



# COMMITTEE REPORT

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## 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:

- 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
- 10 IC 28-2-16-3 or IC 28-2-16-9); or
- 11 (3) an action taken or a factor considered pursuant to the
- 12 requirements of this chapter by a trustee for a:
- 13 (A) bank holding company described in subdivision (1); or
- 14 (B) subsidiary of a bank holding company described in
- 15 subdivision (2).
- 16 **Sec. 2. (a) As used in this chapter, "ESG commitment" means**
- 17 **an action taken or a factor considered by a service provider:**
- 18 (1) with respect to or including the system's assets; and
- 19 (2) with the nonfinancial purpose to further social, political,
- 20 or ideological interests based on evidence indicating the

1           **purpose.**

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

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

8           **(2) Instituting or assessing:**

9           **(A) corporate board;**

10           **(B) employment;**

11           **(C) composition;**

12           **(D) compensation; or**

13           **(E) disclosure;**

14           **criteria that incorporate characteristics protected under**  
 15 **IC 22-9.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           **(1) Advertising.**

19           **(2) Statements.**

20           **(3) Explanations.**

21           **(4) Reports.**

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

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

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

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

27               **(A) a coalition;**

28               **(B) an initiative;**

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

30               **(D) an agreement.**

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

40           **(1) place the name of the service provider on a list maintained**  
 41           **and published by the treasurer of state; and**

42           **(2) provide the:**

- 1 (A) name of the service provider; and
- 2 (B) research supporting the conclusion;
- 3 to the board.

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

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

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

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

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

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

26 Sec. 10. (a) In accordance with the board's duty under section  
27 9 of this chapter, and except as provided in subsection (c), the  
28 board shall not:

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

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

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

1 commitment.

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

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

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

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

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

- 23 (1) The state.
- 24 (2) Officers, agents, and employees of the state.
- 25 (3) The system.
- 26 (4) The:
  - 27 (A) board members;
  - 28 (B) executive director;
  - 29 (C) officers;
  - 30 (D) agents; and
  - 31 (E) employees;
- 32 of the system.

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

- 38 (1) Officers, agents, and employees of the state.
- 39 (2) The:
  - 40 (A) board members;
  - 41 (B) executive director;
  - 42 (C) officers;

- 1 (D) agents; and
- 2 (E) employees;
- 3 of the system.

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

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

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

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

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

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

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

22 (F) a private market fund (as defined in IC 5-10.2-10-11);  
 23 to determine whether any investments would violate section  
 24 9 of this chapter; and

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

27 Delete pages 2 through 7.

28 Page 8, delete lines 1 through 16.

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

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

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

- 1       **the Indiana public retirement system)".**
- 2       Delete pages 9 through 13.
- 3       Renumber all SECTIONS consecutively.  
(Reference is to HB 1008 as printed February 21, 2023.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 7, Nays 3.

**Senator Rogers, Chairperson**