

2013 HOUSE FINANCE AND TAXATION

HB 1167

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1167
January 21, 2013
Job #17481

Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A Bill relating to the definition of earnings of the legacy fund.

Minutes:

Attached testimony #1, 2

Chairman Belter: Opened hearing on HB 1167.

Representative Kempenich: Introduced bill. HB 1167 is brought to you because a definition is needed for allocations of the legacy fund. The investment board hired a consulting firm and it had earnings but there was no definition of earnings. There are about five or six different spots in the code that defined earnings but there wasn't anything specific to this. It states "earnings means interest income and dividends and does not include any capital gain."

Chairman Belter: Are there any questions of Representative Kempenich?

Bill Shalhoob, Greater North Dakota Chamber: See attached testimony #1.

Chairman Belter: Further testimony in support of 1167?

Sandy Clark, North Dakota Taxpayers Association: We were part of the process also during the adoption of the legacy fund and we would like to stand in support of this bill.

Chairman Belter: Further support of 1167? Any testimony in opposition? Any neutral testimony?

Darren Schulz, Interim Chief Investment Officer for the Retirement and Investment Office and State Investment Board: See attached testimony #2.

Chairman Belter: Are there any question? Any other neutral testimony on 1167?

Jeb Oehlke, Deputy State Treasurer: There is a typo on this bill. The article in which the legacy fund appears in the constitution is in article 10 rather than article 9 so an amendment will be needed in order to change that.

Chairman Belter: Any questions? Any other testimony on 1167? If not we will close the hearing on HB 1167.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1167
January 30, 2013
Job 18022

Conference Committee



Explanation or reason for introduction of bill/resolution:

A Bill relating to the definition of earning of the legacy fund.

Minutes:



Chairman Belter: Opens HB 1167, Rep. Drovdal would you like to explain your amendments?

Rep Drovdal: Two corrections to the amendment, one changed 9 to 10 which is the correct location. The other is that capital gain was too broad. Motions to move the amendment.

Rep Headland: Second.

Chairman Belter: Motion carries.

Rep Drovdal: Moves a Do Pass as Amended.

Rep Owens: Second.

Rep (?): Wasn't there a suggestion that on HB 1167, lines 1 and 4, it should be 21-9?

Committee discussed and continues with the motion of Do Pass as Amended.

Yes: 14

No: 0

Absent: 0

Carried by: Rep Schmidt.

1/31/13
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 1, line 7, replace "IX" with "X"

Page 1, line 8, replace "capital gain" with "unrealized gains on investments"

Renumber accordingly

Date: 1-30-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1167

House Finance and Taxation 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. Drovdal Seconded By Rep. Headland

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter			Rep. Scot Kelsh		
Vice Chairman Craig Headland			Rep. Steve Zaiser		
Rep. Matthew Klein			Rep. Jessica Haak		
Rep. David Drovdal			Rep. Marie Strinden		
Rep. Glen Froseth					
Rep. Mark Owens					
Rep. Patrick Hatlestad					
Rep. Wayne Trottier					
Rep. Jason Dockter					
Rep. Jim Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote

Motion carried.

Date: 1-30-13
 Roll Call Vote #: 3

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1167**

House Finance and Taxation 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 Drovdal Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter	✓		Rep. Scot Kelsh	✓	
Vice Chairman Craig Headland	✓		Rep. Steve Zaiser	✓	
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens	✓				
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Schmidt

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

REPORT OF STANDING COMMITTEE

HB 1167: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1167 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "IX" with "X"

Page 1, line 8, replace "capital gain" with "unrealized gains on investments"

Renumber accordingly

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1167

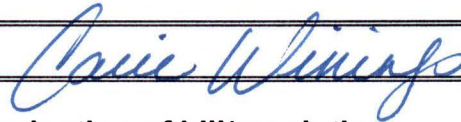
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1167
03/22/2013
Job Number 20351

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to the definition of earnings of the legacy fund.

Minutes:

Chairman Dever: Opened the hearing on HB 1167.

Representative Kempenich, District 39: Testified as sponsor and in support of the bill.

Chairman Dever: If a share is worth \$10 today and \$12 in 2017, we are not going to count the \$2, but if it generates a dividend of \$.50, we will spend that.

Representative Kempenich: That's what it is; the interest part of it. It will earn interest on it.

Chairman Dever: Some investments pay dividends and some don't?

