

2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1278

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1278
2/2/2023

Relating to the prudent investor rule and to the state investment board and the legacy fund.

Chairman Schauer called the meeting to order at 9:23 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider. All present.

Discussion Topics:

- Funds used in foreign activities
- Use of legacy fund money
- Interim study
- Fiscal note
- North Dakota State Investment Board
- Illegal activity involvement
- Legacy fund investment
- Restriction of funding
- Amendment
- Fiduciary duty
- Management of assets
- North Dakota firms
- Transparency from the SIB

Vice Chairman Satrom introduced HB 1278 with supportive testimony and proposed an amendment (#23.0455.01001) (#18787) (#18788).

Janilyn Murtha, Executive Director of the North Dakota Retirement and Investment Office, opposing testimony (#18757).

Karen Tyler, North Dakota State Securities Commissioner, spoke in opposition.

Thomas Beadle, North Dakota State Treasurer, spoke in a neutral position to HB 1278.

Chairman Schauer adjourned the meeting at 10:52 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1278
2/9/2023

Relating to the prudent investor rule and to the state investment board and the legacy fund.
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Chairman Schauer called the meeting to order at 11:17 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider. All present.

Discussion Topics:

- Committee work
- Proposed Amendments

Vice Chairman Satrom explained amendment that would create a mechanism where we could do instate investments and working out having a quarterly report on investments.

Chairman Schauer adjourned the meeting at 11:19 AM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1278
2/17/2023

Relating to the prudent investor rule and to the state investment board and the legacy fund.
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Chairman Schauer called the meeting to order at 11:01 AM.

Chairman Austen Schauer, Vice Chairman Bernie Satrom, Reps. Landon Bahl, Claire Cory, Jorin Johnson, Karen Karls, Scott Louser, Carrie McLeod, Vicky Steiner, Steve Vetter, and Mary Schneider present. Reps. Karen M. Rep. Rohr and Jeff A. Hoverson not present.

Discussion Topics:

- Committee work
- Amendments (23.0455.01008)

Vice Chairman Satrom explained amendment (23.0455.01008).

Jan Murtha, Executive Director for the Retirement Investment Office, answered questions from the committee.

Representative Steiner moved to adopt amendment (23.0455.01008) to HB 1278.

Seconded by Vice Chairman Satrom.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Claire Cory	Y
Representative Jeff A. Hoverson	AB
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	AB
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 11-0-2.

Representative Vetter moved a DO PASS as amended on HB 1278

Seconded by Representative Bahl.

Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	Y
Representative Claire Cory	Y
Representative Jeff A. Hoverson	AB
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	AB
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 11-0-2.

Bill carrier: Vice Chairman Satrom.

Chairman Schauer adjourned the meeting at 11:29 AM.

Phillip Jacobs, Committee Clerk By: Leah Kuball

OR
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2-17-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

Page 1, line 1, remove "create and enact a new subsection to section 21-10-02.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the prudent investor rule; and to"

Page 1, line 2, replace "section" with "sections"

Page 1, line 3, after "21-10-02" insert ", 21-10-06.1"

Page 1, line 3, remove "subsection 1 of section"

Page 1, line 3, replace "2" with "10"

Page 1, line 3, replace "21-10-11" with "54-44.4-02"

Page 1, line 4, after the first "the" insert "powers and duties of the"

Page 1, line 4, replace "and the legacy fund" with ", restrictions on perpetual contracts, required reports, and the prohibition on social investments; and to provide for a legislative management study"

Page 1, line 15, remove "Any designated agent acting as a"

Page 1, remove lines 16 through 21

Page 2, line 3, remove "After five years of offering advisory services, the board shall"

Page 2, remove line 4

Page 2, line 5, remove "request for proposal to interested bidders."

Page 2, line 11, after "state" insert ".

