

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.

HOUSE ENROLLED ACT No. 1008

AN ACT to amend the Indiana Code concerning pensions.

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

SECTION 1. IC 5-10.2-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 14. ESG Commitment

Sec. 1. This chapter does not apply to:

- (1) a bank holding company (as defined in IC 28-2-16-3 or IC 28-2-16-9);**
- (2) a subsidiary of a bank holding company (as defined in IC 28-2-16-3 or IC 28-2-16-9); or**
- (3) an action taken or a factor considered pursuant to the requirements of this chapter by a trustee for a:
 - (A) bank holding company described in subdivision (1); or**
 - (B) subsidiary of a bank holding company described in subdivision (2).****

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

- (1) with respect to or including the system's assets; and**
- (2) with the nonfinancial purpose to further social, political, or ideological interests based on evidence indicating the purpose.**

(b) The term defined in subsection (a) includes a commitment to further, through portfolio company engagement or board or shareholder votes, any of the following for nonfinancial purposes

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beyond the applicable law requirements:

- (1) Eliminating, reducing, offsetting, or disclosing greenhouse gas emissions.
- (2) Instituting or assessing:
 - (A) corporate board;
 - (B) employment;
 - (C) composition;
 - (D) compensation; or
 - (E) disclosure;

criteria that incorporate characteristics protected under IC 22-9.

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

- (A) Fails to meet or does not commit to environmental standards or disclosures.
- (B) Engages in, facilitates, or supports the manufacture, import, distribution, marketing or advertising, sale, or lawful use of firearms, ammunition, or component parts and accessories of firearms or ammunition.
- (C) Contracts with the United States Immigration and Customs Enforcement for the provision of federal immigration detention centers or support services related to the implementation of federal immigration and border 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;
 - (B) an initiative;
 - (C) a joint statement of principles; or
 - (D) an agreement.

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

- (1) name of the service provider; and
- (2) research supporting the conclusion;

to the board.

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

- (1) influencing any social or environmental policy; or
- (2) attempting to influence the governance of any corporation



for nonfinancial purposes.

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

Sec. 9. (a) 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:

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

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

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

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

with a service provider that has made an ESG commitment unless taking the action described in subdivisions (1) and (2) violates the board's fiduciary duty to the system's participants and beneficiaries.

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

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

- (1) decision that a comparable service provider does not exist; and



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

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

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

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

- (1) The state.
- (2) Officers, agents, and employees of the state.
- (3) The system.
- (4) The:
 - (A) board members;
 - (B) executive director;
 - (C) officers;
 - (D) agents; and
 - (E) employees;
 of the system.

(b) In addition to the immunity provided under subsection (a), the following are entitled to indemnification from the system 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:

- (1) Officers, agents, and employees of the state.
- (2) The:
 - (A) board members;
 - (B) executive director;
 - (C) officers;
 - (D) agents; and
 - (E) employees;
 of the system.

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

- (1) ensure that reasonable efforts are made during the due



diligence process before an investment is made and in monitoring investments in:

- (A) the public employees' defined contribution plan established under IC 5-10.3-12;
 - (B) an annuity savings account for the public employees' retirement fund established under IC 5-10.2-2-2(a)(1);
 - (C) the teachers' defined contribution plan established under IC 5-10.4-8;
 - (D) an annuity savings account for the Indiana state teachers' retirement fund established under IC 5-10.2-2-2(c)(1);
 - (E) the legislators' defined contribution plan established under IC 2-3.5-5; or
 - (F) a private market fund (as defined in IC 5-10.2-10-11);
- to determine whether any investments would violate section 9 of this chapter; and
- (2) take appropriate action, if necessary, consistent with the board's fiduciary duties.

SECTION 2. IC 5-10.5-5-1, AS AMENDED BY P.L.86-2018, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. The board has the powers, duties, restrictions, limitations, and penalties in connection with the board's investment and management of the assets of the public pension and retirement funds of the system under the following provisions:

- (1) IC 5-10.2-2-2.5.
- (2) IC 5-10.2-2-13.
- (3) IC 5-10.3-3-7.1.
- (4) IC 5-10.3-5-3.
- (5) IC 5-10.3-5-3.1.
- (6) IC 5-10.3-5-4.
- (7) IC 5-10.3-5-5.
- (8) IC 5-10.3-5-6.
- (9) IC 5-10.4-3-7.
- (10) IC 5-10.4-3-9.
- (11) IC 5-10.4-3-10.
- (12) IC 5-10.4-3-11.
- (13) IC 5-10.4-3-12.
- (14) IC 5-10.4-3-13.
- (15) IC 5-10.4-3-14.
- (16) IC 5-10.4-3-15.
- (17) IC 5-10.4-3-16.
- (18) IC 5-10.2-14.**



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



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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