

Second Regular Session of the 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1378

AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-10.2-11 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]:

Chapter 11. Divestment Related to Boycott of, Divestment from, or Sanctions of Israel

Sec. 1. The general assembly finds the following:

- (1) Mandatory divestment by the system of the system's holdings in certain companies is a measure that should be employed only under extraordinary circumstances.**
- (2) The Jewish state of Israel is the only democracy in the Middle East.**
- (3) By virtue of shared values and interests, the Jewish state of Israel is the strongest ally of the United States in the Middle East.**
- (4) The fundamental principles of the United States are offended by attempts to:
 - (A) delegitimize Israel's existence;**
 - (B) demonize the Jewish state; or**
 - (C) undermine the Jewish people's right to self determination;**through an international campaign to boycott, divest from, or**

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sanction Israel.

(5) Efforts to promote an international campaign to boycott, divest from, or sanction Israel:

(A) increasingly occur on college and university campuses nationwide, leading to a climate of intimidation, fear, and violence on campuses in Indiana;

(B) disproportionately harm thousands of Palestinian workers employed by Israeli owned firms; and

(C) are antithetical and deeply damaging to the cause of peace, justice, equality, democracy, and human rights for all people in the Middle East.

(6) The federal Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L.114-26, Sections 102(b)(20) and 103(b)) specifies principal negotiating objectives regarding commercial partnerships of the United States in negotiation of a transatlantic trade and investment partnership agreement, as follows:

(A) To discourage actions by potential trading partners that prejudice or discourage commercial activity solely between the United States and Israel.

(B) To discourage politically motivated actions to boycott, divest from, or sanction Israel.

(C) To seek elimination of politically motivated nontariff barriers on Israeli goods, services, or other commerce imposed on the Jewish state of Israel.

(D) To seek elimination of state sponsored unsanctioned foreign actions to boycott, divest from, or sanction Israel or compliance with the Arab League boycott of Israel by prospective trading partners.

(As used in this subdivision, "actions to boycott, divest from, or sanction Israel" has the meaning set forth in P.L.114-26, Section 102(b)(20)(B).)

(7) The situation with respect to promotion of activities to boycott, divest from, or sanction Israel is unique and constitutes the extraordinary circumstances necessary for mandatory divestment by the system of the system's holdings in restricted businesses.

Sec. 2. 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. 3. Except as provided in section 1(6) of this chapter, as used in this chapter, "boycott, divest from, or sanction Israel activity"

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means action or inaction that:

- (1) furthers;
- (2) coordinates with; or
- (3) acquiesces in;

an effort by another person to penalize, inflict economic harm on, or otherwise limit commercial relations with the Jewish state of Israel or businesses that are based in the Jewish state of Israel or territories controlled by the Jewish state of Israel. "Boycott, divest from, or sanction Israel" has a corresponding meaning.

Sec. 4. (a) As used in this chapter, "business" means any of the following that exist for profit making purposes:

- (1) A sole proprietorship.
- (2) An organization.
- (3) An association.
- (4) A corporation.
- (5) A partnership.
- (6) A joint venture.
- (7) A limited partnership.
- (8) A limited liability partnership.
- (9) A limited liability company.
- (10) A business association.

(b) The term includes all wholly owned subsidiaries, majority owned subsidiaries, parent businesses, and affiliates of such entities or business associations that exist for profit making purposes.

Sec. 5. As used in this chapter, "cost of divestment" means the sum of the following:

- (1) The costs associated with the sale, redemption, divestment, or withdrawal of an investment.
- (2) The costs associated with the acquisition and maintenance of a replacement investment.
- (3) A cost not described in subdivision (1) or (2) that is incurred by the system in connection with a divestment transaction.

Sec. 6. As used in this chapter, "direct holdings" means all securities of a business held directly by the system on behalf of a fund or in an account in which the system on behalf of a fund owns all shares or interests.

Sec. 7. As used in this chapter, "fund" refers to the following:

- (1) The Indiana state teachers' retirement fund.
- (2) The public employees' retirement fund.

Sec. 8. As used in this chapter, "indirect holdings" means all securities of a business:



- (1) held in an account or a fund; and
- (2) managed by one (1) or more persons not employed by the system, in which the system owns shares or interests on behalf of a fund together with other investors not subject to this chapter.

Sec. 9. As used in this chapter, "research firm" means a reputable, neutral third party research firm not controlled by the system.

Sec. 10. As used in this chapter, "restricted business" means a business that engages in boycott, divest from, or sanction Israel activity.

Sec. 11. As used in this chapter, "system" refers to the Indiana public retirement system established by IC 5-10.5-2-1.

Sec. 12. (a) Not later than January 31, 2017, the board shall make a good faith effort to identify all restricted businesses in which a fund has direct or indirect holdings.

(b) In carrying out its responsibilities under subsection (a), and at the board's discretion, the board may use existing research or contract with a research firm.

(c) The board or a research firm with which the board contracts under subsection (b) may take any of the following actions to determine a business's connections with respect to boycott, divest from, or sanction Israel activity:

- (1) Review publicly available information regarding businesses.
- (2) Contact other institutional investors that invest in businesses.
- (3) Contact asset managers that invest in businesses and are contracted by a fund.

(d) Not later than the first meeting of the board after January 31, 2017, the board shall compile the names of all restricted businesses into a restricted business list.

(e) The board shall update the restricted business list at least on an annual basis based on evolving information from sources described in subsections (b) and (c).

Sec. 13. After the board creates or updates the restricted business list under section 12 of this chapter, the board shall immediately identify the businesses on the restricted business list in which a fund has direct or indirect holdings.

Sec. 14. (a) The board shall send to each restricted business that is identified under section 13 of this chapter as a business in which a fund has direct or indirect holdings a written notice concerning



the contents of this chapter and a statement indicating that the fund's holdings in the business may become subject to divestment by the system.

