

**2023 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1368**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1368  
01/23/2023

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Louser called to order 12:38 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

### **Discussion Topics:**

- Committee work

Chairman Louser notified the committee he expects this bill to be re-referred.

### **Additional written testimony:**

Andrew Varvel, District 47, Bismarck ND, #15173

Sherry Neas, Director, Central Services Division of OMB, #15332

Janilyn Murtha, Executive Director, ND Retirement, and Investment Office, # 15339

Chairman Louser adjourned the meeting 12:39 PM

*Diane Lillis, Committee Clerk*

**2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**HB 1368**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1368  
2/2/2023

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Schauer called the meeting to order at 2:46 PM.

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, Steve Vetter, Mary Schneider. Rep. Vicky Steiner not present.

### Discussion Topics:

- Discriminatory boycotts
- Amendment
- Evidence of national-origin-discrimination
- Financial interests of the state
- Trade with Israel
- Similar acts in other states
- Statement of support
- Preemptive measure
- Reasons for companies to boycott Israel.
- Implementation of the act

Rep. Anderson introduced HB 1368 with supportive testimony (#18626) and orally suggested an amendment.

Betty Grande, North Dakota citizen, supportive testimony (#18871).

Rabbi Yonah Grossman, Rabbi from Fargo, North Dakota, spoke in support.

Pastor Keith Ritchie, from Cornerstone Church in Bismarck, North Dakota, spoke in support.

Jake Bennett – Director of Policy and Legislative Affairs for Israeli-American Coalition for Action, supportive testimony (#18688).

Ron Inget, Lead Pastor of New Life Church in Bismarck, Beulah, and Jamestown, North Dakota, spoke in support.

Janilyn Murtha, Executive Director of the North Dakota Retirement and Investment Office, opposing testimony (#21222).

Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB), opposing testimony (#18092).

Andrew Alexis Farvel, North Dakota citizen, opposing testimony (#18827).

**Additional Written Testimony:**

Laura Backhaus, President at Codelation in Fargo, North Dakota, supportive testimony (#18773).

Chairman Schauer closed the hearing on HB 1368 and created a subcommittee, appointing Rep. Bahl as Chairman, and Vice Chairman Satrom and Rep. Rep. Cory. The subcommittee meeting was scheduled for February 8<sup>th</sup>, 2023 at 8:00 AM.

Chairman Schauer adjourned the meeting at 3:39 PM.

*Phillip Jacobs, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1368  
2/8/2023

### Subcommittee

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Bahl called the meeting to order at 8:04 AM.

Chairman Landon Bahl and Vice Chairman Bernie Satrom present. Representative Claire Cory not present.

#### Discussion Topics:

- Micromanagement
- Removal of sections 3 and 4.
- Enforceability of contract
- Contract provisions

Chairman Bahl called for a discussion on HB 1368.

Chairman Bahl discussed the removal of sections 3 and 4 of bill.

Bette Grande, North Dakota Resident, answered questions from the committee.

Scott Anderson, Chief Department, answered questions from the committee.

Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB), answered questions from the committee and orally proposed an amendment that would strike sections 3 and 4.

Chairman Bahl adjourned the meeting at 8:28 AM.

*Phillip Jacobs, Committee Clerk By: Leah Kuball*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1368  
2/9/2023

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Bahl called the meeting to order at 10:07 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
- Amendment
- Definition of boycott
- Office of Management and Budget

Representative Bahl proposed an amendment to HB 1368 (Pg. 1 replace line 5 to general government. Strike line 15. Line 16 remove the investment board. In section 1, subsection 3-3 & 4 insert a new subsection 3 that states “Expressive activity direction at specific persons, entities, or Governmental Actions, shall not be considered evident of a boycott of Israel).

Representative Bahl moved to adopt the amendment.

Seconded by Representative Schneider.

### 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	Y
Representative Jorin Johnson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries 13-0-0.

Chairman Bahl adjourned the meeting at 10:22 AM.  
*Phillip Jacobs, Committee Clerk By: Leah Kuball*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1368  
2/9/2023

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Schauer called the meeting to order at 3:11 PM.

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, Mary Schneider. All present

### **Discussion Topics:**

- Committee work

Committee discussion on HB 1368.

Chairman Schauer adjourned the meeting at 3:11 PM.

*Phillip Jacobs, Committee Clerk By: Leah Kuball*



# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

HB 1368  
2/16/2023

Relating to a prohibition on investments and contracts with companies that boycott Israel.

Chairman Schauer called the meeting to order at 9:28 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, Mary Schneider. All present

### Discussion Topics:

- Committee action
- Amendment (23.0802.02004)
- Effective administration
- Language of bill

Chairman Schauer called for a discussion on HB 1368.

Sherry Neas, Office of Management and Budget (OMB), spoke in a neutral position to the proposed amendments to HB 1368.

Representative Bahl moved to adopt amendment to HB 1368. (23.0802.02004)

Seconded by Vice Chairman Satrom.

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

Motion carries: 12-0-1.

Vice Chairman Satrom moves a DO PASS as amended on HB 1368

Seconded by Representative Bahl

Roll call vote:

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

Motion carries: 13-0-0

Bill carrier: Representative Bahl

Chairman Schauer adjourned the meeting at 9:55 AM.

