

# HOUSE BILL No. 1224

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.5-5-3; IC 5-13-15; IC 5-16-15-7; IC 5-22-24.

**Synopsis:** Government investments and contracts. Provides that the state, a political subdivision, or a separate or independent body corporate and politic may not make certain investments in companies that boycott energy companies or companies that do business with energy companies. Provides that a state or local governmental body may not enter into a contract with certain companies for the purchase of supplies or services unless the contract contains a written verification from the company that the company does not boycott energy companies and will not boycott energy companies during the term of the contract.

**Effective:** July 1, 2022.

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## Manning, Soliday

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January 6, 2022, read first time and referred to Committee on Utilities, Energy and Telecommunications.

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Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

# HOUSE BILL No. 1224

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 5-10.5-5-3 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2022]: **Sec. 3. IC 5-13-15 applies to the investment of funds under**  
4 **this article.**

5 SECTION 2. IC 5-13-15 IS ADDED TO THE INDIANA CODE AS  
6 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 2022]:

8 **Chapter 15. Prohibition on Investment in Financial Companies**  
9 **that Boycott Certain Energy Companies**

10 **Sec. 1. As used in this chapter, "boycott" means, without an**  
11 **ordinary business purpose, refusing to deal with, terminating**  
12 **business activities with, or otherwise taking any action that is**  
13 **intended to penalize, inflict economic harm on, or limit commercial**  
14 **relations with an energy company.**

15 **Sec. 2. As used in this chapter, "company" refers to any of the**  
16 **following that exist to make a profit:**

- 17 (1) A sole proprietorship.



- 1           **(2) An organization.**  
 2           **(3) An association.**  
 3           **(4) A joint venture.**  
 4           **(5) A partnership.**  
 5           **(6) A limited partnership.**  
 6           **(7) A limited liability partnership.**  
 7           **(8) A corporation.**  
 8           **(9) A limited liability company.**  
 9           **(10) A wholly owned subsidiary, a majority owned subsidiary,**  
 10           **a parent company, or an affiliate of any of the entities**  
 11           **described in subdivisions (1) through (9).**  
 12           **(11) Any other legal entity that exists to make a profit.**  
 13           **Sec. 3. As used in this chapter, "direct holdings" means, with**  
 14           **respect to a financial company, all securities of that financial**  
 15           **company held directly by a governmental entity in an account or**  
 16           **fund in which a governmental entity owns all shares or interests.**  
 17           **Sec. 4. As used in this chapter, "energy company" refers to a**  
 18           **company that does any of the following:**  
 19           **(1) Engages in the exploration, production, use,**  
 20           **transportation, sale, or manufacturing of fossil fuel based**  
 21           **energy and does not commit or pledge to meet environmental**  
 22           **standards beyond applicable federal and state law.**  
 23           **(2) Does business with a company described in subdivision (1).**  
 24           **Sec. 5. As used in this chapter, "financial company" refers to a**  
 25           **publicly traded financial institution, financial services company, or**  
 26           **investment company.**  
 27           **Sec. 6. As used in this chapter, "governmental entity" refers to**  
 28           **any of the following:**  
 29           **(1) The state.**  
 30           **(2) A political subdivision.**  
 31           **(3) A separate or independent body corporate and politic**  
 32           **established by statute that exercises essential government**  
 33           **functions.**  
 34           **Sec. 7. As used in this chapter, "indirect holdings" means, with**  
 35           **respect to a financial company, all securities of that financial**  
 36           **company held in an account or fund, such as a mutual fund,**  
 37           **managed by one (1) or more persons not employed by a**  
 38           **governmental entity, in which the governmental entity owns shares**  
 39           **or interests together with other investors not subject to the**  
 40           **provisions of this chapter. The term does not include money**  
 41           **invested under a plan described by Section 401(k) or 457 of the**  
 42           **Internal Revenue Code.**



1           **Sec. 8. As used in this chapter, "listed financial company"**  
 2 **means a financial company listed by the board for depositories.**

3           **Sec. 9. With respect to actions taken in compliance with this**  
 4 **chapter, including all good faith determinations regarding**  
 5 **financial companies as required by this chapter, a governmental**  
 6 **entity and the board for depositories are exempt from any**  
 7 **conflicting statutory or common law obligations, including any**  
 8 **obligations with respect to making investments, divesting from any**  
 9 **investment, preparing or maintaining any list of financial**  
 10 **companies, or choosing asset managers, investment funds, or**  
 11 **investments for the governmental entity's securities portfolios.**

