

House Bill 1469
North Dakota Retirement and Investment Office (RIO) on behalf of the
State Investment Board
Testimony in opposition to HB 1469 before the House Industry, Business, and
Labor Committee
Representative Scott Louser, Chair
Representative Mitch Ostlie, Vice Chair

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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 1469

Opposition to HB 1469 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.

A. Non-uniform regulatory requirements

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. Specifically, the proposal expands the obligations of a fiduciary in way that may conflict with federal law or regulatory requirements.

B. Conflicts within the proposal

A conflict in law and implementation exists within the proposed legislation itself. Section 1 subsection 2(c) requires that the state not consider non-pecuniary factors when making an investment. Whereas Section 2 requires the state to consider non-pecuniary factors when determining the eligibility of vendors to provide investment services.

C. Infeasibility of administration

Section 2 lacks clarity regarding the scope of the SIB's review and the selection criteria of financial institutions prohibited from offering investment services to the state. The SIB is not a regulatory agency and therefore does not have an identified set of financial institutions under review. We question whether the proposal requires that RIO identify current vendors and only place vendors on a list if issues arise while in the process of vendor selection? Or if the provision requires a more expansive review such that the SIB start to research and evaluate financial institutions with whom the SIB or state currently does no business? Further, the creation and maintenance of the list implies an obligation to 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. 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 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 or the agriculture sectors for non-pecuniary reasons. The proposal, though well intentioned imposes non-uniform regulatory requirements on vendors that may conflict with federal law; imposes contradictory conduct requirements between sections 1 and 2; and may be infeasible to administer by significantly increasing 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.