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SENATE BILL No. 268

Proposed Changes to introduced printing by AM026801

DIGEST OF PROPOSED AMENDMENT

Divestment requirements. Amends the definition of "restricted entity". Provides that the board of trustees of the Indiana public retirement system (board), in consultation with the interim study committee on pension management oversight, may cease or defer divestment if 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 10% of the total value of the restricted entities held in the commingled fund. Amends the reporting requirements for the board. Adds certain applicability provisions. Provides that 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.

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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 or**
- 11 **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**



1 the United States and the people of Indiana.

2 (4) The threat from these entities constitutes the
3 extraordinary circumstances necessary for mandatory
4 divestment by the system of the fund holdings in restricted
5 entities and restricted investment products.

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

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

10 (1) Control as defined in the Investment Company Act of
11 1940 (15 U.S.C. 80a-2(a)).

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

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

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

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

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

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

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



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1 person no longer meets that criteria and removes the person
2 from the list.

3 (2) Any person that:

4 (A) the United States Secretary of Defense has listed as
5 a Communist Chinese military company operating
6 directly or indirectly in the United States or in any of its
7 territories or possessions pursuant to Section 1237 of
8 Public Law 105-261, as amended by Section 1233 of
9 Public Law 106-398 and Section 1222 of Public Law
10 108-375 until such time as the United States Secretary of
11 Defense removes the person from such list;

12 (B) the United States Secretary of Defense, in
13 consultation with the United States Secretary of the
14 Treasury, determines is a Communist Chinese military
15 company operating directly or indirectly in the United
16 States or in any of its territories or possessions and
17 therefore lists as such pursuant to Section 1237 of Public
18 Law 105-261, as amended by Section 1233 of Public Law
19 106-398 and Section 1222 of Public Law 108-375, until
20 such time as the United States Secretary of Defense
21 removes the person from such list; or

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

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

37 (4) Any organization or citizen that is [identified by the
38 appropriate government agencies to be] required by the
39 National Intelligence Law of the People's Republic of China
40 (2017), as amended in 2018, or any successor to support,
41 assist, and cooperate with the state intelligence work of the
42 People's Republic of China and keep the secrets of the



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1 national intelligence work of the People's Republic of
2 China ~~<which are known to the public>~~.¹

3 ~~<The term includes a parent, subsidiary, or affiliate of, or a person
4 controlled by, a person described in subdivision (1), (2), (3), or (4),
5 regardless of the country in which the entity is headquartered or
6 organized.~~

7 ² Sec. 9. As used in this chapter, "restricted investment
8 product" refers to an investment product that:

9 (1) is managed by one (1) or more persons:

10 (A) that are not employed by the system; and

11 (B) in which the system on behalf of the fund owns
12 investments together with investors other than the
13 system; and

14 (2) holds investments in a restricted entity.

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

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

23 Sec. 12. Before June 30, 2023, and at least annually before July
24 1 of each subsequent year, the board shall make a good faith effort
25 to identify all restricted entities and restricted investment products
26 in which the system holds an investment. The board may use an
27 independent research firm to assist the board.

28 Sec. 13. If the board determines after a review under section
29 12 of this chapter that the system has investments in a restricted
30 entity or a restricted investment product, the board shall establish
31 a plan to divest the investment and complete the divestment as soon
32 as financially prudent. However, the investment must be divested
33 not later than the following:

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

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

42 (3) One hundred percent (100%) of the investment shall be



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1 removed from a fund's assets within five (5) years after the
 2 board discovers that the investment is in a restricted entity
 3 or restricted investment product.

4 Sec. 14. The board, in consultation with the interim study
 5 committee on pension management oversight, may cease or defer
 6 divestment in the entity or product initiated under this chapter
 7 and resume investment in the entity or product during any period
 8 in which the entity or product has not returned to being a
 9 restricted entity or restricted investment product if any of the
 10 following conditions are met:

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

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

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

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

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

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

27 (2) The entity or product meets or exceeds the rules and
 28 standards of the Public Company Accounting Oversight
 29 Board and the Sarbanes-Oxley Act of 2002 (Public Law
 30 107-204).

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

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

42 (b) ~~A~~ The report ~~submitted by the board under this~~



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1 ~~section~~ must include at least the following information, as of the
 2 date of the report:

3 (1) ~~A~~ copy of the restricted entity ~~or~~
 4 ~~restricted investment product held by the system on behalf~~
 5 ~~of a fund on July 1 of that year.~~

6 ~~— (2) All actions taken before October 1 of that year to divest~~
 7 ~~holdings in restricted entities and restricted investment~~
 8 ~~products.~~

9 ~~— (3) All investments held on October 1 of that year in~~
 10 ~~restricted entities and restricted investment products and a~~
 11 ~~description of the plan to divest the investments.~~

12 ~~The board may include in the report any other information the~~
 13 ~~board determines relevant.~~

14 ~~— (c) The board shall annually provide for an audit of~~ list.

15 (2) All publicly traded securities sold, redeemed, divested, or
 16 withdrawn in compliance with [section 11 of] this chapter ~~or~~
 17 ~~in the financial year in which its financial statements are~~
 18 ~~being audited. The board shall include in the audited notes to~~
 19 ~~its financial statements in its comprehensive annual financial~~
 20 ~~report at least the information described in subsection (b)(1);~~
 21 ~~(b)(2), and (b)(3).~~

22 >].

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

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

26 **1** Sec. 16. With respect to actions taken in compliance with this
 27 chapter, including all good faith determinations regarding
 28 restricted entities and restricted investment products, the board
 29 and the system are exempt from any conflicting statutory or
 30 common law obligations, including any obligations with respect to
 31 choice of asset managers, investment funds, or investments for
 32 fund investment portfolios.

33 Sec. 17. (a) Both:

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

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

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

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

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

42 (2) the board members, executive director, officers, agents,



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1 and employees of a fund or the system;
2 are entitled to indemnification from the fund for all losses, costs,
3 and expenses, including reasonable attorney's fees, associated with
4 defending against any claim or suit relating to an act authorized
5 under this chapter.

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

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

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

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

19 Sec. 1-9. The provisions of this chapter are severable in
20 the manner provided in IC 1-1-1-8(b).

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

27 SECTION 3. An emergency is declared for this act.
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