6. The board may use the services of external investment managers and establish policies and procedures for internal investment management of client funds under section 21-10-06"

Page 2, remove lines 12 through 31

Page 3, replace lines 1 and 2 with:

"**SECTION 2. AMENDMENT.** Section 21 10 06.1 of the North Dakota Century Code is amended and reenacted as follows:

21-10-06.1. Board - Investment reports - Report to legislative audit and fiscal review committee.

1. The board shall annually ~~shall~~ prepare reports on the investment performance of each fund under its control. The reports must be uniform and must include:
 - ~~4-~~ a. A list of the advisory services managing investments for the board.
 - ~~2-~~ b. A list of investments at market value, compared to previous reporting period, of each fund managed by each advisory service.

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3. c. Earnings, percentage earned, and change in market value of each fund's investments.
 4. d. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to generally accepted market indicators.
 - e. A list of countries in which the funds are invested.
 2. On an annual basis, or if requested, the board shall provide investment reports to the legislative audit and fiscal review committee.
 3. On an annual basis, or if requested, the board shall provide investment reports on the investment performance of the in-state investment program under section 21-10-11 to the legacy and budget stabilization fund advisory board.

SECTION 3. AMENDMENT. Section 21-10-08.1 of the North Dakota Century Code is amended and reenacted as follows:

21-10-08.1. Social investment - Prohibition.

1. As used in this section, "social investment" means the consideration of socially responsible criteria and environmental, social, and governance impact criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return at a prudent level of risk to the state.
2. Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the state investment board, or any other state entity investing public funds, can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and environmental, social, and governance impact investment and has a similar time horizon and risk, the state investment board, or any state entity, may not invest state funds for the purpose of social investment.

SECTION 4. AMENDMENT. Subsection 10 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services. Nothing in this subsection may be construed to allow an agency to create or renew a contract perpetually and without limitation.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE. During the 2023-24 interim, the legislative management shall study current environmental, social, and corporate governance trends, issues, policies, and impacts to citizens, businesses, and industries of this state. The study must include input from representatives from state government with industry-specific expertise in the areas of investment, insurance, economic development, and finance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

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Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1278: Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1278 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new subsection to section 21-10-02.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the prudent investor rule; and to"

Page 1, line 2, replace "section" with "sections"

Page 1, line 3, after "21-10-02" insert ", 21-10-06.1"

Page 1, line 3, remove "subsection 1 of section"

Page 1, line 3, replace "2" with "10"

Page 1, line 3, replace "21-10-11" with "54-44.4-02"

Page 1, line 4, after the first "the" insert "powers and duties of the"

Page 1, line 4, replace "and the legacy fund" with ", restrictions on perpetual contracts, required reports, and the prohibition on social investments; and to provide for a legislative management study"

Page 1, line 15, remove "Any designated agent acting as a"

Page 1, remove lines 16 through 21

Page 2, line 3, remove "After five years of offering advisory services, the board shall"

Page 2, remove line 4

Page 2, line 5, remove "request for proposal to interested bidders."

Page 2, line 11, after "state" insert ".

6. The board may use the services of external investment managers and establish policies and procedures for internal investment management of client funds under section 21-10-06"

Page 2, remove lines 12 through 31

Page 3, replace lines 1 and 2 with:

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1. The board ~~shall~~ annually shall prepare reports on the investment performance of each fund under its control. The reports must be uniform and must include:
 4. a. A list of the advisory services managing investments for the board.
 2. b. A list of investments at market value, compared to previous reporting period, of each fund managed by each advisory service.

- ~~3.~~ c. Earnings, percentage earned, and change in market value of each fund's investments.
4. d. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to generally accepted market indicators.
- e. A list of countries in which the funds are invested.
2. On an annual basis, or if requested, the board shall provide investment reports to the legislative audit and fiscal review committee.
3. On an annual basis, or if requested, the board shall provide investment reports on the investment performance of the in-state investment program under section 21-10-11 to the legacy and budget stabilization fund advisory board.