(b) A notice sent under this section must:

- (1) offer the business the opportunity to clarify the business's boycott, divest from, or sanction Israel activity; and
- (2) encourage the business, within ninety (90) days after the date of the written notice, to cease its boycott, divest from, or sanction Israel activity to avoid divestment by the system of the fund's holdings in the business.

Sec. 15. If, within ninety (90) days after the system's first engagement with a business under section 14 of this chapter, the business ceases boycott, divest from, or sanction Israel activity, the business shall be removed from the restricted business list and sections 16, 17, 18, and 19 of this chapter cease to apply to the business unless the business resumes boycott, divest from, or sanction Israel activity.

Sec. 16. (a) Except as provided in sections 18 and 19 of this chapter, if, after ninety (90) days after the system's first engagement with a business under section 14 of this chapter, the business continues to engage in boycott, divest from, or sanction Israel activity, the system shall sell, redeem, divest, or withdraw all publicly traded securities of the business that are held by a fund, as follows:

- (1) At least fifty percent (50%) of such assets shall be removed from a fund's assets under management within nine (9) months after the business's appearance on the restricted business list.
- (2) One hundred percent (100%) of such assets shall be removed from a fund's assets under management within fifteen (15) months after the business's appearance on the restricted business list.

(b) If a business that ceased boycott, divest from, or sanction Israel activity following engagement under section 14 of this chapter resumes boycott, divest from, or sanction Israel activity, the business shall be placed immediately back on the restricted business list. If a fund has holdings in the business, the system shall sell, redeem, divest, or withdraw all publicly traded securities of the business as provided in subsection (a) based on the date the business is placed back on the restricted business list. The system shall send a written notice to the business indicating that the business was placed back on the restricted business list and is



subject to divestment.

(c) The board is not required to divest a fund's holdings in a passively managed commingled fund that includes a restricted business engaging in boycott, divest from, or sanction Israel activity if the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the restricted businesses held in the commingled fund. The board shall include any commingled fund that includes a restricted business that is exempted from divestment under this subsection in the board's report submitted to the legislative council under section 21 of this chapter.

Sec. 17. Except as provided in sections 18 and 19 of this chapter, the system shall not acquire for a fund securities of businesses on the restricted business list.

Sec. 18. If the United States government affirmatively declares any business on the restricted business list to be excluded from any federal sanctions related to boycott, divest from, or sanction Israel activity, the business is not subject to divestment or investment prohibition under this chapter.

Sec. 19. Notwithstanding any provision to the contrary, sections 16 and 17 of this chapter do not apply to indirect holdings in actively managed investment funds. However, if a fund has indirect holdings in an actively managed investment fund containing the securities of restricted businesses, the board shall submit letters to the managers of the actively managed investment fund requesting that the managers remove the restricted businesses from the actively managed investment fund or create a similar actively managed investment fund with indirect holdings without restricted businesses. If the managers create a similar actively managed investment fund, the board shall replace all applicable investments with investments in the similar actively managed investment fund in a period consistent with prudent investing standards.

Sec. 20. This chapter does not apply directly to private equity funds. However, the board shall ensure that reasonable efforts are made during the due diligence process before an investment is made in a private equity partnership to determine whether any investments by the private equity general partner on behalf of the private equity partnership include a restricted business.

Sec. 21. (a) On or before November 1, 2017, and thereafter as directed by the legislative council, the board shall submit a report in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of



the general assembly.

(b) The report must include at least the following information, as of the date of the report:

- (1) A copy of the restricted business list.
- (2) A summary of correspondence with businesses engaged by the board under section 14 of this chapter.
- (3) All publicly traded securities sold, redeemed, divested, or withdrawn in compliance with section 16 of this chapter.
- (4) All commingled funds that are exempted from divestment under section 16 of this chapter.
- (5) All prohibited securities under section 17 of this chapter.
- (6) Any progress made under section 19 of this chapter.

Sec. 22. This chapter expires on the earliest of the following:

- (1) Twelve (12) months after the date on which boycott, divest from, or sanction Israel activity ceases.
- (2) The date on which the United States government revokes any sanctions imposed on persons engaged in boycott, divest from, or sanction Israel activity.
- (3) The date on which Congress or the President of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of foreign policy of the United States.

Sec. 23. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding businesses on the restricted business list, the system shall be 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 securities portfolios.

Sec. 24. (a) Notwithstanding any provision to the contrary, the system is permitted to cease divesting and to reinvest in certain restricted businesses on the restricted business list if evidence shows that the value for all assets under management by the system on a fund's behalf becomes equal to or less than ninety-nine and five-tenths percent (99.5%) of the value of all assets under management by the system on a fund's behalf, including the businesses divested under section 16 of this chapter.

(b) As provided by this section, any cessation of divestment or reinvestment shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in subsection (a).

(c) For any cessation of divestment, reinvestment, and subsequent ongoing investment authorized by this section, the



board shall submit a report in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly before any initial reinvestment. The report shall be updated annually thereafter as applicable, setting forth the reasons and justifications for the decision to cease divestment, reinvest, or remain invested with businesses engaged in boycott, divest from, or sanction Israel activity. This section does not apply to businesses that have ceased to engage in boycott, divest from, or sanction Israel activity.

Sec. 25. (a) Both:

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

(2) the system and the board members, executive director, officers, agents, and employees of the system;

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 the system;

are entitled to indemnification from the system 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. 26. The provisions of this chapter are severable in the manner provided under IC 1-1-1-8(b).

SECTION 2. IC 34-30-2-11.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 11.6. IC 5-10.2-11-25 (Concerning removal of certain assets from the Indiana state teachers' retirement fund or the public employees' retirement fund).**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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