

FISCAL NOTE
Requested by Legislative Council
01/14/2015

Bill/Resolution No.: HB 1329

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$23,496	\$0	\$23,496
Appropriations	\$0	\$0	\$0	\$23,496	\$0	\$23,496

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would add two additional members to the State Investment Board (SIB) Certain members of the SIB are entitled to compensation of \$148 per day and reimbursement of travel expenses under Section 21-10-01(1) for attendance at SIB meetings.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill would add two additional members to the State Investment Board (SIB) Certain members of the SIB are entitled to compensation of \$148 per day and reimbursement of travel expenses under Section 21-10-01(1) for attendance at SIB meetings. These payments are currently paid by the Retirement and Investment Office (Fund 207). It is unclear whether the two additional members would be eligible for compensation and reimbursement so it is assumed that they are eligible. The SIB highly encourages continuing education for board members. Therefore funds were also included for two out-of-state trips for investment-related board education.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The following assumptions were made in determining the expenditure amounts for Fund 207 of the Retirement and Investment Office:

24 meetings at \$148/meeting + FICA for (2) members \$ 7,648
 Travel reimbursement (\$225/person/meeting) \$10,848 (assumed average 200 miles round trip per person)

Professional Development Registration Fees \$1,000
Professional Development Travel Reimbursement \$4,000

Total \$23,496

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

The following assumptions were made in determining the additional appropriation amounts for Fund 207 of the Retirement and Investment Office:

24 meetings at \$148/meeting + FICA for (2) members \$ 7,648
Travel reimbursement (\$225/person/meeting) \$10,848 (assumed 200 miles round trip per person)
Professional Development Registration Fees \$1,000
Professional Development Travel Reimbursement \$4,000

Total \$23,496

These amounts are not included in the budget request for the Retirement and Investment Office Fund 207 (SB2022). The SIB currently has 11 members and related amounts for those 11 members only have been included in the request included in SB2022.

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Agency: Retirement and Investment Office

Telephone: 328-9892

Date Prepared: 01/16/2015

2015 HOUSE POLITICAL SUBDIVISIONS

HB 1329

2015 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1329

1/30/2015

22897

Subcommittee

Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to the membership of the state investment board

Minutes:

Chairman Klemin: Opened hearing in HB 1329 and note there is a fiscal note

Representative Kreidt: I am here to introduce the bill. It has been before the legislature the last 3 biennium. We would like to add two members to the state investment board. It also deals with the legacy committee (fund set up years ago where a portion of the oil tax is put into it) which is also part of the measure that was passed to start and maintain this fund. This committee is made up of four legislatures and people from different entities. We make a recommendation how to invest those dollars and we recommend how we would like invest it. The investing is done by the state investment board. It has grown and there is a little over 2 billion in it right now. The fund will continue to grow, and there are other funds we are invested with. The reason for the bill is that the legislature and members of the legacy committee. We can recommend how to invest but the investment actually does it. The legislature has no input about it and one day the legislature will become the biggest portion of this fund and we won't have say how it is invested. It would add one member from the senate and one from the house of representative to the state investment board so we can have a say in where the money is invested. We should have a say in how the money is spent by the investment board.

Representative Kretschmar: Times in the session the appointments is done by the chairman of the legislative management instead of the majority leader. Would you consider letting them making the appointments instead?

Representative Kreidt: I would be open to that; you would have more members choosing then.

Representative Koppelman: How long ago has the makeup of this board been set?

Representative Kreidt: A great amount of time, I am not sure exactly.

Chairman Klemin: You mentioned the legacy fund; there are other funds in it. What are they?

Representative Kreidt: I have seen a few, they are smaller funds and they are invested. The council of arts fund is one I know of. The total amount of the investments of this fund is around 2 million dollars.

Representative Beadle: In reference to the state investment board chapter 21-10-06 funds under management of board shows them all under the preview of the state investment board.

Representative Oversen: It says one member appointed by the majority leader and listening to your intention is that member of the legislature?

Representative Kreidt: Yes

Representative Beadle: Do you know what the language is as far as how the legislators are chosen to be on the advisory board?

Representative Kreidt: They are chosen by the majority leaders. So that is why we use that language. The form members from the legislature that now serve on the advisory committee for the legacy fund each are chosen by the majority leader. I am open to allowing legislative management appoints the members.

