January 30, 2009

HOUSE BILL No. 1547

DIGEST OF HB 1547 (Updated January 27, 2009 10:50 am - DI 96)

Citations Affected: IC 5-10.2; IC 34-30; noncode.

Synopsis: Divestment of public pension investments. Requires the public employees' retirement fund (PERF) and the state teachers' retirement fund (TRF), in the capacity of shareholders, to contact companies with certain business activities in a state that sponsors terror and request that the companies cease those business activities or convert the business activities to inactive business operations. Requires PERF and TRF to sell, redeem, divest, or withdraw investments in a company that is unresponsive to the requests. Prohibits PERF and TRF from acquiring securities of certain companies that have active business operations in a state that sponsors terror. Provides for certain exceptions for social development companies operating in a state that sponsors terror. Requires PERF and TRF to report to the general assembly any investments with a company with business operations in a state that sponsors terror. (The introduced version of this bill was prepared by the pension management oversight commission.)

Effective: July 1, 2009.

Niezgodski

January 16, 2009, read first time and referred to Committee on Labor and Employment.
January 29, 2009, amended, reported — Do Pass. Recommitted to Committee on Ways and Means.

C o p y

January 30, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1547

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

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

SECTION 1. IC 5-10.2-10 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 10. Divestment From States That Sponsor Terror

Sec. 1. The requirements for mandatory divestment contained in this chapter are separate and distinct from the requirements for mandatory divestment contained in IC 5-10.2-9.

Sec. 2. As used in this chapter, "active business operations" means all business operations that are not inactive business operations.

Sec. 3. As used in this chapter, "board" refers to the following:

(1) The board of trustees of the Indiana state teachers' retirement fund.

(2) The board of trustees of the public employees' retirement fund.

Sec. 4. As used in this chapter, "business operations" means engaging in any commerce in any form in a state that sponsors

terror.

Sec. 5. (a) As used in this chapter, "company" means any of the following:

(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 companies, and affiliates of such entities or business associations that exist for profit making purposes.

Sec. 6. 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 fund in connection with a divestment transaction.

Sec. 7. As used in this chapter, "direct holdings" means all securities of a company held directly by a fund or in an account in which the fund owns all shares or interests.

Sec. 8. As used in this chapter, "fund" refers to the following:

(1) The Indiana state teachers' retirement fund.

(2) The public employees' retirement fund.

Sec. 9. As used in this chapter, "inactive business operations" means the mere continued holding or renewal of rights to property previously operated to generate revenues but not presently deployed for that purpose.

Sec. 10. As used in this chapter, "indirect holdings" means all securities of a company that are:

(1) held in an account or a fund; and

(2) managed by one (1) or more persons:

(A) who are not employed by the fund; and

(B) in which the fund owns shares or interests together

C o p y

with other investors not subject to this chapter.

Sec. 10.2. (a) As used in this chapter, "military equipment" means weapons, arms, or military defense supplies provided directly or indirectly to any force of a state sponsor of terror. The term includes any equipment that readily may be used for military purposes, including:

(1) radar systems; or

(2) military grade transport vehicles.

(b) The term does not include weapons, arms, or military defense supplies sold to peacekeeping forces that may be dispatched to a state sponsor of terror by the United Nations or the African Union.

Sec. 10.4. (a) As used in this chapter, "mineral extraction activities" means the exploration, extraction, processing, transporting, or wholesale sale of elemental minerals or associated metals or oxides, including:

(1) gold;

(2) copper;

(3) chromium;

(4) chromite;

(5) diamonds;

(6) iron;

(7) iron ore;

(8) silver;

(9) tungsten;

(10) uranium; and

(11) zinc.

(b) The term includes the facilitation of mineral extraction activities, including the provision of supplies or services in support of mineral extraction activities.

Sec. 10.6. (a) As used in this chapter, "oil related activities" includes:

(1) the export of oil;

(2) the extraction of or production of oil;

(3) the exploration for oil;

(4) the ownership of rights to oil blocks;

(5) the refining or processing of oil;

(6) the transportation of oil;

(7) the selling or trading of oil; or

(8) the construction or maintenance of a pipeline, a refinery, or another oil field infrastructure.

