

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2344

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2344  
February 2, 2011  
Job Number 13838

☐ Conference Committee

Committee Clerk Signature

*Eric Lubelt*

### Explanation or reason for introduction of bill/resolution:

Relating to the composition of the state investment board

### Minutes:

Testimony Attached

**Chairman Klein:** Opened the hearing.

**Senator Christmann:** Introduced the bill. In favor of both the bills and would like to have seen them together. The difference between the bills is that this one puts all the state investment board together, if you passed them both then that other change would be made. This basically changes the makeup of the investment board. There are five executive positions; there is a mix of elected officials and some of the same ones that are there now. Right now there are three people from TFFR and three from PERS to make up the majority. This would change that to have three from each side of the legislature and one from TFFR and one from PERS. He continues on why he feels this is an important bill.

**Sparb Colins, Executive Director of the North Dakota Public Employees Retirement System:** He is neutral on the bill. Testimony Attached.

**Senator Andrist:** In the function of the state investment board can you even tell which group someone represents? He said he was wondering how cohesive they have become and how centrally focused they are or if the decisions are made on who they are representing.

**Sparb:** For PERS it is three of the board members on the board and not himself. As an outside observation, he said that the investment board takes a look at the issues more from an overall standpoint then taking a look at it from each individual area. Since this arrangement has been set up there has been discussion on doing this. At no point have they questioned the decision.

**Senator Andrist:** He understood those who represent the teachers only participate in that particular fund and have no input for the other funds, did he misunderstand?

**Sparb:** Used PERS as an example. The PERS board is responsible, under the statute to develop the investments for the funds underneath their jurisdiction and they also develop

the proposed asset allocation of those funds. When they do this they retain a specialized firm that does asset liability studies. They take a look at a variety of ways to invest the funds. Then the PERS board sends it over to the investment board. Those policies they have in place become binding on the investment board.

Continued with questions for Sparb.

**Senator Laffen:** Stated that he felt some changes needed to be made because now there will be a new pot of money which is not retirement money, it is state money so they need some representation. He feels it would make sense to make up a new board.

**Senator Schneider:** In regards to what these board members owe to retirees, if Legislators were to play a larger role on this board, what kind of recourse would retirement participants have in terms of insuring those responsibilities?

**Sparb:** He said that would be more of a legal question.

**Faye Koop, Deputy Director-Retirement Officer, RIO and TFFR:** Testimony Attached. Neutral position.

Questions and comments

**Senator Murphy:** Stated that both Faye and Sparb mentioned that the reason in 1989 that the SIB makeup was altered was so that TFFR and PERS would have six elected seats to assure a majority. Yet you are testifying in a neutral position and you will no longer be in a majority position, what has changed since 1989?

**Faye:** Prior to 1989 the state investment board did invest the funds for the TFFR. The teachers fund has been under the state investment board since the sixties when the board was established. In 1989 PERS came along under the state investment board, so that was the reason for the altering of the investment board makeup. She is testifying in a neutral position because the board has not taken a strong stand. They are interested in hearing what the thoughts and considerations are because we want to work with the parties to address the concerns in the best manner they can.

**Chairman Klein:** Closed the hearing.

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2344  
February 22, 2011  
Job Number 14793

☐ Conference Committee

Committee Clerk Signature
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### Explanation or reason for introduction of bill/resolution:

Relating to the composition of the state investment board

### Minutes:

Amendment attached
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**Chairman Klein:** Opened the meeting on SB 2344.

**Senator Christmann:** Handed out his amendment and explained how the engrossed bill would be if the amendments were passed. Right now the investment board has five members who are either state wide elected officials or appointed by the Governor and six others, three of those are from TFFR and three from PERS. Of the five members, the Commissioner of School Lands, his agency has no involvement with the investment board, he is just on by statute, and the engrossed bill would remove the Commissioner of School Lands. It also removes one of the three TFFR members and removes one of the PERS members. This would replace those three with three new members appointed by the Governor. One of the three would be a member of either the North Dakota Bankers Association or the Independent Community Banks. The other two need to be investment experts. They would need to have either a financial industry regulatory authority series 7 or a North American securities administrators association series 65.

**Chairman Klein:** To be clear we removed three existing members of the board and replaced them with these three members selected by the Governor. The names would be brought forth or moved to the Governor and he would choose from that list.

**Senator Christmann:** Said yes and then he went on to explain the very last underlined language on the amendment. This would be if the person appointed could not attend, the last part allows them to designate an alternate on their behalf.

**Senator Andrist:** He said he felt the amendment improves the bill. Said he was concerned that they had people who understood the world of investments on the board and that this bill would insure that. He moved a do pass on the bill.

**Senator Nodland:** Seconded the motion.

Discussion and comments

**Senator Schneider:** Asked if he knew the status of the advisory council. He said he was looking at page two, line eleven. He read from the bill and asked to what extent the advisory council is used. He said that he thought they already had expert advice in the existing law.

**Senator Christmann:** The answer was he can't tell him but there are policy committees for most of the funds and doesn't know if that is what is referenced to in the bill. Example, TFFR has a separate policy committee as does PERS and WSI, most of these funds do.

**Chairman Klein:** In the discussion we heard that there was a policy committee from each one of the groups that relay their policy information to the state investment board and then the state investment takes them to RIO.

**Senator Christmann:** The state investment board has someone in charge that carries out the plan and hires investment people from around the country to invest pools of money.

**Senator Nodland:** Stated that series 7 and 65 were quite extensive and that they would have to have a lot of knowledge in order to get either of those licenses.

Discussion and comments

**Senator Murphy:** Said it looked like if the amendment and bill passes that subsection two might not be needed. It says they may establish.

Discussion about changing the above or leaving it as is and getting the bill passed with the amendment and letting the House make any other needed changes.

Roll Call Vote on Senator Christmann's amendment.

Yes-7 No-0

Discussion and comments

Senator Nodland moved a do pass as amended.

