disinvest in fossil fuels and "seek investments in renewable energy alternatives, including support for local community-owned renewable power." Many universities have divested from conventional investments and reinvested in revolving funds for greening their campuses and surrounding neighborhoods; the returns have generally been far greater than conventional investments.63

57 OECD, "Pension Markets in Focus," http://www.oecd.org/pensions/private-pensions/Pension-Markets-in-Focus-2017.pdf
58 "Fossil Free Funds," https://fossilfreefunds.org
59 Tim Gray, "Funds That Can Put Your Investments on a Low-Carbon Diet," New York Times, October 13, 2017. https://www.nytimes.com/2017/10/13/business/mutfund/mutual-funds-low-carbon.html?emc=eta1
60 "SPDR S&P 500 Fossil Fuel Reserves Free ETF,"
61 Tim Gray, October 13, 2017. https://www.nytimes.com/2017/10/13/business/mutfund/mutual-funds-low-carbon.html?emc=eta1
62 Morgan Stanley Institute for Sustainable Investing, "Study Shines Light On Sustainable Investing," April 2, 2015. and Patrick Collison, "Fossil fuel-free funds outperformed conventional ones, analysis shows," The Guardian, April 10, 2015.
63 Brendan Smith, Jeremy Brecher, Kristen Sheeran, "Where Should the Divestors Invest?" Common Dreams, May 17, 2014.

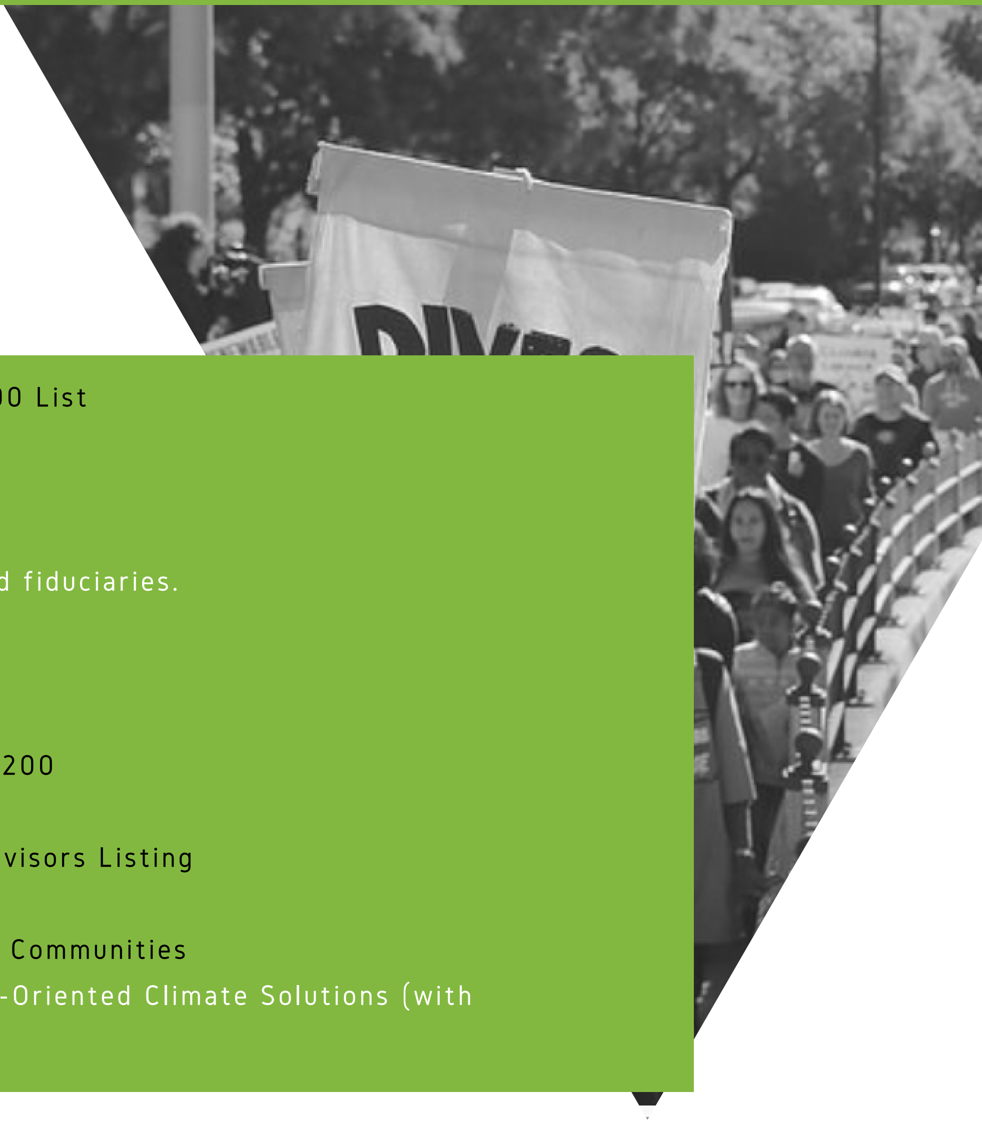
(Cont.) Where to Reinvest

DIVESTMENT NUTS AND BOLTS

Unions have often invested a proportion of their pension funds in local building projects that provide jobs for their members and economic development for local communities. The Reinvest in Our Power project 64 is developing a Reinvest Network in cooperation with the Working World's Peer Network 65 to reinvest funds from fossil fuel industries to its Financial Cooperative, a "democratically-governed cooperative of local revolving loan funds that invest in projects owned and operated by frontline communities to build economic democracy rooted in ecological integrity." As the funds available from divestment grow, such alternative investment opportunities are likely to become more available in the future.

Pension fund trustees may indicate reluctance to divest unless an immediately available equivalent re-investment opportunity is offered. This can be a distraction. Several divestment campaigns have separated the divestment part from the investment part of the demand because, in many cases, the perfect local re-investment opportunities may not yet exist. This should not deter the divestment movement. Divested funds can be re-invested across the board in other present pension holdings and, when the opportunity arises, can then be pulled out and reinvested in economically viable and climate-friendly investments that can enhance the health of our communities as well as the financial health of our pensions.

64 Our Power Campaign, "Reinvest in Our Power," http://www.ourpowercampaign.org/reinvest
65 http://www.ourpowercampaign.org/reinvest



Links and Guides

RESOURCES FOR REINVESTMENT

As You Sow Fossil Free Funds & Clean 200 List

CarbonTracker Initiative

Divest Invest Resources for investors and fiduciaries.

Divest Invest Guide for Individuals

Fossil Free Indexes Carbon Underground 200

Green America Fossil Free Investment Advisors Listing

Climate-Related Investment for Resilient Communities
DivestInvest Opportunities in Community-Oriented Climate Solutions (with DivestInvest Philanthropy)

Divest-Invest Clean Fifteen
A Total Portfolio Approach to Fossil Fuel-Free Climate Solutions (with SOCAP and a consortium of sponsors)

Action on Climate
A Practical Guide for Fiduciaries (with SEIU Capital Stewardship and Responsible Endowments Coalition)

Fixed Income Investing in Climate Solutions
Green Bond Opportunities for Philanthropic Foundations (with Confluence Philanthropy and Clean Energy Group)

Institutional Pathways to Fossil-Free Investing
Endowment Management in a Warming World (with Tellus Institute, 350.org, REC, and Sustainable Endowments Institute)

66 Supplied by the Divest-Invest Network. http://divestinvest.org