

SENATE BILL No. 372

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-10.5-5-1; IC 5-13-15.

Synopsis: Fiduciary duties of pension system administrators. Provides that a fiduciary, in making and supervising investments of a reserve fund of the public pension system, shall discharge the fiduciary's duties solely in the financial interest of the participants and beneficiaries of the public pension system. Establishes certain requirements for fiduciaries, proxy advisors, service providers, and proxy voting. Requires a governmental entity to, at least annually, tabulate and report all proxy votes made in relation to the administration of a fund of the public pension system. Provides that the attorney general shall enforce these provisions. Imposes a civil penalty if a company serving as a fiduciary in regards to a fund of the public pension system violates these provisions.

Effective: July 1, 2023.

Koch

January 19, 2023, read first time and referred to Committee on Pensions and Labor.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 372

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

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

1 SECTION 1. IC 5-10.5-5-1, AS AMENDED BY P.L.86-2018,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 1. The board has the powers, duties, restrictions,
4 limitations, and penalties in connection with the board's investment and
5 management of the assets of the public pension and retirement funds
6 of the system under the following provisions:
7 (1) IC 5-10.2-2-2.5.
8 (2) IC 5-10.2-2-13.
9 (3) IC 5-10.3-3-7.1.
10 (4) IC 5-10.3-5-3.
11 (5) IC 5-10.3-5-3.1.
12 (6) IC 5-10.3-5-4.
13 (7) IC 5-10.3-5-5.
14 (8) IC 5-10.3-5-6.
15 (9) IC 5-10.4-3-7.
16 (10) IC 5-10.4-3-9.
17 (11) IC 5-10.4-3-10.



- 1 (12) IC 5-10.4-3-11.
 2 (13) IC 5-10.4-3-12.
 3 (14) IC 5-10.4-3-13.
 4 (15) IC 5-10.4-3-14.
 5 (16) IC 5-10.4-3-15.
 6 (17) IC 5-10.4-3-16.
 7 **(18) IC 5-13-15.**
 8 SECTION 2. IC 5-13-15 IS ADDED TO THE INDIANA CODE AS
 9 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 10 1, 2023]:
 11 **Chapter 15. Fiduciary Duties**
 12 **Sec. 1. As used in this chapter, "board" refers to the board of**
 13 **trustees of the Indiana public retirement system established by**
 14 **IC 5-10.5-3-1.**
 15 **Sec. 2. As used in this chapter, "fiduciary" includes:**
 16 (1) a governmental entity that establishes or maintains a fund
 17 of the public pension system; and
 18 (2) a person acting on behalf of the governmental entity as an
 19 investment manager or proxy adviser.
 20 **Sec. 3. As used in this chapter, "fiduciary commitment" means**
 21 **evidence of a fiduciary's purpose in managing assets as a fiduciary,**
 22 **including any of the following in a fiduciary's capacity as a**
 23 **fiduciary:**
 24 (1) Advertising, statements, explanations, reports, letters to
 25 clients, communications with portfolio companies, statements
 26 of principles, or commitments.
 27 (2) Participation in, affiliation with, or status as a signatory
 28 to:
 29 (A) a coalition;
 30 (B) an initiative;
 31 (C) a joint statement of principles; or
 32 (D) an agreement.
 33 **Sec. 4. (a) As used in this chapter, "financial" means a prudent**
 34 **determination by a fiduciary to have a material effect on the**
 35 **financial risk or the financial return of an investment.**
 36 (b) The term does not include an action taken or a factor
 37 considered by a fiduciary with a purpose to further social, political,
 38 or ideological interests as set forth in section 9 of this chapter.
 39 **Sec. 5. As used in this chapter, "governmental entity" means:**
 40 (1) the state of Indiana;
 41 (2) a state agency (as defined in IC 1-1-15-3);
 42 (3) the board;



1 (4) a state educational institution (as defined in
2 IC 21-7-13-32);

3 (5) a public school corporation (as defined in IC 4-4-38.5-6.2);
4 or

5 (6) a political subdivision.

6 Sec. 6. As used in this chapter, "public employee" means a
7 person presently or formerly acting on behalf of a governmental
8 entity, whether temporarily or permanently or with or without
9 compensation, including elected public officials, members of
10 boards, committees, commissions, authorities, and other
11 instrumentalities of governmental entities.

12 Sec. 7. As used in this chapter, "public pension system" consists
13 of:

14 (1) the public pension or retirement funds listed in
15 IC 5-10.5-2-2;

16 (2) the state police pension trust under IC 10-12-2-2;

17 (3) a sheriff's pension trust under IC 36-8-10-12; and

18 (4) any other retirement or pension plan maintained,
19 provided, or offered by a governmental entity.