(b) The term includes the facilitation of oil related activities,

C o p y

including the provision of supplies or services in support of oil related activities. The mere retail sale of gasoline and related consumer products is not considered an oil related activity.

Sec. 10.8. As used in this chapter, "power production activities" means any business operation that involves a project commissioned by a state sponsor of terror whose purpose is to facilitate power generation and delivery. The term includes the following:

(1) Establishing power generating plants or hydroelectric dams.

(2) Selling or installing components for power generating plants or hydroelectric dams.

(3) Providing service contracts related to the installation or maintenance of power generating plants or hydroelectric dams.

(4) Facilitating power production activities, including providing supplies or services in support of power production activities.

Sec. 11. As used in this chapter, "private market fund" means any:

(1) private equity fund;

(2) private equity fund of funds;

(3) venture capital fund;

(4) hedge fund;

(5) hedge fund of funds;

(6) real estate fund; or

(7) investment vehicle;

that is not publicly traded.

Sec. 12. As used in this chapter, "scrutinized business operations" means business operations that have caused a company to become a scrutinized company.

Sec. 13. (a) As used in this chapter, "scrutinized company" means a company that meets any of the following criteria:

(1) Both of the following apply to the company:

(A) The company has business operations that involve contracts with or the provision of supplies or services to:

(i) a state sponsor of terror;

(ii) companies in which a state sponsor of terror has any direct or indirect equity share;

(iii) consortiums or projects commissioned by a state sponsor of terror; or

(iv) companies involved in consortiums or projects commissioned by a state sponsor of terror.

C o p y

(B) Either:

(i) more than ten percent (10%) of the company's revenues or assets is linked to a state sponsor of terror involve oil related activities or mineral extraction activities; or

(ii) more than ten percent (10%) of the company's revenues or assets is linked to a state sponsor of terror involve power production activities.

(2) The company supplies military equipment to a state sponsor of terror, unless the company implements safeguards to prevent the use of the equipment by forces actively participating in an armed conflict in a state sponsor of terror. This subdivision does not apply to companies involved in the sale of military equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

(b) The term does not include a social development company.

Sec. 14. (a) As used in this chapter, "social development company" means a company that is:

(1) licensed by the United States Department of Treasury under the Federal Trade Sanction Reform and Export Enhancement Act of 2000 (P.L. 106-387); or

(2) lawfully operating under the laws of another country whose primary purpose in a state sponsor of terror is to provide humanitarian goods or services.

(b) A company described in subsection (a)(2) includes a company whose primary purpose is to provide:

(1) food;

(2) medicine or medical equipment;

(3) agricultural supplies or infrastructure;

(4) educational opportunities;

(5) journalism related activities;

(6) spiritual related activities or materials;

(7) information or information materials;

(8) general consumer goods; or

(9) services of a purely clerical or reporting nature;

to aid the inhabitants of a state sponsor of terror.

Sec. 15. As used in this chapter, "state sponsor of terror" means a country determined by the Secretary of State of the United States to have repeatedly provided support for acts of international terrorism.

Sec. 16. As used in this chapter, "substantial action" means adopting, publicizing, and implementing a formal plan to cease

C o p y

scrutinized business operations within one (1) year and to refrain from any new business operations.

Sec. 17. (a) Not later than March 30, 2010, each board shall make a good faith effort to identify all scrutinized companies in which the fund administered by the board has direct or indirect holdings.

(b) In carrying out its responsibilities under subsection (a), each board may use existing research or contract with a research firm.

(c) A board or a research firm with which the board contracts under subsection (b) may take any of the following actions:

(1) Review publicly available information regarding companies with business operations in states that sponsor terror.

(2) Contact other institutional investors that have divested from or invest in companies with business operations in states that sponsor terror.

(3) Contact asset managers that are contracted by the fund and that invest in companies with business operations in states that sponsor terror.

