

SENATE BILL NO. 2335

Introduced by

Senators Grindberg, Espegard, Holmberg

1 A BILL for an Act to provide for a seed capital investment board; and to amend and reenact
2 sections 21-10-02, 21-10-02.1, 21-10-07, 54-52-14.3, and 54-52.5-03, relating to investment of
3 public pension funds in alternative and venture capital investments.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 21-10-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **21-10-02. Board - Powers and duties.**

- 8 1. The board is charged with the investment of the funds enumerated in section
9 21-10-06. It shall approve general types of securities for investment by these
10 funds and set policies and procedures regulating securities transactions on behalf
11 of the various funds.
- 12 2. Representatives of the funds enumerated in section 21-10-06 may make
13 recommendations to the board in regard to investments.
- 14 3. The board or its designated agents must be custodian of securities purchased on
15 behalf of funds under the management of the board.
- 16 4. The board may appoint an investment director or advisory service, or both, who
17 must be experienced in, and hold considerable knowledge of, the field of
18 investments. The investment director or advisory service shall serve at the
19 pleasure of the board. The investment director or advisory service may be an
20 individual, corporation, limited liability company, partnership, or any legal entity
21 which meets the qualifications established herein.
- 22 5. The board may authorize the investment director to lend securities held by the
23 funds. These securities must be collateralized as directed by the board.

- 1 6. The board may create investment fund pools in which the funds identified in
2 section 21-10-06 may invest.
- 3 7. The board shall report annually to the governor and the legislative assembly on the
4 total number and total amount of funds that are invested in North Dakota
5 companies. This report must include an explanation of what investment could be
6 secured in North Dakota companies and why more North Dakota investments
7 could not be secured that met investment standards as a way of determining what
8 can be done to increase the number of eligible investments. This report must
9 include what special efforts the board made to explore investment of at least five
10 percent of the pension funds under management of the board within the state.

11 **SECTION 2. AMENDMENT.** Section 21-10-02.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **21-10-02.1. Board - Policies on investment goals and objectives and asset**
14 **allocation.**

- 15 1. ~~The~~ Except to the extent necessary to comply with subsection 3, the governing
16 body of each fund enumerated in section 21-10-06 shall establish policies on
17 investment goals and objectives and asset allocation for each respective fund. The
18 policies must provide for:
- 19 a. The definition and assignment of duties and responsibilities to advisory
20 services and persons employed by the board.
- 21 b. Acceptable rates of return, liquidity, and levels of risk.
- 22 c. Long-range asset allocation goals.
- 23 d. Guidelines for the selection and redemption of investments.
- 24 e. Investment diversification, investment quality, qualification of advisory
25 services, and amounts to be invested by advisory services.
- 26 f. The type of reports and procedures to be used in evaluating performance.
- 27 2. ~~The~~ Except to the extent necessary to comply with subsection 3, the asset
28 allocation for each fund, to be effective, must be approved by the governing body
29 of that fund and the state investment board by January first of each year. If the
30 asset allocation is not approved, the previous asset allocation remains effective.
- 31 The governing body of each fund shall use the staff and consultants of the

retirement and investment office in developing asset allocation and investment policies.

3. The board shall attempt to invest five percent of the assets of the teachers' fund for retirement and the public employees retirement system in North Dakota alternative and venture capital investments. As used in this section, alternative and venture capital investments include seed and early-stage investments. The board shall allocate one-quarter of one percent of the five percent allocated to North Dakota alternative and venture capital investments for the fund of funds. The fund of fund must be invested by the seed capital investment board in early-stage capital funds. The North Dakota fund of funds may be leveraged with private investment as well as utilize existing programs such as the renaissance fund, development fund, Lewis and Clark small business investment company, and the seed capital tax credit.
4. The board shall give preference to a North Dakota-based fund when venture firms, consultants, or fiduciaries are selected by the board.

SECTION 3. AMENDMENT. Section 21-10-07 of the North Dakota Century Code is amended and reenacted as follows:

21-10-07. Legal investments. The state investment board shall apply the prudent investor rule in investing for funds under its supervision. The "prudent investor rule" means that in making investments the fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. ~~The~~ Except to the extent necessary to comply with sections 2 and 6 of this Act, the retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives.