*Phillip Jacobs, Committee Clerk By: Leah Kuball*

DR  
142  
2-16-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1368

Page 1, line 1, replace "21-10" with "54-06"

Page 1, line 2, replace "44-08" with "54-44.4"

Page 1, line 2, remove "a prohibition on investments and"

Page 1, line 3, after "Israel" insert "and a prohibition on investments"

Page 1, remove lines 5 through 23

Page 2, replace lines 1 and 2 with:

"**SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Investments - Prohibition - Israel boycott.**

1. As used in this section "boycott Israel" means engaging in refusals to deal, terminating business activities, or other similar commercial actions intended to limit commercial relations with persons doing business in Israel or in Israeli-controlled territories when the actions are taken:
  - a. In compliance or adherence to calls for a boycott of Israel, other than those boycotts under Pub. L. No. 96-72 [50 U.S.C. 2407(c)]; or
  - b. In a manner that discriminates on the basis of nationality, national origin, or religion.
2. Notwithstanding any other provision of law, the state may not adopt any investment policy that would have the effect of requiring or inducing any person to boycott Israel.
3. For purposes of determining whether a company boycotts Israel, a company statement that it is participating in boycotts of Israel or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, can be considered as one type of evidence that a company is participating in a boycott of Israel when accompanied with the conduct described under subsection 1. An expressive activity directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel."

Page 2, replace lines 3 and 4 with:

"**SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:"

Page 2, line 13, after the second underscored comma insert "or"

Page 2, line 14, remove ", or other unreasonable basis"

Page 2, remove lines 19 through 23

Page 2, line 24, remove "Notwithstanding any other provision of law, a public entity may not enter a contract"

Page 2, remove lines 25 through 30

Page 3, replace lines 1 through 5 with "A state entity that enters a contract that includes a provision prohibiting discrimination shall require the contract to include a provision prohibiting a party to the contract from boycotting Israel for the duration of the contract. Failure to comply with this subsection does not affect the enforceability of a contract."

Renumber accordingly

DR  
2/2  
2-16-23

**REPORT OF STANDING COMMITTEE**

**HB 1368: Government and Veterans Affairs Committee (Rep. Schauer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1368 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "21-10" with "54-06"

Page 1, line 2, replace "44-08" with "54-44.4"

Page 1, line 2, remove "a prohibition on investments and"

Page 1, line 3, after "Israel" insert "and a prohibition on investments"

Page 1, remove lines 5 through 23

Page 2, replace lines 1 and 2 with:

**"SECTION 1.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Investments - Prohibition - Israel boycott.**

1. As used in this section "boycott Israel" means engaging in refusals to deal, terminating business activities, or other similar commercial actions intended to limit commercial relations with persons doing business in Israel or in Israeli-controlled territories when the actions are taken:
  - a. In compliance or adherence to calls for a boycott of Israel, other than those boycotts under Pub. L. No. 96-72 [50 U.S.C. 2407(c)]; or
  - b. In a manner that discriminates on the basis of nationality, national origin, or religion.
2. Notwithstanding any other provision of law, the state may not adopt any investment policy that would have the effect of requiring or inducing any person to boycott Israel.
3. For purposes of determining whether a company boycotts Israel, a company statement that it is participating in boycotts of Israel or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, can be considered as one type of evidence that a company is participating in a boycott of Israel when accompanied with the conduct described under subsection 1. An expressive activity directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel."

Page 2, replace lines 3 and 4 with:

**"SECTION 2.** A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:"

Page 2, line 13, after the second underscored comma insert "or"

Page 2, line 14, remove ", or other unreasonable basis"

Page 2, remove lines 19 through 23

Page 2, line 24, remove "Notwithstanding any other provision of law, a public entity may not enter a contract"

Page 2, remove lines 25 through 30

Page 3, replace lines 1 through 5 with "A state entity that enters a contract that includes a provision prohibiting discrimination shall require the contract to include a provision prohibiting a party to the contract from boycotting Israel for the duration of the contract. Failure to comply with this subsection does not affect the enforceability of a contract."

Renumber accordingly

**2023 SENATE INDUSTRY AND BUSINESS**

**HB 1368**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1368  
3/15/2023

A bill relating to contracts with companies that boycott Israel and a prohibition on investments.
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10:10 AM Chairman Larsen called the hearing to order.

Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### **Discussion Topics:**

- Safe jurisdiction
- Trade with Israel
- Economic protection
- Commercial activity

10:11 AM Representative Karen A. Anderson, District 19, Grafton, North Dakota, introduced the bill and testified in favor of HB 1368. #24918

10:13 AM Bette Grande, President and CEO of Roughrider Policy Center, testified in favor. #25138.

10:23 AM Joseph Sebag, Attorney and Policy Specialist, testified. No written testimony.

10:26 AM Pastor Ron Enget, Pastor of New Life Church, ND State Director of Christians United for Israel, testified in favor. No written testimony.

10:29 Pastor Keith Ritchie, Cornerstone Church, testified in favor. No written testimony.

10:30 AM Janilyn Murtha, Executive Director, Retirement and Investment Office, testified neutral of HB 1368. #25135

10:33 AM Sherry Neas, Director of Central Services Division and Chief Procurement Officer with the Office of Management and Budget, testified neutral on HB 1368. #24946

### **Additional written testimony:**

Rabbi Yonah Grossman #25099

10:38 Am Chairman D. Larsen closed the hearing on HB 1368.

*Brenda Cook, Committee Clerk*



# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1368  
3/21/2023

A bill relating to contracts with companies that boycott Israel and a prohibition on investments.
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9:38 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:**

- Boycott
- First Amendment
- Israel

9:39 AM Sherry Neas, Office of Business and Management, testified neutrally on HB 1368, presented proposed amendments, and answered committee questions. #26824

10:11 AM 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 1368  
3/27/2023

A bill relating to contracts with companies that boycott Israel and a prohibition on investments.
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10:08 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:

- Definition of Company
- Investments

10:14 AM Sherry Neas, Office of Management and Budget, testified neutral on HB 1368, and discussed the amendment to the bill. No written testimony.

