



February 11, 2021

HOUSE BILL No. 1387

DIGEST OF HB 1387 (Updated February 11, 2021 11:09 am - DI 137)

Citations Affected: IC 4-12; IC 5-10.2; IC 5-28; IC 34-30.

Synopsis: Prohibited expenditures and investments. Prohibits the use of public funds to subsidize or otherwise incentivize direct flights from international and regional airports in Indiana to or from China. Prohibits the Indiana public retirement system from investing in Chinese companies or companies in which China has a direct or indirect economic interest or a resident of China on the board of directors. Prohibits the Indiana economic development corporation from maintaining a foreign office in China.

Effective: Upon passage.

Judy

January 14, 2021, read first time and referred to Committee on Government and Regulatory Reform.

February 11, 2021, amended, reported — Do Pass. Referred to Committee on Ways and Means pursuant to Rule 127.

HB 1387—LS 6623/DI 51



February 11, 2021

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. 1387

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 4-12-18 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 18. Regulation of Expenditures to Incentivize Direct**
5 **Flights**

6 **Sec. 1. As used in this chapter, "public funds" means any funds**
7 **for which a state agency is accountable by virtue of the functions**
8 **of the state agency, whether or not impressed with a public interest**
9 **or the source of the funds.**

10 **Sec. 2. As used in this chapter, "state agency" has the meaning**
11 **set forth in IC 4-12-1-2. The term includes an elected official.**
12 **Although not a comprehensive list, the instrumentalities included**
13 **in the term include the Indiana economic development corporation,**
14 **the Indiana finance authority, and the Indiana destination**
15 **development corporation.**

16 **Sec. 3. A state agency may not use public funds to subsidize or**
17 **otherwise incentivize direct flights from international and regional**

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1 airports in Indiana to or from the People's Republic of China,
2 including Hong Kong.

3 SECTION 2. IC 5-10.2-13 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 UPON PASSAGE]:

6 **Chapter 13. Divestment of Investments in Chinese Companies**

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

10 **Sec. 2. As used in this chapter, "divest" means a sale,**
11 **redemption, replacement, or any other activity that terminates the**
12 **investment.**

13 **Sec. 3. As used in this chapter, "fund" refers to any public**
14 **pension and retirement funds of the system (as defined in**
15 **IC 5-10.5-1-5).**

16 **Sec. 4. As used in this chapter, "investment" refers to any**
17 **investment that the board or system is authorized to make under**
18 **IC 5-10.5-5 or another law.**

19 **Sec. 5. As used in this chapter, "person" means an individual or**
20 **entity.**

21 **Sec. 6. As used in this chapter, "prohibited investment" refers**
22 **to an investment product that:**

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

24 (A) that are not employed by the system; and

25 (B) in which the system on behalf of the fund owns
26 investments together with investors other than the system;
27 and

28 (2) holds investments in a restricted entity.

29 **Sec. 7. As used in this chapter, "restricted entity" refers to any**
30 **business concern or entity:**

31 (1) for which an entity created in or organized under the laws
32 of the People's Republic of China or the Special
33 Administrative Region of Hong Kong, or that has significant
34 operations in the People's Republic of China or the Special
35 Administrative Region of Hong Kong, owns or holds, directly
36 or indirectly, not less than twenty percent (20%) of the
37 economic interest of the business concern or entity, including
38 as equity shares or a capital or profit interest in a limited
39 liability company or partnership; or

40 (2) that retains, as a member of the board of directors of the
41 business concern, a person who is a resident of the People's
42 Republic of China.



1 **Sec. 8.** As used in this chapter, "system" has the meaning set
2 forth in IC 5-10.5-1-6.

3 **Sec. 9.** After June 30, 2021, the system may not knowingly invest
4 in a proinvestment product and shall divest any investment that the
5 system has on behalf of a fund in accordance with this chapter.
6 Determinations under this chapter are independent of any
7 determinations made under IC 5-10.2-9, IC 5-10.2-10, and
8 IC 5-10.2-11.

9 **Sec. 10.** Before June 30, 2021, and at least annually before July
10 1 of each subsequent year, the board shall make a good faith effort
11 to identify all restricted entities and prohibited investments in
12 which the system holds an investment. The board may use an
13 independent research firm to assist the board.

14 **Sec. 11.** If the board determines after a review under section 10
15 of this chapter that the system has investments in a restricted
16 entity or a prohibited investment, the board shall establish a plan
17 to divest the investment and complete the divestment as soon as
18 financially prudent. However, the investment must be divested not
19 later than the following:

20 (1) At least fifty percent (50%) of the investment shall be
21 removed from a fund's assets within three (3) years after the
22 board discovers that the investment is in a restricted entity or
23 prohibited investment.

