

# HOUSE BILL No. 1180

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.2-13; IC 34-30-2-11.7.

**Synopsis:** Public retirement fund investments. Requires the public retirement system to divest from businesses that engage in action or inaction to penalize, inflict economic harm on, or otherwise limit commercial activity with companies invested in or assisting in the production of or manufacturing of certain carbon based or nuclear products. Provides for notice to businesses, reinvestment, and civil immunity. Requires certain reports to the legislative council. Makes a conforming amendment.

**Effective:** July 1, 2021.

---

---

## Morrison

---

---

January 7, 2021, read first time and referred to Committee on Employment, Labor and Pensions.

---

---



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

## HOUSE BILL No. 1180

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*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 JULY 1, 2021]:

4 **Chapter 13. Divestment Activities Related to Carbon Based or**  
5 **Nuclear Energy Products**

6 **Sec. 1. The general assembly finds it is contrary to the interests**  
7 **of the state and the citizens of Indiana for taxpayer dollars or**  
8 **retirement funds of public pensions to be invested in or at the**  
9 **direction of entities engaging in, providing incentives for, or**  
10 **directing strategies to divest from companies invested in or**  
11 **assisting in the production of or the manufacturing of any of the**  
12 **following:**

- 13 (1) **Natural gas.**  
14 (2) **Oil.**  
15 (3) **Coal.**  
16 (4) **Petrochemicals.**  
17 (5) **Forestry products.**



1           (6) Nuclear energy.

2           (7) Agriculture commodities.

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

6           **Sec. 3. (a)** As used in this chapter, "business" means any of the  
7 following that exist for profit making purposes:

8           (1) A sole proprietorship.

9           (2) An organization.

10          (3) An association.

11          (4) A corporation.

12          (5) A partnership.

13          (6) A joint venture.

14          (7) A limited partnership.

15          (8) A limited liability partnership.

16          (9) A limited liability company.

17          (10) A business association.

18          **(b)** The term includes all wholly owned subsidiaries, majority  
19 owned subsidiaries, parent businesses, and affiliates of such entities  
20 or business associations that exist for profit making purposes.

21          **Sec. 4.** As used in this chapter, "cost of divestment" means the  
22 sum of the following:

23          (1) The costs associated with the sale, redemption, divestment,  
24 or withdrawal of an investment.

25          (2) The costs associated with the acquisition and maintenance  
26 of a replacement investment.

27          (3) A cost not described in subdivision (1) or (2) that is  
28 incurred by the system in connection with a divestment  
29 transaction.

30          **Sec. 5.** As used in this chapter, "direct holdings" means all  
31 securities of a business held directly by the system on behalf of a  
32 fund or in an account in which the system on behalf of a fund owns  
33 all shares or interests.

34          **Sec. 6.** As used in this chapter, "divestment activity" refers to an  
35 action or inaction that furthers, coordinates with, or acquiesces in  
36 an effort by another person to penalize, inflict economic harm on,  
37 or otherwise limit commercial activity with companies invested in  
38 or assisting in the production of or the manufacturing of any of the  
39 products described in section 1 of this chapter.

40          **Sec. 7.** As used in this chapter, "fund" refers to the following:

41          (1) The Indiana state teachers' retirement fund.

42          (2) The public employees' retirement fund.



1           **Sec. 8. As used in this chapter, "indirect holdings" means all**  
2 **securities of a business:**

3           **(1) held in an account or a fund; and**

4           **(2) managed by one (1) or more persons not employed by the**  
5 **system, in which the system owns shares or interests on behalf**  
6 **of a fund together with other investors not subject to this**  
7 **chapter.**

8           **Sec. 9. As used in this chapter, "research firm" means a**  
9 **reputable, neutral third party research firm not controlled by the**  
10 **system.**

11           **Sec. 10. As used in this chapter, "restricted business" means a**  
12 **business that engages in divestment activity.**

13           **Sec. 11. As used in this chapter, "system" refers to the Indiana**  
14 **public retirement system established by IC 5-10.5-2-1.**

15           **Sec. 12. (a) Not later than January 31, 2022, the board shall**  
16 **make a good faith effort to identify all restricted businesses in**  
17 **which a fund has direct or indirect holdings.**