SECTION 4. AMENDMENT. Section 54-52-14.3 of the North Dakota Century Code is amended and reenacted as follows:

54-52-14.3. Public employee retirement funds - Use and investment. Any provision of law relating to the use and investment of public employee retirement funds must be deemed

1 a part of the employment contracts of the employees participating in any public employee
2 retirement system. ~~All~~ Except to the extent necessary to comply with sections 2 and 6 of this
3 Act, all moneys from any source paid into any public employee retirement system fund created
4 by the laws of this state must be used and invested only for the exclusive benefit of the
5 members, retirees, and beneficiaries of that system, including the payment of system
6 administrative costs.

7 **SECTION 5. AMENDMENT.** Section 54-52.5-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **54-52.5-03. State retirement and investment fund - Cost of operation of agency -**
10 **Cost of operation of seed capital investment board.** A special fund known as the "state
11 retirement and investment fund" is established for the purpose of defraying administrative
12 expenses of the state retirement and investment office and the seed capital investment board.
13 The actual amount of administrative expenses incurred by the state retirement and investment
14 office and the seed capital investment board must be paid from the respective funds listed
15 under section 21-10-06 and are hereby appropriated to the state retirement and investment
16 fund in proportion to the services rendered for each fund as estimated by the state investment
17 board. The amount necessary to pay all administrative expenses of the state retirement and
18 investment office and the seed capital investment board must be paid from the state retirement
19 and investment fund in accordance with the agency's appropriation authority. Any interest
20 income earned on the state retirement and investment fund must be credited to the fund.

21 **SECTION 6. Seed capital investment board - Members - Duties - Rules.**

- 22 1. The seed capital investment board consists of:
23 a. The president of the Bank of North Dakota;
24 b. The director of the department of commerce; and
25 c. Three members appointed by the governor.
26 2. The three members appointed by the governor shall serve staggered six-year
27 terms as the governor directs. The governor shall fill any vacancy for the
28 remaining portion of an unexpired term. A member is eligible for reappointment.
29 The three members appointed by the governor must be recognized experts in seed
30 and venture capital investment but who are not interested in being a fund manager.

- 1 3. Members of the board appointed by the governor are entitled to receive
2 compensation for attendance at board meetings and for each day spent in
3 performance of their duties at the rate provided for members of the legislative
4 assembly for attendance at interim committee meetings of the legislative council
5 and are entitled to reimbursement for expenses incurred in attending the meetings
6 in the amount provided by law for state officers.
- 7 4. The board shall elect a chairman from among its members annually.
- 8 5. The board shall invest, monitor, and review the fund of funds established under
9 section 21-10-02.1. The board shall:
 - 10 a. Facilitate public and private investment in a series of state, regional, or
11 national seed and venture capital funds willing to invest in North Dakota seed
12 and venture capital opportunities. Funds selected for investment may focus
13 on economic or industry sectors targeted for development by the state. To
14 the extent feasible, priority must be given to state-based funds before
15 consideration of regional or national funds. In selecting funds for investment,
16 the board shall seek to maximize benefits which inure to seed and venture
17 capital opportunities in this state; and
 - 18 b. Facilitate the creation of a small business investment company to maximize
19 the leverage from available federal and private sources for investment in seed
20 and venture stage companies in this state.
- 21 3. Coordinate with other existing publicly created or supported seed venture
22 investment funds to gain the highest investment leverage with the lowest possible
23 administrative costs for the state.
- 24 4. Report annually to the governor and the legislative assembly on investments made
25 pursuant to this section, the current and anticipated value of such investments, the
26 current and anticipated value of any tax credits given, and the estimated and
27 current and anticipated impact these investments have on the state.
- 28 5. The board may select and appoint, based on criteria established by the board, an
29 executive director to conduct the affairs of the board.

- 1 6. The board, to the extent feasible, shall select fund managers, investment advisers,
2 or other consultants through a competitive selection process and based on criteria
3 established by the board.
- 4 7. The board shall adopt procedures, policies, and rules to carry out the purposes of
5 this section and to administer the programs and business of the board.