Opposition:

Lieutenant Governor: As more money comes in and to talk about what is the biggest component of the invested funds of North Dakota it does nothing to blur the constitutional lines. Just because they are gaining more funds does not mean legislature should be added? The state investment board is a pure executive function. That is why we oppose this piece of legislation. I chair the state investment board and the governor is the main entity but he has designated to assign me as the chair. The Treasurer of North Dakota and the insurance commissioner serve. The board has adequate people on the board now that do represent the people as a whole. The land committee serves on that board and the Representatives of TFFR, Puures, and the insurance folks at WSI. A number of entities across the state choose to invest under the preview of the state investment boards because they get access to the very best financial managers that we can access and they get it at a cut rate. Our performance is done very well across the state. All the financial interests are represented. This goes beyond the constitutional question but its man important financial matter. The financial interests are represented, state employees, the insurance, and people of North Dakota. The legacy fund dollars are under the preview of the state investment boards, for a while they were not. We were given the directive of how to invest those funds by the policy advisory board Representative Kreidt referenced. That is always we carry out the objectives of that state investment board we execute the policies given to us by those various policy boards. The legislature has a majority on the policy board. You have four members of the seven who directed the state investment board how to invest those dollars and what myths of investments we should have and what should be the policy benchmark. The benchmark under the legacy fund we were told to seek a mix that would attain a 5.5% investment realization for the legacy funds. In the first year alone

we exceeded that in performance and as a result there are millions of dollars, over 15 million in exceeds returns beyond what the policy board with the majority of legislators told us to attain. The budget stabilization fund we were told to seek .66% we also exceed about 7 million dollars excess returns of what basically a board with a majority members of legislators already told us what we should try to obtain on their behalf. The concern about the dollars growing they already have a majority say on what happens on the board. That is the appropriate function of that policy board and all of the policy boards who direct our activities. It is our job to carry out the executive function of realizing those returns to the extent possible. Yes the state investment board is also transparent. We have monthly meetings that are noticed in open public meetings of all the membership I just told you about. We have many reports that I worked assiduously in the last four years as a chair to make them even more transparent for the simplicity. Several legislators four years ago raised the issue that sometimes it is almost by death of piles of information. So we avoid that. Any legislature who wants to monitor the performance can get a couple of page reports and see how we are doing relative to the policy objectives that we have been given. The state investment board is carrying out these objectives. The market swings but we are performing at a high level relative to other public funds. We are in the top portion and some years back after the market crashed, relative to that, ours was down in the lowest but nor four years later we now in the top 3rd or 4th tier. We are beyond the average performance of the country. The performance is transparent and we are the accountable parties for those dollars and again carrying out the objectives of the policy board which has a majority of legislators already. The state investment board is a purely executive function. We execute the investment plans and objectives of the various policy boards. The group of 7, 4 of which are legislators, meets regularly, comes up with the objectives, tells us what they have as a benchmark, and monitors our progress towards that, and can change that any time they want. If they think they want to lower the policy we will carry that out immediately. We will institute a plan right away to get to their new benchmark and objectives. This is what we regularly do. All interests are represented. This legislation is a waste of whatever dollars it needs. Performance already exceeds that which is expected by the policy boards that control how that money gets invested. It is inefficient. This I want to make clear to you the governor and I renew our objection to what is clearly the most troublesome part of this legislation, it is unconstitutional. It is an encroachment on the executive function and in such blurs the lines.

Representative Toman: How many and what type of investment officials are on the board?

Lieutenant Governor: It is constantly changing the number because we are constantly monitoring them if they aren't performing to our expectations. On the board are the people who have the accountability to folks who are investing their money. The membership of the board itself is 11 of us, 3 from TFFR, 3 from Puures, 3 constitutional officers, the head of WSI, and the land commissioner. All people accountable to representing. It is our job to hire the investment professionals and all the different investment managers from around the US. I don't have the exact number.

Representative Kretschmar: Does the state investment board have any way to say no to the advisory board?

Lieutenant Governor: It is an ongoing dialogue. I do not remember in my time that it has happened because the advisory boards become advised of setting their objectives and

policies and everything else. If it is unreasonable what they ask, then we may. We do have the ability to reject. It would be a complete open decision, documented and opened to anyone. We have never rejected anything yet though.

Representative Kretschmar: How large is your professional staff?

Lieutenant Governor: We have 7.

Representative Beadle: Of all the funds you guys manage. Has there been direction of the advisor committee to have North Dakota based financial advisors manage any of the funds and are any of the funds currently being managed by North Dakota based financial advisors?

Lieutenant Governor: Some people ask the question but at the end of the day it is not an economic development tool. We have a responsibility for it not to be. Our job is to maximize the possible returns whose funds we are investing. Our staff meets with individuals always to see what they can offer to us but our main job is to maximize returns.

