

# HOUSE BILL No. 1281

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10.2-11; IC 5-10.3-5-4; IC 5-10.4-3-10.

**Synopsis:** PERF and TRF investment manager guidelines. Requires the boards of trustees of the public employees' retirement fund (PERF) and the Indiana state teachers' retirement fund (TRF) to employ investment managers that are minority business enterprises or women-owned business enterprises. Specifies that at least 15% of the assets of each fund must be placed under the investment control of investment advisers that are minority business enterprises and at least 5% of the assets of each fund must be placed under the investment control of investment advisers that are women-owned business enterprises. Provides that if PERF or TRF, exercising financial and fiduciary prudence, determines that it is unable to meet the required percentages, PERF or TRF shall include in its annual report a description of its plan to achieve the specified percentages. Requires PERF's and TRF's investment advisers to use: (1) Indiana based broker dealers; (2) broker-dealers that are minority owned enterprises or women-owned business enterprises; and (3) new broker-dealers. Specifies that at least: (1) 30% of an investment adviser's brokerage fees must be paid to Indiana broker-dealers; (2) 25% of an investment adviser's brokerage fees must be paid to broker-dealers that are minority owned business enterprises or women-owned business enterprises; and (3) 5% of an investment adviser's brokerage fees must be paid to new broker-dealers. Requires PERF and TRF investment advisers to submit a quarterly report to the PERF or TRF board.

**Effective:** July 1, 2011.

**Crawford**

January 12, 2011, read first time and referred to Committee on Employment, Labor and Pensions.

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Digest Continued

Provides that if an investment adviser of PERF or TRF, exercising financial and fiduciary prudence, determines that it is unable to meet the required percentages, the investment adviser shall include in its quarterly report a description of its plan to achieve the percentages as quickly as possible. Requires PERF and TRF to include a summary of the investment advisers' reports in the PERF and TRF annual reports. Requires the PERF and TRF boards to consider whether an investment adviser complies with the requirements when PERF or TRF contracts with or employs investment advisers.

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Introduced

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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## HOUSE BILL No. 1281

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 5-10.2-11 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2011]:

4 **Chapter 11. Securities Trading Guidelines for Fund Managers**

5 **Sec. 1. As used in this chapter, "broker-dealer" has the meaning**  
6 **set forth in IC 23-19-1-2(3).**

7 **Sec. 2. As used in this chapter, "emerging investment manager"**  
8 **means an investment adviser that:**

9 (1) **has an investment portfolio of less than two billion dollars**  
10 **(\$2,000,000,000) on July 1, 2011; and**

11 (2) **is a minority business enterprise or a women-owned**  
12 **business enterprise.**

13 **Sec. 3. As used in this chapter, "Indiana based broker-dealer"**  
14 **means a broker-dealer that:**

15 (1) **is registered in Indiana under IC 23-19-4-1; and**



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(2) is headquartered or has its principal place of business in Indiana.

Sec. 4. As used in this chapter, "investment adviser" has the meaning set forth in IC 23-19-1-2(15).

Sec. 5. As used in this chapter, "minority business enterprise" has the meaning set forth in IC 4-13-16.5-1.

Sec. 6. As used in this chapter, "new broker-dealer" means a broker-dealer that has been a member of a securities association under Section 15(b)(8) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(8)) for less than five (5) years.

Sec. 7. As used in this chapter, "securities trading brokerage commission" means any commission or fee paid on or for a brokered security transaction, a purchase of a security, or any other kind of trade of a security.

Sec. 8. As used in this chapter, "security" has the meaning set forth in IC 23-19-1-2(28).

Sec. 9. As used in this chapter, "women-owned business enterprise" has the meaning set forth in IC 5-16-6.5-3.

Sec. 10. (a) The board of each fund is strongly encouraged to use emerging investment managers to the greatest extent feasible in managing the assets of the fund.