Senator Laffen seconded the motion.

Roll Call Vote: Yes-5 No-2

Senator Nodland to carry the bill

Chairman Klein closed the meeting.

93  
2-22-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2344

Page 1, line 8, remove "three members of"

Page 1, remove line 9

Page 1, line 10, remove "representatives appointed by the house majority leader,"

Page 1, line 10, overstrike the second "the"

Page 1, line 11, overstrike "commissioner of university and school lands,"

Page 1, line 12, after "three" insert "two"

Page 1, line 12, remove the overstrike over "members"

Page 1, line 12, remove "one member"

Page 1, line 13, remove the overstrike over "designees"

Page 1, line 13, remove "designee"

Page 1, line 13, replace "does" with "do"

Page 1, line 14, remove the overstrike over "members"

Page 1, line 14, remove "a member"

Page 1, line 14, remove the overstrike over "two"

Page 1, remove the overstrike over line 15

Page 1, overstrike line 16

Page 1, line 17, overstrike "board" and insert immediately thereafter "and three members selected by the governor. Of the three members selected by the governor, one must be a member of the North Dakota bankers association or the independent community banks of North Dakota and two must hold either a financial industry regulatory authority series 7 registration or a North American securities administrators association series 65 registration"

Page 2, line 1, after the period insert "A member of the state investment board who is appointed by the governor may designate an alternate with full voting privileges to attend meetings of the board if the member is unable to attend."

Page 2, line 5, remove "The"

Page 2, remove lines 6 through 9

Renumber accordingly

Date: 2/22/2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2344

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11. 0761.01001

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Nodland

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Senator Christmann's amendments by Legislative Council.

Date: 2/22/2011  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2344

Senate Industry, Business and Labor 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 Senator Nodland Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider		✓
VC George L. Nodland	✓		Senator Philip Murphy		✓
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Nodland

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



**REPORT OF STANDING COMMITTEE**

**SB 2344: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2344 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "three members of"

Page 1, remove line 9

Page 1, line 10, remove "representatives appointed by the house majority leader."

Page 1, line 10, overstrike the second "the"

Page 1, line 11, overstrike "commissioner of university and school lands,"

Page 1, line 12, after "~~three~~" insert "two"

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Page 1, remove the overstrike over line 15

Page 1, overstrike line 16

Page 1, line 17, overstrike "board" and insert immediately thereafter "and three members selected by the governor. Of the three members selected by the governor, one must be a member of the North Dakota bankers association or the independent community banks of North Dakota and two must hold either a financial industry regulatory authority series 7 registration or a North American securities administrators association series 65 registration"

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Page 2, line 5, remove "The"

Page 2, remove lines 6 through 9

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2344

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2344  
March 15, 2011  
15484

☐ Conference Committee

Committee Clerk Signature
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## Explanation or reason for introduction of bill/resolution:

Composition of the state investment board

## Minutes:

**Chairman Keiser:** Opens the hearing on SB 2344.

**Senator Christmann~District 33:** Introduces SB 2344. With our state investment board, we have some bills in now that are making changes because we know that both for the PERS and the TFFR there has to be more money going into the pot if we are going to make the payouts that we promised. As legislators and leaders in the state, everyone is committed to keeping the promise that we made. Do we have much to say about the investment strategy? I've never given it much thought on how we invest our money. The various funds that the Retirement Office manages, somewhere over 5 billion dollars, and it's amazing the complexity of the investment strategy. Our investment board is made of 11 people. What the bill proposes to do is to have two people from TFFR and two from PERS instead of three each and also eliminate the land board. We would eliminate those three people and replace them with two investment experts and somebody from the banking industry. They would be appointed by the governor as explained on page two, lines 4-10 of the bill. That is the jest of the bill and I think it would be wise to have some people who are not vested in retirement funds and have some big picture investments to bring an outside voice to the board.

**Representative Clark:** Do you think you can get these experts for \$62.50 a day?

**Senator Christmann:** No.

**Representative Clark:** What are series 7 and 65 registrations?

**Senator Christmann:** I can't really tell you.

**Vice Chairman Kasper:** Series 7 is a person who has taken the securities exam and series 65 allows you to give investment advice for fees or commission, so it's a level above. The WSI director is on the board, do you think that person would have the qualifications you are looking for?

**Senator Christmann:** They all came to mind and I was struggling to figure out how we get some outside expertise. My first question was how did we get the board as it is now? I believe it went back to 1989 when it was designed. Apparently at that time there was a lot of weight put into who has the investment in there and at that time most of money was PERS and TFFR. The starting place should be recognizing and left those who have sizable portfolios as they are.

**Vice Chairman Kasper:** Did you give any thought to the two outside financial folks; is it in your mind that they should be from North Dakota or outside experts?

**Senator Christmann:** No, I haven't looked into that but wouldn't object.

**Representative Nathe:** Why change the State Investment Board?

**Senator Christmann:** I'm not entirely happy with it. I've never gotten any evidence from the investment board saying that when we did increase benefits, that we were putting our funds in peril. All the information has been coming to the legislature, always was, that this is completely sustainable. Over a course of a 30 year period, we will have about 8% rate of return, we will have peaks and valleys, but over the long course, it's sustainable. The fact is that it has shown over the long course it is not sustainable or we wouldn't be propping it up right now.

**Chairman Keiser:** Page 2, the state investment board may establish an advisory council, have they ever done that?

**Senator Christmann:** I'm not sure. Most if not all of these various funds have another committee that advises the investment how they want and what their expectations are.

**Chairman Keiser:** As proposed, there is the potential, a quorum would have six on the investment board, with the new language, we would have the potential for having five people attending that meeting, to be appointed to represent a member of the investment board. Do you want us to look into this further? That seems to be a potential problem that they can designate somebody to represent them at the meeting.

