2011 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1182

2011 HOUSE STANDING COMMITTEE MINUTES

House Government and Veterans Affairs Committee
Fort Union Room, State Capitol

HB 1182
January 20, 2011
13169

☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Amend and reenact section relating to investments of agricultural commodity funds

Minutes:

Chairman Bette Grande opened the hearing on HB 1182.

Rep. Joyce Kingsbury, District 16, appeared. **Attachment 1.**

Rep. Karen Karls: Unable to hear question.

Chairman Bette Grande: I think Carlee will address that for us.

Vice Chairman Randy Boehning: I am looking at the bill. I don't see any new language or anything taken out.

Rep. Kingsbury: It was only by rule that they removed.

Carlee McLeod, Deputy State Treasurer, appeared in support of this bill. If I may start by answering a question, I think I heard someone say Line 13. It just takes out by rule. **Attachment 2.**

Rep. Karen Karls: Would you explain the prudent investor standard?

Carlee McLeod: The prudent investor standard is found in the subsection. It basically explains the amount of due diligence that an investor needs to do to be able to understand the market to not put funds in any sort of jeopardy. In the case of these agricultural groups and any other funds that fall under this, we generally put these in very safe investments like CDs rather than in some sort of market situation where there could be a loss. I can probably get you more analysis of the rule. It has been in existence for many years. I believe it also guides the State Investment Board and a variety of other groups that invest state funds so we are all under the same umbrella with our prudence.

Rep. Glen Froseth: All these different funds, they assess their revenues by charge on the product and are they somewhat similar? Where do all the monies come from? I know they

come from all these funds, but how are they assessed? Are they all quite similar? Are they assessed in different manners?

Carlee McLeod: At each of the commodity group levels I am not sure how they make their money. We just have to invest once they give it to us. I would be happy to follow up with any of them and ask them to submit additional information about where their income stream comes if that is something the committee would like.

Chairman Bette Grande: Not being one that is real up on all the ag issues, is this not check off money? These are all the check offs. I am almost positive it is going to be check off money. I am getting some nods.

Rep. Glen Froseth: I believe that is what it is, but I am not sure if they all use the check off system or not. Milk Stabilization Fund—I know the Wheat Commission and Beef Commission do, but I am not sure if they all do.

Vice Chairman Randy Boehning: Are we talking a substantial amount of money or is it a few thousand or hundreds of thousands?

Carlee McLeod: It varies group by group. For some we have probably a few million. For some, maybe a few hundred thousand. All of these monies are invested in CDs at this time or in a money market account, and we ladder out the CDs in accordance to the cash flow needs of the agency. It varies group by group. In fact, I am forgetting which group came to talk to the treasurer just last week, I think they have around $2 million they won't be needing for their cash flow needs over the next year or two and so they want to take them out of something that they had them in and put them through our investment process.

Rep. Glen Froseth: I know the Wheat's check off is ½ cent a bushel. That is automatically withheld from the farmer's check. If he chooses not to participate in that check off system, he can apply for that refund of that ½ cent bushel that is automatically taken out of his check when he sells grains to the elevator. Rep. Kingsbury, I am sure, could enlighten us on soybeans and potatoes and those commodities.

Chairman Bette Grande: I am going to have our counsel here check. This bill draft is incorrect.

Rep. Lonny Winrich: I printed a copy out of LAWS this morning, and it does have the by rule crossed off on Line 13. I think the copy in LAWS is correct.

Chairman Bette Grande: I am wondering if they have a fresh version out at the bill desk. Talking to the law intern: Would you check at the bill desk? Just grab one copy. If it has by rule in it, get us enough. If not, we will print them ourselves.

Vice Chairman Randy Boehning: Rep. Winrich, what is the number at the top?

Chairman Bette Grande: 11.8180.01000. You have all zeroes?

Rep. Lonny Winrich: All zeroes.

Chairman Bette Grande: This one was probably printed sooner. They caught the error and put it in that form, so we need to get his form. We don't want to vote out the wrong bill. I want to make sure that community also sees the correct bill too. We will want to make sure that is adjusted for the public use and then for ours so we don't have an issue with public thinking we voted on a different bill. On Line 13 after the word treasurer it is suppose to say by rule shall establish, and what they are asking for is striking out by rule. Let us get rid of these. Everybody destroy that one so we don't have extra copies around.

Rep. Gary Paur: Steven, in Human Services, weren't we going to look up the definition of prudent or was that someplace else. Oh, that was on the floor.

Chairman Bette Grande: Carlee, do you want to address prudent investor standards?