12           **Sec. 10. In a cause of action based on an action, inaction,**  
 13 **decision, divestment, investment, financial company**  
 14 **communication, report, or other determination made or taken in**  
 15 **connection with this chapter, the state shall indemnify and hold**  
 16 **harmless for actual damages, court costs, and attorney's fees**  
 17 **adjudged against, and defend each of the following, if applicable:**

18           **(1) An employee, a member of the governing body, or any**  
 19 **other officer of a governmental entity.**

20           **(2) A contractor of a governmental entity.**

21           **(3) A former employee, a former member of the governing**  
 22 **body, or any other former officer of a governmental entity**  
 23 **who was an employee, member of the governing body, or**  
 24 **other officer when the act or omission on which the damages**  
 25 **are based occurred.**

26           **(4) A former contractor of a governmental entity who was a**  
 27 **contractor when the act or omission on which the damages**  
 28 **are based occurred.**

29           **(5) A governmental entity.**

30           **Sec. 11. (a) A person, including a member, retiree, or**  
 31 **beneficiary of a retirement system to which this chapter applies, an**  
 32 **association, a research firm, a financial company, or any other**  
 33 **person may not sue or pursue a private cause of action against:**

34           **(1) the state;**

35           **(2) a governmental entity; or**

36           **(3) a current or former:**

37           **(A) employee of a governmental entity;**

38           **(B) member of the governing body;**

39           **(C) other officer of a state governmental entity; or**

40           **(D) contractor of a governmental entity;**

41 **for any claim or cause of action, including breach of fiduciary duty,**  
 42 **or for violation of any constitutional, statutory, or regulatory**



1 requirement in connection with any action, inaction, decision,  
 2 divestment, investment, financial company communication, report,  
 3 or other determination made or taken in connection with this  
 4 chapter.

5 (b) A person who files suit against a person described in  
 6 subsection (a) is liable for paying the costs and attorney's fees of a  
 7 person sued in violation of this section.

8 **Sec. 12.** A governmental entity is not subject to a requirement  
 9 of this chapter if the governmental entity determines that the  
 10 requirement would be inconsistent with its fiduciary responsibility  
 11 with respect to the investment of entity assets or other duties  
 12 imposed by law relating to the investment of entity assets.

13 **Sec. 13. (a)** The board for depositories shall prepare, maintain,  
 14 and provide to each governmental entity, a list of all financial  
 15 companies that boycott energy companies. In maintaining the list,  
 16 the board for depositories may do any of the following:

17 (1) Review and rely, as appropriate in the board for  
 18 depositories' judgment, on publicly available information  
 19 regarding financial companies, including information  
 20 provided by the state, nonprofit organizations, research firms,  
 21 international organizations, and governmental entities.

22 (2) Request written verification from a financial company that  
 23 it does not boycott energy companies and rely, as appropriate  
 24 in the board for depositories' judgment and without  
 25 conducting further investigation, research, or inquiry, on a  
 26 financial company's written response to the request.

27 (b) A financial company that fails to provide the board for  
 28 depositories a written verification under subsection (a) not later  
 29 than sixty (60) days after receiving the request from the board for  
 30 depositories is presumed to be boycotting energy companies.

31 (c) The board for depositories shall update the list annually or  
 32 more often as the board for depositories considers necessary, but  
 33 not more often than quarterly, based on information from, among  
 34 other sources, those described in subsection (a).

35 (d) Not later than thirty (30) days after the date the list of  
 36 financial companies that boycott energy companies is first  
 37 provided or updated, the board for depositories shall do the  
 38 following:

39 (1) File a copy of the list with each of the following:

40 (A) The speaker of the Indiana house of representatives.

41 (B) The president pro tempore of the Indiana senate.

42 (C) The attorney general.



1           (2) Post the list on the board for depositories' Internet web  
2           site.