Representative Beadle: So you're saying none?

Lieutenant Governor: We can get the number.

Representative Koppelman: Are you currently chair of the state investment board?

Lieutenant Governor: Yes.

Representative Koppelman: There is language in there about designating someone to serve in their absence; I don't see that for the governor?

Lieutenant Governor: Elsewhere is state law it is an implied power that the governor has and is able to do in all but a couple so instances where it is explicitly removed from him.

Representative Koppelman: That to amend this would be an unconstitutional action?

Lieutenant Governor: It is an executive function; the state investment board carries out. We don't formulate the policy benchmark objectives; they are set by the legislature or in other instances the funds that are being invested. In this instance for the legacy fund they are set by a policy board which has a majority of legislators. We at the state investment board have no power or ability to set the policy objectives for those funds. We have the responsibility as the executive to carry out that function in a transparent, accountable way. Let's say that all the dollars were legacy fund dollars as a practical matter the people of North Dakota are represented by the statewide elected officials, but as a constitutional matter you don't change the constitution because the dollars are involved. What if the court system, someone were to bring to your attention that fines have doubled, maybe the majority leader of the house should sit in judgment on court cases with the judges because there is all this money that is being handled. It doesn't change the constitutional functions to say there is less or more money.

Representative Koppelman: Is this board named somewhere in the constitution? Where do you draw that direct line? I don't see your direct linkage as to why you think it is purely executive decision?

Lieutenant Governor: Executive function is the governors, congress is legislation, and judiciary is judiciary. Where those lines get blurred at times it is tolerated by one branch or the other

Representative Koppelman: Like the lieutenant governor presiding over the senate.

Lieutenant Governor: When I was sworn in the majority leader of the senate told me they were going to change the provisions and I would be allowed in the senate whenever they wanted. I said to him my title doesn't appear many places in the constitution except right after preceding officer of the senate. If it comes to this there will be a constitutional challenge. We won't have to but we will. I will convince the governor to let me argue that myself, we will win 5 to nothing and I will look good. He smiled and said I bet. This is an executive function and I am waiting for someone to articulate what is the possible legislative or other function that could possibly be carried out in this regard.

Representative Koppelman: It seems to me that the state investment board is the body that determines how the funds are invested and you identified that as a legislative function, so I don't see that this is purely as an executive function.

Lieutenant Governor: Congress sets the speed limits but they cannot arrest me. The officers will. The constitution doesn't say a Representative shall not arrest for speeding but it is a clear distinction between the two.

Representative Kelsh: The common school trust fund has a chunk of money, do you invest that and who advises you on how to invest that money?

Lieutenant Governor: The common schools trust fund is under the land board but it has been discussed, it could be moved over to the state investment board but it has been chosen to be on the other.

Chairman Klemin: Page 2 line 5 subsection 2 of the statute, the state investment board may establish an advisory council, I guess has the advisory council been established and what is their function?

Lieutenant Governor: That is the legacy and budget stabilization advisory board that I referenced before. It is the policy board which advises us in the capacity that I mentioned. That board exists because our administration advocated for it on behalf of the legislature who we understood to want to have control of how these funds be invested.

Chairman Klemin: The way it reads it doesn't mean that way to me. It seems to refer to some other advisory council established by the state investment board, not the legacy funds committee established by the legislature.

Lieutenant Governor: My understanding is that is referencing that policy board.

Chairman Klemin: There is no other advisory council?

Lieutenant Governor: Not that I know of.

Representative Kelsh: Is it clear that this bill made it to the governor that it would not be signed?

Lieutenant Governor: The governor cannot threaten a veto.

The remainder is inaudible

Representative Anderson: Motioned for a do not pass

Representative Zubke: Second

A Roll Call Vote Was Taken: Yes 8, No 5, Absent 1 (Klein)

The do not pass succeeded

Representative Anderson will carry the bill

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1329**

House Political Subdivisions Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Anderson Seconded By Zubke

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson	X	
Vice Chair Patrick R. Hatlestad		X	Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen		X
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	---				
Rep. Kim Koppelman		X			
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos		X			
Rep. Nathan Toman		X			
Rep. Denton Zubke	X				

Total (Yes) 8 No 5

Absent 1 (Klein)

Floor Assignment Anderson

If the vote is on an amendment, briefly indicate intent:

Do not pass was accepted

REPORT OF STANDING COMMITTEE

HB 1329: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1329 was placed on the Eleventh order on the calendar.