

SENATE BILL No. 259

DIGEST OF INTRODUCED BILL

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

Synopsis: Prohibited pension system investments. Prohibits the Indiana public retirement system from investing in companies controlled by the People's Republic of China or the Chinese Communist Party.

Effective: Upon passage.

Garten

January 10, 2022, read first time and referred to Committee on Pensions and Labor.



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.

SENATE BILL No. 259

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 UPON PASSAGE]:

4 **Chapter 13. Divestment of Investments in 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**
- 14 **the United States and the people of Indiana.**
- 15 (4) **The threat from these entities constitutes the**
- 16 **extraordinary circumstances necessary for mandatory**
- 17 **divestment by the system of the fund holdings in restricted**



- 1 entities and restricted investment products.
- 2 **Sec. 2.** As used in this chapter, "board" refers to the board of
3 trustees of the Indiana public retirement system established by
4 **IC 5-10.5-3-1.**
- 5 **Sec. 3.** As used in this chapter, "control" means the following:
6 (1) Control as defined in Section 2(a) of the Investment
7 Company Act of 1940 (15 U.S.C. 80a-2(a)).
8 (2) Involvement in an entity's governance structure,
9 monitoring, or internal human resources decisions of an entity
10 consistent with the objectives set out in Opinion on
11 Strengthening the United Front Work of the Private Economy
12 in the New Era issued by the General Office of the Central
13 Committee of the Chinese Communist Party (2020) or a
14 successor or similar document.
- 15 **Sec. 4.** As used in this chapter, "divest" means a sale,
16 redemption, replacement, or any other activity that terminates the
17 investment.
- 18 **Sec. 5.** As used in this chapter, "fund" refers to any public
19 pension and retirement funds of the system (as defined in
20 **IC 5-10.5-1-5**).
- 21 **Sec. 6.** As used in this chapter, "investment" refers to any
22 investment that the board or system is authorized to make under
23 **IC 5-10.5-5** or another law.
- 24 **Sec. 7.** As used in this chapter, "person" means an individual or
25 entity.
- 26 **Sec. 8.** As used in this chapter, "restricted entity" refers to the
27 following:
28 (1) Any person (other than a U.S. person (as defined in 15
29 CFR 772.1)) that is identified for the People's Republic of
30 China on the Entity List (Supplement No. 4 to 15 CFR Part
31 744) as a person reasonably believed to be involved, or to pose
32 a significant risk of being or becoming involved, in activities
33 contrary to the national security or foreign policy interests of
34 the United States until the End-User Review Committee of the
35 Bureau of Industry and Security in the United States
36 Department of Commerce determines that the person no
37 longer meets that criteria and removes the person from the
38 list.
39 (2) Any person that:
40 (A) the United States Secretary of Defense has listed as a
41 Communist Chinese military company operating directly
42 or indirectly in the United States or in any of its territories



1 or possessions pursuant to Section 1237 of Public Law
 2 105-261, as amended by Section 1233 of Public Law
 3 106-398 and Section 1222 of Public Law 108-375 until such
 4 time as the United States Secretary of Defense removes
 5 such person from such list;

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

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

23 (3) Any other entity (other than a U.S. person or U.S.
 24 subsidiary (as defined in 15 CFR 772.1)) controlled by the
 25 People's Republic of China, the Chinese Communist Party, or
 26 a provincial division, municipality, governmental agency,
 27 sovereign wealth fund, or instrumentality of the People's
 28 Republic of China.

29 (4) Any organization or citizen that is required by the
 30 National Intelligence Law of the People's Republic of China
 31 (2017), as amended in 2018, or any successor to support,
 32 assist, and cooperate with the state intelligence work of the
 33 People's Republic of China and keep the secrets of the
 34 national intelligence work of the People's Republic of China,
 35 which are known to the public.

36 The term includes a parent, subsidiary, or affiliate of, or a person
 37 controlled by a person described in subdivision (1), (2), (3), or (4),
 38 regardless of the country in which the entity is headquartered or
 39 organized.