3           **Sec. 14. Not later than thirty (30) days after the date a**  
4 **governmental entity receives the list provided under section 13(a)**  
5 **of this chapter, the governmental entity shall notify the board for**  
6 **depositories of the listed financial companies in which the**  
7 **governmental entity owns direct holdings or indirect holdings.**

8           **Sec. 15. (a) For each listed financial company identified under**  
9 **section 14 of this chapter, the governmental entity shall send a**  
10 **written notice:**

11           (1) informing the financial company of its status as a listed  
12           financial company;

13           (2) warning the financial company that it may become subject  
14           to divestment by governmental entities after the expiration of  
15           the period described by subsection (b); and

16           (3) offering the financial company the opportunity to clarify  
17           its activities related to the energy companies subject to  
18           boycott by the financial company.

19           (b) Not later than ninety (90) days after the date the financial  
20           company receives notice under subsection (a), the financial  
21           company must cease boycotting energy companies in order to  
22           avoid divestment by governmental entities.

23           (c) If, during the time provided by subsection (b), the financial  
24           company ceases boycotting energy companies:

25           (1) the board for depositories shall remove the financial  
26           company from the list maintained under section 13 of this  
27           chapter; and

28           (2) this section will no longer apply to the financial company  
29           unless it resumes boycotting energy companies.

30           (d) If, after the time provided by subsection (b) expires, the  
31           financial company continues to boycott energy companies, the  
32           governmental entity shall sell, redeem, divest, or withdraw all  
33           publicly traded securities of the financial company, except  
34           securities described in section 17 of this chapter, according to the  
35           schedule in section 16(a) of this chapter.

36           **Sec. 16. (a) A governmental entity required to sell, redeem,**  
37 **divest, or withdraw all publicly traded securities of a listed**  
38 **financial company shall comply with the following schedule:**

39           (1) At least fifty percent (50%) of those assets must be  
40           removed from the governmental entity's assets under  
41           management not later than one hundred eighty (180) days  
42           after the date the financial company receives notice under



1 section 15(a) of this chapter or subsection (b) unless the  
 2 governmental entity determines, based on a good faith  
 3 exercise of its fiduciary discretion and subject to subdivision  
 4 (2), that a later date is more prudent.

5 (2) One hundred percent (100%) of those assets must be  
 6 removed from the governmental entity's assets under  
 7 management not later than three hundred sixty (360) days  
 8 after the date the financial company receives notice under  
 9 section 15(a) of this chapter or subsection (b).

10 (b) If a financial company that ceased boycotting energy  
 11 companies after receiving notice under section 15 of this chapter  
 12 resumes its boycott, the governmental entity shall send a written  
 13 notice to the financial company informing it that the governmental  
 14 entity will sell, redeem, divest, or withdraw all publicly traded  
 15 securities of the financial company according to the schedule in  
 16 subsection (a).

17 (c) Except as provided by subsection (a), a governmental entity  
 18 may delay the schedule for divestment only to the extent that the  
 19 governmental entity determines, in the governmental entity's good  
 20 faith judgment, and consistent with the governmental entity's  
 21 fiduciary duty, that divestment from listed financial companies will  
 22 likely result in a loss in value or a benchmark deviation described  
 23 in section 18 of this chapter.

24 (d) If a governmental entity delays the schedule for divestment,  
 25 the governmental entity shall submit a report to the officials  
 26 described in section 13(d)(1) of this chapter stating the reasons and  
 27 justification for the governmental entity's delay in divestment from  
 28 listed financial companies. The report must include documentation  
 29 supporting its determination that the divestment would result in a  
 30 loss in value or a benchmark deviation described by section 18 of  
 31 this chapter, including objective numerical estimates. The  
 32 governmental entity shall update the report every one hundred  
 33 eighty (180) days.

34 Sec. 17. A governmental entity is not required to divest from  
 35 any indirect holdings in actively or passively managed investment  
 36 funds or private equity funds. The governmental entity shall  
 37 submit letters to the managers of each investment fund containing  
 38 listed financial companies requesting that they remove those  
 39 financial companies from the fund or create a similar actively or  
 40 passively managed fund with indirect holdings devoid of listed  
 41 financial companies. If a manager creates a similar fund with  
 42 substantially the same management fees and same level of



1 investment risk and anticipated return, the governmental entity  
2 may replace all applicable investments with investments in the  
3 similar fund in a time frame consistent with prudent fiduciary  
4 standards but not later than four hundred fifty (450) days after the  
5 date the fund is created.

