



April 7, 2023

ENGROSSED

HOUSE BILL No. 1008

DIGEST OF HB 1008 (Updated April 5, 2023 3:07 pm - DI 144)

Citations Affected: IC 5-10.2; IC 5-10.5; IC 34-30.

Synopsis: Pension investments. Specifies certain entities, actions taken, or factors considered to which the ESG commitment provisions do not apply. Provides that if the treasurer of state concludes that the service provider has made an ESG commitment, the treasurer of state
(Continued next page)

Effective: July 1, 2023.

**Manning, Speedy, Lindauer, Soliday, Prescott,
Abbott, McGuire, Morris, Lehman, May,
Teshka, Bartels, Judy, Greene, Lauer, Goodrich,
Mayfield, Snow, Davis, Morrison, Borders,
Behning, Haggard, Culp, Lucas, Sweet, Frye R,
Aylesworth, Ledbetter, Payne, Engleman,
Heaton, Cherry, Jordan, Patterson, Vermilion,
Barrett, DeVon, Criswell, Steuerwald, King,
Miller D, Pressel, Cash, Jeter, Heine, Wesco,
Hostettler**

(SENATE SPONSORS — HOLDMAN, KOCH, BUSCH, ROGERS, CRANE)

January 12, 2023, read first time and referred to Committee on Financial Institutions.
February 2, 2023, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
February 21, 2023, amended, reported — Do Pass.
February 23, 2023, read second time, ordered engrossed.
February 24, 2023, engrossed.
February 27, 2023, read third time, passed. Yeas 66, nays 33.

SENATE ACTION

March 1, 2023, read first time and referred to Committee on Pensions and Labor.
April 6, 2023, amended, reported favorably — Do Pass.

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shall place the name of the service provider on a list maintained and published by the treasurer of state and provide the name of the service provider and research supporting the conclusion to the board of trustees of the Indiana public retirement system (board). Prohibits the board from making an investment decision with the purpose of influencing any social or environmental policy or attempting to influence the governance of any corporation for nonfinancial purposes. Prohibits the Indiana public retirement system (system) from making an ESG commitment with respect to system assets. Provides that in making and supervising investments of the system, the board shall discharge its duties solely in the financial interest of the participants and beneficiaries of the system for the exclusive purposes of providing financial benefits to participants and beneficiaries and defraying reasonable expenses of administering the system. Provides that the board, in accordance with certain fiduciary duties, shall make investment decisions with the primary purpose of maximizing the target rate of return on the board's investments. Prohibits the board from entering a contract or modifying, amending, or continuing a contract with a service provider that has made an ESG commitment and is on the list maintained and published by the treasurer of state, unless taking the action violates the board's fiduciary duty to the system's participants and beneficiaries. Requires the board to continue contracting with a service provider that has made an ESG commitment if the board determines that there is not a comparable service provider to replace the service provider. Requires the board to, at least annually, tabulate and report all proxy votes made by a service provider that is not a private market fund in relation to the administration of the system. Specifies certain persons and entities that are immune from civil liability and entitled to indemnification. Requires the board to: (1) ensure that reasonable efforts are made during the due diligence process before an investment is made and in monitoring investments in the public employees' defined contribution plan, an annuity savings account for the public employees' retirement fund or the Indiana state teachers' retirement fund, the teachers' defined contribution plan, the legislators' defined contribution plan, and a private market fund to determine whether any investments would violate the requirement that the board discharge its duties solely in the financial interest of the participants and beneficiaries of the system; and (2) take appropriate action, if necessary, consistent with the board's fiduciary duties. Defines terms and makes conforming amendments.



April 7, 2023

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1008

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10.2-14 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]:

4 **Chapter 14. ESG Commitment**

5 **Sec. 1. This chapter does not apply to:**

6 (1) a bank holding company (as defined in IC 28-2-16-3 or
7 IC 28-2-16-9);

8 (2) a subsidiary of a bank holding company (as defined in
9 IC 28-2-16-3 or IC 28-2-16-9); or

10 (3) an action taken or a factor considered pursuant to the
11 requirements of this chapter by a trustee for a:

12 (A) bank holding company described in subdivision (1); or

13 (B) subsidiary of a bank holding company described in
14 subdivision (2).

15 **Sec. 2. (a) As used in this chapter, "ESG commitment" means**
16 **an action taken or a factor considered by a service provider:**

17 (1) with respect to or including the system's assets; and

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(2) with the nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose.

(b) The term defined in subsection (a) includes a commitment to further, through portfolio company engagement or board or shareholder votes, any of the following for nonfinancial purposes beyond the applicable law requirements:

(1) Eliminating, reducing, offsetting, or disclosing greenhouse gas emissions.

(2) Instituting or assessing:

(A) corporate board;

(B) employment;

(C) composition;

(D) compensation; or

(E) disclosure;

criteria that incorporate characteristics protected under IC 22-9.

(3) Divesting from, limiting investment in, or limiting the activities or investments of a company that does any of the following:

(A) Fails to meet or does not commit to environmental standards or disclosures.

(B) Engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or component parts and accessories of firearms or ammunition.

(C) Contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border security laws, regulations, and policies.

