

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.

SENATE ENROLLED ACT No. 268

AN ACT to amend the Indiana Code concerning pensions.

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

SECTION 1. IC 5-10.2-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13. Divestment From Chinese Companies

Sec. 1. The general assembly finds the following:

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

Sec. 2. As used in this chapter, "board" refers to the board of trustees of the Indiana public retirement system established by IC 5-10.5-3-1.

Sec. 3. As used in this chapter, "control" means the following:

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(1) Control as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).

(2) Involvement in an entity's governance structure, monitoring, or internal human resources decisions of an entity consistent with the objectives set out in the Opinion on Strengthening the United Front Work of the Private Economy in the New Era issued by the General Office of the Central Committee of the Chinese Communist Party (2020) or a successor or similar document.

Sec. 4. As used in this chapter, "divest" means a sale, redemption, replacement, or any other activity that terminates the investment.

Sec. 5. As used in this chapter, "fund" refers to any public pension and retirement funds of the system (as defined in IC 5-10.5-1-5).

Sec. 6. As used in this chapter, "investment" refers to any investment that the board or system is authorized to make under IC 5-10.5-5 or another law.

Sec. 7. As used in this chapter, "person" means an individual or entity.

Sec. 8. As used in this chapter, "restricted entity" refers to the following, including wholly owned subsidiaries, majority owned subsidiaries, parent companies, and affiliates that exist for profit-making purposes:

(1) Any person (other than a U.S. person (as defined in 15 CFR 772.1)) that is identified for the People's Republic of China on the Entity List (Supplement No. 4 to 15 CFR Part 744) as a person reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States until the End-User Review Committee of the Bureau of Industry and Security in the United States Department of Commerce determines that the person no longer meets that criteria and removes the person from the list.

(2) Any person that:

(A) the United States Secretary of Defense has listed as a Communist Chinese military company operating directly or indirectly in the United States or in any of its territories or possessions pursuant to Section 1237 of Public Law 105-261, as amended by Section 1233 of Public Law 106-398 and Section 1222 of Public Law 108-375 until such



time as the United States Secretary of Defense removes the person from such list;

(B) the United States Secretary of Defense, in consultation with the United States Secretary of the Treasury, determines is a Communist Chinese military company operating directly or indirectly in the United States or in any of its territories or possessions and therefore lists as such pursuant to Section 1237 of Public Law 105-261, as amended by Section 1233 of Public Law 106-398 and Section 1222 of Public Law 108-375, until such time as the United States Secretary of Defense removes the person from such list; or

(C) the United States Secretary of the Treasury publicly lists as meeting the criteria in Section 1237(b)(4)(B) of Public Law 105-261, or publicly lists as a subsidiary of a person already determined to be a Communist Chinese military company, until the United States Secretary of the Treasury determines that the person no longer meets that criteria and removes the person from such list.

(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.

Sec. 9. As used in this chapter, "restricted investment product" refers to an investment product that:

- (1) is managed by one (1) or more persons:
 - (A) that are not employed by the system; and
 - (B) in which the system on behalf of the fund owns investments together with investors other than the system; and
- (2) holds investments in a restricted entity.



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

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

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

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

- (1) At least fifty percent (50%) of the investment shall be removed from a fund's assets within three (3) years after the board discovers that the investment is in a restricted entity or restricted investment product.
- (2) At least seventy-five percent (75%) of the investment shall be removed from a fund's assets within four (4) years after the board discovers that the investment is in a restricted entity or restricted investment product.
- (3) One hundred percent (100%) of the investment shall be removed from a fund's assets within five (5) years after the board discovers that the investment is in a restricted entity or restricted investment product.

Sec. 14. The board, as directed by the legislative council, shall consult with the interim study committee on pension management oversight to determine whether to cease or defer divestment in the entity or product initiated under this chapter and resume investment in the entity or product during any period in which the entity or product has not returned to being a restricted entity or restricted investment product if any of the following conditions are met:

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



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

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

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

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

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

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

(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.

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.

Sec. 16. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding restricted entities and restricted investment products, the board and the system are exempt from any conflicting statutory or common law obligations, including any obligations with respect to choice of asset managers, investment funds, or investments for fund investment portfolios.

Sec. 17. (a) Both:

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



(2) a fund or the system and its board members, executive director, officers, agents, and employees; are immune from civil liability for any act or omission related to the removal of an asset from a fund under this chapter.

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

- (1) the officers, agents, and employees of the state; and
- (2) the board members, executive director, officers, agents, and employees of a fund or the system;

are entitled to indemnification from the fund 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. 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.

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

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

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.



SECTION 4. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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