6 **Sec. 18. (a)** A state governmental entity may cease divesting  
7 from a listed financial company only if clear and convincing  
8 evidence shows either of the following:

9 (1) The governmental entity has suffered or will suffer a loss  
10 in the hypothetical value of all assets under management by  
11 the governmental entity as a result of having to divest from  
12 the listed financial company under this chapter.

13 (2) An individual portfolio that uses a benchmark aware  
14 strategy would be subject to an aggregate expected deviation  
15 from its benchmark as a result of having to divest from the  
16 listed financial company under this chapter.

17 (b) A governmental entity may cease divesting from a listed  
18 financial company as provided by this section only to the extent  
19 necessary to ensure that the governmental entity does not suffer a  
20 loss in value or deviate from its benchmark as described by  
21 subsection (a).

22 (c) Before a governmental entity may cease divesting from a  
23 listed financial company under this section, the governmental  
24 entity must provide a written report to each of the following:

25 (1) The board for depositories.

26 (2) The speaker of the Indiana house of representatives.

27 (3) The president pro tempore of the Indiana senate.

28 (4) The attorney general.

29 The report required by this subsection must set forth the reason  
30 and justification, supported by clear and convincing evidence, for  
31 deciding to cease divestment or to remain invested in a listed  
32 financial company. The governmental entity shall update the  
33 report required by this subsection every one hundred eighty days  
34 (180).

35 (d) This section does not apply to reinvestment in a financial  
36 company that is no longer a listed financial company.

37 **Sec. 19.** Except as provided by section 18 of this chapter, a  
38 governmental entity may not acquire securities of a listed financial  
39 company.

40 **Sec. 20. (a)** Not later than January 5 of each year, each  
41 governmental entity shall file a publicly available report with each  
42 of the following:





- 1           (1) The board for depositories.  
 2           (2) The speaker of the Indiana house of representatives.  
 3           (3) The president pro tempore of the Indiana senate.  
 4           (4) The attorney general.  
 5       (b) The report required by subsection (a) must:  
 6           (1) identify all securities sold, redeemed, divested, or  
 7           withdrawn in compliance with section 16 of this chapter;  
 8           (2) identify all prohibited investments under section 19 of this  
 9           chapter; and  
 10          (3) summarize any changes made under section 17 of this  
 11          chapter.  
 12       **Sec. 21. The attorney general may bring any action necessary to**  
 13       **enforce this chapter.**  
 14       SECTION 3. IC 5-16-15-7 IS ADDED TO THE INDIANA CODE  
 15       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 16       1, 2022]: **Sec. 7. IC 5-22-24 applies to a contract.**  
 17       SECTION 4. IC 5-22-24 IS ADDED TO THE INDIANA CODE AS  
 18       A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
 19       1, 2022]:  
 20       **Chapter 24. Prohibition on Contracts with Companies That**  
 21       **Boycott Certain Energy Companies**  
 22       **Sec. 1. As used in this chapter, "boycott" has the meaning set**  
 23       **forth in IC 5-13-15-1.**  
 24       **Sec. 2. As used in this chapter, "company" has the meaning set**  
 25       **forth in IC 5-13-15-2.**  
 26       **Sec. 3. As used in this chapter, "energy company" has the**  
 27       **meaning set forth in IC 5-13-15-4.**  
 28       **Sec. 4. (a) This section applies only to a contract that:**  
 29           (1) is between a governmental body and a company with at  
 30           least ten (10) full-time employees; and  
 31           (2) has a value of at least one hundred thousand dollars  
 32           (\$100,000) that is paid wholly or partly from public funds of  
 33           the governmental body.  
 34       (b) This section does not apply if the governmental body  
 35       determines the requirements of this section are inconsistent with  
 36       the governmental body's constitutional or statutory duties related  
 37       to the issuance, incurrence, or management of debt obligations or  
 38       the deposit, custody, management, borrowing, or investment of  
 39       funds.  
 40       (c) A governmental body may not enter into a contract with a  
 41       company for the purchase of supplies or services unless the  
 42       contract contains a written verification from the company that the



1       **company:**  
2           **(1) does not boycott energy companies; and**  
3           **(2) will not boycott energy companies during the term of the**  
4           **contract.**