**Senator Christmann:** It's fine with me. There are six that can appoint.

**Chairman Keiser:** Worker's Comp person and the TRRF & PERS.

**Senator Christmann:** There are quite a few that can appoint somebody.

**Chairman Keiser:** As an alternate.

**Senator Christmann:** That right.

**Chairman Keiser:** Anyone else here to testify in support, in opposition to SB 2344.

**Jack McDonald~Independent Bankers Association and the North Dakota Bankers Association:** I feel uncomfortable coming here and opposing the bill because we really

don't oppose the bill. We became aware of new regulations in the Dodd Frank Act that was passed a year ago. The regulation in effect says that bankers, if they serve on these type of advisory committees, are taking on a banking function and have to be regulated under banking regulations. It has onerous regulations and so we just as soon not be on the committee.

**Vice Chairman Kasper:** You don't object to the change, you just don't want the bankers included on the board?

**Jack McDonald:** That's correct.

**Greg Burns~Director of the North Dakota Education Association:** The reduction in representatives from TFFR and PERS is bothersome to us. We feel it's not good to reduce the representation of these folks on the state investment board. It is our understanding that it's the TFFR, PERS still represents the bulk of the funds that are invested by the state investment board, and we think it would not be wise to reduce their representation. These people are capable of making good decisions and they have made those good decisions in the past. It seems counter-intuitive to oppose putting bankers and people of financial expertise on the state investment board. The only problems caused in both pension funds has not been the investment strategies that the TFFR and PERS boards but because of what happened on Wall Street and other places. The state investment board does not determine benefit increases, those recommendations come from the individual boards. It looks like a very intuitive thing to do to change the composition of state investment board. This feels like a solution in search of a problem. The state investment board was audited both financially and a performance audit and they came up clean and good. We feel there is no need to change the structure of the board.

**Steward Savelkoul~Executive Director of the North Dakota Public Employees Association:** My testimony very closely matches Greg Burns who preceded me. We oppose the bill for much the same reasons. Primarily it diminishes the strength of the voice that public employees have on their retirement system. We urge a Do Not Pass.

**Vice Chairman Kasper:** Have you had the opportunity to sit in on an investment board meeting?

**Steward Savelkoul:** No, I have not, but have read minutes.

**Vice Chairman Kasper:** The minutes you have read, are you able to shed some light on what the board does?

**Steward Savelkoul:** I'm sure there are experts that can much better explain the activities.

**Vice Chairman Kasper:** You don't know what the board does but you want to continue three members from yours and the other organization, what type of input do those members from your association have with three voices versus two?

**Steward Savelkoul:** North Dakota public employees' retirement system is not the same as the North Dakota employees association, which I represent. What's the difference between

three to two, is a majority versus a lack of majority opposed on the committee. The people appointed take their position seriously and the responsibility with a great deal of support from their respective boards.

**Vice Chairman Kasper:** There really isn't a whole lot of expertise in the business of investing with the current makeup of the board.

**Steward Savelkoul:** I think you will hear in later testimony, that the state investment board does receive some council from outside entities that have such expertise. The question is putting non-North Dakotan citizens on this board. Shouldn't the folks most invested in the fund also have the largest say on how that fund is handled?

**Vice Chairman Kasper:** Sometimes the forest clouds the trees, so by broadening that board might be valuable to the members of that board and the fund?

**Chairman Keiser:** Do you know, are they currently using an advisory council?

**Steward Savelkoul:** I'll defer.

**Chairman Keiser:** Anyone here to testify in a neutral position to SB 2344?

**John Geissinger~Executive Director and Chief Investment Officer of the North Dakota Retirement and Investment Office:** (See attached testimony 1).

**Vice Chairman Kasper:** Do you believe that some of the makeup of the board right now have a background in helping to determine asset allocation and in helping which money managers ought to be picked that are out there?

**John Geissinger:** The state investment board is not a body doing the daily due diligence on the managers nor are they expected to be investment experts. They have retained and hired the investment experts to provide the advice and counsel to them. We have individuals from various backgrounds and at the end of the day investing is not that hard. The board is there to focus on policy, process and review the performance of the managers.

**Vice Chairman Kasper:** It appears that you and your staff are dealing with the money managers and finding out what they are doing and monitoring that to give advice to the state investment board. What is your staff makeup in your office?

**John Geissinger:** Myself, on the investment side; Connie Flanagan is our fiscal officer that manages the asset allocation and we have put in our budget to add a deputy chief investment officer to broaden the expertise in our office.

**Vice Chairman Kasper:** Do you have two people with investment background in your office right now and you are looking for a third?

**John Geissinger:** That's correct.

**Vice Chairman Kasper:** About how many dollars have all these funds accumulated?

**John Geissinger:** We had just over 5 billion dollars in assets in our management.

**Chairman Keiser:** The reality is this is much bigger than my little 401K, but it strikes me that there are a lot of similarities. It's just a size difference, isn't it?

**John Geissinger:** Some of the best investors I've run across have a lot of street smarts and common sense. You look them in the eye and say "can I trust this individual with my money" and that's what it comes down to at the end of the day.

**Representative Vigesaa:** The clients, want their funds invested individually or pooled with one strategy?

**John Geissinger:** Each of these clients has different asset allocations. We have two pool trusts, insurance and pension trusts. Each of the pension clients may or may not have the same or different asset allocation. However, we look to pool the assets so that each of the clients participates in the managers that we hire. The managers try to implement their equity portfolio's the same.

**Chairman Keiser:** Getting back to the bill, does it help if we put two people on the state investment board that do have investment experience? Does it help or not?

**John Geissinger:** If we are looking to provide additional perspective and knowledge, I would suggest this bill is too narrowly defined. I would not argue that someone series 7 & 65 is necessarily the best financial expert that we could get for the board. Series 7 allows an individual that works for a registered broker dealer to sell securities to an individual. Series 65 allows them to charge management fees and also these individuals will retain investment managers and recommend investment managers manage the client's money. Outside the mutual fund you hire other managers. One concern I have is, what is the potential conflict of interest with these individuals? Are they advising their clients and receiving commissions for that advice? In a public arena that we are in, that is the one area that I'm concerned about.