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2. Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the state investment board, or any other state entity investing public funds, can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and environmental, social, and governance impact investment and has a similar time horizon and risk, the state investment board, or any state entity, may not invest state funds for the purpose of social investment.

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SECTION 5. LEGISLATIVE MANAGEMENT STUDY - ENVIRONMENTAL, SOCIAL, AND CORPORATE GOVERNANCE. During the 2023-24 interim, the legislative management shall study current environmental, social, and corporate governance trends, issues, policies, and impacts to citizens, businesses, and industries of this state. The study must include input from representatives from state government with industry-specific expertise in the areas of investment, insurance, economic development, and finance. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-ninth legislative assembly."

Renumber accordingly

2023 SENATE INDUSTRY AND BUSINESS

HB 1278

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1278
3/15/2023

A bill relating to the powers and duties of the state investment board, restrictions on perpetual contracts, required reports, and the prohibition on social investments; and to provide for a legislative management study.
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11:31 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Investment of funds
- Transparency
- Legislative study
- ESG movement

11:31 AM Representative Bernie Satrom, District 12, Jamestown, North Dakota introduced HB 1278 and testified in support. #23762

11:39 AM Janilyn Murtha, JD, MPAP, Executive Director, Retirement and Investment Office, (RIO), testified in support of the amendments made to HB 1278. #25141

11:52 AM Sherry Ness, Office of Management and Budget, Director of Central Services Division, testified neutral on HB 1278. No written testimony.

11:56 AM Chairman C. Larsen closed the hearing on HB 1278.

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1278
3/27/2023

A bill relating to the powers and duties of the state investment board, restrictions on perpetual contracts, required reports, and the prohibition on social investments; and to provide for a legislative management study.
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11:17 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

Discussion Topics:

- Related bills
- Terminology

11:17 Senator Kessel provided information. No written testimony.

11:23 Chairman D. Larsen closed the meeting

Brenda Cook, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee Fort Union Room, State Capitol

HB 1278
3/28/2023

A bill relating to the powers and duties of the state investment board, restrictions on perpetual contracts, required reports, and the prohibition on social investments; and to provide for a legislative management study.

10:17 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Klein, Senator Boehm.

Discussion Topics:

- Committee action

10:17 AM Senator Kessel moved to DO NOT PASS HB 1278.

10:17 AM Senator Barta seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- Motion DO NOT PASS HB 1278.

Senator Klein will carry the bill.

10:20 AM Committee discussion.

10:25 AM Chairman D. Larsen adjourned.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1278, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1278 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1278

House Bill 1278
North Dakota Retirement and Investment Office (RIO)
Testimony in opposition to HB 1278 before the House Government &
Veterans Affairs Committee
Representative Austen Schauer, Chair
Representative Bernie Satrom, Vice Chair

Janilyn Murtha, JD, MPAP – Executive Director
Scott Anderson, CFA, MBA – Chief Investment Officer

I. Introduction

The Retirement and Investment Office (hereinafter “RIO”) was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the investment program of the State Investment Board (SIB) and the retirement program of the Teachers’ Fund for Retirement (TFFR). Statutory authority for the agency is found in North Dakota Century Code chapter 54-52.5 and the programs are governed by chapters 21-10 (SIB) and 15-39.1 (TFFR).

The State Investment Board has the statutory responsibility to administer the investment program for 28 funds including the Legacy Fund, TFFR, PERS, and WSI. It also maintains contractual relationships for the investment management of multiple political subdivisions and governmental funds. Currently SIB is responsible for the investment of the Legacy Fund, seven pension funds and 20 other non-pension funds for a total of 28 separate client funds with an overall fund value of approximately \$18.5 billion as of November 30, 2022.

These assets under management have grown from about \$4 billion in 2010 and continue to grow from investment returns and contributions to the Legacy Fund, pension plans, and insurance funds. The combination of the growth of AUM, the number of individually managed funds, and the complexity of mandates such as the Legacy Fund have increased the need for staff resources, infrastructure and new scalable investment processes that can enhance the performance of client funds while reducing the net cost of management of those funds when manager fees are considered.