Representative Kempenich: Some of it will, but truthfully, I don't think that you can't really, I don't think when those money managers get in to that, I suppose you could specify that you lean more heavily toward, if that's what you want but that doesn't always mean that is the best investment. (4:50)

Chairman Dever: The legacy fund is in the constitution and this is statutory, so this is our policy until we decide to change it.

Representative Kempenich: They needed to have kind of a definition of earning and what could be, and that is why this is here.

Bill Shalhoob, Greater North Dakota Chamber of Commerce: See Attachment #1 for testimony in support of the bill.

Chairman Dever: My understanding of these kinds of issues is as an observer and yours are as a participant.

Connie Flanagan, Fiscal and Investment Officer, Retirement and Investment Office: See Attachment #2 for testimony in a neutral position on this bill.

Chairman Dever: I think I am going to have to study your testimony to fully understand it.

Senator Cook: I have a question; to what degree can the legislature spend money in 2017 without a two-thirds vote?

Connie Flanagan: My understanding is that anything that is earned through June 30, 2017 becomes part of the principal. So only anything accruing after June 30, 2017 the income accruing after that can be transferred out.

Discussion continued on the transferring provision.

Chairman Dever: Closed the hearing on 1167.

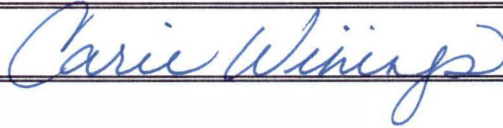
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee
Missouri River Room, State Capitol

HB 1167
04/04/2013
Job Number 20890

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1167 for committee discussion. See Attachments #1 and #2 for additional testimony and proposed amendments from Connie Flanagan of the North Dakota Retirement and Investment Office.

Committee Discussion: The committee reviewed the cover letter and amendments proposed. There were also amendments already proposed by Connie Flanagan that were slightly different. The committee discussed whether or not they were ready to act or needed to have more time to look at the bill and testimony. The committee decided that they needed more time to look at all the information provided and come back to make a decision on the bill. Senator Cook suggested that Alan Knutson come down and discuss the bill before making the decision.

Chairman Dever: Closed the committee discussion on HB 1167.

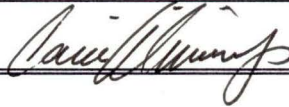
2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee Missouri River Room, State Capitol

HB 1167
04/09/2013
Job Number 21037

Conference Committee

Committee Clerk Signature



Minutes:

Chairman Dever: Opened HB 1167 for committee discussion. This bill involves defining the earnings of the legacy fund and we had testimony from Connie Flanagan and she brought us a couple of different amendments and they involved realized and unrealized earnings as well as the stabilization fund.

Alan Knutson, Legislative Council: Starting in 2017, the interest earnings will be transferred to the general fund each biennium and the intent of this bill is to clarify what is interest earnings because of the constitutional amendment that was passed doesn't define what earnings are. (Explained the amendments and what unrealized and realized gains are.)

(2:54) Senator Nelson: So the realized gain is from the base?

Alan Knutson: Yes, your realized gain would be based on the base. It would be your cost that you paid for it.

Senator Nelson: So you would really only have a 5% gain for that 5% loss you had in the second year because it was plus 10 minus 5.

Alan Knutson: Correct. So the question is then with the definition of earnings, do you want them to include unrealized gains and losses which is going to be changing constantly pretty much or just what they have actually sold and realized at that point.

Senator Cook: We do not want them to include unrealized gains. If we include unrealized gains, we could force them to make a sale.

Chairman Dever: Correct.

Senator Nelson: That is what is in this bill.

Chairman Dever: I would imagine that they invest and reinvest and shift and all that kind of thing all the time so if it was \$120 and they decided to sell that and spend that on another, then they got to pull the \$20 out if they wanted to reallocate the stock.

Alan Knutson: Yes, that would be correct if they were going to buy something else. As part of the accounting in the investment world, they would have to know that the \$20 they earned on that was going to have to be transferred to the general fund so they would have to set that aside because they would know that it is going to have to be transferred at the end of the year. You probably have money to purchase another investment or they would buy a short term investment.

Chairman Dever: So then when that unrealized gain, when the stock was sold, that becomes realized and for this purpose, that would have to go to the general fund and it would not be able to be used to reinvest?

Alan Knutson: Correct. The other option would be to not include either realized or unrealized and just include interest and dividend income but I do not know if you want to go that far. Then that realized gain would just remain part of the principle.

Senator Nelson: So you have to raid principle in order to buy anything new if you give all of the proceeds away?