**Representative Gruchalla:** Are you satisfied with what Callan Associates has done and the fees they charge over the period these two funds have lost a considerable amount of money?

**John Geissinger:** Fiscal 2009 was a brutal year. The financial markets operate upon trust, yes the fund lost money in 2009 but everyone lost money. Callan is a consultant for several hundred public funds and they have peer groups. Over the last 10 years, the pension funds are above medium in the Callan universe. They are doing a good job.

**Representative Gruchalla:** The basis points that Callan has charged, are they satisfactory?

**John Geissinger:** They charge a flat fee. So the basis will go down as we get more assets into the funds. The fees are all within norm with other consultants. Callan has gone out of

their way to make sure they do not have any perceived conflicts of interest and will not discuss that account at all.

**Chairman Keiser:** Anyone else here to testify in a neutral position to SB 2234.

**Sparb Collins~Executive Director of the North Dakota Public Employees Retirement System:** (See attached testimony 2).

**Vice Chairman Kasper:** Are the SIB members considered trustees?

**Sparb Collins:** Yes, because they are responsible for the investing.

**Vice Chairman Kasper:** You want independent?

**Sparb Collins:** Independent trustees that have an exclusive interest in investing for the retirement participants.

**Vice Chairman Kasper:** If we have six of the board, who are trustees, who have a direct vested interest in the fact that they are members of the retirement funds, how is that independence?

**Sparb Collins:** Their sole interest is the investment funds themselves. With that sole interest in mind, their decisions are based upon what is best for the fund.

**Vice Chairman Kasper:** We have six people who are recipients of the fund, so they are beneficiaries and we have trustees who are supposed to maintain independence.

**Sparb Collins:** They are independent in the sense that their sole interest is the fund. They do not have any broader range of interest besides insuring that the retirement fund itself is successful and able to meet the obligations of those members.

**Vice Chairman Kasper:** Would it be safe to say, that they do not have any ordinary investment background experience other than being ordinary citizens?

**Sparb Collins:** Yes, but keep in mind that they are supported just like you were doing the analysis earlier, Mr. Vice Chairman, just like a member of a defined contribution plan who does investing. The technical resources of the state investment board support them; there is a whole range of money managers that bring that expertise to them. There is an education portion to every meeting to talk about different investment strategies but it's a constant educational process.

**Representative Vigesaa:** How long have the current members that represent PERS been on the investment board and how often is their turnover?

**Sparb Collins:** They stay pretty stable and PERS are elected in 5-year terms, which are rotated.

**Chairman Keiser:** Anyone else here to testify in a neutral position to SB 2344.



**Fay Kopp~Deputy Director-Retirement Officer Retirement and Investment office (RIO)-Teachers'Fund for Retirement (TFFR):** (See attached testimony 3).

**Representative Nathe:** Are you familiar with other states, do they operate in the same manner?

**Fay Kopp:** Some are run the same and some are different. In some states, the pension board itself also handles the investments of the program.

**Representative Nathe:** Do they also include investment experts and bankers?

**Fay Kopp:** Some do but the question is conflict of interest.

**Vice Chairman Kasper:** The market went south and you have three members on the board. What type of feedback did your board members get from your regular members? What happened here, we appointed you to watch our money, it's gone, what type of feedback happened?

**Fay Kopp:** Without a doubt, our members who serve on the pension board and also sit on the state investment board heard about it from the members. That's the point I was trying to bring out, is that they are held accountable by those participants. They have some skin in the game and that causes them to make the best judgment.

**Vice Chairman Kasper:** With your three board members, do you recall what some of the explanations they had to say about what happened?

**Fay Kopp:** Certainly, not to all but to some of them. What they said was that this was the worst period in time since the great depression, with market meltdown.

**Representative Gruchalla:** Is there any chance that North Dakota will get any of that money back?

**Fay Kopp:** I will turn that over to John.

**John Geissinger:** The state of North Dakota did have one investment with one investment manager, WG Trading, they perpetuated a fraud and we were victims of that fraud. We are currently in discussions and I can't give you any details. Our Attorney General is landing in NYC right now. The receiver has issued his statement on how he thinks it's fair to distribute the assets that are left. We have some minor objections to his process and that's where we stand right now. Whether we will get a settlement, is yet to be determined.

**Vice Chairman Kasper:** Can you tell us how much money perpetuated in this fraud that you are investigating?

**John Geissinger:** It was 160 million dollars, we have some money back, so 130 million dollars. The numbers that we are looking at from the receiver, the amount of money we invested, plus the amount of money we received back in cash, plus the numbers of

receivers, represents a return on principal, plus or minus 85 to 90% of the original investment.

**Chairman Keiser:** But we also lost the gain that was there, it's just the original investment.

**John Geissinger:** Yes, that 160 million.

**Chairman Keiser:** Anyone else here to testify in a neutral position to SB 2344.

**Lt Governor Drew Wrigley~State of North Dakota:** It's interesting how a very complicated discussion can come down to a simple thing. At the end of the day, these funds on behalf of North Dakota have performed above the median. I'm not certain what problem that people are seeking to solve? This arose because out of something exciting, the Legacy Fund. The Legislature has wisely recognized that you need to have someone who has oversight for the Legacy Fund. Who is going to oversee the Legacy Fund? There has been a misperception that the state investment board is going to decide how those funds are going to be invested, they're not. They don't decide that for any of the funds. There are two policy-making bodies on behalf of each fund and the state investment board executes. You know what the performance is; it's above median, over the course of 10 years. In our amendment tomorrow, we will recommend a policy making body for that Legacy Fund. It's been recommended by a number of Senators that Legislators have a big role in that policy making body. Some have said that that is not constitutional and it's our opinion, that it is constitutional. The only thing new to this equation is the Legacy Fund. If you look at the numbers of TFFR and PERS together, you have 60% of the funds invested by the state investment board and another 25% invested on behalf of WSI. Their membership on the board represents their stake in all of this. If you would go through this, you would diminish their representation without any reason and increase the power of the governor, which we didn't request. We would make one recommendation, add one person to the state investment board with someone with knowledge of the banking and investment industries.