(d) Not later than the first meeting of the board after March 30, 2010, each board shall compile the names of all scrutinized companies into a scrutinized company list and indicate whether each scrutinized company has active or inactive business operations in a state sponsor of terror.

(e) Each board shall update its scrutinized company list at least on an annual basis based on evolving information from sources described in subsections (b) and (c).

(f) If the Secretary of State of the United States determines that a country is a state sponsor of terror after June 30, 2009, each board shall add any additional scrutinized company resulting from the Secretary of State's determination when each board updates its scrutinized company list under subsection (e).

Sec. 18. After a board creates or updates the scrutinized company list under section 17 of this chapter, the board shall immediately identify the companies on the scrutinized company list in which the fund administered by the board has direct or indirect holdings.

Sec. 19. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has only inactive business operations;

a written notice concerning the provisions of this chapter and a

C o p y

statement encouraging the company to continue to refrain from initiating active business operations in a state sponsor of terror until the company is able to avoid scrutinized business operations altogether.

(b) Each fund shall continue to correspond on a semiannual basis with scrutinized companies:

(1) in which the fund has direct or indirect holdings; and

(2) that have only inactive business operations.

Sec. 20. (a) Each fund shall send to each scrutinized company:

(1) that is identified under section 18 of this chapter as one in which the fund has direct or indirect holdings; and

(2) that has active business operations;

a written notice concerning the contents of this chapter and a statement indicating that the fund's holdings in the company may become subject to divestment by the fund.

(b) A notice sent under this section must:

(1) offer the company the opportunity to clarify the company's state sponsor of terror related activities; and

(2) encourage the company to:

(A) cease its scrutinized business operations; or

(B) convert the company's operations to inactive business operations in order to avoid divestment by the fund of the fund's holdings in the company;

not later than one hundred eighty (180) days after the date of the notice.

Sec. 21. (a) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company ceases scrutinized business operations, the company shall be removed from the fund's scrutinized company list, and sections 22, 23, 24, and 25 of this chapter do not apply to the company unless the company resumes scrutinized business operations.

(b) If, within one hundred eighty (180) days after a fund first sends written notice to a company under section 20 of this chapter, the company converts its scrutinized active business operations to inactive business operations, the company is subject to section 19 of this chapter.

Sec. 22. (a) Except as provided in sections 24 and 25 of this chapter, if a company continues to have scrutinized active business operations one hundred eighty (180) days after a fund first sends written notice to the company under section 20 of this chapter, the fund shall sell, redeem, divest, or withdraw all publicly traded

C o p y

securities of the company that are held by the fund, as follows:

(1) At least fifty percent (50%) of the securities shall be removed from the fund's assets under management within three (3) years after the company's appearance on the scrutinized company list.

(2) At least seventy-five percent (75%) of the securities shall be removed from the fund's assets under management within four (4) years after the company's appearance on the scrutinized company list.

(3) One hundred percent (100%) of the securities shall be removed from the fund's assets under management within five (5) years after the company's appearance on the scrutinized company list.

(b) If a company that ceased scrutinized active business operations following engagement under section 20 of this chapter resumes scrutinized active business operations, the company shall immediately be placed on the scrutinized company list and shall remain on the scrutinized company list while the company continues to have active business operations. A fund that has holdings in the company shall send a written notice to the company as described in section 20 of this chapter indicating that the company has been placed on the scrutinized company list and is subject to divestment. The fund shall sell, redeem, divest, or withdraw all publicly traded securities of the company as provided in subsection (a) based on the date the company is placed back on the scrutinized company list.

(c) A board is not required to divest the board's holdings in a passively managed commingled fund that includes a scrutinized company with active business operations in a state sponsor of terror if the estimated cost of divestment of the commingled fund is greater than ten percent (10%) of the total value of the scrutinized companies with active business operations held in the commingled fund. The board shall include any commingled fund that includes a scrutinized company that is exempted from divestment under this subsection in the board's report submitted to the legislative council under section 26 of this chapter.