Carlee McLeod: I believe that I addressed that earlier, but I can readdress it. They simply guide what must be done in order to assure that we followed proper due diligence. We have done the research. We know that we are not putting the money at risk unnecessarily. They guide most of the state investments, the state investment board, and that nature. I believe that there probably has been additional analysis of that rule that is not in code throughout the years, but I don't have that at my fingertips. If you want me to go and get more information on it, I sure can.

Chairman Bette Grande: Is that in reference of the GASB rules?

Carlee McLeod: I am not quite sure about that. We follow the standard that is written in code and what is supplemented to us from the Attorney General's Office from time to time when we need to look at investment by investment to see if it would be appropriate under that standard. I suppose I could ask the State Auditor's Office if they delve into it from their end with the GASB rules if that is something that the committee would like.

Rep. Roscoe Streyle: I can email that. I got an email shortly after that. Basically all it means is you are not going to speculate. You are going to prudently invest the funds. **See Attached Email.**

There was no one neutral or in opposition to 1182.

The hearing was closed.

Rep. Vicky Steiner made a motion for a **Do Pass.**

Rep. Lisa Meier seconded the motion.

Rep. Bill Amerman: For the committee's information, in the Industry, Business, and Labor Committee we have kind of a conflicting bill which has to do with one of the agency's head. They are not using the administrative rules process, and they are looking to put it in so they have to use administrative rules type thing. Basically this one is eliminating that process. Is that correct?

Chairman Bette Grande: In some fashions, yes it is. I do believe that they meet kind of the criteria, at least in my mind, of the fact that it is already in code so she can't write rules separate than what she has already told to do in that section. She would be redundant in writing a rule, and I am not sure that we want to be redundant in the rules. If we were to see later that she wasn't following that direction, I think then we would have to address it at that point. If the Attorney General's Office is questioning whether or not we have redundancy in rule and law, I think we can feel safe in saying not necessary at this point. This only removes her from that one portion of rule, not all rule. This is just regarding of agricultural commodities portion.

Rep. Bill Amerman: I understand that but there are 15 different commodities in here. It does represent a pretty large group of investors, so I was just concerned about that area.

DO PASS, 11 YEAS, 2 NAYS. Rep. Roscoe Streyle is the carrier of this bill.

Chairman Bette Grande: We can just change that. You don't have to retype that. In her testimony there are a couple of numbers that are flipped flopped in the code piece where she is mentioning the prudent investors' code. I think it is suppose to say 21 versus 27.

Date: 1-20-11
Roll Call Vote #: ____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1182

House GOVERNMENT AND VETERAN AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☑ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Steiner Seconded By Rep Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Bette Grande	✓		Bill Amerman		✓
Vice Chairman Randy Boehning	✓		Ron Guggisberg	✓	
Glen Froseth	✓		Lonny Winrich		✓
Karen Karls	✓				
Lisa Meier	✓				
Gary Paur	✓				
Karen Rohr	✓				
Mark Sanford	✓				
Vicky Steiner	✓				
Roscoe Streyle	✓				

Total (Yes) 11 No 2

Absent 0

Floor Assignment Rep Streyle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1182: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1182 was placed on the Eleventh order on the calendar.

2011 SENATE AGRICULTURE

HB 1182

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

HB 1182
March 17, 2011
Job # 15589

☐ Conference Committee

Committee Clerk Signature Greta Nelson

Explanation or reason for introduction of bill/resolution:

Relating to investments of agricultural commodity funds.

Minutes: Attachment : #1, #2

Senator Flakoll: Meeting called to order for HB 1182 at 11:00 am.

Joyce Kingsbury: District 16 Walsh County in support of HB 1182 (Attachment #1)

Carlee McLeod: Deputy State Treasure Support HB 1182 (Attachment #2)

Senator Flakoll; What does the fund generate on lines 15-16 area which is the 20% of the income derived language? What would that generate on a year or biennial?

Carlee McLeod: Depends on how much money is coming that we have invested and how active those groups are. Groups that have a couple of million dollars that we are investing, we have some that have a couple hundred thousand. The 20% would be what we are investing.....the less they have to invest, the less the 20% was and it varies.

Senator Miller: Don't know what we're changing as there are no lines through.

Carlee McLeod: Same problem on House version. Clerk had to get the change. (Explain lines drawn through)

Senator Miller; What lines?

Senator Flakoll; Intern getting new amendment

Senator Flakoll: The income off there has become smaller in the past couple years because of economic markets.

Carlee Mcleod: the income is down on these investments. They are done through CD's and we get a better investment rate rather than cash we have to keep in an MMDA.....they are still making decent money.

Senator Flakoll; Don't want to confuse Rep Kingsbury's bill, but sometimes maybe we should say 30% or whatever number the income and we pay for their audit they have to go through.