**Senator Christmann:** Regarding a few weeks ago, the bankers were on board. That was a change from a few weeks ago.

**Chairman Keiser:** Anyone else in the neutral position to SB 2344. Closes the hearing.

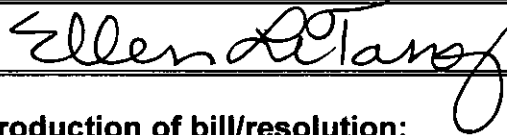
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2344  
March 28, 2011  
16073

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Composition of the state investment board

## Work Session Committee Minutes:

**Chairman Keiser:** Opens the work session on SB 2344.

**Vice Chairman Kasper:** We had the questions, should it be amended or stay the same, so we came up with something for your consideration. It doesn't matter to me what the committee wishes. (goes over the amendment)

**Representative N Johnson:** The commissioner school lands, that was one that they suggested taking off, you suggest leaving it on, is there a reason?

**Vice Chairman Kasper:** To make it as close to the governor's has as possible. Here are my thought about the amendment, when you think back to what the fund and market has done, the change over the years going to 8%, someone in that profession along with a banker would bring to the board would be some longevity look of the financial markets. Senator Christmann wanted some financial experience on the board and that is the perspective of coming up with those two suggestions.

**Chairman Keiser:** Further discussion?

**Representative N Johnson:** I'm a little hesitant to take out the members of TFFR & PERS board. I say that because what I understood in the testimony, 60% of the investment funds at this point, are actually those member's funds. So to have less representation on there, I have some concern over that.

**Vice Chairman Kasper:** A board from my perspective is there to lend their background, experience and expertise to make better decisions. The fact they are employees of the state and do not have financial experience. Do you want a new look to make the investment better?

**Representative Ruby:** They are still going to retain the highest representation and it's to their benefit to retain them. I feel comfortable with it.

**Chairman Keiser:** Further discussion? Do we have a motion?

**Representative Ruby:** Moves the amendment.

**Representative Vigesaa:** Second.

**Chairman Keiser:** I think there is some merit to adding these financial people. The board that manages investments, I understand that they are all in academia, but there isn't one of them that in financial services of academia. I can't imagine anyone who wouldn't want have any financial perspective and I'm going to support the amendments.

**Representative N Johnson:** Depending how this amendment goes, I also prepared an amendment that would remove the commissioner of University of School Lands and put on a financial background person.

**Chairman Keiser:** We have the amendment before us, we will take the roll call.

**Roll call was taken on amendment 11.0761.02001 with 9 yeas, 4 nays, 1 absent, amendment adopted.**

**Chairman Keiser:** Representative N Johnson, do you want to offer your amendment?

**Representative N Johnson:** No.

**Chairman Keiser:** We have SB 2344 before us, what are your wishes.

**Representative Vigesaa:** Moves a Do Pass as Amended on SB 2344.

**Representative Clark:** Second.

**Roll call was taken on SB 2344 for a Do Pass as Amended with 9 yeas, 4 nays, 1 absent and Representative Clark is the carrier.**

YR  
3/29/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2344

Page 1, line 9, remove the overstrike over "~~the commissioner of university and school lands,~~"

Page 1, line 14, replace "~~three~~" with "two"

Page 1, line 15, remove "Of the three members selected by the governor, one must"

Page 1, remove lines 16 through 18

Page 1, line 19 replace "association series 65 registration" with "One of the members selected by the governor must be chosen from a list of three candidates submitted by the North Dakota bankers association and the independent community banks of North Dakota. The other member selected by the governor must hold a financial industry regulatory authority series 7 registration or a higher level of registration and be chosen from a list of three candidates submitted by the North Dakota association for insurance and financial advisers"

Renumber accordingly

Date: March 28, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2344

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0761.02001

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

Motion Made By Rep. Ruby Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman		1
Vice Chairman Kasper	1		Representative Boe	Ab	
Representative Clark	1		Representative Gruchalla		1
Representative Frantsvog	1		Representative M Nelson	1	
Representative N Johnson		1			
Representative Kreun	1				
Representative Nathe		1			
Representative Ruby	1				
Representative Sukut	1				
Representative Vigesaa	1				

Total Yes 9 No 4

Absent 1

Floor Assignment \_\_\_\_\_

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

Date: March 28, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2344

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Rep. Vigesaa Seconded By Rep. Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe	AB	
Representative Clark	✓		Representative Gruchalla		✓
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson		✓			
Representative Kreun	✓				
Representative Nathe		✓			
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 9 No 4

Absent 1

Floor Assignment Rep Clark

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

**REPORT OF STANDING COMMITTEE**

**SB 2344, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2344 was placed on the Sixth order on the calendar.**

Page 1, line 9, remove the overstrike over "~~the commissioner of university and school lands,~~"

Page 1, line 14, replace "three" with "two"

Page 1, line 15, remove "Of the three members selected by the governor, one must"

Page 1, remove lines 16 through 18

Page 1, line 19 replace "association series 65 registration" with "One of the members selected by the governor must be chosen from a list of three candidates submitted by the North Dakota bankers association and the independent community banks of North Dakota. The other member selected by the governor must hold a financial industry regulatory authority series 7 registration or a higher level of registration and be chosen from a list of three candidates submitted by the North Dakota association for insurance and financial advisers"

Renumber accordingly



**2011 TESTIMONY**

**SB 2344**

**TESTIMONY OF  
SPARB COLLINS  
ON SB 2344**

Mr. Chairman, members of the committee my name is Sparb Collins. I am the Executive Director of the North Dakota Public Employees Retirement System. I appear before you today in a neutral position on this bill and to share with you some observations and suggestions from the PERS Board. PERS presently is responsible for the Main, Judges, Law Enforcement, National Guard, Highway Patrol and the Job Service retirement plans that are invested through the State Investment Board (SIB). In addition, we have the retiree health insurance care fund invested with the SIB. Three of our elected PERS Board members serve on the SIB and they are appointed by the PERS Board from our four elected members. The PERS Board understands that as funds join the SIB for investing and as others may go off that changes in the composition of the board are appropriate and necessary just as when PERS joined the SIB back in the late 80's.

