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Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1469

Introduced by

Representatives Novak, Dyk, J. Olson, S. Olson, Porter, Schauer, Weisz

Senators Bekkedahl, Rust

1 A BILL for an Act to create and enact a new section to chapter 21-06 and two new subsections
2 to section 21-10-02 of the North Dakota Century Code, relating to the investment and
3 management of public funds.

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

5 **SECTION 1.** A new section to chapter 21-06 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Non-pecuniary factors - Public funds - Investment.**

8 1. For purposes of this section:

9 a. "Fiduciary" means a person that:

10 (1) Exercises any discretionary authority or discretionary control regarding the
11 management of a plan or exercises any authority or control regarding
12 management or disposition of a plan's assets;

13 (2) Renders investment advice for a fee or other compensation, directly or
14 indirectly, with respect to any funds or other property of a plan or has the
15 authority or responsibility to render investment advice; or

16 (3) Has discretionary authority or discretionary responsibility in administering a
17 plan.

18 b. "Non-pecuniary factor" means any factor intended to further or promote a
19 political, social, or other nontraditional goal or standard without regard to the
20 investment objectives and funding policy of a plan.

21 c. "Pecuniary factor" means a factor that has a material effect on the financial risk or
22 the financial return of an investment based on appropriate investment horizons
23 consistent with the investment objectives and funding policy of a plan.

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- 1 d. "Plan" means any plan, fund, or program established or maintained by the state
2 or a political subdivision, including any public university, to do any of the
3 following:
- 4 (1) Provide retirement income or other retirement benefits to employees or
5 former employees.
- 6 (2) Defer income by employees for a period of time extending to the termination
7 of covered employment or beyond.
- 8 (3) Invest taxpayer funds for any purpose.
- 9 2. Notwithstanding section 21-10-07, a fiduciary:
- 10 a. Shall discharge the fiduciary's duties with respect to a plan in accordance with
11 the best interests of the participants and beneficiaries of the plan for the
12 exclusive purpose of providing pecuniary benefit to the participants and
13 beneficiaries, defraying reasonable expenses of administering the plan, and
14 earning a return on the investment.
- 15 b. Shall consider pecuniary factors when evaluating an investment or discharging its
16 duties with respect to a plan.
- 17 c. May not consider any non-pecuniary or other factors when evaluating an
18 investment or discharging its duties with respect to a plan.
- 19 3. Unless a person follows guidelines consistent with the governmental entity's obligation
20 to act on pecuniary factors, the governmental entity that establishes, maintains, or
21 manages a plan may not grant proxy voting authority to a person that is not part of the
22 governmental entity.
- 23 4. The shares held directly or indirectly by a plan may be voted only in the pecuniary
24 interest of the plan. Notwithstanding section 21-10-07, the share may not be voted to
25 further non-pecuniary, environmental, social, political, ideological, or other benefits or
26 goals and plan assets may not be entrusted to any fiduciary that has a practice of or
27 commits to engaging with companies or voting shares based upon non-pecuniary
28 factors.
- 29 5. Notwithstanding section 21-01-07, a fiduciary may not adopt a practice of following the
30 recommendations of a proxy advisory firm or other service provider unless the proxy

1 advisory firm's or the service provider's voting guidelines are consistent with the
2 fiduciary's obligation to act solely based on pecuniary factors.

3 **SECTION 2.** Two new subsections to section 21-10-02 of the North Dakota Century Code
4 are created and enacted as follows:

5 The board shall establish a list of financial institutions not eligible to receive
6 investments of state funds based on the financial institution's intended furtherance or
7 promotion of a political, social, environmental, ideological, or other nontraditional goal
8 or standard that conflicts with the state's energy or agriculture industries or the state's
9 support of the manufacture, import, distribution, marketing, advertising, sale, or lawful
10 use of firearms, ammunition, or components, parts, and accessories of firearms or
11 ammunition.

12
13 The board may enter an environmental and social governance compact with other
14 states on behalf of the state to establish and enact fiduciary standards.

Does not apply if the government entity determines and documents the goods or services are not otherwise available on a commercially reasonable terms or is inconsistent with the governmental entity's constitutional or statutory duties.