10:23 AM Betty Grande, Israel American Coalition for Action, testified on behalf of HB 1368, and explained her view of the amendments to the bill. No written testimony.

10:33 AM Chairman D. Larsen closed the hearing on HB 1368.

10:33 AM Senator Klein moved to adopt amendment LC 23.0802.03001.  
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 passed.

10:33 AM Senator Boehm moved to DO PASS HB 1368 AS AMENDED.  
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 passed.

Senator Boehm will carry the bill.

10:36 AM Chairman D. Larsen closed the meeting.

*Brenda Cook, Committee Clerk*

March 27, 2023

DR  
181  
3-27-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1368

Page 1, line 18, replace "For purposes of determining whether a company boycotts Israel, a" with "If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a"

Page 1, line 19, replace the first "it" with "indicates the company"

Page 1, line 19, replace "boycotts" with "a boycott"

Page 1, line 19, remove "that it"

Page 1, line 19, remove the second "the"

Page 1, line 21, replace "can" with "may"

Page 1, line 21, replace the first "a" with "the"

Page 1, line 22, remove "when accompanied with the conduct described under subsection 1"

Page 1, line 23, after "activity" insert ", alone."

Page 2, line 16, remove "which has more than ten full-time employees"

Page 2, line 19, remove "Failure to comply with this subsection"

Page 2, line 20, replace "does not affect the enforceability of a contract" with "The office of management and budget or purchasing agency may waive the requirement in this subsection if the waiver is in the best interest of the state. A waiver under this subsection may not affect the enforceability of a contract"

Page 2, after line 20, insert:

3. If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a company statement that indicates the company is participating in a boycott of Israel or has taken boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, may be considered as one type of evidence that the company is participating in a boycott of Israel. An expressive activity, alone, directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel.

4. This section does not apply to:

- a. A contract with a value of less than one hundred thousand dollars; or
- b. A contract with a company that has fewer than ten full-time employees."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**HB 1368, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1368 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 18, replace "For purposes of determining whether a company boycotts Israel, a" with "If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a"

Page 1, line 19, replace the first "it" with "indicates the company"

Page 1, line 19, replace "boycotts" with "a boycott"

Page 1, line 19, remove "that it"

Page 1, line 19, remove the second "the"

Page 1, line 21, replace "can" with "may"

Page 1, line 21, replace the first "a" with "the"

Page 1, line 22, remove "when accompanied with the conduct described under subsection 1"

Page 1, line 23, after "activity" insert ". alone."

Page 2, line 16, remove "which has more than ten full-time employees"

Page 2, line 19, remove "Failure to comply with this subsection"

Page 2, line 20, replace "does not affect the enforceability of a contract" with "The office of management and budget or purchasing agency may waive the requirement in this subsection if the waiver is in the best interest of the state. A waiver under this subsection may not affect the enforceability of a contract"

Page 2, after line 20, insert:

"3. If the state receives evidence that a company boycotts Israel, the state shall determine whether the company boycotts Israel. If accompanied by the conduct described under subsection 1, a company statement that indicates the company is participating in a boycott of Israel or has taken boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, may be considered as one type of evidence that the company is participating in a boycott of Israel. An expressive activity, alone, directed at a specific person or a governmental action may not be considered evidence of a boycott of Israel.

4. This section does not apply to:

- a. A contract with a value of less than one hundred thousand dollars; or
- b. A contract with a company that has fewer than ten full-time employees."

Renumber accordingly

**TESTIMONY**

**HB 1368**

# House Industry, Business, and Labor Committee

## House Bill 1368

Andrew Alexis Varvel

Written Testimony

North Dakota State Capitol

Room 327C

January 23, 2023 9:00AM

### Chairman Louser and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

I oppose House Bill 1368. I understand the intentions behind this bill. And I largely agree with those intentions. I get it. I don't like the BDS movement either.

One problem I have with this bill is that I don't think North Dakota should be making its own foreign policy. The United States and the State of Israel share many common values, and Israel's role as a front line state against our common foes should never be forgotten. That said, North Dakota should keep ideological commitments in our public contracting to a minimum. We should not be enforcing loyalty tests onto corporations.

It would send the wrong message for the State of North Dakota to care more about boycotts against the State of Israel than about boycotts against North Dakota itself.

Indeed, such a policy would play straight into the hands of the worst enemies of the State of Israel. It would be a propaganda coup for Jew haters throughout the world, and their often repeated claim that Americans care more about the interests of the State of Israel than their own interests. So, it would be not only in our own interests but also in the long term interests of the State of Israel for us to focus on North Dakota.

The State of California has levied economic sanctions on the State of North Dakota, specifically a ban on state-funded travel by its state employees to North Dakota. This is an economic sanction aimed at North Dakota's tourism sector. It also prevents university professors in California's state-funded universities from visiting North Dakota for academic conferences – and as such, that boycott undermines academic freedom.

Whatever I think of North Dakota's laws, I am outraged that the State of California is casting judgment on our state. North Dakota decriminalized homosexuality before California did. California's very first bond issue was to raise funds to exterminate Indians. Yet that state, with its deep legacy of genocide, casts judgment on us!

Rather than ban North Dakota state employees from visiting California, I think it would be make more sense for North Dakota to levy asymmetrical counter-sanctions on any state which levies sanctions on our state. Rather than ban North Dakota state employees from visiting California, I propose the following alternatives:

1. Create a travel fund for state employees – particularly university professors – from any sanctioning state to visit North Dakota.
2. Prohibit the State Investment Board from investing in corporations either registered in the sanctioning state or administratively headquartered in the sanctioning state.
3. Prohibit the State of North Dakota from entering into contracts with corporations either registered in the sanctioning state or administratively headquartered in the sanctioning state.
4. Prohibit the export of electricity from North Dakota to the sanctioning state.