The existing State Investment Board membership and investment responsibilities were enacted by the 1989 legislative session. Prior to that, the PERS funds were invested directly by the PERS Board who employed its own investment officer and hired its own investment managers. The PERS Board participated in the development and supported the reorganization of the investment functions to the present arrangement since it offered the opportunity to reduce our overall investment costs. While there were many points of discussion in developing the present arrangement back in 1989, one of the key issues was accommodating the unique fiduciary responsibility relating to the various retirement funds in the proposed new structure for the SIB. Retirement trustee requirements are somewhat different from other state agencies and they are subject to an extensive and stringent set of fiduciary obligations to the retirement programs' participants and beneficiaries (basically the exclusive benefit rule). These obligations both require and justify the need for trustees to be independent with their sole responsibility to the retirement funds and the funds' members. Furthermore, the

independence is required because it permits the trustees to perform their duties without concern for other priorities that may relate to other constituencies or needs. In the absence of independence, trustees may be required to decide between fulfilling their fiduciary obligations to retirement participants or responding to the needs of others that may have a wider ranging set of interests or priorities. In this sense, the independence of retirement trustees is an integral part of the fiduciary obligations that govern the operations of retirement plan investing. This was a key concern back in 1989 in establishing the existing SIB membership. In fulfilling these obligations, there are legal requirements and also requirements that relate to maintaining the trust and confidence of the members.

In addition to the fiduciary considerations, it was felt that the SIB membership should also recognize that the retirement funds were over 50% of the funds invested by the SIB. In fact, today the retirement funds invested through the SIB represent approximately 62% of the total funds invested by the SIB.

To respond to the concerns in 1989 it was decided that the retirement funds would have six of the eleven seats on the State Investment Board. This would assure that those with needed independence for retirement plan investing would be in a majority. Also with the retirement funds having six of the eleven seats, it would represent about 54% of the SIB membership thereby recognizing that the retirement funds were a majority of the total funds invested by the SIB.

Mr. Chairman, members of the committee, we would request that as you contemplate the future composition of the SIB that you recognize these important historical considerations in any changes that are proposed.

Thank you.

**SB 2344**

**SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE**

**Fay Kopp, Deputy Director - Retirement Officer  
Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)  
February 2, 2011**

The Teachers' Fund for Retirement (TFFR) Board is responsible for administering the retirement plan for our state's public school educators. Like other State Investment Board (SIB) client funds, the TFFR Board develops investment policy and asset allocation for the fund which is then implemented by the SIB. The seven-member TFFR Board selects three of its appointed members to serve on the SIB to represent TFFR. I appear today on behalf of the TFFR Board in a neutral position.

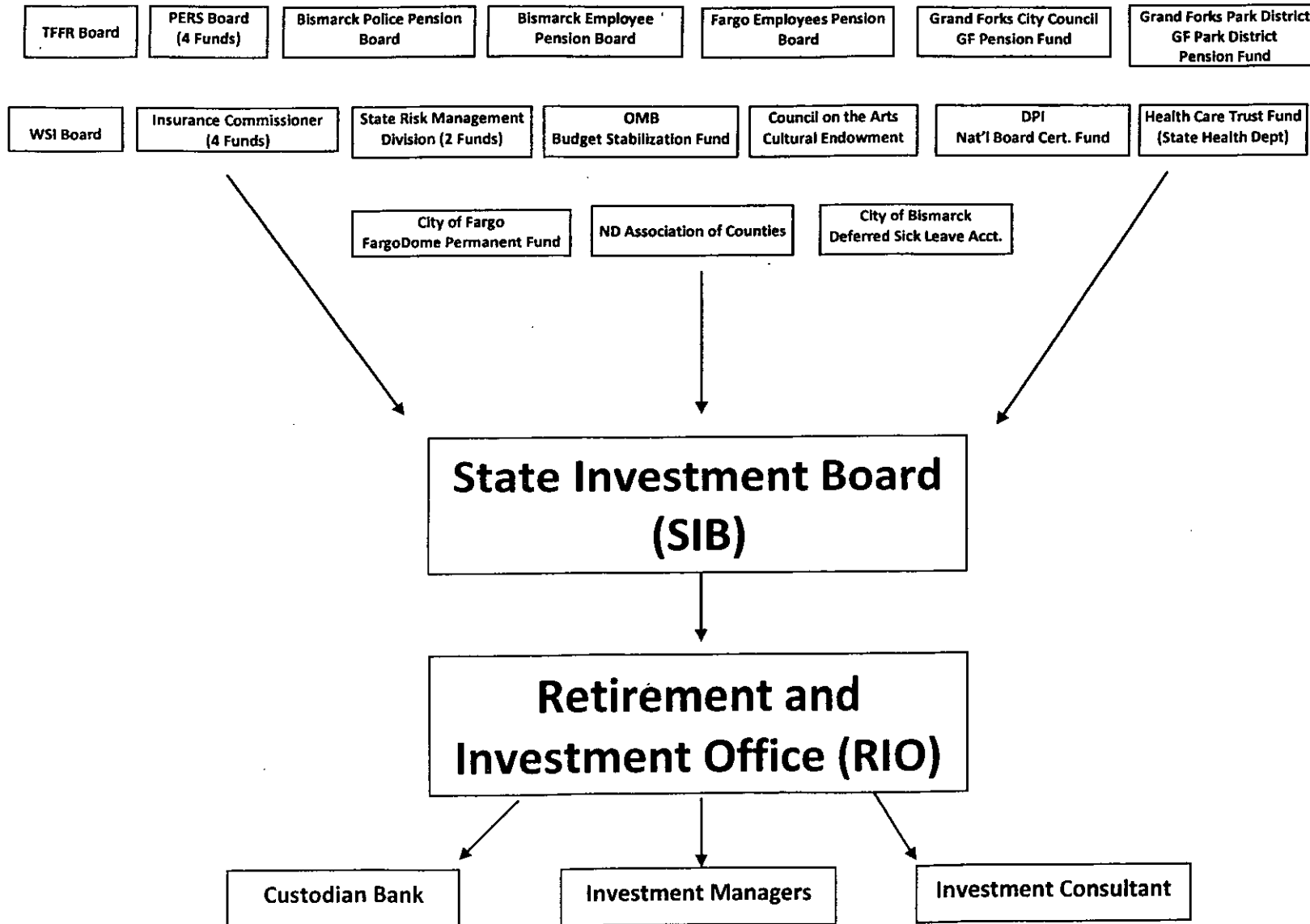
Under state law, retirement trustees are subject to an extensive and stringent set of fiduciary responsibilities to the TFFR trust fund beneficiaries which include the duties of skill, prudence, and loyalty. Fiduciaries must act solely in the best interests of the trust fund participants and beneficiaries as required by the exclusive benefit rule. Furthermore, fiduciaries must perform their duties in a prudent manner using independent judgment. Other considerations, no matter how laudable or important, must not impinge on decisions made by fiduciaries.