(D) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel based energy, timber, mining, agriculture, and food animal production.

Sec. 3. (a) As used in this chapter, "financial" means a prudent determination by a fiduciary to have a material effect on the monetary risk or the monetary return of an investment.

(b) The term does not include an action taken or a factor considered by a fiduciary with the nonfinancial purpose to further social, political, or ideological interests as set forth in section 2 of this chapter.



1 **Sec. 4. As used in this chapter, "service provider" means**
 2 **investment managers and proxy advisors to the system.**

3 **Sec. 5. (a) As used in this chapter and except as provided in**
 4 **subsection (b), "system" refers to the Indiana public retirement**
 5 **system established by IC 5-10.5-2-1.**

6 **(b) The term does not include the following:**

7 **(1) The public employees' defined contribution plan**
 8 **established under IC 5-10.3-12.**

9 **(2) An annuity savings account for the public employees'**
 10 **retirement fund established under IC 5-10.2-2-2(a)(1).**

11 **(3) The teachers' defined contribution plan established under**
 12 **IC 5-10.4-8.**

13 **(4) An annuity savings account for the Indiana state teachers'**
 14 **retirement fund established under IC 5-10.2-2-2(c)(1).**

15 **(5) The legislators' defined contribution plan established**
 16 **under IC 2-3.5-5.**

17 **Sec. 6. Factors to be considered as evidence of a service**
 18 **provider's ESG commitment may include one (1) or more of the**
 19 **following:**

20 **(1) Advertising.**

21 **(2) Statements.**

22 **(3) Explanations.**

23 **(4) Reports.**

24 **(5) Letters to clients.**

25 **(6) Communications with portfolio companies.**

26 **(7) Statements of principles.**

27 **(8) Participation in, affiliation with, or status as a signatory**
 28 **to:**

29 **(A) a coalition;**

30 **(B) an initiative;**

31 **(C) a joint statement of principles; or**

32 **(D) an agreement.**

33 **Sec. 7. If the treasurer of state has reasonable cause to believe**
 34 **that a service provider has made an ESG commitment, the**
 35 **treasurer of state shall research the matter and make a**
 36 **determination as to whether the service provider has made an ESG**
 37 **commitment. In conducting this research, the treasurer of state**
 38 **shall attempt to consult with the service provider and consider any**
 39 **information the service provider provides to the treasurer of state.**
 40 **If the treasurer of state concludes that the service provider has**
 41 **made an ESG commitment, the treasurer of state shall:**

42 **(1) place the name of the service provider on a list maintained**



and published by the treasurer of state; and

(2) provide the:

(A) name of the service provider; and

(B) research supporting the conclusion;

to the board.

Sec. 8. (a) Except as otherwise provided by law, the board may not make an investment decision with the purpose of:

(1) influencing any social or environmental policy; or

(2) attempting to influence the governance of any corporation for nonfinancial purposes.

(b) Except as otherwise provided by law, the system is prohibited from making an ESG commitment with respect to system assets, including without limitation in the selection of investments, selection of investment managers, management or oversight of investments, proxy voting, or shareholder engagement.

Sec. 9. (a) In making and supervising investments of the system, the board shall discharge its duties solely in the financial interest of the participants and beneficiaries of the system for the exclusive purposes of:

(1) providing financial benefits to participants and beneficiaries; and

(2) defraying reasonable expenses of administering the system.

(b) The board, in accordance with the fiduciary duties described in this article, shall make investment decisions with the primary purpose of maximizing the target rate of return on the board's investments.

Sec. 10. (a) In accordance with the board's duty under section 9 of this chapter, and except as provided in subsection (c), the board shall not:

(1) enter a contract; or

(2) modify, amend, or continue a contract;

with a service provider that has made an ESG commitment and is on the list maintained and published by the treasurer of state under section 7 of this chapter, unless taking the action described in subdivisions (1) and (2) violates the board's fiduciary duty to the system's participants and beneficiaries.

(b) The board shall replace a service provider that has made an ESG commitment with a service provider that is comparable in financial performance, so as not to violate the board's fiduciary duty to the system's participants and beneficiaries. If the board replaces a service provider, it shall do so within a reasonable time,



1 but not later than one hundred eighty (180) days after receiving
 2 notice from the treasurer of state of the service provider's ESG
 3 commitment.

4 (c) If the board determines that there is not a comparable
 5 service provider to replace a service provider under subsection (b),
 6 the board shall continue contracting with the service provider that
 7 has made an ESG commitment. The board shall include in its
 8 minutes the:

9 (1) decision that a comparable service provider does not exist;
 10 and

11 (2) evidence supporting the decision under subdivision (1).

12 Sec. 11. The board shall, at least annually, tabulate and report
 13 all proxy votes made by a service provider that is not a private
 14 market fund (as defined in IC 5-10.2-10-11) in relation to the
 15 administration of the system. For each vote reported, the report
 16 must contain:

17 (1) a vote caption;

18 (2) the fund's vote;

19 (3) the recommendation of the portfolio company's
 20 management; and

21 (4) if applicable, the recommendation of a proxy advisor or
 22 other service provider.