Senator Cook: You always have more income coming in.

Senator Nelson: But Alan Knutson is saying that we have to put it all in the general fund.

Senator Cook: You always have more tax revenue coming in.

Chairman Dever: I think the legacy fund was set up to allow us to put money into it also. So if we did not want to move that to the general fund, we could designate that to stay.

Alan Knutson: Which is the purpose of this bill then, is to say what earnings you want to transfer to the general fund.

Committee Discussion: The committee discussed the two sets of amendments brought by Connie Flanagan with Alan Knutson. They discussed whether they improve or clarify the bill.

(9:42)Chairman Dever: Do we want to include the budget stabilization fund in this?

Alan Knutson: That seems like a separate issue to me. It doesn't make a big difference either way. The way the law is now, once the budget stabilization fund is at its maximum balance, any interest earned or income earned gets transferred to the general fund because the fund is at its maximum balance. Right now they do that transfer once a year and with this amendment, it would be once a biennium. So they are adding into the budget stabilization fund at the end of the biennium. It would be once a biennium instead of once a year. The second part at the bottom says that at the end of the biennium they take a look at the general fund appropriations for the next biennium and recalculate what the maximum balance is. The way it works now is that at the end of the biennium they would transfer the money to the general fund because the fund is at its maximum balance and then when the fund balance is recalculated, they put money back from the general fund into the budget stabilization fund to bring it up to its maximum balance again. What they are saying here is that instead of doing the transfer of the budget stabilization fund interest to the general fund and then just turning around and sending it back, they would just assume net it out and not do that transfer. It is really just a bookkeeping transaction. The thought I had that is a potential concern is that the way it is now, you know how much interest was transferred

from the budget stabilization to the general fund and transfer it back. If you do it, they are just going to net it out and you would not really have information on how much earnings of the budget stabilization fund would have been transferred to the general fund.

Chairman Dever: Do they need to sell stock to do that?

Alan Knutson: Generally not. These investments are pretty much in short term items so they would pretty much have the cash.

Senator Nelson: (inaudible question)

Chairman Dever: I think Connie Flanagan, but I think the treasurer spoke in favor of it.

Senator Cook: I am not interested in putting the budget stabilization fund in there. I think we should just keep it the legacy fund. My guess is that before we go home, people down in appropriations generally deal with the budget stabilization fund. I think that it will surface anyways.

Chairman Dever: I think that is a good point.

Senator Cook: I move the amendments on page 4 of Connie Flanagan's testimony.

Senator Nelson: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

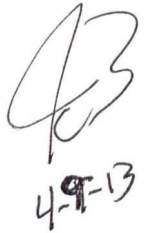
Senator Nelson: Moved a Do Pass As Amended.

Senator Poolman: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Senator Schaible: Carrier.

April 9, 2013



A handwritten signature, possibly 'B', is located in the top right corner. Below the signature, the date '4-9-13' is written in a similar handwritten style.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1167

Page 1, line 8, replace "interest" with "net"

Page 1, line 8, replace "and dividends and does not include" with "in accordance with generally accepted accounting principles, excluding"

Page 1, line 8, remove "on"

Page 1, line 9, replace "investments" with "or losses"

Renumber accordingly

Date: 4/9
 Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES

BILL/RESOLUTION NO. 1167

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number pg 4 *Amendments of Connie Flanagan*

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

Motion Made By Senator Cook Seconded By Senator Nelson

Senators	Yes	No	Senator	Yes	No
Chariman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 4/9
 Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES

BILL/RESOLUTION NO. 1167

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0538.02001 03000

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

Motion Made By Senator Nelson Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 19

Floor Assignment Senator Schaible

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

REPORT OF STANDING COMMITTEE

HB 1167, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1167 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "interest" with "net"

Page 1, line 8, replace "and dividends and does not include" with "in accordance with generally accepted accounting principles, excluding"

Page 1, line 8, remove "on"

Page 1, line 9, replace "investments" with "or losses"

Renumber accordingly

2013 TESTIMONY

HB 1167

Testimony of Bill Shalhoob
Greater North Dakota Chamber of Commerce
HB 1167
January 21, 2013

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working to build the strongest business environment possible through its more than 1,100 business members as well as partnerships and coalitions with local chambers of commerce from across the state. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of HB 1167 and urge a do pass from your committee on the bill.

