



April 11, 2023

ENGROSSED SENATE BILL No. 268

DIGEST OF SB 268 (Updated April 11, 2023 12:19 pm - DI 140)

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

Synopsis: Prohibited pension system investments. Prohibits the Indiana public retirement system from investing in certain restricted entities or restricted investment products, including particular investments publicly confirmed to be controlled by the People's Republic of China or the Chinese Communist Party. Specifies exceptions, a divestment schedule, and reporting requirements. Adds a provision urging the legislative council to assign to the interim study
(Continued next page)

Effective: Upon passage.

**Garten, Holdman, Freeman, Zay,
Baldwin, Buchanan, Rogers, Busch,
Crane, Walker G, Doriot, Perfect,
Koch, Gaskill, Messmer,
Randolph Lonnie M, Raatz, Tomes**
(HOUSE SPONSORS — JUDY, JETER, CARBAUGH, VANNATTER)

January 11, 2023, read first time and referred to Committee on Pensions and Labor.
January 26, 2023, amended, reported favorably — Do Pass. Reassigned to Committee on Appropriations pursuant to Rule 68(b).
February 23, 2023, amended, reported favorably — Do Pass.
February 27, 2023, read second time, amended, ordered engrossed.
February 28, 2023, engrossed. Read third time, passed. Yeas 49, nays 0.
HOUSE ACTION
March 6, 2023, read first time and referred to Committee on Employment, Labor and Pensions.
April 6, 2023, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.
April 11, 2023, reported — Do Pass.

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Digest Continued

committee on pension management oversight the topic of studying whether to cease or defer divestment or resume investment in an entity or product in accordance with the provisions regarding divestment from Chinese companies.

ES 268—LS 6153/DI 141



April 11, 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 SENATE BILL No. 268

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 5-10.2-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 13. Divestment From Chinese Companies**

5 **Sec. 1. The general assembly finds the following:**

- 6 (1) **Mandatory divestment by the system of fund holdings in**
7 **entities and investment products is a measure that should be**
8 **employed only under extraordinary circumstances.**
9 (2) **The People's Republic of China has both the motivation**
10 **and capability to interfere with and impose economic,**
11 **political, or military harm on the United States and its people.**
12 (3) **Economic support for and investment in Chinese entities**
13 **unnecessarily increase the risk to the security and welfare of**
14 **the United States and the people of Indiana.**
15 (4) **The threat from these entities constitutes the**
16 **extraordinary circumstances necessary for mandatory**
17 **divestment by the system of the fund holdings in restricted**

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- 1 entities and restricted investment products.
- 2 **Sec. 2.** As used in this chapter, "board" refers to the board of
 3 trustees of the Indiana public retirement system established by
 4 **IC 5-10.5-3-1.**
- 5 **Sec. 3.** As used in this chapter, "control" means the following:
 6 (1) Control as defined in the Investment Company Act of 1940
 7 (15 U.S.C. 80a-2(a)).
 8 (2) Involvement in an entity's governance structure,
 9 monitoring, or internal human resources decisions of an entity
 10 consistent with the objectives set out in the Opinion on
 11 Strengthening the United Front Work of the Private Economy
 12 in the New Era issued by the General Office of the Central
 13 Committee of the Chinese Communist Party (2020) or a
 14 successor or similar document.
- 15 **Sec. 4.** As used in this chapter, "divest" means a sale,
 16 redemption, replacement, or any other activity that terminates the
 17 investment.
- 18 **Sec. 5.** As used in this chapter, "fund" refers to any public
 19 pension and retirement funds of the system (as defined in
 20 **IC 5-10.5-1-5).**
- 21 **Sec. 6.** As used in this chapter, "investment" refers to any
 22 investment that the board or system is authorized to make under
 23 **IC 5-10.5-5** or another law.
- 24 **Sec. 7.** As used in this chapter, "person" means an individual or
 25 entity.
- 26 **Sec. 8.** As used in this chapter, "restricted entity" refers to the
 27 following, including wholly owned subsidiaries, majority owned
 28 subsidiaries, parent companies, and affiliates that exist for
 29 profit-making purposes:
 30 (1) Any person (other than a U.S. person (as defined in 15
 31 CFR 772.1)) that is identified for the People's Republic of
 32 China on the Entity List (Supplement No. 4 to 15 CFR Part
 33 744) as a person reasonably believed to be involved, or to pose
 34 a significant risk of being or becoming involved, in activities
 35 contrary to the national security or foreign policy interests of
 36 the United States until the End-User Review Committee of the
 37 Bureau of Industry and Security in the United States
 38 Department of Commerce determines that the person no
 39 longer meets that criteria and removes the person from the
 40 list.
 41 (2) Any person that:
 42 (A) the United States Secretary of Defense has listed as a