Sec. 23. Except as provided in sections 24 and 25 of this chapter, a fund shall not acquire securities of companies on the scrutinized company list that have active business operations.

Sec. 24. If the government of the United States declares that a company on the scrutinized company list with active business operations in a state sponsor of terror is excluded from any federal

C o p y

sanctions relating to a state sponsor of terror, the company is not subject to divestment or investment prohibition under this chapter.

Sec. 25. Notwithstanding any provision to the contrary, sections 22 and 23 of this chapter do not apply to indirect holdings in a private market fund that includes a scrutinized company with active business operations in a state sponsor of terror.

Sec. 25.5. Notwithstanding any provision to the contrary, sections 22 and 23 of this chapter do not apply to indirect holdings in actively managed investment funds. However, if a fund has indirect holdings in actively managed investment funds containing the securities of scrutinized companies with active business operations, the fund shall submit letters to the managers of the investment funds requesting that the managers remove the scrutinized companies with active business operations from the fund or create a similar actively managed fund with indirect holdings without scrutinized companies with active business operations. If the manager creates a similar fund, the fund shall replace all applicable investments with investments in the similar fund in a period consistent with prudent investing standards.

Sec. 26. (a) On or before November 1, 2010, and thereafter as directed by the legislative council, each board shall submit a report in an electronic format under IC 5-14-6 to the legislative council. Notwithstanding IC 5-14-6-4(b)(2), the submission of a report under this subsection to the executive director of the legislative services agency fulfills the board's requirement to send a copy of the report to each member of the general assembly using the member's senate or house of representatives electronic mail address.

(b) A report submitted by the board of a fund under this section must include at least the following information, as of the date of the report:

(1) A copy of the fund's scrutinized company list.

(2) A summary of correspondence between the fund and companies under sections 19 and 20 of this chapter.

(3) All investments sold, redeemed, divested, or withdrawn by the fund in compliance with section 22 of this chapter.

(4) All commingled funds that are exempted from divestment under section 22 of this chapter.

(5) All companies whose securities the fund is prohibited from acquiring under section 23 of this chapter.

(6) Any progress made under section 21 of this chapter.

Sec. 27. The provisions of this chapter regarding any country

C o p y

determined to be a state sponsor of terror cease to apply to that country on the earlier of the following:

(1) The date the Secretary of State of the United States removes the country from its official list of state sponsors of terrorism.

(2) The date 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. 28. With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies on the scrutinized company list, a fund is 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. 29. (a) Both:

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

(2) each fund 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 the 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;

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

SECTION 2. IC 34-30-2-11.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 11.4. IC 5-10.2-10-29 (Concerning the state and certain public pension funds for divestment of fund assets authorized by law).**

SECTION 3. [EFFECTIVE JULY 1, 2009] **(a) This SECTION applies to IC 5-10.2-10, as added by this act.**

(b) The definitions in IC 5-10.2 apply throughout this SECTION.

C o p y

(c) The general assembly finds the following:

(1) Mandatory divestment by the funds of the funds' holdings in certain companies is a measure that should be employed only under extraordinary circumstances.

(2) States that are designated as a state sponsor of terror by the Secretary of State of the United States are providing military, financial, political, diplomatic, and organizational aid to known terrorist groups.

(3) Support for terrorism and the acquisition of weapons of mass destruction represent a grave threat to the security of the United States and to the citizens of the state of Indiana.

(4) The threat from terrorism to the security of the United States and to the citizens of the state of Indiana constitutes the extraordinary circumstances necessary for mandatory divestment by the funds of the funds' holdings in scrutinized companies with active business operations in a state sponsor of terror.

C o p y

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1547, 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 3, between lines 1 and 2, begin a new paragraph and insert:

"Sec. 10.2. (a) As used in this chapter, "military equipment" means weapons, arms, or military defense supplies provided directly or indirectly to any force of a state sponsor of terror. The term includes any equipment that readily may be used for military purposes, including:

(1) radar systems; or

(2) military grade transport vehicles.