18           **(b) In carrying out its responsibilities under subsection (a), and**  
19 **at the board's discretion, the board may use existing research or**  
20 **contract with a research firm.**

21           **(c) The board or a research firm with which the board contracts**  
22 **under subsection (b) may take any of the following actions to**  
23 **determine a business's connections with respect to divestment**  
24 **activity:**

25           **(1) Review publicly available information regarding**  
26 **businesses.**

27           **(2) Contact other institutional investors that invest in**  
28 **businesses.**

29           **(3) Contact asset managers that invest in businesses and are**  
30 **contracted by a fund.**

31           **(d) Not later than the first meeting of the board after January**  
32 **31, 2022, the board shall compile the names of all restricted**  
33 **businesses into a restricted business list.**

34           **(e) The board shall update the restricted business list at least on**  
35 **an annual basis based on evolving information from sources**  
36 **described in subsections (b) and (c).**

37           **Sec. 13. After the board creates or updates the restricted**  
38 **business list under section 12 of this chapter, the board shall**  
39 **immediately identify the businesses on the restricted business list**  
40 **in which a fund has direct or indirect holdings.**

41           **Sec. 14. (a) The board shall send to each restricted business that**  
42 **is identified under section 13 of this chapter as a business in which**



1 a fund has direct or indirect holdings a written notice concerning  
 2 the contents of this chapter and a statement indicating that the  
 3 fund's holdings in the business may become subject to divestment  
 4 by the system.

5 (b) A notice sent under this section must:

6 (1) offer the business the opportunity to clarify the business's  
 7 divestment activity; and

8 (2) encourage the business, within ninety (90) days after the  
 9 date of the written notice, to cease its divestment activity to  
 10 avoid divestment by the system of the fund's holdings in the  
 11 business.

12 Sec. 15. If, within ninety (90) days after the system's first  
 13 engagement with a business under section 14 of this chapter, the  
 14 business ceases its divestment activity, the business shall be  
 15 removed from the restricted business list and sections 16, 17, and  
 16 18 of this chapter cease to apply to the business unless the business  
 17 resumes divestment activity.

18 Sec. 16. (a) Except as provided in section 18 of this chapter, if,  
 19 after ninety (90) days after the system's first engagement with a  
 20 business under section 14 of this chapter, the business continues to  
 21 engage in divestment activity, the system shall sell, redeem, divest,  
 22 or withdraw all publicly traded securities of the business that are  
 23 held by a fund, as follows:

24 (1) At least fifty percent (50%) of such assets shall be removed  
 25 from a fund's assets under management within nine (9)  
 26 months after the business's appearance on the restricted  
 27 business list.

28 (2) One hundred percent (100%) of such assets shall be  
 29 removed from a fund's assets under management within  
 30 fifteen (15) months after the business's appearance on the  
 31 restricted business list.

32 (b) If a business that ceased divestment activity following  
 33 engagement with the board under section 14 of this chapter  
 34 resumes divestment activity, the business shall be placed  
 35 immediately back on the restricted business list. If a fund has  
 36 holdings in the business, the system shall sell, redeem, divest, or  
 37 withdraw all publicly traded securities of the business as provided  
 38 in subsection (a) based on the date the business is placed back on  
 39 the restricted business list. The system shall send a written notice  
 40 to the business indicating that the business was placed back on the  
 41 restricted business list and is subject to divestment.

42 (c) The board is not required to divest a fund's holdings in a



1 passively managed commingled fund that includes a restricted  
 2 business engaging in divestment activity if the estimated cost of  
 3 divestment of the commingled fund is greater than ten percent  
 4 (10%) of the total value of the restricted businesses held in the  
 5 commingled fund. The board shall include any commingled fund  
 6 that includes a restricted business that is exempted from  
 7 divestment under this subsection in the board's report submitted  
 8 to the legislative council under section 20 of this chapter.

9 Sec. 17. Except as provided in section 18 of this chapter, the  
 10 system shall not acquire for a fund securities of businesses on the  
 11 restricted business list.