23 Sec. 12. (a) The following are immune from civil liability for any
 24 act or omission related to any action under this chapter:

25 (1) The state.

26 (2) Officers, agents, and employees of the state.

27 (3) The system.

28 (4) The:

29 (A) board members;

30 (B) executive director;

31 (C) officers;

32 (D) agents; and

33 (E) employees;

34 of the system.

35 (b) In addition to the immunity provided under subsection (a),
 36 the following are entitled to indemnification from the system for all
 37 losses, costs, and expenses, including reasonable attorney's fees,
 38 associated with defending against any claim or suit relating to an
 39 act authorized under this chapter:

40 (1) Officers, agents, and employees of the state.

41 (2) The:

42 (A) board members;



- (B) executive director;
 - (C) officers;
 - (D) agents; and
 - (E) employees;
- of the system.

Sec. 13. This chapter does not apply directly to the defined contribution plans or an annuity savings account described in section 5(b) of this chapter or a private market fund (as defined in IC 5-10.2-10-11). However, the board shall:

(1) ensure that reasonable efforts are made during the due diligence process before an investment is made and in monitoring investments in:

- (A) the public employees' defined contribution plan established under IC 5-10.3-12;**
- (B) an annuity savings account for the public employees' retirement fund established under IC 5-10.2-2(a)(1);**
- (C) the teachers' defined contribution plan established under IC 5-10.4-8;**
- (D) an annuity savings account for the Indiana state teachers' retirement fund established under IC 5-10.2-2(c)(1);**
- (E) the legislators' defined contribution plan established under IC 2-3.5-5; or**
- (F) a private market fund (as defined in IC 5-10.2-10-11);**

to determine whether any investments would violate section 9 of this chapter; and

(2) take appropriate action, if necessary, consistent with the board's fiduciary duties.

SECTION 2. IC 5-10.5-5-1, AS AMENDED BY P.L.86-2018, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. The board has the powers, duties, restrictions, limitations, and penalties in connection with the board's investment and management of the assets of the public pension and retirement funds of the system under the following provisions:

- (1) IC 5-10.2-2-2.5.**
- (2) IC 5-10.2-2-13.**
- (3) IC 5-10.3-3-7.1.**
- (4) IC 5-10.3-5-3.**
- (5) IC 5-10.3-5-3.1.**
- (6) IC 5-10.3-5-4.**
- (7) IC 5-10.3-5-5.**
- (8) IC 5-10.3-5-6.**



- 1 (9) IC 5-10.4-3-7.
- 2 (10) IC 5-10.4-3-9.
- 3 (11) IC 5-10.4-3-10.
- 4 (12) IC 5-10.4-3-11.
- 5 (13) IC 5-10.4-3-12.
- 6 (14) IC 5-10.4-3-13.
- 7 (15) IC 5-10.4-3-14.
- 8 (16) IC 5-10.4-3-15.
- 9 (17) IC 5-10.4-3-16.
- 10 **(18) IC 5-10.2-14.**
- 11 SECTION 3. IC 34-30-2.1-36.6 IS ADDED TO THE INDIANA
- 12 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 13 [EFFECTIVE JULY 1, 2023]: **Sec. 36.6. IC 5-10.2-14-12 (Concerning**
- 14 **the Indiana public retirement system).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1008, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 39 through 42.

Page 3, delete lines 1 through 5, begin a new paragraph and insert:

"Sec. 5. (a) As used in this chapter, "governmental entity" means any of the following:

(1) The state of Indiana.

(2) An authority, a board, a branch, a commission, a committee, a department, or other instrumentality of any of the following:

(A) The executive, including the administrative department of state government.

(B) The legislative department of state government.

(C) The judicial department of state government.

(D) A body corporate and politic created by statute.

(3) The board.

(b) The term does not include the following:

(1) A state educational institution (as defined in IC 21-7-13-32).

(2) A public school corporation (as defined in IC 4-4-38.5-6.2).

(3) A political subdivision.

Sec. 5.5. As used in this chapter, "person" means a natural person, corporation, limited liability company, partnership, or other business unit or association."

Page 3, delete lines 12 through 19, begin a new paragraph and insert:

"Sec. 7. (a) As used in this chapter, "public pension system" consists of:

(1) the public pension or retirement funds listed in IC 5-10.5-2-2;

(2) the state police pension trust under IC 10-12-2-2; and

(3) except as provided in subsection (b), any other retirement or pension plan maintained, provided, or offered by a governmental entity.

(b) The term does not include a sheriff's pension trust under IC 36-8-10-12."

Page 5, delete line 42.

Page 6, delete lines 1 through 3, begin a new paragraph and insert:

"(c) The treasurer of state may request that the attorney general



provide assistance with an investigation under this chapter by using the attorney general's investigative authority under IC 4-6-3-3. A request made by the treasurer of state under this subsection must:

- (1) be in writing; and
- (2) identify the name of the person or a specific fund of the person that is subject to the investigation.

(d) If, after investigation, the treasurer of state determines that a person has engaged in, is engaging in, or is going to engage in a violation of this chapter, the treasurer of state shall make available to the public the name of the person or a specific fund offered by the person.