40 Sec. 9. As used in this chapter, "restricted investment product"
 41 refers to an investment product that:

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



- 1 (A) that are not employed by the system; and
 2 (B) in which the system on behalf of the fund owns
 3 investments together with investors other than the system;
 4 and
 5 (2) holds investments in a restricted entity.
- 6 **Sec. 10.** As used in this chapter, "system" has the meaning set
 7 forth in IC 5-10.5-1-6.
- 8 **Sec. 11.** After June 30, 2022, the system may not knowingly
 9 invest in a restricted entity or a restricted investment product and
 10 shall divest any investment that the system has on behalf of a fund
 11 in accordance with this chapter. Determinations under this chapter
 12 are independent of any determinations made under IC 5-10.2-9,
 13 IC 5-10.2-10, and IC 5-10.2-11.
- 14 **Sec. 12.** Before June 30, 2022, and at least annually before July
 15 1 of each subsequent year, the board shall make a good faith effort
 16 to identify all restricted entities and restricted investment products
 17 in which the system holds an investment. The board may use an
 18 independent research firm to assist the board.
- 19 **Sec. 13.** If the board determines after a review under section 12
 20 of this chapter that the system has investments in a restricted
 21 entity or a restricted investment product, the board shall establish
 22 a plan to divest the investment and complete the divestment as soon
 23 as financially prudent. However, the investment must be divested
 24 not later than the following:
- 25 (1) At least fifty percent (50%) of the investment shall be
 26 removed from a fund's assets within three (3) years after the
 27 board discovers that the investment is in a restricted entity or
 28 restricted investment product.
- 29 (2) At least seventy-five percent (75%) of the investment shall
 30 be removed from a fund's assets within four (4) years after
 31 the board discovers that the investment is in a restricted
 32 entity or restricted investment product.
- 33 (3) One hundred percent (100%) of the investment shall be
 34 removed from a fund's assets within five (5) years after the
 35 board discovers that the investment is in a restricted entity or
 36 restricted investment product.
- 37 **Sec. 14.** The board, in consultation with the interim study
 38 committee on pension management oversight, may cease
 39 divestment in the entity or product initiated under this chapter and
 40 resume investment in the entity or product during any period in
 41 which the entity or product has not returned to being a restricted
 42 entity or restricted investment product if the following conditions



- 1 are met:
- 2 (1) The United States Secretary of State has issued a
- 3 determination that the People's Republic of China is in
- 4 compliance with each of the following:
- 5 (A) The December 19, 1984, Joint Declaration of the
- 6 Government of the United Kingdom of Great Britain and
- 7 Northern Ireland and the Government of the People's
- 8 Republic of China on the Question of Hong Kong.
- 9 (B) The Basic Law of the Hong Kong Special
- 10 Administrative Region of the People's Republic of China.
- 11 (C) The Uyghur Human Rights Policy Act of 2020.
- 12 (D) The December 10, 1948, Universal Declaration of
- 13 Human Rights.
- 14 (E) The December 19, 1966, International Covenant on
- 15 Civil and Political Rights.
- 16 (2) The entity or product meets or exceeds the rules and
- 17 standards of the Public Company Accounting Oversight
- 18 Board and the Sarbanes-Oxley Act of 2002 (Public Law
- 19 107-204).
- 20 Sec. 15. (a) Before November 2, 2022, and annually before
- 21 November 2 of each subsequent year, the board shall submit a
- 22 report in an electronic format under IC 5-14-6 to the executive
- 23 director of the legislative services agency.
- 24 (b) A report submitted by the board under this section must
- 25 include at least the following information:
- 26 (1) All investments in a restricted entity or restricted
- 27 investment product held by the system on behalf of a fund on
- 28 July 1 of that year.
- 29 (2) All actions taken before October 1 of that year to divest
- 30 holdings in restricted entities and restricted investment
- 31 products.
- 32 (3) All investments held on October 1 of that year in restricted
- 33 entities and restricted investment products and a description
- 34 of the plan to divest the investments.
- 35 The board may include in the report any other information the
- 36 board determines relevant.
- 37 (c) The board shall annually provide for an audit of compliance
- 38 with this chapter in the financial year in which its financial
- 39 statements are being audited. The board shall include in the
- 40 audited notes to its financial statements in its comprehensive
- 41 annual financial report at least the information described in
- 42 subsection (b)(1), (b)(2), and (b)(3).



1 **Sec. 16. With respect to actions taken in compliance with this**
 2 **chapter, including all good faith determinations regarding**
 3 **restricted entities and restricted investment products, the board**
 4 **and the system are exempt from any conflicting statutory or**
 5 **common law obligations, including any obligations with respect to**
 6 **choice of asset managers, investment funds, or investments for**
 7 **fund investment portfolios.**

8 **Sec. 17. (a) Both:**

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

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

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

14 **(b) In addition to the immunity provided under subsection (a),**
 15 **both:**

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

17 (2) the board members, executive director, officers, agents,
 18 and employees of a fund or the system;

19 **are entitled to indemnification from the fund for all losses, costs,**
 20 **and expenses, including reasonable attorney's fees, associated with**
 21 **defending against any claim or suit relating to an act authorized**
 22 **under this chapter.**

23 **Sec. 18. The provisions of this chapter are severable in the**
 24 **manner provided in IC 1-1-1-8(b).**

25 SECTION 2. IC 34-30-2-11.7 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: Sec. 11.7. IC 5-10.2-13-17
 28 **(Concerning removal of certain assets from a public pension or**
 29 **employee retirement fund administered by the board of trustees of**
 30 **the Indiana public retirement system).**

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