(b) The term does not include weapons, arms, or military defense supplies sold to peacekeeping forces that may be dispatched to a state sponsor of terror by the United Nations or the African Union.

Sec. 10.4. (a) As used in this chapter, "mineral extraction activities" means the exploration, extraction, processing, transporting, or wholesale sale of elemental minerals or associated metals or oxides, including:

(1) gold;

(2) copper;

(3) chromium;

(4) chromite;

(5) diamonds;

(6) iron;

(7) iron ore;

(8) silver;

(9) tungsten;

(10) uranium; and

(11) zinc.

(b) The term includes the facilitation of mineral extraction activities, including the provision of supplies or services in support of mineral extraction activities.

Sec. 10.6. (a) As used in this chapter, "oil related activities" includes:

(1) the export of oil;

(2) the extraction of or production of oil;

(3) the exploration for oil;

(4) the ownership of rights to oil blocks;

(5) the refining or processing of oil;

C o p y

(6) the transportation of oil;

(7) the selling or trading of oil; or

(8) the construction or maintenance of a pipeline, a refinery, or another oil field infrastructure.

(b) The term includes the facilitation of oil related activities, including the provision of supplies or services in support of oil related activities. The mere retail sale of gasoline and related consumer products is not considered an oil related activity.

Sec. 10.8. As used in this chapter, "power production activities" means any business operation that involves a project commissioned by a state sponsor of terror whose purpose is to facilitate power generation and delivery. The term includes the following:

(1) Establishing power generating plants or hydroelectric dams.

(2) Selling or installing components for power generating plants or hydroelectric dams.

(3) Providing service contracts related to the installation or maintenance of power generating plants or hydroelectric dams.

(4) Facilitating power production activities, including providing supplies or services in support of power production activities.".

Page 3, delete lines 15 through 42.

Page 4, delete lines 1 through 4.

Page 4, between lines 4 and 5, begin a new paragraph and insert:

"**Sec. 13. (a) As used in this chapter, "scrutinized company" means a company that meets any of the following criteria:**

(1) Both of the following apply to the company:

(A) The company has business operations that involve contracts with or the provision of supplies or services to:

(i) a state sponsor of terror;

(ii) companies in which a state sponsor of terror has any direct or indirect equity share;

(iii) consortiums or projects commissioned by a state sponsor of terror; or

(iv) companies involved in consortiums or projects commissioned by a state sponsor of terror.

(B) Either:

(i) more than ten percent (10%) of the company's revenues or assets is linked to a state sponsor of terror involve oil related activities or mineral extraction activities; or

C o p y

(ii) more than ten percent (10%) of the company's revenues or assets is linked to a state sponsor of terror involve power production activities.

(2) The company supplies military equipment to a state sponsor of terror, unless the company implements safeguards to prevent the use of the equipment by forces actively participating in an armed conflict in a state sponsor of terror. This subdivision does not apply to companies involved in the sale of military equipment solely to any internationally recognized peacekeeping force or humanitarian organization.

(b) The term does not include a social development company.".

Page 7, line 33, delete "(a)".

Page 7, delete lines 37 through 42.

Page 8, delete lines 1 through 4, begin a new paragraph and insert:

"**Sec. 25.5. Notwithstanding any provision to the contrary, sections 22 and 23 of this chapter do not apply to indirect holdings in actively managed investment funds. However, if a fund has indirect holdings in actively managed investment funds containing the securities of scrutinized companies with active business operations, the fund shall submit letters to the managers of the investment funds requesting that the managers remove the scrutinized companies with active business operations from the fund or create a similar actively managed fund with indirect holdings without scrutinized companies with active business operations. If the manager creates a similar fund, the fund shall replace all applicable investments with investments in the similar fund in a period consistent with prudent investing standards.**".

and when so amended that said bill do pass.

(Reference is to HB 1547 as introduced.)

NIEZGODSKI, Chair

Committee Vote: yeas 11, nays 0.

C o p y