(e) The treasurer of state shall provide written notice to the person of the treasurer of state's determination that the person or a specific fund offered by the person has engaged in, is engaging in, or is going to engage in a violation of this chapter. The written notice under this subsection must:

- (1) contain a warning that the person or a specific fund offered by the person may be subject to divestment or termination of a business relationship with the board; and
- (2) offer the person the opportunity to clarify the activities of the person or a specific fund offered by the person related to the requirements of this chapter.

(f) Not later than ninety (90) days after the date the person receives a written notice under subsection (e), the person shall demonstrate to the treasurer of state that the person or a specific fund offered by the person is in compliance with the requirements of this chapter.

(g) If the treasurer of state determines that the person or a specific fund of the person is in compliance with the requirements of this chapter, the treasurer of state shall make the determination under this subsection available to the public.

(h) If the treasurer of state determines that the person or a specific fund offered by the person is not in compliance with the requirements of this chapter after the ninety (90) day period under subsection (f), the treasurer of state shall provide the name of the person or a specific fund offered by the person to the board.

Sec. 17. (a) Not later than one hundred eighty (180) days after the board receives the information under section 16(h) of this chapter, the board shall begin:

- (1) divesting from; and
- (2) terminating any business relationship with;



the named person or a specific fund offered by the person according to the board's best judgment on the timing of the divestment and termination of a business relationship in order to maximize returns, minimize losses, and minimize management fees.

(b) If the board determines that it is not in the best economic interest of the public pension system to divest from and terminate a business relationship with the person or a specific fund offered by the person, the board shall make the board's rationale available to the public within the one hundred eighty (180) day period under subsection (a). The rationale must include information detailing the financial reasons that led to the board's decision, including:

(1) the expected impact of divestment on risks and returns; and

(2) whether management fees influenced the board's decision.

(c) A pension consultant that contracts with the board may provide the information under subsection (b) if the pension consultant:

(1) has a practice of following; and

(2) commits, in writing, to follow;

guidelines that meet the requirements of section 8 of this chapter.

Sec. 18. On or before December 31, 2023, the board shall amend the board's investment policies to comply with the requirements of this chapter."

Page 6, line 4, delete "17." and insert "19."

and when so amended that said bill do pass.

(Reference is to HB 1008 as introduced.)

SPEEDY

Committee Vote: yeas 9, nays 4.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1008, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 7.

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Page 2, line 8, delete "IC 5-13-15" and insert "IC 5-10.2-13".

Page 2, line 11, delete "15." and insert "**13.**".

Page 2, delete lines 18 through 19, begin a new line block indented and insert:

"(2) any person accepting the role of a fiduciary by contract or agreement with the Indiana public retirement system, to the extent defined by such contract or agreement."

Page 2, line 22, after "as a" insert "**fiduciary specifically on behalf of assets managed for the public pension system:**".

Page 2, delete line 23.

Page 2, line 24, delete "letters to" and insert "**letters,**".

Page 2, line 25, delete "clients,".

Page 2, line 27, delete "Participation" and insert "**Engaging in nonfinancial actions due to participation**".

Page 2, line 37, after "with a" insert "**nonfinancial**".

Page 3, line 26, after "IC 5-10.5-2-2;" insert "**and**".

Page 3, line 27, delete "IC 10-12-2-2; and" and insert "**IC 10-12-2-2.**".

Page 3, delete lines 28 through 30.

Page 3, line 31, after "under" insert "**IC 36-8-10-12 or any plan under IC 5-10-1.1.**".

Page 3, delete line 32.

Page 4, delete lines 3 through 41, begin a new paragraph and insert:

"(c) A fiduciary must discharge the fiduciary's duties consistent with its applicable fiduciary obligations to ensure public pension system assets are not used for or diverted to any purpose other than that purpose specified by the public pension system.

Sec. 9. A fiduciary may be reasonably determined to have taken an action or considered a factor with a purpose to further social, political, or ideological interests based on evidence indicating the purpose, including a fiduciary commitment to further, through portfolio company engagement, board or shareholder votes, or otherwise as a fiduciary, any of the following beyond the requirements of applicable law, specifically on behalf of assets managed for the public pension system:

(1) Eliminating, reducing, or offsetting greenhouse gas emissions for nonfinancial purposes.

(2) Instituting:

(A) corporate board;

(B) employment;

(C) composition; or

(D) compensation;



criteria that incorporate characteristics protected under IC 22-9 or applicable law.

(3) Divesting from, limiting investment in, or limiting the activities or investments of a company:

(A) that:

- (i) fails to meet or does not commit to environmental standards or disclosures;**
- (ii) engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or components parts and accessories of firearms or ammunition;**
- (iii) contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border security laws, regulations, and policies; or**
- (iv) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel based energy, timber, mining, agriculture, and food animal production; and**

(B) for nonfinancial purposes.

Sec. 10. Compliance with this chapter does not impose any additional fiduciary obligations on a person, other than to the extent required by law or the applicable contract or agreement."

Page 5, delete lines 5 through 26, begin a new paragraph and insert:

"Sec. 12. (a) This section does not apply to a private market fund (as defined in IC 5-10.2-10-11).