Currently, the SIB relies entirely on an external investment manager structure; ie RIO does not have internal investment management authority or operations. RIO contracts with over forty investment managers, vendors, and consultants in the administration of our two programs.

II. Opposition to HB 1278

Opposition to HB 1278 should in no way be construed as a lack of support for investment in the agriculture or energy sectors. The SIB recognizes the importance of the energy and agriculture sectors for a thriving economy and continues to invest in companies in this sector and implements business practices that would not restrict any investment or business activities within these sectors for non-pecuniary reasons. The investment program as a matter of policy and in compliance with North Dakota law as set forth under NDCC Ch. 21-10, only invests for the exclusive benefit of its

beneficiaries in a way that seeks to maximize return for a given level of risk. As such any restriction of its investment or commercial set of opportunities for non-pecuniary reasons such as restricting investment in either of these sectors is already prohibited by policy and law.

Our concerns relate to the potential conflict this bill may create with other existing or future legislation, or mandated business practices, the cost and complexity of implementing the bill, and the potential that the bill may unintentionally reduce commercial opportunities with vendors who support these sectors because of the cost the bill imposes on the vendor.

The vast majority of RIO's vendor's conduct business in many if not all states, and the regulation and oversight of these vendors is largely concurrent between state and federal regulatory systems, especially within the securities industry. Uniformity among regulatory requirements is therefore a critical issue both the vendors and for government entities attempting to procure their services. The proposal, though well intentioned, would impose non-uniform conduct requirements on our vendors and require a level of administration from RIO that may be infeasible to implement. The proposal requires that RIO not only negotiate with every vendor these additional contract provisions but monitor the public statements and private contracts the vendor may engage in with other clients or providers that have no direct business with RIO or the State of North Dakota. In addition, the proposed legislation extends the monitoring requirement to not only the vendor but the associations the vendor and its affiliates may belong to. It would be infeasible for RIO to monitor public statements of vendors and their associations without a significant increase in compliance personnel and cost; and infeasible for RIO to access information related to the private contracts or dealings the vendor may engage in with other private third parties. In the event that outside vendors are unable or unwilling to work with RIO due to these additional requirements RIO would need to internalize functions that are currently contracted out at a significantly increased pace and with a significant increased cost for the agency.

III. Summary

Pursuant to both North Dakota law and SIB policy, RIO implements business practices that would not restrict any investment or business activities within either the energy and agriculture sectors for non-pecuniary reasons; the proposal, though well intentioned, may be infeasible to administer and significantly increase the cost and resources needed to perform compliance monitoring as well as have the unintended consequence of requiring the agency to internalize many functions that are currently performed by external partners at an imprudent pace and significantly increased cost.

OPINION

Port: Out-of-state consultant recommends out-of-state firm to manage North Dakota's new in-state investment program

People talk about "North Dakota nice." This is North Dakota self-loathing.

Written By: Rob Port | 3:50 pm, Apr. 27, 2021

MINOT, N.D. — North Dakota's reliance on consultants, at all levels of government, is an epidemic.

From state boards down to local school boards, our state's leaders can't seem to even tie their shoes without hiring a consultant.

Everybody knows it.

People in political circles joke about it.

The smartest person in the room, the oft-made quip goes, is the person from out-of-state with a briefcase.

Case in point, on April 8, **Gov. Doug Burgum** signed into law House Bill 1425, sponsored by **Rep. Mike Nathe** (R-Bismarck), which directs some of the principal of the Legacy Fund into an in-state investment program that directs capital to infrastructure projects and business ventures.

This was a hugely popular bill, passing 87-8 in the House and 47-0 in the Senate before Burgum put his signature on it, and it was needed, too. Historically the Legacy Fund has had a lot of money invested with the Putin regime in Russia, and in puppet companies for the Chinese Communists, and almost nothing invested in North Dakota.

