

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3084**

BY DELEGATES MAYNARD, STEELE, ANDERSON, BRIDGES,

DEAN, PAYNTER, J. KELLY, ZATEZALO AND CLARK

[Introduced March 12, 2021; Referred to the  
Committee on Pensions and Retirement then  
Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5-10E-1, §5010E-2, §5-10E-3, §5-10E-4, §5-10E-5, §5-10E-6, §5-10E-7, §5-  
 3 10E-8, and §5-10E-9, relating to the West Virginia Public Employees Retirement system;  
 4 prohibiting the investment of funds in companies divesting from natural gas, oil, coal,  
 5 petrochemicals, forestry products, or agriculture commodities; empowering the board to  
 6 name restricted businesses to a restricted business list; empowering the board to remove  
 7 investments from restricted businesses with notice; providing for immunity for actors under  
 8 this article.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 10E. DIVESTMENT ACTIVITIES RELATED TO CARBON BASED ENERGY PRODUCTS**

**§5-10E-1. Legislative Findings.**

1 The Legislature finds it is contrary to the interests of the State of West Virginia and the  
 2 citizens of West Virginia for taxpayer dollars or retirement funds of public pensions to be invested  
 3 in or at the direction of entities engaging in, providing incentives for, or directing strategies to  
 4 divest from companies invested or assisting in the production of or the manufacturing of any of  
 5 the following:

- 6 (1) Natural gas,
- 7 (2) Oil,
- 8 (3) Coal,
- 9 (4) Petrochemicals,
- 10 (5) Forestry products, or
- 11 (6) Agriculture commodities.

**§5-10E-2. Definitions.**

1 (a) As used in this chapter, “board” refers to the Board of Trustees of the West Virginia

2 Public Employees Retirement System (“PERS”), under the Consolidated Public Retirement  
3 Board, as defined by §5-10-2(7) of this code.

4 (b) As used in this chapter, “business” means any proprietorship, corporation, association,  
5 or other business of any structure, including any subsidiary, parent or affiliated business.

6 (c) As used in this chapter, “cost of divestment” means the sum of the following:

7 (1) The costs associated with the sale, redemption, divestment, or withdrawal of an  
8 investment.

9 (2) The costs associated with the acquisition and maintenance of a replacement  
10 investment.

11 (3) A cost not described in subdivision (1) or (2) of this subsection that is incurred by the  
12 system in connection with a divestment transaction.

13 (d) As used in this chapter, “direct holdings” means all securities of a business held  
14 directly by the system on behalf of a fund or in an account in which the system on behalf of a fund  
15 owns all shares or interests.

16 (e) As used in this chapter, “divestment activity” refers to an action or inaction that furthers,  
17 coordinates with, or acquiesces in an effort by another person to penalize, inflict economic harm  
18 on, or otherwise limit commercial activity with companies invested in or assisting in the production  
19 of or the manufacturing of any of the products described in section §5-10E-1 et seq. of this code.

20 (f) As used in this chapter, “fund” refers to the funds administered and invested by the  
21 Board of the West Virginia Public Employees Retirement system (PERS).

22 (g) As used in this chapter, “indirect holdings” means all securities of a business:

23 (1) Held in an account or a fund; and

24 (2) Managed by one or more persons not employed by the system, in which the system  
25 owns shares or interests on behalf of a fund together with other investors not subject to this  
26 chapter.

27 (h) As used in this chapter, “restricted business” means a business that engages in

28 divestment activity.

29 (i) As used in this chapter, “system” refers to the West Virginia Public Employees  
30 Retirement system (PERS) established by §5-10-1 et seq. of this code.

**§5-10E-3. Duties of the Board to identify restricted businesses.**

1 (a) Not later than January 31, 2022, the board shall identify all restricted businesses in  
2 which the Fund has direct or indirect holdings.

3 (b) Not later than the first meeting of the board after January 31, 2022, the board shall  
4 compile the names of all restricted businesses into a restricted business list.