(b) To the extent economically feasible, a governmental entity that administers a fund of the public pension system may not grant proxy voting authority to a person who is not a public employee unless the person:

- (1) has a practice of following; and**
- (2) commits, in writing, to follow;**

guidelines that meet the requirements of section 8 of this chapter.

Sec. 13. (a) This section does not apply to a private market fund (as defined in IC 5-10.2-10-11).

(b) To the extent economically feasible, assets of the public pension system may not be entrusted to a fiduciary, unless the fiduciary:

- (1) has a practice of following; and**
- (2) commits, in writing, to follow;**

guidelines that meet the requirements of section 8 of this chapter



when the fiduciary engages with portfolio companies and voting shares or proxies.

Sec. 14. (a) This section does not apply to a private market fund (as defined in IC 5-10.2-10-11).

(b) To the extent economically feasible, a fiduciary may not follow the recommendations of a proxy advisor or other service provider, unless the proxy advisor or service provider:

- (1) has a practice of following; and**
- (2) commits, in writing, to follow;**

proxy voting guidelines that meet the requirements of section 8 of this chapter."

Page 5, line 27, delete "A governmental entity" and insert "**The board**".

Page 5, line 28, after "made" insert "**by any fiduciary**".

Page 5, delete lines 38 through 39.

Page 5, line 40, delete "(d)" and insert "**(c)**".

Page 7, delete lines 9 through 33, begin a new paragraph and insert:

"Sec. 17. (a) Not later than one hundred eighty (180) days after the board receives the information under section 16(h) of this chapter, the board shall begin:

- (1) divesting from; and**
- (2) terminating any business relationship with;**

the named person or a specific fund offered by the person according to the board's best judgment on the timing of the divestment and termination of a business relationship in order to maximize returns, minimize losses, and minimize management fees.

(b) If the board determines that it is not consistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets to divest from and terminate a business relationship with the person or a specific fund offered by the person, the board shall make the board's rationale available to the public within the one hundred eighty (180) day period under subsection (a). The rationale must include information detailing the financial reasons that led to the board's decision, including:

- (1) the expected impact of divestment on risks and returns; and**
- (2) whether management fees influenced the board's decision.**

(c) To the extent economically feasible, a pension consultant that contracts with the board may provide the information under subsection (b) if the pension consultant:

- (1) has a practice of following; and**



(2) commits, in writing, to follow;
guidelines that meet the requirements of section 8 of this chapter.

(d) If:

(1) the treasurer of state determines that a person or specific fund offered by the person is not in compliance with the requirements of this chapter under section 16(h) of this chapter; and

(2) the board takes a vote under this section concerning whether to divest from or terminate a business relationship with a person or specific fund described in subdivision (1);

the treasurer of state may not cast a vote under subdivision (2)."

Page 7, between lines 36 and 37, begin a new paragraph and insert:

"Sec. 19. (a) The following are immune from civil liability for any act or omission related to any action under this chapter:

(1) The state.

(2) Officers, agents, and employees of the state.

(3) The system.

(4) The:

(A) board members;

(B) executive director;

(C) officers;

(D) agents; and

(E) employees;

of the system.

(b) In addition to the immunity provided under subsection (a), the following are entitled to indemnification from the system for all losses, costs, and expenses, including reasonable attorney's fees, associated with defending against any claim or suit relating to an act authorized under this chapter:

(1) Officers, agents, and employees of the state.

(2) The:

(A) board members;

(B) executive director;

(C) officers;

(D) agents; and

(E) employees;

of the system."

Page 7, line 37, delete "19." and insert "20."

Page 7, after line 38, begin a new paragraph and insert:

"SECTION 2. IC 5-10.5-5-1, AS AMENDED BY P.L.86-2018, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. The board has the powers, duties, restrictions,



limitations, and penalties in connection with the board's investment and management of the assets of the public pension and retirement funds of the system under the following provisions:

- (1) IC 5-10.2-2-2.5.
- (2) IC 5-10.2-2-13.
- (3) IC 5-10.3-3-7.1.
- (4) IC 5-10.3-5-3.
- (5) IC 5-10.3-5-3.1.
- (6) IC 5-10.3-5-4.
- (7) IC 5-10.3-5-5.
- (8) IC 5-10.3-5-6.
- (9) IC 5-10.4-3-7.
- (10) IC 5-10.4-3-9.
- (11) IC 5-10.4-3-10.
- (12) IC 5-10.4-3-11.
- (13) IC 5-10.4-3-12.
- (14) IC 5-10.4-3-13.
- (15) IC 5-10.4-3-14.
- (16) IC 5-10.4-3-15.
- (17) IC 5-10.4-3-16.

(18) IC 5-10.2-13.

SECTION 3. IC 10-12-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 7. Fiduciary Duties

Sec. 1. As used in this chapter, the following terms have the meaning set forth in IC 5-10.2-13:

- (1) "Fiduciary".
- (2) "Fiduciary commitment".
- (3) "Financial".
- (4) "Person".
- (5) "Public employee".

