

House File 227 - Introduced

HOUSE FILE 227

BY BODEN

A BILL FOR

1 An Act relating to the investment of certain public funds in
2 and contracts with Chinese domiciled companies and funds.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 12.8, subsection 1, Code 2023, is amended
2 to read as follows:

3 1. The treasurer of state shall invest or deposit, subject
4 to chapters 12F, 12H, and 12J, and 12K and as provided by law,
5 any of the public funds not currently needed for operating
6 expenses and shall do so upon receipt of monthly notice from
7 the director of the department of administrative services of
8 the amount not so needed. In the event of loss on redemption
9 or sale of securities invested as prescribed by law, and if
10 the transaction is reported to the executive council, neither
11 the treasurer nor director of the department of administrative
12 services is personally liable but the loss shall be charged
13 against the funds which would have received the profits or
14 interest of the investment and there is appropriated from the
15 funds the amount so required.

16 Sec. 2. NEW SECTION. 12K.1 Legislative findings and intent.

17 The general assembly is deeply concerned about the
18 activities of the Chinese communist party, the entity in
19 control of the government of the People's Republic of China, as
20 well as the risks inherent in investing in companies domiciled
21 in China and Hong Kong due to the control exercised by that
22 entity. Therefore, the general assembly intends that state
23 funds and funds administered by the state, including public
24 employee retirement funds, should not be invested in China
25 domiciled companies and funds.

26 Sec. 3. NEW SECTION. 12K.2 Definitions.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. "*China domiciled company*" means a company incorporated
30 in, or whose principal place of business is in, the People's
31 Republic of China or in the Hong Kong special administrative
32 region of the People's Republic of China. "*China domiciled*
33 *company*" does not include a company incorporated in, or whose
34 principal place of business is in, the Republic of China.

35 2. "*China exchange-traded fund*" means a fund of investments

1 in multiple China domiciled company securities that trades
2 intraday on an exchange like individual stocks, and tracks an
3 underlying index of such securities.

4 3. "*Company*" means any business or business entity that is
5 publicly traded and that is not based in the United States.

6 4. "*Direct holdings*" in a company or exchange traded
7 fund means all publicly traded securities of that company or
8 exchange traded fund that are held directly by the public fund
9 in an actively managed account or fund in which the public fund
10 owns all shares or interests.

11 5. "*Public entity*" means the state, political subdivisions
12 of the state, public school corporations, and all public
13 officers, boards, commissions, departments, agencies, and
14 authorities empowered by law to enter into public contracts for
15 the expenditure of public funds, including the state board of
16 regents and institutions under the control of the state board
17 of regents.

18 6. "*Public fund*" means the treasurer of state, the state
19 board of regents, the public safety peace officers' retirement
20 system created in chapter 97A, the Iowa public employees'
21 retirement system created in chapter 97B, the statewide fire
22 and police retirement system created in chapter 411, or the
23 judicial retirement system created in chapter 602.

24 Sec. 4. NEW SECTION. 12K.3 **Identification of Chinese**
25 **companies and exchange-traded funds.**

26 1. a. By October 1, 2023, the public fund shall make its
27 best efforts to identify or have identified all China domiciled
28 companies and China exchange-traded funds in which the public
29 fund has direct holdings and compile a list of such companies
30 and exchange-traded funds. The public fund shall review on
31 an annual basis and update, if necessary, the China domiciled
32 companies and China exchange-traded funds list.

33 b. In making its best efforts to identify or have identified
34 China domiciled companies and China exchange-traded funds,
35 the public fund may review and rely, in the best judgment of

1 the public fund, on publicly available information regarding
2 companies, and including other information that may be provided
3 by nonprofit organizations, research firms, international
4 organizations, and government entities.

5 Sec. 5. NEW SECTION. 12K.4 Prohibited investments —
6 divestment.

7 1. *a.* The public fund shall not acquire publicly traded
8 securities of a company or exchange-traded fund on the
9 public fund's most recent China domiciled companies and
10 China exchange-traded funds list so long as such company
11 or exchange-traded fund remains on the public fund's China
12 domiciled companies and China exchange-traded funds list as
13 provided in this chapter.

14 *b.* The public fund shall not acquire publicly traded
15 securities of a company or exchange-traded fund which it knows
16 to be a China domiciled company or China exchange-traded fund
17 regardless of whether it is on the China domiciled companies
18 and China exchange-traded funds list.

