



January 25, 2022

HOUSE BILL No. 1224

DIGEST OF HB 1224 (Updated January 25, 2022 12:49 pm - DI 137)

Citations Affected: IC 5-10.5; IC 5-13; IC 5-16; IC 5-22.

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.

Manning, Soliday

January 6, 2022, read first time and referred to Committee on Utilities, Energy and Telecommunications.
January 10, 2022, reassigned to Committee on Financial Institutions and Insurance.
January 25, 2022, amended, reported — Do Pass.

HB 1224—LS 7122/DI 75



January 25, 2022

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 commercial action**
13 **that is intended to penalize, inflict economic harm on, or limit**
14 **commercial relations with an energy company because the energy**
15 **company does not pledge to meet environmental standards beyond**
16 **applicable federal or state law.**

17 **Sec. 2. As used in this chapter, "company" refers to any of the**

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1 following that exist to make a profit:

- 2 (1) An organization.
 3 (2) An association.
 4 (3) A joint venture.
 5 (4) A partnership.
 6 (5) A limited partnership.
 7 (6) A limited liability partnership.
 8 (7) A corporation.
 9 (8) A limited liability company.
 10 (9) A wholly owned subsidiary, a majority owned subsidiary,
 11 a parent company, or an affiliate of any of the entities
 12 described in subdivisions (1) through (8).
 13 (10) Any other legal entity that exists to make a profit.

14 The term does not include a sole proprietorship.

15 Sec. 3. As used in this chapter, "direct holdings" means, with
 16 respect to a financial company, all securities of that financial
 17 company held directly by a governmental entity in an account or
 18 fund in which a governmental entity owns all shares or interests.

19 Sec. 4. As used in this chapter, "energy company" refers to a
 20 company that does any of the following:

- 21 (1) Engages in the exploration, production, use,
 22 transportation, sale, or manufacturing of fossil fuel based
 23 energy.
 24 (2) Does business with a company described in subdivision (1).

25 Sec. 5. As used in this chapter, "financial company" refers to a
 26 publicly traded financial institution, financial services company, or
 27 investment company.

28 Sec. 6. As used in this chapter, "governmental entity" refers to
 29 any of the following:

- 30 (1) The state.
 31 (2) A political subdivision.
 32 (3) A separate or independent body corporate and politic
 33 established by statute that exercises essential government
 34 functions.

35 Sec. 7. As used in this chapter, "indirect holdings" means, with
 36 respect to a financial company, all securities of that financial
 37 company held in an account or fund, such as a mutual fund,
 38 managed by one (1) or more persons not employed by a
 39 governmental entity, in which the governmental entity owns shares
 40 or interests together with other investors not subject to the
 41 provisions of this chapter. The term does not include money
 42 invested under a plan described by Section 401(k) or 457 of the



1 **Internal Revenue Code.**

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

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

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

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

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

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

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

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

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

35 (1) **the state;**

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

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

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

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

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

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

42 **for any claim or cause of action, including breach of fiduciary duty,**



1 or for violation of any constitutional, statutory, or regulatory
 2 requirement in connection with any action, inaction, decision,
 3 divestment, investment, financial company communication, report,
 4 or other determination made or taken in connection with this
 5 chapter.

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

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

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

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

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

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

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

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

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

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

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



1 (C) The attorney general.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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

26 (1) The board for depositories.

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

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

29 (4) The attorney general.

30 The report required by this subsection must set forth the reason
 31 and justification, supported by clear and convincing evidence, for
 32 deciding to cease divestment or to remain invested in a listed
 33 financial company. The governmental entity shall update the
 34 report required by this subsection every one hundred eighty days
 35 (180).

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

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

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



1 of the following:

- 2 (1) The board for depositories.
 3 (2) The speaker of the Indiana house of representatives.
 4 (3) The president pro tempore of the Indiana senate.
 5 (4) The attorney general.

6 (b) The report required by subsection (a) must:

- 7 (1) identify all securities sold, redeemed, divested, or
 8 withdrawn in compliance with section 16 of this chapter;
 9 (2) identify all prohibited investments under section 19 of this
 10 chapter; and
 11 (3) summarize any changes made under section 17 of this
 12 chapter.

13 **Sec. 21. The attorney general may bring any action necessary to**
 14 **enforce this chapter.**

15 SECTION 3. IC 5-16-15-7 IS ADDED TO THE INDIANA CODE
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 17 1, 2022]: **Sec. 7. IC 5-22-24 applies to a contract.**

18 SECTION 4. IC 5-22-24 IS ADDED TO THE INDIANA CODE AS
 19 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2022]:

21 **Chapter 24. Prohibition on Contracts with Companies That**
 22 **Boycott Certain Energy Companies**

23 **Sec. 1. As used in this chapter, "boycott" has the meaning set**
 24 **forth in IC 5-13-15-1.**

25 **Sec. 2. As used in this chapter, "company" has the meaning set**
 26 **forth in IC 5-13-15-2.**

27 **Sec. 3. As used in this chapter, "energy company" has the**
 28 **meaning set forth in IC 5-13-15-4.**

29 **Sec. 4. (a) This section applies only to a contract that:**

- 30 (1) is between a governmental body and a company with at
 31 least ten (10) full-time employees; and
 32 (2) has a value of at least one hundred thousand dollars
 33 (\$100,000) that is paid wholly or partly from public funds of
 34 the governmental body.

35 (b) This section does not apply if the governmental body
 36 determines the requirements of this section are inconsistent with
 37 the governmental body's constitutional or statutory duties related
 38 to the issuance, incurrence, or management of debt obligations or
 39 the deposit, custody, management, borrowing, or investment of
 40 funds.

41 (c) A governmental body may not enter into a contract with a
 42 company for the purchase of supplies or services unless the



1 **contract contains a written verification from the company that the**
2 **company:**
3 **(1) does not boycott energy companies; and**
4 **(2) will not boycott energy companies during the term of the**
5 **contract.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions and Insurance, to which was referred House Bill 1224, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 12, after "any" insert "**commercial**".

Page 1, line 14, delete "." and insert "**because the energy company does not pledge to meet environmental standards beyond applicable federal or state law.**".

Page 1, delete line 17 and insert:

(1) An organization.

(2) An association.

(3) A joint venture.

(4) A partnership.

(5) A limited partnership.

(6) A limited liability partnership.

(7) A corporation.

(8) A limited liability company.

(9) A wholly owned subsidiary, a majority owned subsidiary, a parent company, or an affiliate of any of the entities described in subdivisions (1) through (8).

(10) Any other legal entity that exists to make a profit.

The term does not include a sole proprietorship.

Page 2, delete lines 1 through 12.

Page 2, line 21, delete "and does not commit or pledge to meet environmental" and insert ".".

Page 2, delete line 22.

and when so amended that said bill do pass.

(Reference is to HB 1224 as introduced.)

CARBAUGH

Committee Vote: yeas 7, nays 5.