Although none of these retaliatory actions will accomplish much if the State of North Dakota acts alone against a state with the biggest economy in the United States, these policies would create a strong bite on the California economy if they are levied in concert with dozens of other states – particularly in the American West.

They can follow our lead. And I think they very well may, if we move forward.

California cannot function without electricity imported from other states. And when the State of California levied sanctions on North Dakota to punish our economy for defying its ideological litmus test, I think it crossed the Rubicon of violating the spirit – if not the letter – of the Interstate Commerce Clause of our Constitution. The point of these counter-sanctions is not to cripple California's economy, but rather to remind it to deal with other states as equals rather than as subjects. The State of California not only has no cause to impose economic sanctions on North Dakota, but it is a blatant insult against our state's sovereignty. If California stops its sanctions, we should stop ours.

Thank you, and I welcome questions from the committee.

Andrew Alexis Varvel  
2630 Commons Avenue  
Bismarck, ND 58503  
701-255-6639  
mr.a.alexis.varvel@gmail.com



Testimony in Opposition to  
**House Bill 1368**  
**House Industry, Business  
and Labor Committee**  
January 23, 2023

TESTIMONY OF

**Sherry Neas, Director, Central Services Division**

Good morning, Chairman Louser and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB). OMB opposes HB 1368, as introduced.

HB 1368 would create a new section in NDCC Chapter 44-08 providing that, "...a public entity may not enter a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

This broad language would impact all state agencies, higher education institutions, and political subdivisions. The bill targets companies with more than ten employees and contracts valued at over \$100,000. We estimate this bill would impact thousands of government contracts.

Currently, government contract decisions are based upon an evaluation the quality, price, and timely delivery of what we are buying, and the experience and qualifications of the potential contractor. This bill seeks to materially change the procurement process for all government entities. If this bill were enacted, the primary consideration for contracting decisions would be tied to the political beliefs and opinions expressed by the potential contractor.

This bill mixes politics and procurement. This bill would complicate the procurement process and could adversely impact competition. There may be contractors who provide very important goods, services and information technology that refuse to sign contracts that include this provision, adversely impacting North Dakota government entities. As introduced, this bill provides no flexibility to negotiate this provision which could result in significant time delays and additional legal costs.

OMB opposes HB 1368. While this bill is well-intend, it would complicate procurement and contracting and could have legal implications. I would be happy to answer any questions and would be available to provide any assistance requested by the committee to draft amendments if you choose to amend the bill to address the concerns raised today.

Thank you, Mr. Chairman and committee members. This concludes my testimony.



**House Bill 1368**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony in opposition to HB 1368 before the House Industry, Business, and**  
**Labor Committee**  
**Representative Scott Louser, Chair**  
**Representative Mitch Ostlie, 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 assets under management (AUM) of roughly \$18 billion as of October 31, 2022.

This AUM has 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 1368**

Opposition to HB 1368 should in no way be construed as opposition to prohibiting commercial activities or investment activities with Israel. On the contrary, RIO implements business practices that would not restrict any investment or business activities with Israel 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. Any restriction of its investment or

commercial set of opportunities for non-pecuniary reasons such as restricting investment in Israel 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 even with vendors who support Israel 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 for 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 additional contract provisions with every vendor but also monitor the public statements and private contracts that the vendor may engage in with other clients or providers that have no direct business with RIO or the State of North Dakota. It would be infeasible for RIO to monitor public statements of vendors 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, significantly increasing costs 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 with Israel 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. An additional consequence of impairment to contracting with third parties and a subsequent need to internalize operations at a speed beyond our current phased proposal would have a detrimental impact to the investment program and client fund earnings.



Testimony in Opposition to  
**House Bill 1368**  
**House Government and  
Veterans Affairs Committee**  
February 2, 2023

TESTIMONY OF

**Sherry Neas, Director, Central Services Division**

Good morning, Chairman Schauer and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB). OMB opposes HB 1368, as introduced.

HB 1368 would create a new section in NDCC Chapter 44-08 providing that, "...a public entity may not enter a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

This broad language would impact all state agencies, higher education institutions, and political subdivisions. The bill targets companies with more than ten employees and contracts valued at over \$100,000. We estimate this bill would impact thousands of government contracts.

Currently, government contract decisions are based upon an evaluation the quality, price, and timely delivery of what we are buying, and the experience and qualifications of the potential contractor. This bill seeks to materially change the procurement process for all government entities. If this bill were enacted, the primary consideration for contracting decisions would be tied to the political beliefs and opinions expressed by the potential contractor.

This bill mixes politics and procurement. This bill would complicate the procurement process and could adversely impact competition. There may be contractors who provide very important goods, services and information technology that refuse to sign contracts that include this provision, adversely impacting North Dakota government entities. As introduced, this bill provides no flexibility to negotiate this provision which could result in significant time delays and additional legal costs.

OMB opposes HB 1368. While this bill is well-intend, it would complicate procurement and contracting and could have legal implications. I would be happy to answer any questions and would be available to provide any assistance requested by the committee to draft amendments if you choose to amend the bill to address the concerns raised today.

Thank you, Mr. Chairman and committee members. This concludes my testimony.