12 Sec. 18. Notwithstanding any provision to the contrary, sections  
 13 16 and 17 of this chapter do not apply to indirect holdings in  
 14 actively managed investment funds. However, if a fund has indirect  
 15 holdings in an actively managed investment fund containing the  
 16 securities of restricted businesses, the board shall submit letters to  
 17 the managers of the actively managed investment fund requesting  
 18 that the managers remove the restricted businesses from the  
 19 actively managed investment fund or create a similar actively  
 20 managed investment fund with indirect holdings without restricted  
 21 businesses. If the managers create a similar actively managed  
 22 investment fund, the board shall replace all applicable investments  
 23 with investments in the similar actively managed investment fund  
 24 in a period consistent with prudent investing standards.

25 Sec. 19. This chapter does not apply directly to private equity  
 26 funds. However, the board shall ensure that reasonable efforts are  
 27 made during the due diligence process before an investment is  
 28 made in a private equity partnership to determine whether any  
 29 investments by the private equity general partner on behalf of the  
 30 private equity partnership include a restricted business.

31 Sec. 20. (a) Not later than November 1, 2022, and thereafter as  
 32 directed by the legislative council, the board shall submit a report  
 33 in an electronic format under IC 5-14-6 to the executive director of  
 34 the legislative services agency for distribution to the members of  
 35 the general assembly.

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

- 38 (1) A copy of the restricted business list.
- 39 (2) A summary of correspondence with businesses engaged by  
 40 the board under section 14 of this chapter.
- 41 (3) All publicly traded securities sold, redeemed, divested, or  
 42 withdrawn in compliance with section 16 of this chapter.



1           **(4) All commingled funds that are exempted from divestment**  
 2           **under section 16 of this chapter.**

3           **(5) All prohibited securities under section 17 of this chapter.**

4           **(6) Any progress made under section 18 of this chapter.**

5           **Sec. 21. With respect to actions taken in compliance with this**  
 6           **chapter, including all good faith determinations regarding**  
 7           **businesses on the restricted business list, the system shall be**  
 8           **exempt from any conflicting statutory or common law obligations,**  
 9           **including any obligations with respect to choice of asset managers,**  
 10           **investment funds, or investments for fund securities portfolios.**

11           **Sec. 22. (a) Notwithstanding any provision to the contrary, the**  
 12           **system is permitted to cease divesting and to reinvest in certain**  
 13           **restricted businesses on the restricted business list if evidence**  
 14           **shows that the value for all assets under management by the system**  
 15           **on a fund's behalf becomes equal to or less than ninety-nine and**  
 16           **five-tenths percent (99.5%) of the value of all assets under**  
 17           **management by the system on a fund's behalf, including the**  
 18           **businesses divested under section 16 of this chapter.**

19           **(b) As provided by this section, any cessation of divestment or**  
 20           **reinvestment shall be strictly limited to the minimum steps**  
 21           **necessary to avoid the contingency set forth in subsection (a).**

22           **(c) For any cessation of divestment, reinvestment, and**  
 23           **subsequent ongoing investment authorized by this section, the**  
 24           **board shall submit a report in an electronic format under**  
 25           **IC 5-14-6 to the executive director of the legislative services agency**  
 26           **for distribution to the members of the general assembly before any**  
 27           **initial reinvestment. The report shall be updated annually**  
 28           **thereafter as applicable, setting forth the reasons and justifications**  
 29           **for the decision to cease divestment, reinvest, or remain invested**  
 30           **with restricted businesses. This section does not apply to businesses**  
 31           **that have ceased to engage in divestment activity.**

32           **Sec. 23. (a) Both:**

33           **(1) the state and officers, agents, and employees of the state;**  
 34           **and**

35           **(2) the system and the board members, executive director,**  
 36           **officers, agents, and employees of the system;**

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,**



1           **and employees of the system;**  
2           **are entitled to indemnification from the system 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           SECTION 2. IC 34-30-2-11.7 IS ADDED TO THE INDIANA  
7           CODE AS A NEW SECTION TO READ AS FOLLOWS  
8           [EFFECTIVE JULY 1, 2021]: **Sec. 11.7. IC 5-10.2-13-23 (Concerning**  
9           **removal of certain assets from the Indiana state teachers'**  
10           **retirement fund or the public employees' retirement fund).**