Among the legislation's requirements is that the State Investment Board, which oversees the Legacy Fund, "give preference to investment firms and financial institutions with a presence in the state."

Per this hugely popular law, passed with broad bipartisan support, the SIB is supposed to make an effort to use North Dakota firms for managing investments.

So it was remarkable to see that by April 23, with the ink of Burgum's signature on HB 1425 barely dry, the SIB went ahead and followed the advice of their out-of-state consultant, Callan, to select an out of state firm from Chicago to manage North Dakota's brand new in-state investment program.

This firm, 50 South Capital of Chicago, may get a contract at the next SIB meeting in May.

Treasurer Thomas Beadle, a member of the SIB, tells me that, though he voted for 50 South, he's still making inquiries as to the proposal process that led to these finalists. He also said that he expects 50 South to act as an "umbrella" and will hire North Dakota-based firms to work under it.

Dave Hunter, the executive director of the SIB, assured the board members in the agenda for their April 23 meeting that whichever out-of-state firm they chose would be sure to open a North Dakota office as soon as they got the state's business.

I'm not joking. You can read it for yourself.

TO: State Investment Board
FROM: Dave Hunter
DATE: April 19, 2021
SUBJECT: SIB Meeting Materials – April 23, 2021

In-State Investment Program Update – After completing additional due diligence on the top three candidates advanced by the SIB last month, RIO and Callan identified 50 South Capital and Sun Mountain Capital as the top two finalists. All three firms were deemed to be strong candidates to expand the Legacy Fund In-State Investment Program (IIP) by providing needed capital to drive economic development in North Dakota. However, RIO and Callan ranked 50 South and Sun Mountain higher than GCM Grosvenor largely due to their proposals being more closely aligned with the desire to promote new capital formation for both new and existing entrepreneurs in our state in order to further diversify our economy and create jobs. 50 South Capital and Sun Mountain Capital also committed to establishing a physical presence in North Dakota. Finalist presentations will be distributed to the SIB on Monday, April 19th, in addition to RIO's recommendation based on a comprehensive due diligence process completed with Callan's exceptional assistance over the past six months.

Invesco Real Estate Recommendation – RIO will recommend the SIB approve a new \$200 million private real estate commitment to Invesco in order to reduce our current underweight allocation to the diversified real assets sector.

People talk about "North Dakota nice."

This is North Dakota self-loathing.

This is simpering, craven deference to powerful consultants even despite what our own laws say.

Certainly, HB 1425 doesn't require the hiring of an in-state firm, but it does require that preference be given to such a firm. How did the State Investment Board even solicit proposals from North Dakota firms between April 8, when this program was created by the Legislature, and April 23, when the SIB made their decision?

The idea that 50 South Capital of Chicago can satisfy the preference language in HB 1425 by establishing some offices in our state is an insult to our intelligence.

One gets the idea that Hunter and his board feel they can do what they like, because nobody is really paying attention.

23.0455.01001
Title.

Prepared by the Legislative Council staff for
Representative Satrom
February 1, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1278

Page 1, line 1, remove "create and enact a new subsection to section 21-10-02.1 of the North"

Page 1, line 2, remove "Dakota Century Code, relating to the prudent investor rule; and to"

Page 1, line 3, remove ", subsection 1 of section 21-10-08.1, and subsection 2 of section 21-10-11"

Page 1, line 4, remove "and the legacy fund"

Page 1, line 17, remove "may not be a member of any association that has not publicly supported the"

Page 1, remove lines 18 through 20

Page 1, line 21, replace "agriculture industries of this state" with "shall notify, and recommend to the board all qualified investment firms under subsection 5, consistent with the prudent investor rule"

Page 2, line 3, replace "After" with "Beginning on January 1, 2024, and every"

Page 2, line 3, replace "of offering advisory services" with "thereafter"

Page 2, remove lines 12 through 31

Page 3, remove lines 1 and 2

Renumber accordingly

HB1278

Thank you Chairman and members of the committee. For the record I am Bernie Satrom and I am honored to serve the great people of District 12 in Jamestown and NE Stutsman county. Today I bring before you HB1278 I will provide you an overview of what this bill does.