5 (c) The board shall update the restricted business list at least on an annual basis.

**§5-10E-4. Notice under this article.**

1 (a) The board shall send to each restricted business that is identified under §5-10E-3 of  
2 this code as a business in which a fund has direct or indirect holdings a written notice concerning  
3 the contents of this chapter and a statement indicating that the fund’s holdings in the business  
4 may become subject to divestment by the system.

5 (b) A notice sent under this section must:

6 (1) Offer the business the opportunity to clarify the business’s divestment activity; and

7 (2) Encourage the business, within 90 days after the date of the written notice, to cease  
8 its divestment activity to avoid divestment by the system of the fund’s holdings in the business.

9 (c) The board shall not acquire for a fund security of businesses on the restricted business  
10 list.

11 (d) With respect to actions taken in compliance with this article, including all good faith  
12 determinations regarding businesses on the restricted business list, the board shall be exempt  
13 from any conflicting statutory or common law obligations, including any obligations with respect  
14 to choice of asset managers, investment funds, or investments for fund securities portfolios.

**§5-10E-5. Cessation of restricted divestment activity.**

1 (a) If, within 90 days after the system’s first engagement with a business under §5-10E-3

2 of this code, the business ceases its divestment activity, the business shall be removed from the  
 3 restricted business list and the requirements of this article cease to apply to the business unless  
 4 the business resumes divestment activity.

**§5-10E-6. Failure to cease restricted divestment activity.**

1 (a) If 90 days after the system’s first engagement with a business under §5-10E-3 of this  
 2 code, the business continues to engage in divestment activity, the system shall sell, redeem,  
 3 divest, or withdraw all publicly traded securities of the business that are held by a fund, as follows:

4 (1) At least 50 percent of such assets shall be removed from a fund’s assets under  
 5 management within nine months after the business’s appearance on the restricted business list.

6 (2) 100 percent of such assets shall be removed from a fund’s assets under management  
 7 within 15 months after the business’s appearance on the restricted business list.

8 (b) If a business that ceased divestment activity following engagement with the board  
 9 under section §5-10E-5 of this code resumes restricted divestment activity, the business shall be  
 10 placed immediately back on the restricted business list. If a fund has holdings in the business, the  
 11 system shall sell, redeem, divest, or withdraw all publicly traded securities of the business as  
 12 provided in subsection (a) of this section based on the date the business is placed back on the  
 13 restricted business list. The system shall send a written notice to the business indicating that the  
 14 business was placed back on the restricted business list and is subject to divestment.

**§5-10E-7. Application to Private Equity Funds.**

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

**§5-10E-8. Report to the Legislature.**

1 (a) No later than November 1, 2022, and yearly thereafter, the board shall submit a report  
 2 to the Director of the Legislative Services Division for distribution to the members of the general

3 assembly.

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

5 (1) A copy of the restricted business list.

6 (2) A summary of correspondence with businesses engaged by the board under section  
7 §5-10E-4 of this code.

8 (3) All publicly traded securities sold, redeemed, divested, or withdrawn in compliance  
9 with this article.

**§5-10E-9. Immunity for actions under this article.**

1 (a) The state, officers, agents, and employees of the state, board members, the executive  
2 director, officers, and agents of the West Virginia Public Employees Retirement system are  
3 immune from civil liability for any act or omission related to the removal of an asset from a fund  
4 under this article.

5 (b) The state, officers, agents, and employees of the state, board members, the executive  
6 director, officers, and agents of the West Virginia Public Employees Retirement system are  
7 entitled to indemnification from the system for all losses, costs, and expenses, including  
8 reasonable attorney’s fees, associated with defending against any claim or suit relating to an act  
9 authorized under this chapter.

NOTE: The purpose of this bill is to prohibit investment of West Virginia Public employees’ retirement funds into “restricted businesses” which divest from natural gas, oil, coal, petrochemicals, forestry products, or agriculture commodities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.