- 1 Communist Chinese military company operating directly
 2 or indirectly in the United States or in any of its territories
 3 or possessions pursuant to Section 1237 of Public Law
 4 105-261, as amended by Section 1233 of Public Law
 5 106-398 and Section 1222 of Public Law 108-375 until such
 6 time as the United States Secretary of Defense removes the
 7 person from such list;
- 8 (B) the United States Secretary of Defense, in consultation
 9 with the United States Secretary of the Treasury,
 10 determines is a Communist Chinese military company
 11 operating directly or indirectly in the United States or in
 12 any of its territories or possessions and therefore lists as
 13 such pursuant to Section 1237 of Public Law 105-261, as
 14 amended by Section 1233 of Public Law 106-398 and
 15 Section 1222 of Public Law 108-375, until such time as the
 16 United States Secretary of Defense removes the person
 17 from such list; or
- 18 (C) the United States Secretary of the Treasury publicly
 19 lists as meeting the criteria in Section 1237(b)(4)(B) of
 20 Public Law 105-261, or publicly lists as a subsidiary of a
 21 person already determined to be a Communist Chinese
 22 military company, until the United States Secretary of the
 23 Treasury determines that the person no longer meets that
 24 criteria and removes the person from such list.
- 25 (3) Any investment that is domiciled, issued, incorporated, or
 26 listed in the People's Republic of China (other than a U.S.
 27 person or U.S. subsidiary (as defined in 15 CFR 772.1)) or
 28 that is publicly confirmed to be controlled by the People's
 29 Republic of China, the Chinese Communist Party, or a
 30 provincial division, municipality, governmental agency,
 31 sovereign wealth fund, or political instrumentality of the
 32 People's Republic of China.
- 33 (4) Any organization or citizen that is identified by the
 34 appropriate government agencies to be required by the
 35 National Intelligence Law of the People's Republic of China
 36 (2017), as amended in 2018, or any successor to support,
 37 assist, and cooperate with the state intelligence work of the
 38 People's Republic of China and keep the secrets of the
 39 national intelligence work of the People's Republic of China.
- 40 Sec. 9. As used in this chapter, "restricted investment product"
 41 refers to an investment product that:
 42 (1) is managed by one (1) or more persons:



1 (A) that are not employed by the system; and
2 (B) in which the system on behalf of the fund owns
3 investments together with investors other than the system;
4 and

5 (2) holds investments in a restricted entity.

6 Sec. 10. As used in this chapter, "system" has the meaning set
7 forth in IC 5-10.5-1-6.

8 Sec. 11. After June 30, 2023, the system may not knowingly
9 invest in a restricted entity or a restricted investment product and
10 shall divest any investment that the system has on behalf of a fund
11 in accordance with this chapter. Determinations under this chapter
12 are independent of any determinations made under IC 5-10.2-9,
13 IC 5-10.2-10, and IC 5-10.2-11.

14 Sec. 12. Before June 30, 2023, and at least annually before July
15 1 of each subsequent year, the board shall make a good faith effort
16 to identify all restricted entities and restricted investment products
17 in which the system holds an investment. The board may use an
18 independent research firm to assist the board.

19 Sec. 13. If the board determines after a review under section 12
20 of this chapter that the system has investments in a restricted
21 entity or a restricted investment product, the board shall establish
22 a plan to divest the investment and complete the divestment as soon
23 as financially prudent. However, the investment must be divested
24 not later than the following:

25 (1) At least fifty percent (50%) of the investment shall be
26 removed from a fund's assets within three (3) years after the
27 board discovers that the investment is in a restricted entity or
28 restricted investment product.

29 (2) At least seventy-five percent (75%) of the investment shall
30 be removed from a fund's assets within four (4) years after
31 the board discovers that the investment is in a restricted
32 entity or restricted investment product.

33 (3) One hundred percent (100%) of the investment shall be
34 removed from a fund's assets within five (5) years after the
35 board discovers that the investment is in a restricted entity or
36 restricted investment product.

