

**House Bill 1319**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony before House Finance and Taxation**  
**Representative Craig Headland, Chair**

**Jodi Smith – Interim Executive Director**  
**Scott Anderson, CFA – Chief Investment Officer**

**I. RIO Statutory Authority and Responsibilities**

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 SIB has the statutory responsibility to administer the investment program for 31 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 23 other non-pension funds for a total of 31 separate client funds with an overall fund value of roughly \$23 billion as of October 31, 2024.

**II. Legacy Fund Overview**

The North Dakota Legacy Fund was established in 2010 following the passage of a constitutional amendment approved by North Dakota voters. The fund was created to ensure that a portion of the state’s tax revenues from oil and gas production would be set aside for the long-term benefit of North Dakotans, securing financial stability for future generations.

The Legacy Fund operates as a sovereign wealth fund, receiving 30% of all oil and gas tax revenues collected in the state. Since its inception, the fund has grown significantly and had an asset value of \$11.49 billion as of October 31, 2024. It serves as a strategic financial resource for the state, generating investment earnings that can be utilized for various purposes, including legislative appropriations, infrastructure investments, economic diversification initiatives, and maintaining financial reserves to mitigate economic downturns.

During the 2023-2025 biennium, the Legacy Fund generated \$601 million in earnings, demonstrating its importance in supplementing the state's general fund and supporting long-term financial sustainability. The SIB governs investment decisions regarding the fund, ensuring that assets are allocated prudently across diverse asset classes to maximize long-term returns while managing risk.

### **III. Opposition Testimony relating to H.B. 1319**

HB 1319 requires the establishment of a Legacy Fund disclosure website. RIO and SIB are in full support of establishing a website dedicated to the Legacy Fund.

While RIO and SIB fully support transparency and accountability in public investments, there are concerns this bill, as currently drafted, would introduce substantial commercial and contractual conflicts, ultimately jeopardizing the investment strategies and returns that the SIB is responsible for managing on behalf of North Dakota citizens. Thus, we are testifying in opposition to HB 1319.

Per RIO's interpretation of NDCC 44-04-18.4, we are unable to provide the following as listed in HB 1319: The name of the company, geography, amount invested by a fund, derivative, or other financial mechanism grouped by manager. The weights of holdings by manager are proprietary. RIO can deliver the name of a company, geography, amount invested by a fund, derivative, or other financial mechanism aggregated across managers where the underlying holdings are available and not part of an indirect fund such as a public market commingled fund, a private market commingled fund or an index fund. The weights and holdings in a public market commingled fund, index fund, a private market commingled are proprietary information.

House Bill 1319 mandates the public disclosure of all companies, funds, derivatives, and other financial mechanisms in which the Legacy Fund is invested. While transparency is a priority, such a sweeping disclosure requirement could result in unintended conflicts with contractual agreements and industry standards.

Investment managers and financial institutions routinely include confidentiality provisions in their agreements with institutional investors like the SIB. These provisions protect proprietary investment strategies, pricing structures, and competitive market positions. Publicly disclosing all investment holdings by manager or index, as required by this bill, would violate these agreements, North Dakota law and potentially limit SIB's ability to access top-tier investment opportunities and negotiate favorable terms.

Furthermore, private market investments—including private equity, venture capital, and real estate funds—frequently restrict public disclosures to maintain market integrity. If RIO is forced to disclose these investments, fund managers may refuse to do business with North Dakota's Legacy Fund or impose additional fees and conditions that could reduce returns.

### **Potential Legal and Regulatory Challenges**

Mandating the disclosure of all investments, including private and alternative asset holdings, raises potential legal and regulatory concerns. RIO operates in compliance with federal and state regulations governing fiduciary investment management, including the

Uniform Prudent Investor Act. Under these guidelines, fiduciaries must act in the best financial interest of beneficiaries, ensuring that investment decisions are made without undue external influence or constraints that could impair financial performance.

If enacted as written, HB 1319 would place RIO in a position where it must comply with North Dakota state law and fail to adhere to industry best practices and federal fiduciary standards. This conflict could expose the state to legal challenges from investment managers, beneficiaries, or regulatory bodies, creating unnecessary liabilities. An Attorney General Opinion has been requested regarding the holdings information RIO is able to disclose and it is anticipated to be issued in the near future.

#### **IV. Summary**

RIO and the SIB share the Legislature's commitment to responsible and transparent governance of the Legacy Fund. However, House Bill 1319, as currently drafted, risks undermining the very investment strategies that have allowed the fund to grow and generate substantial earnings for North Dakota. The proposed public disclosure requirements would create contractual conflicts, limit investment opportunities, and expose the fund's strategies to undue market risks.

For these reasons, we respectfully urge this committee to oppose House Bill 1319 in its current form.

RIO and the SIB are recommending HB 1319 be amended to the following:

**SECTION 1.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

##### **Legacy fund disclosure website**

1. The state investment board shall maintain a publicly accessible website containing information regarding all legacy fund investments.
2. The website must list all companies, funds and other financial mechanisms in which the legacy fund is invested in accordance with state and Federal laws.
3. This section is a continuing appropriation of all moneys required for the development and maintenance of the website.

We appreciate your time and consideration and are happy to answer any questions.