24 (2) At least seventy-five percent (75%) of the investment shall
25 be removed from a fund's assets within four (4) years after
26 the board discovers that the investment is in a restricted
27 entity or prohibited investment.

28 (3) One hundred percent (100%) of the investment shall be
29 removed from a fund's assets within five (5) years after the
30 board discovers that the investment is in a restricted entity or
31 prohibited investment.

32 **Sec. 12.** The board, in consultation with the interim study
33 committee on pension management oversight, may cease
34 divestment in the entity or product initiated under this chapter and
35 resume investment in the entity or product during any period in
36 which the entity or product has not returned to being a restricted
37 entity or prohibited investment if all of the following conditions are
38 met:

39 (1) The United States Secretary of State has issued a
40 determination that the People's Republic of China is in
41 compliance with each of the following:

42 (A) The December 19, 1984, Joint Declaration of the



- 1 **Government of the United Kingdom of Great Britain and**
 2 **Northern Ireland and the Government of the People's**
 3 **Republic of China on the Question of Hong Kong.**
 4 **(B) The Basic Law of the Hong Kong Special**
 5 **Administrative Region of the People's Republic of China.**
 6 **(C) The Uyghur Human Rights Policy Act of 2020.**
 7 **(D) The December 10, 1948, Universal Declaration of**
 8 **Human Rights.**
 9 **(E) The December 16, 1966, International Covenant on**
 10 **Civil and Political Rights.**
- 11 **(2) The entity or product meets or exceeds the rules and**
 12 **standards of the Public Company Accounting Oversight**
 13 **Board and the Sarbanes-Oxley Act of 2002 (Public Law**
 14 **107-204).**
- 15 **Sec. 13. (a) Before November 2, 2021, and annually before**
 16 **November 2 of each subsequent year, the board shall submit a**
 17 **report in an electronic format under IC 5-14-6 to the executive**
 18 **director of the legislative services agency.**
- 19 **(b) A report submitted by the board under this section must**
 20 **include at least the following information:**
- 21 **(1) All investments in a restricted entity or prohibited**
 22 **investment held by the system on behalf of a fund on July 1 of**
 23 **that year.**
- 24 **(2) All actions taken before October 1 of that year to divest**
 25 **holdings in restricted entities and prohibited investments.**
- 26 **(3) All investments held on October 1 of that year in restricted**
 27 **entities and prohibited investments and a description of the**
 28 **plan to divest the investments.**
- 29 **The board may include in the report any other information the**
 30 **board determines relevant.**
- 31 **Sec. 14. With respect to actions taken in compliance with this**
 32 **chapter, including all good faith determinations regarding**
 33 **restricted entities and prohibited investments, the board and the**
 34 **system are exempt from any conflicting statutory or common law**
 35 **obligations, including any obligations with respect to choice of asset**
 36 **managers, investment funds, or investments for fund investment**
 37 **portfolios.**
- 38 **Sec. 15. (a) Both:**
- 39 **(1) the state and its officers, agents, and employees; and**
 40 **(2) a fund or the system and its board members, executive**
 41 **director, officers, agents, and employees;**
 42 **are immune from civil liability for any act or omission related to**



1 **the removal of an asset from a fund under this chapter.**

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

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

5 **(2) the board members, executive director, officers, agents,**
 6 **and employees of a fund or the system;**

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

11 **Sec. 16. The provisions of this chapter are severable in the**
 12 **manner provided in IC 1-1-1-8(b).**

13 SECTION 3. IC 5-28-6-2, AS AMENDED BY P.L.130-2018,
 14 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 UPON PASSAGE]: Sec. 2. (a) The corporation shall develop and
 16 promote programs designed to make the best use of Indiana resources
 17 to ensure a balanced economy and continuing economic growth for
 18 Indiana, and, for those purposes, may do the following:

19 (1) Cooperate with federal, state, and local governments and
 20 agencies in the coordination of programs to make the best use of
 21 Indiana resources, based on a statewide study to determine
 22 specific economic sectors that should be emphasized by the state
 23 and by local economic development organizations within
 24 geographic regions in Indiana, and encourage collaboration with
 25 local economic development organizations within geographic
 26 regions in Indiana and with the various state economic
 27 development organizations within the states contiguous to
 28 Indiana.