19 2. *a.* The public fund shall sell, redeem, divest, or
20 withdraw all publicly traded securities of a company or
21 publicly traded exchange-traded funds on the public fund's list
22 of China domiciled companies and China exchange-traded funds
23 within ninety calendar days after the issuance of the first
24 such list and within thirty calendar days after the issuance of
25 subsequent lists.

26 *b.* The public fund shall sell, redeem, divest, or withdraw
27 all publicly traded securities of a company or exchange-traded
28 fund within ninety calendar days of becoming aware it is a
29 China domiciled company or China exchange-traded fund even if
30 such company or fund is not yet on the public fund's list of
31 China domiciled companies and China exchange-traded funds.

32 *c.* This subsection shall not be construed to require the
33 premature or otherwise imprudent sale, redemption, divestment,
34 or withdrawal of an investment, but such sale, redemption,
35 divestment, or withdrawal shall be completed as provided by

1 this subsection.

2 Sec. 6. NEW SECTION. **12K.5 Reports.**

3 1. Each public fund shall, within thirty days after the
4 China domiciled companies and China exchange-traded funds list
5 is created or updated as required by section 12K.3, make the
6 list available to the public.

7 2. On October 1, 2023, and each October 1 thereafter, each
8 public fund shall make available to the public, and file with
9 the general assembly, an annual report covering the prior
10 fiscal year that includes all of the following:

11 a. The China domiciled companies and China exchange-traded
12 funds list as of the end of the fiscal year.

13 b. All investments sold, redeemed, divested, or withdrawn as
14 provided in section 12K.4 during the fiscal year.

15 Sec. 7. NEW SECTION. **12K.6 Public entities — contract**
16 **requirements.**

17 A public entity shall not enter into a contract of one
18 thousand dollars or more with a China domiciled company
19 included on a China domiciled company list created by a public
20 fund pursuant to section 12K.3 or with any other company which
21 the public entity is aware is a China domiciled company.

22 Sec. 8. NEW SECTION. **12K.7 Legal obligations — immunity.**

23 With respect to actions taken in compliance with this
24 chapter, including all good-faith determinations regarding
25 companies and exchange-traded funds as required by this
26 chapter, the public fund shall be immune from any liability
27 and exempt from any conflicting statutory or common law
28 obligations, including but not limited to any such obligations
29 in respect to choice of investments for the public fund's
30 securities portfolios.

31 Sec. 9. Section 35A.13, subsection 4, paragraph a, Code
32 2023, is amended to read as follows:

33 a. Notwithstanding [subsection 5](#), moneys in the fund, except
34 so much of the fund as may be necessary to be kept on hand
35 for the making of disbursements under [this section](#), shall

1 be invested by the treasurer of state, in consultation with
2 the commission and the public retirement systems committee
3 established by [section 97D.4](#), in any investments authorized for
4 the Iowa public employees' retirement system in [section 97B.7A](#),
5 including common stock, and subject to the requirements of
6 chapters [12F](#), [12H](#), [and 12J](#), and 12K, and the earnings therefrom
7 shall be credited to the fund. The treasurer of state may
8 execute contracts and agreements with investment advisors,
9 consultants, and investment management and benefit consultant
10 firms in the administration of investments of moneys in the
11 fund.

12 Sec. 10. Section 97A.7, subsection 1, Code 2023, is amended
13 to read as follows:

14 1. The board of trustees shall be the trustees of the
15 retirement fund created by [this chapter](#) as provided in section
16 97A.8 and shall have full power to invest and reinvest funds
17 subject to the terms, conditions, limitations, and restrictions
18 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
19 12K and subject to like terms, conditions, limitations, and
20 restrictions said trustees shall have full power to hold,
21 purchase, sell, assign, transfer, or dispose of any of the
22 securities and investments of the retirement fund which have
23 been invested, as well as of the proceeds of said investments
24 and any moneys belonging to the retirement fund. The board
25 of trustees may authorize the treasurer of state to exercise
26 any of the duties of [this section](#). When so authorized the
27 treasurer of state shall report any transactions to the board
28 of trustees at its next monthly meeting.

29 Sec. 11. Section 97B.4, subsection 5, Code 2023, is amended
30 to read as follows:

31 5. *Investments.* The system, through the chief investment
32 officer, shall invest, subject to [chapters 12F, 12H, and 12J](#),
33 and 12K and in accordance with the investment policy and
34 goal statement established by the board, the portion of the
35 retirement fund which, in the judgment of the system, is not

1 needed for current payment of benefits under [this chapter](#)
2 subject to the requirements of [section 97B.7A](#).