Sec. 2. (a) The trustee shall discharge its duties solely in the financial interest of the participants and beneficiaries of the trust for the exclusive purposes of:

- (1) providing financial benefits to participants and beneficiaries; and
- (2) defraying reasonable expenses of administering the trust.

Sec. 3. A fiduciary must discharge the fiduciary's duties consistent with its applicable fiduciary obligations to ensure trust assets are not used for or diverted to any purpose other than that purpose specified by the trustee.



Sec. 4. A fiduciary may be reasonably determined to have taken an action or considered a factor with a purpose to further social, political, or ideological interests based on evidence indicating the purpose, including a fiduciary commitment to further, through portfolio company engagement, board or shareholder votes, or otherwise as a fiduciary, any of the following beyond the requirements of applicable law specifically on behalf of assets managed for the trustee:

(1) Eliminating, reducing, or offsetting greenhouse gas emissions for nonfinancial purposes.

(2) Instituting:

(A) corporate board;

(B) employment;

(C) composition; or

(D) compensation;

criteria that incorporate characteristics protected under applicable law.

(3) Divesting from, limiting investment in, or limiting the activities or investments of a company:

(A) that:

(i) fails to meet or does not commit to environmental standards or disclosures;

(ii) engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or components parts and accessories of firearms or ammunition;

(iii) contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border security laws, regulations, and policies; or

(iv) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel based energy, timber, mining, agriculture, and food animal production; and

(B) for nonfinancial purposes.

Sec. 5. Compliance with this chapter does not impose any additional fiduciary obligations on a person, other than to the extent required by law or the applicable contract or agreement.

Sec. 6. All shares held directly or indirectly by or on behalf of:

(1) the trust; or

(2) the participants and beneficiaries;



must be voted solely in the financial interest of the participants and beneficiaries.

Sec. 7. To the extent economically feasible, the trustee may not:

(1) grant proxy voting authority to a fiduciary who is not a public employee unless the fiduciary:

(A) has a practice of following; and

(B) commits, in writing, to follow;

guidelines that meet the requirements of section 2 of this chapter;

(2) entrust assets of the trust to a fiduciary, unless the fiduciary:

(A) has a practice of following; and

(B) commits, in writing, to follow;

guidelines that meet the requirements of section 2 of this chapter when the fiduciary engages with portfolio companies and voting shares or proxies;

(3) follow the recommendations of a proxy advisor or other service provider, unless the proxy advisor or service provider:

(A) has a practice of following; and

(B) commits, in writing, to follow;

proxy voting guidelines that meet the requirements of section 2 of this chapter.

Sec. 8. The trustee shall, at least annually, tabulate and report all proxy votes made in relation to the administration of the trust and make such report available on its website. For each vote reported, the report must contain:

(1) a vote caption;

(2) the fund's vote;

(3) the recommendation of a portfolio company's management; and

(4) if applicable, the recommendation of a proxy advisor or other service provider.

Sec. 9. (a) If the trustee has reasonable cause to believe that a fiduciary has engaged in, is engaging in, or is going to engage in a violation of this chapter, the trustee may do any of the following:

(1) Require the fiduciary to:

(A) file, on a form prescribed by the trustee, a written statement describing the facts and circumstances concerning the violation; and

(B) provide any other data or information that the trustee deems necessary.

(2) Examine a record, book, document, account, or paper as



the trustee deems necessary.

(b) The trustee may request that the attorney general provide assistance with an investigation under this section by using the attorney general's investigative authority under IC 4-6-3-3. A request made by the trustee under this subsection must:

- (1) be in writing; and
- (2) identify the name of the fiduciary or a specific fund of the fiduciary that is subject to the investigation.

(c) If, after investigation, the trustee determines that a fiduciary has engaged in, is engaging in, or is going to engage in a violation of this section, the trustee shall make available to the public the name of the fiduciary or a specific fund offered by the fiduciary.

(d) The trustee shall provide written notice to the fiduciary of the trustee's determination that the fiduciary or a specific fund offered by the fiduciary has engaged in, is engaging in, or is going to engage in a violation of this chapter. The written notice under this subsection must:

- (1) contain a warning that the fiduciary or a specific fund offered by the fiduciary may be subject to divestment or termination of a business relationship with the trustee; and
- (2) offer the fiduciary the opportunity to clarify the activities of the fiduciary or a specific fund offered by the fiduciary related to the requirements of this chapter.

(e) Not later than ninety (90) days after the date the fiduciary receives a written notice under subsection (d), the fiduciary shall demonstrate to the trustee that the fiduciary or a specific fund offered by the fiduciary is in compliance with the requirements of this chapter.

(f) If the trustee determines that the fiduciary or a specific fund of the fiduciary is in compliance with the requirements of this chapter, the trustee shall make the determination under this subsection available to the public.

(g) If the trustee determines that the fiduciary or a specific fund offered by the fiduciary is not in compliance with the requirements of this chapter after the ninety (90) day period under subsection (e), the trustee shall make such determination at a public trustee meeting and shall inform the interim study committee on pension management oversight.