29 (2) Receive and expend funds, grants, gifts, and contributions of
 30 money, property, labor, interest accrued from loans made by the
 31 corporation, and other things of value from public and private
 32 sources, including grants from agencies and instrumentalities of
 33 the state and the federal government. The corporation:

34 (A) may accept federal grants for providing planning
 35 assistance, making grants, or providing other services or
 36 functions necessary to political subdivisions, planning
 37 commissions, or other public or private organizations;

38 (B) shall administer these grants in accordance with the terms
 39 of the grants; and

40 (C) may contract with political subdivisions, planning
 41 commissions, or other public or private organizations to carry
 42 out the purposes for which the grants were made.



- 1 (3) Direct that assistance, information, and advice regarding the
 2 duties and functions of the corporation be given to the corporation
 3 by an officer, agent, or employee of the executive branch of the
 4 state. The head of any other state department or agency may
 5 assign one (1) or more of the department's or agency's employees
 6 to the corporation on a temporary basis or may direct a division
 7 or an agency under the department's or agency's supervision and
 8 control to make a special study or survey requested by the
 9 corporation.
- 10 (b) The corporation shall perform the following duties:
- 11 (1) Develop and implement industrial development programs to
 12 encourage expansion of existing industrial, commercial, and
 13 business facilities in Indiana and to encourage new industrial,
 14 commercial, and business locations in Indiana.
- 15 (2) Assist businesses and industries in acquiring, improving, and
 16 developing overseas markets and encourage international plant
 17 locations in Indiana. The corporation, with the approval of the
 18 governor, may establish foreign offices to assist in this function.
 19 **However, after June 30, 2021, the corporation may not fund,**
 20 **operate, or otherwise maintain a foreign office in the People's**
 21 **Republic of China, including Hong Kong.**
- 22 (3) Promote the growth of minority business enterprises by doing
 23 the following:
- 24 (A) Mobilizing and coordinating the activities, resources, and
 25 efforts of governmental and private agencies, businesses, trade
 26 associations, institutions, and individuals.
- 27 (B) Assisting minority businesses in obtaining governmental
 28 or commercial financing for expansion or establishment of
 29 new businesses or individual development projects.
- 30 (C) Aiding minority businesses in procuring contracts from
 31 governmental or private sources, or both.
- 32 (D) Providing technical, managerial, and counseling assistance
 33 to minority business enterprises.
- 34 (4) Assist the office of the lieutenant governor in:
- 35 (A) community economic development planning;
- 36 (B) implementation of programs designed to further
 37 community economic development; and
- 38 (C) the development and promotion of Indiana's tourist
 39 resources.
- 40 (5) Assist the secretary of agriculture and rural development in
 41 promoting and marketing of Indiana's agricultural products and
 42 provide assistance to the director of the Indiana state department



- 1 of agriculture.
- 2 (6) With the approval of the governor, implement federal
- 3 programs delegated to the state to carry out the purposes of this
- 4 article.
- 5 (7) Promote the growth of small businesses by doing the
- 6 following:
- 7 (A) Assisting small businesses in obtaining and preparing the
- 8 permits required to conduct business in Indiana.
- 9 (B) Serving as a liaison between small businesses and state
- 10 agencies.
- 11 (C) Providing information concerning business assistance
- 12 programs available through government agencies and private
- 13 sources.
- 14 (8) Establish a public information page on its current Internet site
- 15 on the world wide web. The page must provide the following:
- 16 (A) By program, cumulative information on the total amount
- 17 of incentives awarded, the total number of companies that
- 18 received the incentives and were assisted in a year, and the
- 19 names and addresses of those companies.
- 20 (B) A mechanism on the page whereby the public may request
- 21 further information online about specific programs or
- 22 incentives awarded.
- 23 (C) A mechanism for the public to receive an electronic
- 24 response.
- 25 (D) Access to any information or report that is required by
- 26 statute to be included in the economic incentives and
- 27 compliance report submitted under IC 5-28-28.
- 28 (c) The corporation may do the following:
- 29 (1) Disseminate information concerning the industrial,
- 30 commercial, governmental, educational, cultural, recreational,
- 31 agricultural, and other advantages of Indiana.
- 32 (2) Plan, direct, and conduct research activities.
- 33 (3) Assist in community economic development planning and the
- 34 implementation of programs designed to further community
- 35 economic development.
- 36 SECTION 4. IC 34-30-2-11.7 IS ADDED TO THE INDIANA
- 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 38 [EFFECTIVE UPON PASSAGE]: **Sec. 11.7. IC 5-10.2-13-15**
- 39 **(Concerning removal of certain assets from a public pension or**
- 40 **employee retirement fund administered by the board of trustees of**
- 41 **the Indiana public retirement system).**
- 42 SECTION 5. **An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1387, 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 2, delete lines 3 through 42, begin a new paragraph and insert:

"SECTION 2. IC 5-10.2-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 13. Divestment of Investments in Chinese Companies

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

Sec. 2. As used in this chapter, "divest" means a sale, redemption, replacement, or any other activity that terminates the investment.