This need for independence in pension fund investing was understood and statutorily recognized in 1989 when the SIB makeup was last altered by the Legislature. At that time, it was decided that the retirement funds (TFFR and PERS) would have six of the eleven seats on the SIB to assure that pension trustees would be in the majority because of their fiduciary obligations and need for independence. This majority position also recognized that the pension funds are the largest investors with the SIB and currently make up over 60% of the total funds invested by the SIB.

As your Committee considers the future size and composition of the SIB, we ask that you consider this background information to better understand why the majority of the SIB is comprised of pension fund trustees (TFFR and PERS).

Thank you.

# State Investment Board Process



# State Investment Board Process

**Client Responsibilities:** (Per NDCC 21-10-02.1) The governing body of each fund (client) shall establish policies on investment goals and objectives and asset allocation that must include:

- Acceptable rates of return, liquidity and levels of risk
- Long-range asset allocation goals

**State Investment Board Responsibilities:** (Per NDCC 21-10):

- Implement client asset allocations
- Apply Prudent Investor Rule when investing for fund under its supervision
- Approve general types of securities for investment
- Set policies and procedures regulating securities transactions on behalf of the clients
- Select custodian servicer
- Select investment director and/or investment consulting service
- Create investment pools

# **State Investment Board Process**

## **Retirement and Investment Office Staff Responsibilities (on behalf of SIB):**

- Administer overall investment strategy
- Advise SIB on ways to maximize risk/return opportunities within each asset class
- Act as liaison between SIB and managers, consultant and custodian
- Monitor individual clients' investment guidelines and asset allocations
- Maintain separate accounting for client accounts

## **Investment Manager Responsibilities:**

- Implement specific mandates or "investment missions"
- Make buy/sell decisions based on investment guidelines
- Report to RIO Staff on regular basis
- Provide education to SIB

## **Custodian Bank Responsibilities:**

- Safe-keep assets
- Settle trades
- Record-keeper

# State Investment Board Process

## **Investment Consultant Responsibilities:**

- Performance measurement of investment managers
- Manager search assistance
- Provide education to SIB
- Special projects



Testimony 1

TESTIMONY OF  
JOHN GEISSINGER  
ON SB2344  
March 15, 2011

Mr. Chairman and members of the committee, my name is John Geissinger. I am the Executive Director and Chief Investment Officer of the North Dakota Retirement and Investment Office. I appear before you today, on behalf of the state investment board, in a neutral position on this bill, and to share with you some background and perspective on the investment process of the state investment board.

I refer you to the handout entitled "State Investment Board Process". On the first page are the 3 major entities involved in the investment process:

1. Clients-TFFR, PERS, and WSI are the largest clients, though the SIB oversees the investments for 17 different entities, some of which have more than one fund invested with the SIB
2. SIB
3. RIO

The responsibilities for each of the entities are enumerated in Chapter 21-10 of the North Dakota Century Code.

The governing body for each client is responsible for, among other things, developing policies that provide for:

1. Investment goals and objectives
2. Asset allocation policy
3. Guidelines regarding risk and liquidity

The asset allocation for each fund must be approved by the governing body and the state investment board.

The state investment board is charged with implementing each of the client's investment policies:

1. Implement client asset allocations
2. Approve general types of securities for investment
3. Set policies and procedures regulating securities transactions on behalf of the clients
4. Apply prudent investor rule investing funds under supervision

The Retirement and Investment Office is responsible, on behalf of the SIB, to:

1. Administer overall investment strategy
2. Advise SIB on ways to maximize risk/return opportunities, including recommendations on new asset classes, investment strategies, and investment managers
3. Act as liaison between SIB and managers, consultants, and custodian
4. Monitor individual clients' investment guidelines and asset allocations

The investment process is a three-legged stool. The clients establish investment policy. The state investment board implements the investment policies, and RIO advises, administers and executes.

The state investment board is the interface between the clients on one hand, and the investment professionals-RIO, consultant, and investment managers-on the other. The ultimate objective of the SIB is to achieve the investment goals of the clients, and the composition of the board reflects this objective. The members of the board are 1) accountable to the clients, 2) have a vested interest in the success of the investment program, and 3) avoid a conflict of interest, either real or perceived.