37 Sec. 14. The board, as directed by the legislative council, shall
38 consult with the interim study committee on pension management
39 oversight to determine whether to cease or defer divestment in the
40 entity or product initiated under this chapter and resume
41 investment in the entity or product during any period in which the
42 entity or product has not returned to being a restricted entity or



1 restricted investment product if any of the following conditions are
2 met:

3 (1) The United States Secretary of State has issued a
4 determination that the People's Republic of China is in
5 compliance with each of the following:

6 (A) The December 19, 1984, Joint Declaration of the
7 Government of the United Kingdom of Great Britain and
8 Northern Ireland and the Government of the People's
9 Republic of China on the Question of Hong Kong.

10 (B) The Basic Law of the Hong Kong Special
11 Administrative Region of the People's Republic of China.

12 (C) The Uyghur Human Rights Policy Act of 2020.

13 (D) The December 10, 1948, Universal Declaration of
14 Human Rights.

15 (E) The December 19, 1966, International Covenant on
16 Civil and Political Rights.

17 (2) The entity or product meets or exceeds the rules and
18 standards of the Public Company Accounting Oversight
19 Board and the Sarbanes-Oxley Act of 2002 (Public Law
20 107-204).

21 (3) The board determines that a fund has holdings in a
22 passively managed commingled fund that includes a restricted
23 entity and the estimated cost of divestment of the commingled
24 fund is greater than ten percent (10%) of the total value of the
25 restricted entities held in the commingled fund.

26 Sec. 15. (a) On or before November 2, 2023, and annually before
27 November 2 of each subsequent year, the board shall submit a
28 report in an electronic format under IC 5-14-6 to the executive
29 director of the legislative services agency for distribution to the
30 members of the general assembly.

31 (b) The report must include at least the following information,
32 as of the date of the report:

33 (1) A copy of the restricted entity list.

34 (2) All publicly traded securities sold, redeemed, divested, or
35 withdrawn in compliance with section 11 of this chapter.

36 (3) All commingled funds that are exempted from divestment
37 under sections 14 and 18 of this chapter.

38 (4) Any progress made under section 14 of this chapter.

39 Sec. 16. With respect to actions taken in compliance with this
40 chapter, including all good faith determinations regarding
41 restricted entities and restricted investment products, the board
42 and the system are exempt from any conflicting statutory or



1 common law obligations, including any obligations with respect to
 2 choice of asset managers, investment funds, or investments for
 3 fund investment portfolios.

4 **Sec. 17. (a) Both:**

5 (1) the state and its officers, agents, and employees; and

6 (2) a fund or the system and its board members, executive
 7 director, officers, agents, and employees;

8 are immune from civil liability for any act or omission related to
 9 the removal of an asset from a fund under this chapter.

10 (b) In addition to the immunity provided under subsection (a),
 11 both:

12 (1) the officers, agents, and employees of the state; and

13 (2) the board members, executive director, officers, agents,
 14 and employees of a fund or the system;

15 are entitled to indemnification from the fund for all losses, costs,
 16 and expenses, including reasonable attorney's fees, associated with
 17 defending against any claim or suit relating to an act authorized
 18 under this chapter.

19 **Sec. 18. (a) Except as provided in subsection (b), the divestment**
 20 **requirements of this chapter do not apply to existing investments**
 21 **in private market funds.**

22 (b) The requirements of section 11 of this chapter shall apply to
 23 existing investments in private market funds.

24 (c) Notwithstanding any provision to the contrary, sections 9
 25 and 11 of this chapter do not apply to indirect holdings in actively
 26 managed investment funds.

27 (d) If a manager creates a similar actively managed investment
 28 fund without the restricted entities, the board shall replace all
 29 applicable investments with investment in the similar actively
 30 managed investment fund in a period consistent with prudent
 31 investing standards.

32 **Sec. 19. The provisions of this chapter are severable in the**
 33 **manner provided in IC 1-1-1-8(b).**

34 SECTION 2. IC 34-30-2.1-36.5 IS ADDED TO THE INDIANA
 35 CODE AS A NEW SECTION TO READ AS FOLLOWS
 36 [EFFECTIVE UPON PASSAGE]: **Sec. 36.5. IC 5-10.2-13-17**
 37 **(Concerning removal of certain assets from a public pension or**
 38 **employee retirement fund administered by the board of trustees of**
 39 **the Indiana public retirement system).**

40 SECTION 3. [EFFECTIVE UPON PASSAGE] (a) The legislative
 41 council is urged to assign to the interim study committee on
 42 pension management oversight, during the 2023 legislative interim,



1 **the task of studying whether to:**
2 **(1) cease or defer divestment; or**
3 **(2) resume investment;**
4 **in an entity or product under IC 5-10.2-13-14, as added by this act.**
5 **(b) This SECTION expires January 1, 2024.**
6 **SECTION 4. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 268, 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 2, line 27, delete "following:" and insert "**following, including wholly owned subsidiaries, majority owned subsidiaries, parent companies, and affiliates that exist for profit-making purposes:**".