(b) Except as provided in subsection (c), not later than December 31, 2012, each board shall contract for and employ:

- (1) emerging investment managers that are minority business enterprises to manage at least fifteen percent (15%) of the assets under the board's control; and
- (2) emerging investment managers that are women-owned business enterprises to manage at least five percent (5%) of the assets under the board's control.

(c) Beginning with the 2011 annual report, each fund shall provide the following information in its annual report each year:

- (1) The identity of each emerging investment manager used by the fund.
- (2) The percentage of the fund's assets under the investment control of each emerging investment manager used by the fund.

If either fund, exercising financial and fiduciary prudence, determines that it is unable to meet the percentages set forth in subsection (b), the fund shall include in its annual report a description of the fund's plan to achieve the percentages as quickly as possible.

Sec. 11. (a) The fund's investment advisers are strongly

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1 encouraged to use:

- 2 (1) Indiana based broker-dealers;  
 3 (2) broker-dealers that are:  
 4 (A) minority business enterprises; or  
 5 (B) women-owned business enterprises; and  
 6 (3) new broker-dealers;

7 to the greatest extent feasible in purchasing or trading securities  
 8 for the fund.

9 (b) Except as provided in subsection (c), not later than  
 10 December 31, 2012, fund investment advisers shall allocate security  
 11 trades or purchases on an annual basis in the following manner:

- 12 (1) At least thirty percent (30%) of the fund's securities  
 13 trading brokerage commissions shall be paid to Indiana based  
 14 broker-dealers.  
 15 (2) At least twenty-five percent (25%) of the fund's securities  
 16 trading brokerage commissions shall be paid to  
 17 broker-dealers that are:  
 18 (A) minority business enterprises; or  
 19 (B) women-owned business enterprises.  
 20 (3) At least five percent (5%) of the fund's securities trading  
 21 brokerage commissions shall be paid to new broker-dealers.

22 (c) An investment adviser for the fund shall administer this  
 23 section consistent with Section 28(e)(1) of the federal Securities  
 24 Exchange Act of 1934 (15 U.S.C. 78bb(e)(1)). The investment  
 25 adviser shall, in the exercise of its fiduciary duty, make a good faith  
 26 determination that the fund's securities trading brokerage  
 27 commissions are reasonable, considering the best net price, as well  
 28 as the value of the brokerage and research services provided by the  
 29 broker-dealer, viewed in terms of either that particular transaction  
 30 or the investment adviser's overall responsibilities to the fund. If  
 31 the fund's investment adviser, exercising financial and fiduciary  
 32 prudence, determines that it is unable to meet the percentages set  
 33 forth in subsection (b), the investment adviser shall include in its  
 34 quarterly report under subsection (d) a description of the  
 35 investment adviser's plan to achieve the percentages as quickly as  
 36 possible.

37 (d) After June 30, 2011, each investment adviser for the fund  
 38 shall provide a quarterly report to the fund's board. The report  
 39 must be provided within thirty (30) business days after the end of  
 40 each quarter. The report must provide the following information:

- 41 (1) The names of all:  
 42 (A) Indiana based broker-dealers;

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- 1                   **(B) broker-dealers that are minority business enterprises**
- 2                   **or women-owned business enterprises; and**
- 3                   **(C) new broker-dealers;**
- 4                   **used by the fund's investment adviser for the purchase or**
- 5                   **trading of securities for the fund.**
- 6                   **(2) The amount of fund assets traded for the quarter and for**
- 7                   **the current year to date by broker-dealers identified in**
- 8                   **subdivision (1).**
- 9                   **(3) The amount of the fund's securities trading brokerage**
- 10                   **commissions paid for the quarter and the current year to date**
- 11                   **to broker-dealers identified in subdivision (1).**
- 12                   **(4) The percentage of the fund's total securities trading**
- 13                   **brokerage commissions paid to broker-dealers identified in**
- 14                   **subdivision (1) out of all securities trading brokerage**
- 15                   **commissions paid for the quarter and the current year to date**
- 16                   **for the fund's investments.**