3 Sec. 12. Section 262.14, unnumbered paragraph 1, Code 2023,
4 is amended to read as follows:

5 The board may invest funds belonging to the institutions,
6 subject to [chapters 12F, 12H, and 12J](#), and 12K and the
7 following regulations:

8 Sec. 13. Section 411.7, subsection 1, Code 2023, is amended
9 to read as follows:

10 1. The board of trustees is the trustee of the fire
11 and police retirement fund created in [section 411.8](#) and
12 shall annually establish an investment policy to govern the
13 investment and reinvestment of the moneys in the fund, subject
14 to the terms, conditions, limitations, and restrictions
15 imposed by [subsection 2](#) and [chapters 12F, 12H, and 12J](#), and
16 12K. Subject to like terms, conditions, limitations, and
17 restrictions the system has full power to hold, purchase, sell,
18 assign, transfer, or dispose of any of the securities and
19 investments in which the fund has been invested, as well as of
20 the proceeds of the investments and any moneys belonging to the
21 fund.

22 Sec. 14. Section 602.9111, subsection 1, Code 2023, is
23 amended to read as follows:

24 1. So much of the judicial retirement fund as may not be
25 necessary to be kept on hand for the making of disbursements
26 under [this article](#) shall be invested by the treasurer of
27 state in any investments authorized for the Iowa public
28 employees' retirement system in [section 97B.7A](#) and subject to
29 the requirements of [chapters 12F, 12H, and 12J](#), and 12K, and
30 the earnings therefrom shall be credited to the fund. The
31 treasurer of state may execute contracts and agreements with
32 investment advisors, consultants, and investment management and
33 benefit consultant firms in the administration of the judicial
34 retirement fund.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill creates new Code chapter 12K, which restricts
4 public funds, defined as the treasurer of state, the state
5 board of regents, the Iowa public employees' retirement system
6 (IPERS), the public safety peace officers' retirement system,
7 the statewide fire and police retirement system, and the
8 judicial retirement system, and public entities, defined to
9 include a public fund and the state and political subdivisions
10 of the state, from generally investing in China domiciled
11 companies and China exchange-traded funds and entering into a
12 contract with China domiciled companies.

13 The bill defines "China domiciled company" as a company
14 incorporated in, or whose principal place of business is in,
15 the People's Republic of China or in the Hong Kong special
16 administrative region of the People's Republic of China.
17 The definition excludes companies incorporated or located
18 in the Republic of China. The bill also defines "China
19 exchange-traded fund" as a fund of investments in multiple
20 China domiciled company securities that trades intraday on an
21 exchange like individual stocks, and tracks an underlying index
22 of such securities.

23 The bill requires a public fund to identify all China
24 domiciled companies and China exchange-traded funds in which
25 the public fund has direct holdings by October 1, 2023.
26 Additionally, the bill requires a public fund to create and
27 make available to the public the list and review and update
28 the list on an annual basis. The bill authorizes a public
29 fund to review and rely on publicly available information and
30 information from other sources when identifying prohibited
31 companies.

32 The bill prohibits a public fund from acquiring direct
33 holdings in China domiciled companies and China exchange-traded
34 funds publicly traded securities. The bill requires a public
35 fund to sell, redeem, divest, or withdraw all direct holdings

1 in publicly traded securities of such a company or fund
2 no later than 90 days following the date the public fund
3 becomes aware that it is a China domiciled company or China
4 exchange-traded fund.

5 The bill requires each public fund, within 30 days after the
6 list of China domiciled companies and China exchange-traded
7 funds is created or updated, to make the list available to the
8 public. Additionally, the bill requires a public fund to make
9 available to the public and file with the general assembly an
10 annual report beginning October 1, 2023, and each October 1
11 thereafter.

12 The bill also provides that a public entity shall not enter
13 into a contract of \$1,000 or more with a China domiciled
14 company.

15 The bill provides that, with respect to actions taken
16 in compliance with the bill, including all good-faith
17 determinations regarding companies and funds subject to the
18 bill, the public fund shall be immune from any liability
19 and exempt from any conflicting statutory or common law
20 obligations, including any such obligations in respect
21 to choice of investments for the public fund's securities
22 portfolios.

23 The bill makes conforming changes to Code sections 12.8,
24 35A.13, 97A.7, 97B.4, 262.14, 411.7, and 602.9111.