

PROPOSED AMENDMENT

HB 1008 # 21

DIGEST

ESG commitment. Specifies that the bill does not apply to certain entities, actions taken, or factors considered. Provides that if the treasurer of state concludes that the service provider has made an ESG commitment, the treasurer of state 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. 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. Allows 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. Makes technical corrections.

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- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
2 "SECTION 1. IC 5-10.2-14 IS ADDED TO THE INDIANA CODE
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2023]:
5 **Chapter 14. ESG Commitment**
6 **Sec. 1. This chapter does not apply to:**
7 **(1) a bank holding company (as defined in IC 28-2-16-3 or**
8 **IC 28-2-16-9);**
9 **(2) a subsidiary of a bank holding company (as defined in**

1 IC 28-2-16-3 or IC 28-2-16-9); or

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

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

5 (B) subsidiary of a bank holding company described in
6 subdivision (2).

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

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

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

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

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

19 (2) Instituting or assessing:

20 (A) corporate board;

21 (B) employment;

22 (C) composition;

23 (D) compensation; or

24 (E) disclosure;

25 criteria that incorporate characteristics protected under
26 IC 22-9.

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

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

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

36 (C) Contracts with the United States Immigration and
37 Customs Enforcement for the provision of federal
38 immigration detention centers or support services related
39 to the implementation of federal immigration and border
40 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;

- 1 (B) an initiative;
- 2 (C) a joint statement of principles; or
- 3 (D) an agreement.

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

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

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

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

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

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

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

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

1 **Sec. 10. (a) In accordance with the board's duty under section**
 2 **9 of this chapter, and except as provided in subsection (c), the**
 3 **board shall not:**

4 **(1) enter a contract; or**

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

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

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

19 **(c) If the board determines that there is not a comparable**
 20 **service provider to replace a service provider under subsection (b),**
 21 **the board shall continue contracting with the service provider that**
 22 **has made an ESG commitment. The board shall include in its**
 23 **minutes the:**

24 **(1) decision that a comparable service provider does not exist;**

25 **and**

26 **(2) evidence supporting the decision under subdivision (1).**

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

32 **(1) a vote caption;**

33 **(2) the fund's vote;**

34 **(3) the recommendation of the portfolio company's**
 35 **management; and**

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

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

40 **(1) The state.**

- 1 **(2) Officers, agents, and employees of the state.**
- 2 **(3) The system.**
- 3 **(4) The:**
 - 4 **(A) board members;**
 - 5 **(B) executive director;**
 - 6 **(C) officers;**
 - 7 **(D) agents; and**
 - 8 **(E) employees;**
 - 9 **of the system.**
- 10 **(b) In addition to the immunity provided under subsection (a),**
11 **the following are entitled to indemnification from the system for all**
12 **losses, costs, and expenses, including reasonable attorney's fees,**
13 **associated with defending against any claim or suit relating to an**
14 **act authorized under this chapter:**
 - 15 **(1) Officers, agents, and employees of the state.**
 - 16 **(2) The:**
 - 17 **(A) board members;**
 - 18 **(B) executive director;**
 - 19 **(C) officers;**
 - 20 **(D) agents; and**
 - 21 **(E) employees;**
 - 22 **of the system.**
- 23 **Sec. 13. This chapter does not apply directly to the defined**
24 **contribution plans or an annuity savings account described in**
25 **section 5(b) of this chapter or a private market fund (as defined in**
26 **IC 5-10.2-10-11). However, the board shall:**
 - 27 **(1) ensure that reasonable efforts are made during the due**
28 **diligence process before an investment is made and in**
29 **monitoring investments in:**
 - 30 **(A) the public employees' defined contribution plan**
31 **established under IC 5-10.3-12;**
 - 32 **(B) an annuity savings account for the public employees'**
33 **retirement fund established under IC 5-10.2-2(a)(1);**
 - 34 **(C) the teachers' defined contribution plan established**
35 **under IC 5-10.4-8;**
 - 36 **(D) an annuity savings account for the Indiana state**
37 **teachers' retirement fund established under**
38 **IC 5-10.2-2(c)(1);**
 - 39 **(E) the legislators' defined contribution plan established**
40 **under IC 2-3.5-5; or**

- 1 **(F) a private market fund (as defined in IC 5-10.2-10-11);**
2 **to determine whether any investments would violate section**
3 **9 of this chapter; and**
4 **(2) take appropriate action, if necessary, consistent with the**
5 **board's fiduciary duties."**
6 Delete pages 2 through 7.
7 Page 8, delete lines 1 through 16.
8 Page 8, line 40, delete "IC 5-10.2-13." and insert "**IC 5-10.2-14.**".
9 Page 8, delete lines 41 through 42, begin a new paragraph and
10 insert:
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)."**
15 Delete pages 9 through 13.
16 Renumber all SECTIONS consecutively.
 (Reference is to HB 1008 as printed February 21, 2023.)