



February 6, 2023

Testimony of Brent Bennett, Ph.D.  
Policy Director, Life:Powered  
Texas Public Policy Foundation  
Before the  
North Dakota House  
Industry, Business and Labor Committee

Chairman Louser and Members of the Committee,

Thank you for the opportunity to testify in support of HB 1469 and to share some of our experience developing and implementing similar laws in Texas. I hope to convey to you both the importance of passing this legislation and to provide some guidance as to how North Dakota can implement this legislation in an effective manner that will benefit North Dakota taxpayers and pensioners.

At this point, Texas is in the process of implementing two elements that are contained in HB 1469: divesting in part from investments with firms that are deemed to be boycotting energy companies and reforming proxy voting practices. The divestment element is a result of Senate Bill 13 from 2021 and follows the creation of a restricted company list similar to what is required by Section 2 of this bill. I say “divesting in part” because the bill provides wide latitude not to move funds if it cannot be done in an economically practicable manner or if doing so conflicts with other statutory duties.

To date, West Virginia has also created a similar list, and Kentucky and Oklahoma are in the process of doing so. The estimated cost to create the list given by the fiscal note for HB 1469 seems in line with the experience of other states, but North Dakota may be able to lean on that experience to achieve greater efficiency. The policy goals of this bill can be accomplished without a restricted company list, as exemplified by Florida and a few other states. However, Texas and these other states have determined that the clarity of the list and the public awareness of the activities of firms that are boycotting and sanctioning important industries is worth the effort to create the list.

Certainly, it would seem unwise, as suggested by the fiscal note, to implement this legislation such that 100% of the activities of the State Investment Board would be internalized, given its existing practice of using outside managers. Nothing in this legislation requires that change, and the application of this fiduciary standard should only apply to investment managers that are already fiduciaries under existing federal and state law. It should not burden entities such as private equity firms that are not subject to existing fiduciary requirements or force the SIB to avoid external managers.

Texas pensions are moving money away from some investment managers, but in the vast majority of cases, they are not changing the balance of internal versus external management. Even companies that are on the Texas restricted list are not summarily excluded because in some cases switching managers

would be too expensive or simply impossible. [Florida has moved \\$2 billion](#) out of BlackRock funds while maintaining more than \$12 billion with the firm and ensuring those funds are managed according to a stricter fiduciary standard, particularly with regard to how their shares are voted in corporate elections, which is known as proxy voting. If it is not clear that the existing language in HB 1469 allows for this level of discretion, perhaps an explicit opt out clause could be added that would allow for it.

In addition to the fiduciary standards that this bill establishes, the proxy voting reforms in Section 1 are absolutely critical. Shareholder resolutions requiring extra reporting and changes in corporate policies surrounding many environmental and social issues are becoming increasingly common and are being used to push progressive political agendas onto corporations. These practices must be monitored and countered by our states who do not want to espouse the values or the activities of these activist investors and their supporters.

Our examination of the [proxy voting](#) of Texas's two largest pensions found that they were frequently voting their shares in favor of resolutions to sanction companies for not reducing greenhouse gas emissions, not providing support for employees who wanted to cross state lines to receive abortions, or not adopting board diversity requirements. Subsequent investigation by the Texas Senate State Affairs Committee has revealed that the pensions were not properly monitoring the application of their policies by their proxy advisor, Institutional Shareholder Services, and ISS was voting their shares improperly. It's not that the pensions had bad policies or that they themselves wanted to vote for these activist resolutions. Their votes were being misapplied, and they were not exercising proper oversight.

I'll reiterate from my testimony on HB 1429 that market competition is the antidote to the collusive action through which progressive activists seek to impose. Our states will either be swept up in these investing practices or not, and our states must actively be on guard given the propensity of external managers and advisors to adopt these practices when they can benefit financially or virtue signal to their own clients and investors. States collectively control more than [\\$4 trillion in pension assets](#) and play an important role in setting trends within the investment industry. By adopting these reforms, North Dakota will provide important protections for its pensioners, taxpayers, and industries, and it will send an important message to its citizens about sound investment practices that will reverberate across the country as more states adopt a strong stance against the encroachment of woke capitalism.

Sincerely,

Brent Bennett  
Policy Director, Life:Powered  
Texas Public Policy Foundation