Sec. 3. As used in this chapter, "fund" refers to any public pension and retirement funds of the system (as defined in IC 5-10.5-1-5).

Sec. 4. As used in this chapter, "investment" refers to any investment that the board or system is authorized to make under IC 5-10.5-5 or another law.

Sec. 5. As used in this chapter, "person" means an individual or entity.

Sec. 6. As used in this chapter, "prohibited investment" refers to an investment product that:

- (1) is managed by one (1) or more persons:**
 - (A) that are not employed by the system; and**
 - (B) in which the system on behalf of the fund owns investments together with investors other than the system; and**
- (2) holds investments in a restricted entity.**

Sec. 7. As used in this chapter, "restricted entity" refers to any business concern or entity:

- (1) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than twenty percent (20%) of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited**



liability company or partnership; or
(2) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China.

Sec. 8. As used in this chapter, "system" has the meaning set forth in IC 5-10.5-1-6.

Sec. 9. After June 30, 2021, the system may not knowingly invest in a proinvestment product and shall divest any investment that the system has on behalf of a fund in accordance with this chapter. Determinations under this chapter are independent of any determinations made under IC 5-10.2-9, IC 5-10.2-10, and IC 5-10.2-11.

Sec. 10. Before June 30, 2021, and at least annually before July 1 of each subsequent year, the board shall make a good faith effort to identify all restricted entities and prohibited investments in which the system holds an investment. The board may use an independent research firm to assist the board.

Sec. 11. If the board determines after a review under section 10 of this chapter that the system has investments in a restricted entity or a prohibited investment, the board shall establish a plan to divest the investment and complete the divestment as soon as financially prudent. However, the investment must be divested not later than the following:

- (1) At least fifty percent (50%) of the investment shall be removed from a fund's assets within three (3) years after the board discovers that the investment is in a restricted entity or prohibited investment.
- (2) At least seventy-five percent (75%) of the investment shall be removed from a fund's assets within four (4) years after the board discovers that the investment is in a restricted entity or prohibited investment.
- (3) One hundred percent (100%) of the investment shall be removed from a fund's assets within five (5) years after the board discovers that the investment is in a restricted entity or prohibited investment.

Sec. 12. The board, in consultation with the interim study committee on pension management oversight, may cease divestment in the entity or product initiated under this chapter and resume investment in the entity or product during any period in which the entity or product has not returned to being a restricted entity or prohibited investment if all of the following conditions are met:



(1) The United States Secretary of State has issued a determination that the People's Republic of China is in compliance with each of the following:

(A) The December 19, 1984, Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong.

(B) The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.

(C) The Uyghur Human Rights Policy Act of 2020.

(D) The December 10, 1948, Universal Declaration of Human Rights.

(E) The December 16, 1966, International Covenant on Civil and Political Rights.

(2) The entity or product meets or exceeds the rules and standards of the Public Company Accounting Oversight Board and the Sarbanes-Oxley Act of 2002 (Public Law 107-204).

Sec. 13. (a) Before November 2, 2021, and annually before November 2 of each subsequent year, the board shall submit a report in an electronic format under IC 5-14-6 to the executive director of the legislative services agency.

(b) A report submitted by the board under this section must include at least the following information:

(1) All investments in a restricted entity or prohibited investment held by the system on behalf of a fund on July 1 of that year.

(2) All actions taken before October 1 of that year to divest holdings in restricted entities and prohibited investments.

(3) All investments held on October 1 of that year in restricted entities and prohibited investments and a description of the plan to divest the investments.

The board may include in the report any other information the board determines relevant.

Sec. 14. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding restricted entities and prohibited investments, the board and the system are exempt from any conflicting statutory or common law obligations, including any obligations with respect to choice of asset managers, investment funds, or investments for fund investment portfolios.

Sec. 15. (a) Both:



**(1) the state and its officers, agents, and employees; and
(2) a fund or the system and its board members, executive director, officers, agents, and employees;**
are immune from civil liability for any act or omission related to the removal of an asset from a fund under this chapter.

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

**(1) the officers, agents, and employees of the state; and
(2) the board members, executive director, officers, agents, and employees of a fund or the system;**
are entitled to indemnification from the fund 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.

Sec. 16. The provisions of this chapter are severable in the manner provided in IC 1-1-1-8(b)."

Delete pages 3 through 6.

Page 7, delete line 1.

Page 9, line 27, delete "IC 5-10.2-13-17" and insert "IC 5-10.2-13-15".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1387 as introduced.)

MILLER D

Committee Vote: yeas 11, nays 1.