17                   **(e) Beginning with the 2011 annual report, each fund shall**  
 18                   **provide a summary of the information provided to the board of**  
 19                   **each fund by the fund's investment advisers under subsection (d).**

20                   **(f) The board of each fund shall evaluate the manner in which**  
 21                   **investment advisers implement the requirements of this section.**  
 22                   **The fund's board shall consider whether an investment adviser**  
 23                   **complies with the requirements of this section when the board**  
 24                   **contracts with or employs investment advisers under IC 5-10.3-5-4**  
 25                   **or IC 5-10.4-3-10.**

26                   SECTION 2. IC 5-10.3-5-4, AS AMENDED BY P.L.115-2009,  
 27                   SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 28                   JULY 1, 2011]: Sec. 4. (a) Securities shall be held for the fund by  
 29                   banks or trust companies under a custodial agreement. Income, interest,  
 30                   proceeds of sale, materials, redemptions, and all other receipts from  
 31                   securities and other investments which the board retains for the cash  
 32                   working balance shall be deposited as authorized by the board.

33                   **(b) Subject to IC 5-10.2-11,** the board may contract with  
 34                   investment counsel, trust companies, or banks to assist the board in its  
 35                   investment program.

36                   SECTION 3. IC 5-10.4-3-10, AS ADDED BY P.L.2-2006,  
 37                   SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 38                   JULY 1, 2011]: Sec. 10. (a) The board shall invest its assets with the  
 39                   care, skill, prudence, and diligence that a prudent person acting in a  
 40                   like capacity and familiar with such matters would use in the conduct  
 41                   of an enterprise of a like character with like aims. The board also shall  
 42                   diversify investments in accordance with prudent investment standards,

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1 subject to the limitations and restrictions set forth in IC 5-10.2-2-18.  
 2 (b) The board may:  
 3 (1) make or have investigations made concerning investments;  
 4 and  
 5 (2) contract for and employ investment counsel to advise and  
 6 assist in the purchase and sale of securities, **subject to**  
 7 **IC 5-10.2-11.**  
 8 (c) The board is not subject to IC 4-13, IC 4-13.6, or IC 5-16 when  
 9 managing real property as an investment. A management agreement  
 10 entered into by the board shall ensure that the management agent acts  
 11 in a prudent manner regarding the purchase of goods and services.  
 12 Contracts for the management of investment property shall be  
 13 submitted to the governor, the attorney general, and the budget agency  
 14 for approval. A contract for the management of real property as an  
 15 investment:  
 16 (1) may not exceed a four (4) year term and must be based upon  
 17 guidelines established by the board;  
 18 (2) may provide that the property manager may collect rent and  
 19 make disbursements for routine operating expenses such as  
 20 utilities, cleaning, maintenance, and minor tenant finish needs;  
 21 (3) shall establish, consistent with the board's duty under  
 22 IC 30-4-3-3(c), guidelines for the prudent management of  
 23 expenditures related to routine operation and capital  
 24 improvements; and  
 25 (4) may provide specific guidelines for the board to:  
 26 (A) purchase new properties;  
 27 (B) contract for the construction or repair of properties; and  
 28 (C) lease or sell properties;  
 29 without individual transactions requiring the approval of the  
 30 governor, the attorney general, the Indiana department of  
 31 administration, and the budget agency. However, each individual  
 32 contract involving the purchase or sale of real property is subject  
 33 to review and approval by the attorney general at the specific  
 34 request of the attorney general.  
 35 (d) Whenever the board takes bids in managing or selling real  
 36 property, the board shall require a bid submitted by a trust (as defined  
 37 in IC 30-4-1-1(a)) to identify all the following:  
 38 (1) Each beneficiary of the trust.  
 39 (2) Each settlor empowered to revoke or modify the trust.

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