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



## COMMITTEES:

Human Services  
Transportation

### Representative Karen A. Anderson

District 19  
14334 70<sup>th</sup> Street NE  
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**House Bill 1368**  
**Pioneer Room**  
**Government and Veterans Affairs**  
**Committee**  
**Representative Schauer Chairman**  
**January 23, 2023**

Mr. Chairman and Members of the Committee,  
For the record ...I'm Rep. Karen Anderson from District 19 up in the NE corner of the state at Grafton.

I bring to you House bill 1368 creating a new section to chapter 21-10 and a new section to chapter 44-08 of the ND century code relating to prohibition on investments and contracts with companies that boycott Israel.

This bill protects the state's financial interest by ensuring that taxpayer funds are shielded from the economic damage and instability caused by parties that engage in discriminatory, national-origin-based boycotts against Israel and its trade partners. It protects the social interest of the states' citizens by ensuring that taxpayer dollars are not used to invest in companies that would simultaneously undermine the state's public policy protections from national origin-based discrimination. The passage of this bill would make clear that our state is a safe jurisdiction where trade with Israel is encouraged.

There are others who will be testifying who are more experts at this than me.

Thank you and please vote favorably on this bill.

What does this bill do?

(1) It protects the financial interests of North Dakota's citizens by ensuring that your state investment funds and contracts with the private sector are shielded from the economic damage and instability caused by parties that engage in discriminatory boycotts against businesses operating in Israel;

(2) It protects the social interests of North Dakota's citizens by ensuring that taxpayer dollars, through the state government, are not party to contracts and investments that undermine North Dakota's public policy protections from discrimination.

Let's be clear, the commercial boycotts that this bill addresses are a form of national-origin discrimination driven by bigotry and hate. Perhaps the best service I can provide here today is to articulate this point in practical terms, so that North Dakotans can better appreciate the public policy protections their state government is wisely considering here today.

Boycotts of entities and individuals of specific countries often amount to ethnic, religious, racial and nationality discrimination, which directly contradicts the public policy of our federal government, the state of North Dakota, and the values of our nation. Ignoring national-origin discrimination practices and boycotts by parties simultaneously doing business with the state would consequently make the state and its citizens de facto partners in these discriminatory practices and/or boycotts. This conflicts with the ethical standards of North Dakota's state government and its citizens. This bill will ensure that the people and government of the state will not unknowingly become party to discriminatory business practices or boycotts that undermine its public policy. Furthermore, this law provides North Dakota's private sector with a clear business rationale for avoiding discriminatory practices and boycotts in the first place.

Now let us consider what this bill does not do. In June of 2022 the United States 8<sup>th</sup> Circuit Court of Appeals decisively ruled that the law North Dakota is creating here *does not* regulate the private conduct of free speech. In a very practically worded opinion worth reading, the Arkansas court clearly explained that these laws properly regulate the conduct of commercial activity.

The pro-Israel community fully supports the First Amendment of the Constitution. In this case, states have created laws that carefully regulate commercial activity, and not the conduct of private speech. Anti-BDS laws are narrowly-tailored

anti-discrimination laws, similar to many other anti-discrimination laws that protect - among other categories of people- women, racial minorities and LGBTQ individuals. All of these laws help highlight the critical distinction between commercial activity and the exercise of free speech, which comes into sharp focus in the course of carrying out the government's obligation to protect various classes of people from discrimination.

In passing North Dakota's law defending the state from anti-Israel commercial boycotts, this legislature is being perfectly clear in its intent, predicating its passage on the recognition that such boycotts are overwhelmingly anti-Semitic in nature and not political. That's why these laws have passed with such a high level of co-sponsorship and bi-partisan support in all instances. It is critical that this point once again be reemphasized for the benefit of the public, and the onlooking courts that may need to further take this point into account.

In conclusion, I congratulate the people and government of North Dakota for taking this stand and passing this bill.

Good afternoon Representatives,

I am honored to submit this testimony today on behalf of our great state and the nation of Israel. It is my privilege to run a technology company based out of Fargo. We strive to be community-driven, client-centric, technology thought leaders that are displaying excellence in our craft of software development. Israel has been imperative on the world stage of thought-leading technology for many decades. Many of these innovations I am sure have been mentioned here today, but I would like to focus on the ones that impact our business's daily lives.

Israel's advancements and innovations have impacted the very technology we employ, daily, to impact the great state of North Dakota and her surrounding regions. Yesterday, while preparing for a podcast episode that will advance our local business, I opened a book on Kindle that the interviewee had written and will be promoting. Within moments, I was able to receive and process the information needed to have information out on the airwaves that will represent technology coming from our own state. I would not have been able to do this without the Java platform that supports Kindle. The transference and speed of information procured are incredible. Who developed this? You guessed it, Israel.

Every morning, I open my laptop and get to work on the Windows XP operating system. When a business comes to us right here in North Dakota for a technical solution to solving a problem, we cover the values that will be most critical to the development of their products. One of these values is always security. Thanks to Israel's thought-leading technology, we can offer several options, one of which is Firewall protection developed by Israel.

Finally, our company is proud to represent one of the many start-ups in our state. Israel has been dubbed a start-up nation. She is a technological powerhouse and boasts more science-related start-ups per capita than any other nation on earth. Her venture capital funding is second only to the United States. The nation of Israel is one that we must support to have access to the most brilliant advancements in the world. We must stand to protect the boycott of Israel in the great state of North Dakota. To this end, I am expressing my support for bill #1368, my support for the protection of a partnership with the nation of technology advancements in our state and in our world, and my support for Israel.

Propelling Into the Future,

Laura Backhaus

President at Codelation

Fargo, ND

# House Government & Veterans Affairs Committee

## House Bill 1368

Andrew Alexis Varvel

### Additional Written Testimony

North Dakota State Capitol

Pioneer Room

February 2, 2023

2:30AM

Chairman Schauer and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck.