Sec. 10. (a) Not later than one hundred eighty (180) days after the trustee makes the determination under section 9(g) of this chapter, the trustee shall begin:

- (1) divesting from; and



(2) terminating any business relationship with;
the named fiduciary or a specific fund offered by the fiduciary according to the trustee's best judgment on the timing of the divestment and termination of a business relationship in order to maximize returns, minimize losses, and minimize management fees.
(b) If the trustee determines that it is not in the best economic interest of the trustee assets to divest from and terminate a business relationship with the fiduciary or a specific fund offered by the fiduciary, the trustee shall make the trustee's rationale available to the public within the one hundred eighty (180) day period under subsection (a). The rationale must include information detailing the financial reasons that led to the trustee's decision, including:

- (1) the expected impact of divestment on risks and returns;
and
- (2) whether management fees influenced the trustee's decision.

(c) A pension consultant that contracts with the trustee may provide the necessary information if the pension consultant:

- (1) has a practice of following; and
- (2) commits, in writing, to follow;

guidelines that meet the requirements of section 2 of this chapter.

Sec. 11. (a) The following are immune from civil liability for any act or omission related to any action under this chapter:

- (1) The state.
- (2) Officers, agents, and employees of the state.

(b) In addition to the immunity provided under subsection (a), officers, agents, and employees of the state are entitled to indemnification from the system for all losses, costs, and expenses, including reasonable attorney's fees, associated with defending against any claim or suit relating to an act authorized under this chapter.

Sec. 12. On or before December 31, 2023, the trustee shall amend the trustee's investment policies to comply with the requirements of this chapter.

SECTION 4. IC 34-30-2.1-36.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 36.2. IC 5-10.2-13-19 (concerning fiduciary duties and divestment related to certain public pension funds).

SECTION 5. IC 34-30-2.1-114.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2023]: **Sec. 114.5. IC 10-12-7-11 (concerning fiduciary duties and divestment related to certain public pension funds).**".

Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1008 as printed February 2, 2023.)

THOMPSON

Committee Vote: yeas 15, nays 8.

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred House Bill No. 1008, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
"SECTION 1. IC 5-10.2-14 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 14. ESG Commitment

Sec. 1. This chapter does not apply to:

- (1) a bank holding company (as defined in IC 28-2-16-3 or IC 28-2-16-9);**
- (2) a subsidiary of a bank holding company (as defined in IC 28-2-16-3 or IC 28-2-16-9); or**
- (3) an action taken or a factor considered pursuant to the requirements of this chapter by a trustee for a:**
 - (A) bank holding company described in subdivision (1); or**
 - (B) subsidiary of a bank holding company described in subdivision (2).**

Sec. 2. (a) As used in this chapter, "ESG commitment" means an action taken or a factor considered by a service provider:

- (1) with respect to or including the system's assets; and**
- (2) with the nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose.**

(b) The term defined in subsection (a) includes a commitment to further, through portfolio company engagement or board or

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shareholder votes, any of the following for nonfinancial purposes beyond the applicable law requirements:

- (1) Eliminating, reducing, offsetting, or disclosing greenhouse gas emissions.
- (2) Instituting or assessing:
 - (A) corporate board;
 - (B) employment;
 - (C) composition;
 - (D) compensation; or
 - (E) disclosure;

criteria that incorporate characteristics protected under IC 22-9.

- (3) Divesting from, limiting investment in, or limiting the activities or investments of a company that does any of the following:

- (A) Fails to meet or does not commit to environmental standards or disclosures.
- (B) Engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or component parts and accessories of firearms or ammunition.
- (C) Contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border security laws, regulations, and policies.
- (D) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel based energy, timber, mining, agriculture, and food animal production.

Sec. 3. (a) As used in this chapter, "financial" means a prudent determination by a fiduciary to have a material effect on the monetary risk or the monetary return of an investment.

(b) The term does not include an action taken or a factor considered by a fiduciary with the nonfinancial purpose to further social, political, or ideological interests as set forth in section 2 of this chapter.

Sec. 4. As used in this chapter, "service provider" means investment managers and proxy advisors to the system.

Sec. 5. (a) As used in this chapter and except as provided in subsection (b), "system" refers to the Indiana public retirement system established by IC 5-10.5-2-1.



(b) The term does not include the following:

- (1) The public employees' defined contribution plan established under IC 5-10.3-12.**
- (2) An annuity savings account for the public employees' retirement fund established under IC 5-10.2-2-2(a)(1).**
- (3) The teachers' defined contribution plan established under IC 5-10.4-8.**
- (4) An annuity savings account for the Indiana state teachers' retirement fund established under IC 5-10.2-2-2(c)(1).**
- (5) The legislators' defined contribution plan established under IC 2-3.5-5.**

Sec. 6. Factors to be considered as evidence of a service provider's ESG commitment may include one (1) or more of the following:

- (1) Advertising.**
- (2) Statements.**
- (3) Explanations.**
- (4) Reports.**
- (5) Letters to clients.**
- (6) Communications with portfolio companies.**
- (7) Statements of principles.**
- (8) Participation in, affiliation with, or status as a signatory to:**
 - (A) a coalition;**
 - (B) an initiative;**
 - (C) a joint statement of principles; or**
 - (D) an agreement.**

Sec. 7. If the treasurer of state has reasonable cause to believe that a service provider has made an ESG commitment, the treasurer of state shall research the matter and make a determination as to whether the service provider has made an ESG commitment. In conducting this research, the treasurer of state shall attempt to consult with the service provider and consider any information the service provider provides to the treasurer of state. If the treasurer of state concludes that the service provider has made an ESG commitment, the treasurer of state shall:

- (1) place the name of the service provider on a list maintained and published by the treasurer of state; and**
- (2) provide the:**
 - (A) name of the service provider; and**
 - (B) research supporting the conclusion;**
to the board.



