

SENATE BILL No. 140

DIGEST OF INTRODUCED BILL

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

Synopsis: Pension investments in American adversaries. Requires the board of trustees of the Indiana public retirement system to divest investments in entities and investment products that the federal government has determined to be a Communist Chinese military company or otherwise pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. Requires the system to provide an audited statement of compliance with this requirement.

Effective: Upon passage.

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January 12, 2021, read first time and referred to Committee on Pensions and Labor.



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.

SENATE BILL No. 140



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 Adversaries of the**
5 **United States**
6 **Sec. 1. The general assembly finds the following:**
7 **(1) Mandatory divestment by the system of fund holdings in**
8 **entities and investment products is a measure that should be**
9 **employed only under extraordinary circumstances.**
10 **(2) Certain entities have both the motivation and capability to**
11 **interfere with and impose economic or military harm to the**
12 **United States and its people.**
13 **(3) Economic support for and investment in these entities**
14 **unnecessarily increase the risk to the security and welfare of**
15 **the United States and the people of Indiana.**
16 **(4) The threat from these entities constitutes the**
17 **extraordinary circumstances necessary for mandatory**



- 1 divestment by the system of the system's holdings in restricted
2 entities and restricted investment products.
- 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.** As used in this chapter, "control" has the meaning set
7 forth in Section 2(a) of the Investment Company Act of 1940 (15
8 U.S.C. 80a-2(a)).
- 9 **Sec. 4.** As used in this chapter, "divest" means a sale,
10 redemption, replacement, or any other activity that terminates the
11 investment.
- 12 **Sec. 5.** As used in this chapter, "fund" refers to any public
13 pension and retirement funds of the system (as defined in
14 **IC 5-10.5-1-5).**
- 15 **Sec. 6.** As used in this chapter, "investment" refers to any
16 investment that the board or system is authorized to make under
17 **IC 5-10.5-5** or another law.
- 18 **Sec. 7.** As used in this chapter, "person" means an individual or
19 entity.
- 20 **Sec. 8.** As used in this chapter, "restricted entity" refers to the
21 following:
- 22 (1) Any person (other than a U.S. person (as defined in 15
23 CFR 772.1)) that is identified on the Entity List (Supplement
24 No. 4 to 15 CFR Part 744) as a person reasonably believed to
25 be involved, or to pose a significant risk of being or becoming
26 involved, in activities contrary to the national security or
27 foreign policy interests of the United States until the End User
28 Review Committee of the Bureau of Industry and Security in
29 the United States Department of Commerce determines that
30 the person no longer meets that criteria and removes the
31 person from the list.
- 32 (2) Any person that:
- 33 (A) the United States Secretary of Defense has listed as a
34 Communist Chinese military company operating directly
35 or indirectly in the United States or in any of its territories
36 or possessions pursuant to Section 1237 of Public Law
37 105-261, as amended by Section 1233 of Public Law
38 106-398 and Section 1222 of Public Law 108-375 until such
39 time as the United States Secretary of Defense removes
40 such person from such list;
- 41 (B) the United States Secretary of Defense, in consultation
42 with the United States Secretary of the Treasury,



1 determines is a Communist Chinese military company
 2 operating directly or indirectly in the United States or in
 3 any of its territories or possessions and therefore lists as
 4 such pursuant to Section 1237 of Public Law 105-261, as
 5 amended by Section 1233 of Public Law 106-398 and
 6 Section 1222 of Public Law 108-375, until such time as the
 7 United States Secretary of Defense removes such person
 8 from such list; or

9 (C) the United States Secretary of the Treasury publicly
 10 lists as meeting the criteria in Section 1237(b)(4)(B) of
 11 Public Law 105-261, or publicly lists as a subsidiary of a
 12 person already determined to be a Communist Chinese
 13 military company, until the United States Secretary of the
 14 Treasury determines that such person no longer meets that
 15 criteria and removes such person from such list.

16 The term includes a parent, subsidiary, or affiliate of, or a person
 17 controlled by, a person described in subdivision (1) or (2).

18 **Sec. 9.** As used in this chapter, "restricted investment product"
 19 refers to an investment product that:

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

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

22 (B) in which the system on behalf of the fund owns
 23 investments together with investors other than the system;
 24 and

25 (2) holds investments in a restricted entity.

26 **Sec. 10.** As used in this chapter, "system" has the meaning set
 27 forth in IC 5-10.5-1-6.

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

34 **Sec. 12.** Before June 30, 2021, and at least annually before July
 35 1 of each subsequent year, the board shall make a good faith effort
 36 to identify all restricted entities and restricted investment products
 37 in which the system holds an investment. The board may use an
 38 independent research firm to assist the board.

39 **Sec. 13.** If the board determines after a review under section 12
 40 of this chapter that the system has investments in a restricted
 41 entity or a restricted investment product, the board shall establish
 42 a plan to divest the investment and complete the divestment as soon



1 as financially prudent. However, the investment must be divested
2 not later than the following:

3 (1) At least fifty percent (50%) of the investment shall be
4 removed from a fund's assets within three (3) years after the
5 board discovers that the investment is in a restricted entity or
6 restricted investment product.

7 (2) At least seventy-five percent (75%) of the investment shall
8 be removed from a fund's assets within four (4) years after
9 the board discovers that the investment is in a restricted
10 entity or restricted investment product.

11 (3) One hundred percent (100%) of the investment shall be
12 removed from a fund's assets within five (5) years after the
13 board discovers that the investment is in a restricted entity or
14 restricted investment product.

15 **Sec. 14. If the board receives information that demonstrates to**
16 **the satisfaction of the board that an entity ceases to be a restricted**
17 **entity or an investment product ceases to be a restricted investment**
18 **product, the board may:**

19 (1) cease divestment in the entity or product initiated under
20 this chapter; and

21 (2) resume investment in the entity or product;

22 during any period in which the entity or product has not returned
23 to being a restricted entity or restricted investment product.

24 **Sec. 15. (a) Before November 2, 2021, and annually before**
25 **November 2 of each subsequent year, the board shall submit a**
26 **report in an electronic format under IC 5-14-6 to the executive**
27 **director of the legislative services agency.**

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

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

33 (2) All actions taken before October 1 of that year to divest
34 holdings in restricted entities and restricted investment
35 products.

36 (3) All investments held on October 1 of that year in restricted
37 entities and restricted investment products and a description
38 of the plan to divest the investments.

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

41 (c) The board shall annually provide for an audit of compliance
42 with this chapter in the financial year in which its financial



1 statements are being audited. The board shall include in the
 2 audited notes to its financial statements in its comprehensive
 3 annual financial report at least the information described in
 4 subsection (b)(1), (b)(2), and (b)(3).

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

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

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

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

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

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

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

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

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

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

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

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