Scott Rising: Soybean Growers Association. The state is not the only group who audits ....at least the soybean growers has many audits.

Senator Flakoll; Opposition?

Senator Flakoll; Close hearing HB1182

Senator Klein; Move a Do Pass HB 1182

Senator Larsen: Second

Senator Flakoll: Moved and second HB 1182

Senator Flakoll; Discussion?

Clerk: 7-0-0

Senator Flakoll; Do Pass Carrier Murphy

Senator Flakoll; Adjourned

Date: 4/17/11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1182

Senate Agriculture Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Klein Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Flakoll	✓		**Senator Heckaman**	✓	
Vice-Chair Larsen	✓				
Senator Klein	✓				
Senator Luick	✓				
Senator Miller	✓				
Senator Murphy	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Murphy

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1182: Agriculture Committee (Sen. Flakoll, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1182 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1182

Attachment 1
1182

HB 1182

Mr. Chairman, members of the committee

My name is Joyce Kingsbury, I represent District 16, which is Walsh County and part of Pembina.

I am introducing HB 1182 at the request of the Treasurer's Office.

House bill 1182 takes out the requirement for the administrative rulemaking process for setting guidelines for moneys invested by the state treasurer for agricultural commodities.

This change is being requested because Administrative laws are not necessary here. Each commodity group is regulated by separate federal laws and regulations which require money to be invested in a certain way. The Office of State Treasurer works with each group to invest money in the way that meets federal standards and the specific needs of each group.

Aside from the separate federal regulations, under this section of code, the State treasurer is governed by the prudent investor standard of NDCC 27-10-07, and may only invest funds in accordance with that.

Thank you, Mr. Chairman

STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
STATE CAPITOL, 600 E. BOULEVARD AVE., DEPT 120, BISMARCK, NORTH DAKOTA 58505-0600
701-328-2643 FAX 701-328-3002
http://www.treasurer.nd.gov

Attachment 2
1182

...ly L. Schmidt
State Treasurer

House Bill 1182
Testimony in Support
House Government and Veterans Affairs
Date: January 20, 2011
Carlee McLeod
Deputy State Treasurer

Chairwoman Grande, members of the committee:

For the record, I am Carlee McLeod, Deputy Treasurer for the Office of State Treasurer. The Office of the State Treasurer supports HB 1182 relating to the investment of agricultural commodity funds.

As a brief introduction, we should note that this change involves removing the rulemaking requirement under this provision of code. Legally, administrative rules are meant to have the force and effect of law. Here, the State Treasurer is only meant to develop guidelines. Guidelines are not meant to have the force and effect of law.

The first reason that we support this change is that rules are neither necessary nor appropriate here. Each of these funds is governed by some rule or law that does have the force and effect of law. As our office crafted guidelines regarding agricultural investments, we were in contact with each of the groups for whom these funds are invested. The overwhelming response from the groups was that each commodity group is regulated by separate federal laws and regulations which require money to be invested in a certain way. In investing their funds, the Office of State Treasurer works with each group to invest according to the federal standards governing each group. We also invest according to the cash flow needs of each group.

Aside from the separate federal regulations, under this section of code, the State Treasurer is governed by the prudent investor standard of NDCC 27-10-07, and may only invest funds in accordance with that. Guidelines established by the Office of State Treasurer could not have a force and effect of law beyond NDCC 27-10-07.

The second reason that we support this bill is that rulemaking is a lengthy process, and we need to be able to react more quickly that the process allows. In this ever-changing economy, it is important that the agricultural commodity groups and the State Treasurer have the ability to act quickly to make any necessary changes to investments.

As one last point, we should note that the cost involved in advertising for the rulemaking process is unnecessary spending. In the Office of State Treasurer, we keep a very tight reign on all spending, and we would prefer not to waste dollars advertising for a process that would not provide additional efficiency or benefit to the people we serve.

Attachment 3
Email 1182

NDLA, H GVA

From: Streyle, Roscoe K.
Sent: Thursday, January 20, 2011 12:08 PM
To: NDLA, H GVA
Subject: FYI-Prudent Investor

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 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.

Roscoe Streyle
Representative
District 3

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Kelly L. Schmidt
State Treasurer

#2

House Bill 1182
Testimony in Support
Senate Agriculture Committee
Date: March 17, 2011
Carlee McLeod
Deputy State Treasurer

Chairman Flakoll, members of the committee:

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Aside from the separate federal regulations, under this section of code, the State Treasurer is governed by the prudent investor standard of NDCC 21-10-07, and may only invest funds in accordance with that. Guidelines established by the Office of State Treasurer could not have a force and effect of law beyond NDCC 21-10-07.

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