Sec. 8. (a) Except as otherwise provided by law, the board may not make an investment decision with the purpose of:

- (1) influencing any social or environmental policy; or**
- (2) attempting to influence the governance of any corporation for nonfinancial purposes.**

(b) Except as otherwise provided by law, the system is prohibited from making an ESG commitment with respect to system assets, including without limitation in the selection of investments, selection of investment managers, management or oversight of investments, proxy voting, or shareholder engagement.

Sec. 9. (a) In making and supervising investments of the system, the board shall discharge its duties solely in the financial interest of the participants and beneficiaries of the system for the exclusive purposes of:

- (1) providing financial benefits to participants and beneficiaries; and**
- (2) defraying reasonable expenses of administering the system.**

(b) The board, in accordance with the fiduciary duties described in this article, shall make investment decisions with the primary purpose of maximizing the target rate of return on the board's investments.

Sec. 10. (a) In accordance with the board's duty under section 9 of this chapter, and except as provided in subsection (c), the board shall not:

- (1) enter a contract; or**
- (2) modify, amend, or continue a contract;**

with a service provider that has made an ESG commitment and is on the list maintained and published by the treasurer of state under section 7 of this chapter, unless taking the action described in subdivisions (1) and (2) violates the board's fiduciary duty to the system's participants and beneficiaries.

(b) The board shall replace a service provider that has made an ESG commitment with a service provider that is comparable in financial performance, so as not to violate the board's fiduciary duty to the system's participants and beneficiaries. If the board replaces a service provider, it shall do so within a reasonable time, but not later than one hundred eighty (180) days after receiving notice from the treasurer of state of the service provider's ESG commitment.

(c) If the board determines that there is not a comparable service provider to replace a service provider under subsection (b),



the board shall continue contracting with the service provider that has made an ESG commitment. The board shall include in its minutes the:

- (1) decision that a comparable service provider does not exist; and
- (2) evidence supporting the decision under subdivision (1).

Sec. 11. The board shall, at least annually, tabulate and report all proxy votes made by a service provider that is not a private market fund (as defined in IC 5-10.2-10-11) in relation to the administration of the system. For each vote reported, the report must contain:

- (1) a vote caption;
- (2) the fund's vote;
- (3) the recommendation of the portfolio company's management; and
- (4) if applicable, the recommendation of a proxy advisor or other service provider.

Sec. 12. (a) The following are immune from civil liability for any act or omission related to any action under this chapter:

- (1) The state.
- (2) Officers, agents, and employees of the state.
- (3) The system.
- (4) The:
 - (A) board members;
 - (B) executive director;
 - (C) officers;
 - (D) agents; and
 - (E) employees;

of the system.

(b) In addition to the immunity provided under subsection (a), the following are entitled to indemnification from the system for all losses, costs, and expenses, including reasonable attorney's fees, associated with defending against any claim or suit relating to an act authorized under this chapter:

- (1) Officers, agents, and employees of the state.
 - (2) The:
 - (A) board members;
 - (B) executive director;
 - (C) officers;
 - (D) agents; and
 - (E) employees;
- of the system.



Sec. 13. This chapter does not apply directly to the defined contribution plans or an annuity savings account described in section 5(b) of this chapter or a private market fund (as defined in IC 5-10.2-10-11). However, the board shall:

(1) ensure that reasonable efforts are made during the due diligence process before an investment is made and in monitoring investments in:

(A) the public employees' defined contribution plan established under IC 5-10.3-12;

(B) an annuity savings account for the public employees' retirement fund established under IC 5-10.2-2-2(a)(1);

(C) the teachers' defined contribution plan established under IC 5-10.4-8;

(D) an annuity savings account for the Indiana state teachers' retirement fund established under IC 5-10.2-2-2(c)(1);

(E) the legislators' defined contribution plan established under IC 2-3.5-5; or

(F) a private market fund (as defined in IC 5-10.2-10-11); to determine whether any investments would violate section 9 of this chapter; and

(2) take appropriate action, if necessary, consistent with the board's fiduciary duties."

Delete pages 2 through 7.

Page 8, delete lines 1 through 16.

Page 8, line 40, delete "IC 5-10.2-13." and insert "**IC 5-10.2-14.**".

Page 8, delete lines 41 through 42, begin a new paragraph and insert:

"SECTION 3. IC 34-30-2.1-36.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 36.6. IC 5-10.2-14-12 (Concerning the Indiana public retirement system)."

Delete pages 9 through 13.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1008 as printed February 21, 2023.)

ROGERS, Chairperson

Committee Vote: Yeas 7, Nays 3.

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