My opposition to this bill boils down to two aspects of “North Dakota First”.

First of all, I am philosophically opposed to adding extra red tape to North Dakota's investment portfolios and purchasing contracts.

I also think the BDS movement is better shunned than openly confronted.

Imitation is the highest form of flattery. So, North Dakota should considering imitating Israel's Yozma program to promote high tech venture capital.

Secondly, if we do decide to go down the route of mixing politics and procurement, the State of North Dakota needs to make a point of caring more about boycotts against North Dakota than about boycotts against Israel.

This is not only about us. It is also about Israel. We would do the State of Israel no favors if our state cares more about a boycott against Israel than a boycott against North Dakota. Not putting North Dakota first would play into the worst kind of Jew hating propaganda over the past century and hand Israel's worst enemies a major propaganda victory. America has very important strategic reasons to support the State of Israel; let's keep maudlin sentimentality out of it.

The State of California has already levied economic sanctions on North Dakota.



<https://www.kxnet.com/news/national-news/california-bans-state-funded-travel-to-nd-4-other-states-over-lgbtq-laws/>

<https://www.csustan.edu/financial-support-services-gateway/staff-faculty/banned-states-assembly-bill-1887>

This travel ban has already affected academic conferences in North Dakota.

California's pretext for this embargo may be pro-LGBTQ+ ideology, but it is principally because the State of California is simply casting judgment on other Americans. It hardly matters that the State of California is in no position to cast moral judgment on any other state. North Dakota decriminalized homosexuality before California did, while California's first bond issue was for killing Indians.

The State of California's sanctions are highly offensive. If these sanctions are not rescinded soon, our state should respond with counter-measures to convince the State of California to cease and desist. My recommended asymmetric strategy is outlined in the testimony that I have previously provided to the House Industry, Business & Labor Committee. I am also recommending that the State of North Dakota establish a separate prison for transgender and nonbinary inmates, which would provide an obvious contrast to California's own human rights record.

I oppose House Bill 1368. It has good intentions. And we all know where a road goes when it is paved with good intentions. We should be focusing on boycotts against North Dakota before focusing on any boycotts against a foreign country.

So, please give this bill a DO NOT PASS recommendation.

Thank you. I welcome questions from the committee.

Andrew Alexis Varvel  
2630 Commons Avenue  
Bismarck, ND 58503  
701-255-6639  
mr.a.alexis.varvel@gmail.com

House Government and Veterans Affairs Committee  
Testimony in Favor of HB 1368  
February 2, 2023

Chairman Schauer and Members of the Committee:

My name is Bette Grande and I thank you for the opportunity to present this testimony in favor of HB 1368.

This bill will benefit North Dakota's economy and reinforce our public policy to responsibly use taxpayer funds, while placing only minimal administrative demands upon the state.

First, let me begin by clarifying HB 1368's underlying rationale. The bill will create a basic anti-discrimination law that safeguards state funds from going to parties who would otherwise undermine important public policy protections that many North Dakotans rely upon. As you know, North Dakota regulates against many forms of discrimination and has a duty to invest and spend state funds prudently. HB 1368 keeps the threat of national origin-based bias away from our state's economy by defending our procurement and investment processes against discriminatory, unethical, and politically motivated business partners.

Considering that most states have already enacted laws with language similar to that of HB 1368, passing HB 1368 puts North Dakota in line with common national standards—and thus uniform. HB 1368 does not place any administrative duty upon the state to monitor marketplace activity. Contracting parties subject to the law would only need to submit a basic certification that they do not engage in discriminatory commercial practices as specified in the statute. The state's prohibited investment list will also only require minimal administrative effort to maintain. Officials would only need to undertake inquiries after being notified of particular cases where there is reason to believe parties may be participating in commercial discrimination prohibited by the statute.

As I mentioned, 35 American states have already adopted such anti-discrimination laws with overwhelming success demonstrated in their implementation and enforcement. In passing HB 1368, North Dakota will stand with 35 other states and protect public money from going to parties who choose to operate their businesses in ways that our against vital states interests.

Any business dealings the state forgoes with this bill are minimal compared with the message we send that our state is a safe place where trade with Israel is protected from outside interference by discriminating parties.

Israel is a strong and growing trade partner with benefits to our economy and the quality of life of North Dakotans in health sciences, agriculture and water, energy, all areas of tech R&D, and more. HB 1368 shows our commitment to maintain and grow this relationship.

I am happy to address any questions that you have for me.

A handwritten signature in cursive script that reads "Bette Grande". The signature is written in black ink and is positioned above the printed name.

Bette Grande

**House Bill 1368**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony in opposition to HB 1368 before the House Industry, Business, and**  
**Labor Committee**  
**Representative Scott Louser, Chair**  
**Representative Mitch Ostlie, 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 assets under management (AUM) of roughly \$18 billion as of October 31, 2022.

This AUM has 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 1368**

Opposition to HB 1368 should in no way be construed as opposition to prohibiting commercial activities or investment activities with Israel. On the contrary, RIO implements business practices that would not restrict any investment or business activities with Israel 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. Any restriction of its investment or

commercial set of opportunities for non-pecuniary reasons such as restricting investment in Israel 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 even with vendors who support Israel 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 for 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 additional contract provisions with every vendor but also monitor the public statements and private contracts that the vendor may engage in with other clients or providers that have no direct business with RIO or the State of North Dakota. It would be infeasible for RIO to monitor public statements of vendors 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, significantly increasing costs 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 with Israel 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. An additional consequence of impairment to contracting with third parties and a subsequent need to internalize operations at a speed beyond our current phased proposal would have a detrimental impact to the investment program and client fund earnings.



## NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



### COMMITTEES:

Human Services  
Transportation

**Representative Karen A. Anderson.**  
**District 19.**

**14334 70<sup>th</sup> St. NE**  
**Grafton, ND 58237-9138**  
**Cell-701-520-0559**  
*kanderson@ndlegis.gov*

### **HB1368**

Mr. Chairman and members of the committee.

For the record I'm Rep. Karen A. Anderson from District 19 up in the NE corner of the state at Grafton.

Today I bring to you House Bill 1368 creating a new section in the Century Code relating to prohibition on investments and contracts with companies that boycott Israel.

This bill protects the states financial interest by ensuring that taxpayer funds are shielded by economic damage and instability caused by parties that engage in discriminatory, national origin-based boycotts against Israel and its trade partners. It protects the social interest of the states by ensuring that taxpayer dollars are not used to invest in companies that would simultaneously undermine the states public policy protections from origin-based discrimination.

The passage of this bill would make clear our state is a safe jurisdiction where trade with Israel is encouraged.

A subcommittee was formed on this bill to encourage that it would be the best it can be for the state of ND. The subcommittee had all parties including OMB and RIO at the table and the final draft you see has been thoroughly vetted by all agencies.

By passing this bill it would put ND in line with 35 other states that have acted and passed similar legislation. Passing this legislation could bolster and enhance our contracts and trade, as this has been the case with other states.

1368 is not a political or religious statement but it is about a business relationship, it's about patriotism and it is about doing business with an ally and business partner.

This bill has no fiscal note.

Mr. Chairman I urge a Do Pass from this committee.

Thank you.

TESTIMONY OF

**Sherry Neas, Division Director, OMB Central Services Division**

Good morning, Senator Larsen, and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB). OMB is neutral on the engrossed HB 1368.

The engrossed bill was the result of collaboration with the House subcommittee, the sponsor, bill supporters and state agencies opposed to the bill as introduced.

The OMB testimony only pertains to section 2 of the engrossed bill.

The original bill created a new section in N.D.C.C. Chapter 44-08 providing that, "...a public entity may not enter a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not engaged in, and agrees for the duration of the contract to not engage in, a boycott of goods or services from Israel."

The original bill was very broad, impacting all levels of North Dakota government conducting multiple types of contracting activities. Opposition to the original bill language cited potential legal implications and complication of the procurement and contract negotiations.

The engrossed bill addresses those concerns.

Section 2, on page 2, narrows the scope considerably by creating a new section in the state purchasing chapter of law, N.D.C.C. 54-44.4. This chapter applies to state agencies and higher education institutions when procuring goods, services, printing, and information technology. The bill no longer impacts local government contracts.

The engrossed bill removes the requirement to have contractors provide a written certification that they are not boycotting goods and services from Israel.

Page 2, lines 17-20: The engrossed bill requires that if a state entity enters a contract that includes a nondiscrimination provision, that contract will include a provision "prohibiting the party to the contract from boycotting Israel for the duration of the contract." Also added was a new sentence, "Failure to comply with this subsection does not affect the enforceability of a contract."

Section 2, Page 2, Lines 13-16: This section does contain a definition of "Company" that likely inadvertently remained from the original bill. The word "company" is no longer used in Section 2, except in the definition of company.

OMB is neutral on the engrossed bill. OMB has been focused on simplification of procurement and contracting. We greatly appreciate the good working relationship between the sponsors and supporters to understand and address the concerns raised about the original bill. The engrossed bill addresses those concerns.

If this committee and the legislative body vote to pass this legislation, OMB will work with the Office of the Attorney General, North Dakota University System, and all state agencies and institutions to implement.

Thank you, Mr. Chairman and committee members. This concludes my testimony. I would be happy to answer any questions.



By the Grace of G-d

### **Testimony in support of HB 1368 by Rabbi Yonah Grossman of Fargo, ND**

Regarding the initiative to come together in support of Israel, the first thing that comes to mind is a teaching often quoted by the greatest Jewish leader of our generation, Rabbi Menachem Mendel Schneerson, also known as “The Rebbe”.

By divine providence, we are approaching the day that marks the Rebbe’s 121st birthday, a day that has been proclaimed annually in the **State of North Dakota** and around the world as “Education and Sharing Day” recognizing the Rebbe’s promotion of the moral and ethical component of education.

When the conversation would come up regarding Israel's right to exist, the Rebbe pointed out that the truth is the simplest and most effective argument. And the truth is that the foundation for Israel's right to exist is right at the beginning of the Bible.

You are likely familiar with the first verse of the bible: In the beginning, G-d created the heavens and the earth.

Every Jewish child that studies the Bible is introduced to Rashi, a medieval French rabbi and author of a commentary on the Hebrew Bible that is studied to this day by scholars and students alike, and gives its students a basic understanding of scripture.

Although the Hebrew Bible, which we call the Torah, is rich with historical narrative, this is not its primary function.

The Torah is G-d’s instruction manual. From the 10 commandments given on Mt Sinai, to the many other laws that give man the ability to know what G-d wants from us.

Rashi - the medieval commentator, asks: Wouldn’t it make more sense for a book of law to begin with the law? Perhaps start with the 10 Commandments, or the laws the children of Israel were given at the exodus from Egypt. Why does the Torah begin with the story of creation?

The commentator proceeds to answer that the reason the Bible starts with the story of creation is to answer those who claim that the Israelites stole the land of Israel from the Canaanite nations.

G-d **created** the earth, and he is the **owner** of the earth.

The same G-d made a covenant with Abraham that he would give the land of Israel to his descendants, the Jewish people.