Mr. Chairman, members of the committee, we would request you recognize these three critical characteristics as you contemplate changes to the state investment board.

Thank you.

Testimony 2

**TESTIMONY OF  
SPARB COLLINS  
ON SB 2344**

Mr. Chairman, members of the committee my name is Sparb Collins. I am the Executive Director of the North Dakota Public Employees Retirement System. I appear before you today in a neutral position on this bill and to share with you some observations and suggestions from the PERS Board. PERS presently is responsible for the Main, Judges, Law Enforcement, National Guard, Highway Patrol and the Job Service retirement plans that are invested through the State Investment Board (SIB). In addition, we have the retiree health insurance care fund invested with the SIB. Three of our elected PERS Board members serve on the SIB and they are appointed by the PERS Board from our four elected members.

The existing State Investment Board membership and investment responsibilities were enacted by the 1989 legislative session. Prior to that, the PERS funds were invested directly by the PERS Board who employed its own investment officer and hired its own investment managers. The PERS Board participated in the development and supported the reorganization of the investment functions to the present arrangement since it offered the opportunity to reduce our overall investment costs. While there were many points of discussion in developing the present arrangement back in 1989, one of the key issues was accommodating the unique fiduciary responsibility relating to the various retirement funds in the proposed new structure for the SIB. Retirement trustee requirements are somewhat different from other state agencies and they are subject to an extensive and stringent set of fiduciary obligations to the retirement programs' participants and beneficiaries (basically the exclusive benefit rule). These obligations both require and justify the need for trustees to be independent with their sole responsibility to the retirement funds and the funds' members. Furthermore, the independence is required because it permits the trustees to perform their duties without concern for other priorities that may relate to other constituencies or needs. In the

absence of independence, trustees may be required to decide between fulfilling their fiduciary obligations to retirement participants or responding to the needs of others that may have a wider ranging set of interests or priorities. In this sense, the independence of retirement trustees is an integral part of the fiduciary obligations that govern the operations of retirement plan investing. This was a key concern back in 1989 in establishing the existing SIB membership. In fulfilling these obligations, there are legal requirements and also requirements that relate to maintaining the trust and confidence of the members.

In addition to the fiduciary considerations, it was felt that the SIB membership should also recognize that the retirement funds were over 50% of the funds invested by the SIB. In fact, today the retirement funds invested through the SIB represent approximately 62% of the total funds invested by the SIB.

To respond to the concerns in 1989 it was decided that the retirement funds would have six of the eleven seats on the State Investment Board. This would assure that those with needed independence for retirement plan investing would be in a majority. Also with the retirement funds having six of the eleven seats, it would represent about 54% of the SIB membership thereby recognizing that the retirement funds were a majority of the total funds invested by the SIB.

Mr. Chairman, members of the committee, we would request that as you contemplate changes to the SIB you recognize these important considerations in any changes that are enacted.

Thank you.

Engrossed SB 2344

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

Fay Kopp, Deputy Director - Retirement Officer  
Retirement and Investment Office (RIO) - Teachers' Fund for Retirement (TFFR)  
March 15, 2011

The Teachers' Fund for Retirement (TFFR) Board is responsible for administering the retirement plan for our state's public school educators. I appear today on behalf of the TFFR Board in a neutral position, and in agreement with PERS and SIB comments.

The seven-member TFFR Board includes two active teachers, one active school administrator, two retired members, the State Treasurer, and the State Superintendent. The TFFR Board selects three of its appointed members to serve on the SIB to represent TFFR. Like other State Investment Board (SIB) client funds, as the governing body of TFFR, the TFFR Board develops investment policy and asset allocation for the fund which is then implemented by the SIB. **Under state law, retirement trustees are subject to an extensive and stringent set of fiduciary responsibilities. These responsibilities require fiduciaries to act solely in the best interests of the trust fund participants and beneficiaries as required by the exclusive benefit rule. Furthermore, fiduciaries must perform their duties in a prudent manner using independent judgment.** Other considerations that may sometimes influence non fiduciaries, no matter how laudable or important, must not impinge on decisions made by fiduciaries.

This need for independence in pension fund investing was understood and statutorily recognized in 1989 when the SIB makeup was last altered by the Legislature. At that time, it was decided that the retirement funds (TFFR and PERS) would have six of the eleven seats on the SIB to assure that pension trustees would be in the majority because of their fiduciary obligations and need for independence. This majority position also recognized that the pension funds are the largest investors with the SIB and

currently make up over 60% of the total funds invested by the SIB. TFFR supported this approach in 1989, and believes continuation of this position continues to be appropriate.

In addition to the above fiduciary considerations, the TFFR Board is concerned that the SIB composition proposed in SB 2344 reduces the number of SIB trustees who are directly accountable to the members of the applicable trust funds. Under the current SIB composition, both pension and insurance trust fund members are represented by their largest clients (pension trust funds are represented by TFFR and PERS members and insurance trust funds are represented by Workforce Safety and Insurance designee). Elected officials on the SIB represent the state and its people as a whole, all of which helps to ensure a solid system of checks and balances. While knowledge of investment principles and concepts has merit, accountability is also a very important consideration. **Board members are held accountable by the participants in the trust fund which incentivizes board members, in their oversight role, to exercise good judgment and make sound decisions. These decisions include hiring the Chief Investment Officer, investment consultant, and investment managers for their specific investment expertise.** This accountability factor is a valuable feature of the current SIB composition.

**Finally, the proposed SIB composition in SB 2344 increases the chances for potential conflicts of interest.** Under the current SIB makeup, it is less likely that individual board members could directly profit from investment decisions or money managers hired by the SIB.

As your Committee evaluates the future size and composition of the SIB, the TFFR Board asks that you also consider these issues. Thank you.