Page 3, delete lines 23 through 39, begin a new line block indented and insert:

"(3) Any investment that is domiciled, issued, incorporated, or listed in the People's Republic of China (other than a U.S. person or U.S. subsidiary (as defined in 15 CFR 772.1)) or that is publicly confirmed to be controlled by the People's Republic of China, the Chinese Communist Party, or a provincial division, municipality, governmental agency, sovereign wealth fund, or political instrumentality of the People's Republic of China.

(4) Any organization or citizen that is identified by the appropriate government agencies to be required by the National Intelligence Law of the People's Republic of China (2017), as amended in 2018, or any successor to support, assist, and cooperate with the state intelligence work of the People's Republic of China and keep the secrets of the national intelligence work of the People's Republic of China."

Page 4, line 38, after "cease" insert "**or defer**".

Page 4, line 42, after "product if" insert "**any of**".

Page 5, between lines 19 and 20, begin a new line block indented and insert:

"(3) The board determines that a fund has holdings in a passively managed commingled fund that includes a restricted entity and the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the restricted entities held in the commingled fund."

Page 5, delete lines 20 through 42, begin a new paragraph and insert:

"Sec. 15. (a) On or before November 2, 2023, and annually before November 2 of each subsequent year, the board shall submit a report in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

(b) The report must include at least the following information,



as of the date of the report:

- (1) A copy of the restricted entity list.
- (2) All publicly traded securities sold, redeemed, divested, or withdrawn in compliance with section 11 of this chapter.
- (3) All commingled funds that are exempted from divestment under sections 14 and 18 of this chapter.
- (4) Any progress made under section 14 of this chapter."

Page 6, between lines 22 and 23, begin a new paragraph and insert:

"Sec. 18. (a) Except as provided in subsection (b), the divestment requirements of this chapter do not apply to existing investments in private market funds.

(b) The requirements of section 11 of this chapter shall apply to existing investments in private market funds.

(c) Notwithstanding any provision to the contrary, sections 9 and 11 of this chapter do not apply to indirect holdings in actively managed investment funds.

(d) If a manager creates a similar actively managed investment fund without the restricted entities, the board shall replace all applicable investments with investment in the similar actively managed investment fund in a period consistent with prudent investing standards."

Page 6, line 23, delete "18." and insert "19."

and when so amended that said bill do pass.

(Reference is to SB 268 as introduced.)

ROGERS, Chairperson

Committee Vote: Yeas 10, Nays 0.

REPORT OF THE PRESIDENT
PRO TEMPORE

Madam President: Pursuant to Senate Rule 68(b), I hereby report that, subsequent to the adoption of the Committee Report on January 26, 2023, Senate Bill 268 was reassigned to the Committee on Appropriations.

BRAY

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COMMITTEE REPORT

Madam President: The Senate Committee on Appropriations, to which was referred Senate Bill No. 268, 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 4, line 37, delete "in consultation" and insert "**as directed by the legislative council, shall consult**".

Page 4, line 38, delete "oversight, may" and insert "**oversight to determine whether to**".

Page 6, between lines 38 and 39, begin a new paragraph and insert: "SECTION 3. [EFFECTIVE UPON PASSAGE] **(a) The legislative council is urged to assign to the interim study committee on pension management oversight, during the 2023 legislative interim, the task of studying whether to:**

(1) cease or defer divestment; or

(2) resume investment;

in an entity or product under IC 5-10.2-13-14, as added by this act.

(b) This SECTION expires January 1, 2024."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 268 as printed January 27, 2023.)

MISHLER, Chairperson

Committee Vote: Yeas 13, Nays 0.

 SENATE MOTION

Madam President: I move that Senate Bill 268 be amended to read as follows:

Page 1, line 10, after "economic" insert "**, political,**".

(Reference is to SB 268 as printed February 24, 2023.)

GARTEN



COMMITTEE REPORT

Mr. Speaker: Your Committee on Employment, Labor and Pensions, to which was referred Senate Bill 268, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to SB 268 as reprinted February 28, 2023.)

VANNATTER

Committee Vote: Yeas 12, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Engrossed Senate Bill 268, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to ESB 268 as printed April 6, 2023.)

THOMPSON

Committee Vote: Yeas 23, Nays 0