20 Sec. 8. (a) In making and supervising investments of a reserve
21 fund of the public pension system, a fiduciary shall discharge the
22 fiduciary's duties solely in the financial interest of the participants
23 and beneficiaries of the public pension system for the exclusive
24 purposes of:

25 (1) providing financial benefits to participants and
26 beneficiaries; and

27 (2) defraying reasonable expenses of administering the public
28 pension system.

29 (b) A fiduciary shall consider only financial factors when
30 discharging the fiduciary's duties with respect to a fund of the
31 public pension system.

32 Sec. 9. A fiduciary may be reasonably determined to have taken
33 an action or considered a factor with a purpose to further social,
34 political, or ideological interests based on evidence indicating the
35 purpose, including a fiduciary commitment to further, through
36 portfolio company engagement, board or shareholder votes, or
37 otherwise as a fiduciary, any of the following beyond the applicable
38 federal or state law requirements:

39 (1) Eliminating, reducing, offsetting, or disclosing greenhouse
40 gas emissions.

41 (2) Instituting or assessing:

42 (A) corporate board;



- 1 **(B) employment;**
 2 **(C) composition;**
 3 **(D) compensation; or**
 4 **(E) disclosure;**
 5 **criteria that incorporate characteristics protected under**
 6 **IC 22-9.**
 7 **(3) Divesting from, limiting investment in, or limiting the**
 8 **activities or investments of any company for failing to meet or**
 9 **not committing to environmental standards or disclosures.**
 10 **(4) Divesting from, limiting investment in, or limiting the**
 11 **activities or investments of a company that engages in,**
 12 **facilitates, or supports the manufacture, import, distribution,**
 13 **marketing or advertising, sale, or lawful use of firearms,**
 14 **ammunition, or component parts and accessories of firearms**
 15 **or ammunition.**
 16 **Sec. 10. An investment manager appointed to manage a fund of**
 17 **the public pension system is subject to the same fiduciary duties as**
 18 **the governmental entity that establishes or maintains a fund of the**
 19 **public pension system.**
 20 **Sec. 11. All shares held directly or indirectly by or on behalf of:**
 21 **(1) a fund of the public pension system; or**
 22 **(2) the participants and beneficiaries;**
 23 **must be voted solely in the financial interest of the participants and**
 24 **beneficiaries.**
 25 **Sec. 12. A governmental entity that administers a fund of the**
 26 **public pension system may not grant proxy voting authority to a**
 27 **person who is not a public employee unless the person:**
 28 **(1) has a practice of following; and**
 29 **(2) commits, in writing, to follow;**
 30 **guidelines that meet the requirements of section 8 of this chapter.**
 31 **Sec. 13. Assets of the public pension system may not be**
 32 **entrusted to a fiduciary, unless the fiduciary:**
 33 **(1) has a practice of following; and**
 34 **(2) commits, in writing, to follow;**
 35 **guidelines that meet the requirements of section 8 of this chapter**
 36 **when the fiduciary engages with portfolio companies and voting**
 37 **shares or proxies.**
 38 **Sec. 14. A fiduciary may not follow the recommendations of a**
 39 **proxy advisor or other service provider, unless the proxy advisor**
 40 **or service provider:**
 41 **(1) has a practice of following; and**
 42 **(2) commits, in writing, to follow;**



1 proxy voting guidelines that meet the requirements of section 8 of
2 this chapter.

3 Sec. 15. (a) A governmental entity shall, at least annually,
4 tabulate and report all proxy votes made in relation to the
5 administration of a fund of the public pension system.

6 (b) For each vote reported under subsection (a), the report must
7 contain:

8 (1) a vote caption;

9 (2) the fund's vote;

10 (3) the recommendation of a portfolio company's
11 management; and

12 (4) if applicable, the recommendation of a proxy advisor or
13 other service provider.

14 (c) A governmental entity, other than the board, shall submit a
15 report under this section to the board.

16 (d) The board shall publish reports under this section on the
17 board's website.

18 Sec. 16. (a) The attorney general shall enforce this chapter.

19 (b) If the attorney general has reasonable cause to believe that
20 a person has engaged in, is engaging in, or is going to engage in a
21 violation of this chapter, the attorney general may require the
22 person to:

23 (1) file, under oath and on a form prescribed by the attorney
24 general, a written statement describing the facts and
25 circumstances concerning the violation; and

26 (2) provide any other data or information that the attorney
27 general deems necessary.

28 Sec. 17. (a) In addition to any other remedies available by law,
29 a company that:

30 (1) serves as a fiduciary in regards to a fund of the public
31 pension system; and

32 (2) violates this chapter;

33 is subject to a civil penalty in an amount equal to three (3) times
34 the amount paid to the company by a governmental entity for the
35 company's services.

36 (b) The attorney general shall collect the civil penalties under
37 subsection (a).

38 (c) All civil penalties collected under this section shall be
39 deposited in the state general fund.