G-d doesn't change, and his words don't change.

So Rashi teaches - that the placement of the entire book of Genesis and half of Exodus is to express that G-d, as creator of the universe, has the right to give the **land** of Israel to the **Children** of Israel.

Thank you therefore for your commitment to defend truth, helping protect the safety of Israel, and upholding G-d's promise to Abraham.

Surely G-d will keep another promise that he made to Abraham, "I will bless those who bless you", and will protect and support you and your families for the rest of your life with blessings of good health, sustenance, and success in all your endeavors.

**House Bill 1368**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony in support of the Engrossed HB 1368 before the Senate Industry**  
**and Business Committee**  
**Senator Doug Larsen, Chair**  
**Senator Greg Kessel, Vice Chair**

**Janilyn Murtha, JD, MPAP – Executive Director**

**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 assets under management (AUM) of roughly \$19.2 billion as of January 31, 2023.

This AUM has 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 H.B. 1368**

RIO already implements business practices that would not restrict any investment or business activities with Israel 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. Any restriction of its investment or commercial set of opportunities for non-pecuniary reasons such as restricting investment in Israel is already prohibited by policy and law.

RIO opposed the original version of H.B. 1368 due to concerns related to the potential conflict this bill may have created 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 even with vendors who support Israel because of the cost the bill imposes on the vendor.

Engrossed H.B. 1368 incorporates amendments that eliminated these concerns and therefore the agency supports the amendments to H.B. 1368 while recognizing that the public policy reflected is decision for the legislature.

### **III. Summary**

Pursuant to both North Dakota law and SIB policy, RIO already implements business practices that would not restrict any investment or business activities with Israel for non-pecuniary reasons. Engrossed H.B. 1368 incorporates amendments that eliminated initial concerns with implementation. The agency supports the amendments made to H.B. 1368 while recognizing that the public policy reflected is a decision for the legislature.

*Complaining about a  
problem without proposing a  
solution is called whining.*

*-Teddy Roosevelt*



**Bette B. Grande**  
*President & CEO*

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Senate Business and Labor Committee  
Testimony on of HB 1368  
March 15, 2023

Chairman Larsen and Members of the Committee:

My name is Bette Grande and I thank you for the opportunity to present this testimony in favor of HB 1368.

This bill will benefit North Dakota's economy and reinforce our public policy to responsibly use taxpayer funds, while placing only minimal administrative demands upon the state.

In the other chamber a good deal of work on amendments to assure the bill was workable too place but some of the language was left off and I am offering that important language to you now.

First, let me begin by clarifying HB 1368's underlying rationale. The bill will create a basic anti-discrimination law that safeguards state funds from going to parties who would otherwise undermine important public policy protections that many North Dakotans rely upon. As you know, North Dakota regulates against many forms of discrimination and has a duty to invest and spend state funds prudently. HB 1368 keeps the threat of national origin-based bias away from our state's economy by defending our procurement and investment processes against discriminatory, unethical, and politically motivated business partners.

Contracting parties subject to the law would only need to submit a basic certification that they do not engage in discriminatory commercial practices as specified in the statute. Officials would only need to undertake inquiries after being notified of particular cases where there is reason to believe parties may be participating in commercial discrimination prohibited by the statute.

Thirty-five states have already adopted such anti-discrimination laws with overwhelming success demonstrated in their implementation and enforcement.

In passing HB 1368, North Dakota will stand with these other states and protect public money from going to parties who choose to operate their businesses in ways that are against vital states interests.

Israel based companies are on the cutting edge in every major sector of our economy, with 85 companies listed on the New York Stock Exchange, and the third-highest number of companies listed on the NASDAQ exchange after the USA and China. This bill protects North Dakota's right to free trade with Israel.

Israel is a strong and growing trade partner with benefits to our economy and the quality of life of North Dakotans in health sciences, agriculture and water, energy, all areas of tech R&D, and more. HB 1368 shows our commitment to maintain and grow this relationship.

I am happy to address any questions that you have for me.

A handwritten signature in cursive script that reads "Bette Grande". The signature is written in black ink and is positioned above the printed name.

Bette Grande

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT  
ENGROSSED HOUSE BILL NO. 1368

Page 1, remove lines 18-24, and replace with:

“3. The state shall determine whether a company boycotts Israel in response to the receipt of evidence of such activity. A company statement that it is participating in boycotts of Israel or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, can be considered as one type of evidence that a company is participating in a boycott of Israel when accompanied with the conduct described under subsection 1. Expressive activity alone, directed at a specific person or a government action, may not be considered evidence of a boycott of Israel.”

Page 2, Line 16, remove: “which has more than ten full-time employees”

Page 2, Line 19, replace: “Failure to comply with this subsection does not affect the enforceability of a contract.” With: “The office of management and budget or purchasing agency may waive this requirement when determined to be in the best interest of the state, and such waiver shall not affect the enforceability of the contract.”

Page 2, after line 20 insert:

“3. The state shall determine whether a company boycotts Israel in response to the receipt of evidence of such activity. A company statement that it is participating in boycotts of Israel or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of Israel, can be considered as one type of evidence that a company is participating in a boycott of Israel when accompanied with the conduct described under subsection 1. Expressive activity alone, directed at a specific person or a government action, may not be considered evidence of a boycott of Israel.

4. This section does not apply to:

- a. A contract with a value of less than one hundred thousand dollars, and
- b. A contract with a company that has fewer than ten full-time employees.

5. Nothing in this section shall be construed in a manner that diminishes or infringes upon a right protected under the constitution of this state or the first amendment to the constitution of the United States."

Renumber accordingly