The First feature of the bill codifies that it the State investment board may use the services of external investment managers and adds to establish policies and procedures or internal investment management. This is similar to the process that other states such as SD FL and TX use for their investments. If we utilize internal investment of 15% of our funds it would result in an estimated \$16 million additional income versus external investors.

To promote transparency The second component of this bill calls for a annual report on our ND investments plus a list of the countries which we are invested.

The Section 3 aligns with HB1429 and language from SB2091 from last session which we passed which had to do with ESG investments. And clarifies that there is a prohibition of social investing not only by SIB but also by any state agency investing public funds.

Section 4 Prohibits an agency from renewing a contract perpetually and without limitation.

Section 5 The ESG movement is a large concern for many of our citizens and businesses, 1278 Calls for LM to study current ESG, Environmental, Social and governance trends, issues, policies and impacts to citizens businesses and industries of this state.

Thank you and members of the committee.

House Bill 1278
North Dakota Retirement and Investment Office (RIO)
Testimony in support of Engrossed HB 1278 before the Senate Industry and
Business Committee
Senator Doug Larsen Chair
Senator Greg Kessel, Vice Chair

Janilyn Murtha, JD, MPAP – Executive Director

I. Introduction

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The State Investment Board has the statutory responsibility to administer the investment program for 28 funds including the Legacy Fund, TFFR, PERS, and WSI. It also maintains contractual relationships for the investment management of multiple political subdivisions and governmental funds. Currently SIB is responsible for the investment of the Legacy Fund, seven pension funds and 20 other non-pension funds for a total of 28 separate client funds with an overall fund value of approximately \$19.2 billion as of January 31, 2023.

These assets under management have grown from about \$4 billion in 2010 and continue to grow from investment returns and contributions to the Legacy Fund, pension plans, and insurance funds. The combination of the growth of AUM, the number of individually managed funds, and the complexity of mandates such as the Legacy Fund have increased the need for staff resources, infrastructure and new scalable investment processes that can enhance the performance of client funds while reducing the net cost of management of those funds when manager fees are considered.

Currently, the SIB relies entirely on an external investment manager structure; ie RIO does not have internal investment management authority or operations. RIO contracts with over forty investment managers, vendors, and consultants in the administration of our two programs.

II. Engrossed HB 1278

The SIB recognizes the importance of the energy and agriculture sectors for a thriving economy and continues to invest in companies in this sector and implements business practices that would not restrict any investment or business activities within these sectors for non-pecuniary reasons. The investment program as a matter of policy and in compliance with North Dakota law as set forth under NDCC Ch. 21-10, only invests for the exclusive benefit of its beneficiaries in a way that seeks to maximize return for a given level of risk. As such any restriction of its

investment or commercial set of opportunities for non-pecuniary reasons such as restricting investment in either of these sectors is already prohibited by policy and law.

RIO opposed the original version of H.B. 1278 due to concerns related to the potential conflict this bill may create with other existing or future legislation, or mandated business practices, the cost and complexity of implementing the bill, and the potential that the bill may unintentionally reduce commercial opportunities with vendors who support these sectors because of the cost the bill imposes on the vendor. Engrossed H.B. 1278 incorporates amendments that eliminated these concerns and therefore the agency supports the amendments to H.B. 1278 while recognizing that the public policy reflected is decision for the legislature.

III. Summary

Pursuant to both North Dakota law and SIB policy, RIO implements business practices that would not restrict any investment or business activities within either the energy and agriculture sectors for non-pecuniary reasons. Engrossed H.B. 1278 incorporates amendments that eliminated initial concerns with implementation. The agency supports the amendments made to H.B. 1278 while recognizing that the public policy reflected is a decision for the legislature.