As background GNDC was one of the principle organizations involved with taking the Legacy Fund from a concept to a constitutional measure that passed. For the record we were equally involved in the first vote that did not win the approval of the voters. When we were projecting possible fund balances we thought we had the ability to reach five billion dollars in five biennia. This may have been the highest estimate that was considered by anybody but given the 2011-2013 results it appears even we underestimated the fund balance potential. When we developed the concept the goal was to take a non-renewable resource like oil and make the benefits we get from it renewable through earnings that would continue way beyond the life of the oil play. Although not addressed in the measure it was certainly intended that earnings to be transferred to the general fund would include interest and dividends and not capital gains as HB 1167 does specify. It actually was our hope that oil revenue in years six through ten of the fund's life would still be at a level that law makers would be able to reinvest all earnings in those years and still meet budget needs, thereby increasing the fund value even more for the time it will be needed.

Thank you for the opportunity to appear before you today in support HB 1167. I would be happy to answer any questions.

Champions (for) Business

PO Box 2639 P: 701-222-0929
Bismarck, ND 58502 F: 701-222-1611

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HB 1167

North Dakota Retirement and Investment Office North Dakota State Investment Board Testimony to the House Finance and Taxation Committee

January 21, 2013

Good morning Mr. Chairman and members of the committee. My name is Darren Schulz and I am the Interim Chief Investment Officer for the Retirement and Investment Office (RIO) and State Investment Board (SIB). I am here today to provide neutral testimony concerning House Bill 1167.

As the agency that is responsible for providing the accounting for the Legacy Fund, it is important to RIO and the SIB to have a definition of earnings as it appears in section 26 of article X of the Constitution relating to the Legacy Fund. That section indicates that all earnings accrued after June 30, 2017, must be transferred to the General Fund. To assist you in defining "earnings" as it relates to the Legacy Fund, I would like to provide you with a quick review of some accounting terminology.

"Realized" gains and losses are the differences between the original cost of a security and the amount received upon sale of that security. "Unrealized" gains and losses are changes in the value of securities in a portfolio. Those securities fluctuate in value over time. Realized gains result in cash proceeds, while unrealized gains are simply accounting gains and do not result in cash proceeds available for transfer to the General Fund. Depending upon the source, the definition of "capital gains" may include only realized gains or may include both realized and unrealized gains. Therefore, in order to ensure clarity, I would suggest that earnings as defined in this section should specifically exclude net unrealized gains on investments in the fund.

I would be happy to answer any questions you may have and this concludes my testimony.

Testimony of Bill Shalhoob
Greater North Dakota Chamber of Commerce
HB 1167
March 22, 2013

Mr. Chairman and members of the committee, My name is Bill Shalhoob and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working to build the strongest business environment possible through its more than 1,100 business members as well as partnerships and coalitions with local chambers of commerce from across the state. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As a group we stand in support of HB 1167 and urge a do pass from your committee on the bill.

As background GNDC was one of the principle organizations involved with taking the Legacy Fund from a concept to a constitutional measure that passed. For the record we were equally involved in the first vote that did not win the approval of the voters. When we were projecting possible fund balances we thought we had the ability to reach five billion dollars in five biennia. This may have been the highest estimate that was considered by anybody but given the 2011-2013 results it appears even we underestimated the fund balance potential. When we developed the concept the goal was to take a non-renewable resource like oil and make the benefits we get from it renewable through earnings that would continue way beyond the life of the oil play. Although not addressed in the measure it was certainly intended that earnings to be transferred to the general fund would include interest and dividends and not unrealized gains as HB 1167 does specify. It actually was our hope that oil revenue in years six through ten of the fund's life would still be at a level that law makers would be able to reinvest all earnings in those years and still meet budget needs, thereby increasing the fund value even more for the time it will be needed.

Thank you for the opportunity to appear before you today in support HB 1167. I would be happy to answer any questions.

Engrossed HB 1167

North Dakota Retirement and Investment Office
North Dakota State Investment Board
Testimony to the Senate Government and Veterans Affairs Committee

March 22, 2013

Mr. Chairman and members of the committee, my name is Connie Flanagan and I am the Fiscal and Investment Officer for the Retirement and Investment Office (RIO) and State Investment Board (SIB). I am here today to provide neutral testimony concerning House Bill 1167.

As the agency that is responsible for providing the accounting for the Legacy Fund, it is important to RIO and the SIB to have a definition of earnings as it appears in section 26 of article X of the Constitution relating to the Legacy Fund. That section indicates that all earnings accrued after June 30, 2017, must be transferred to the General Fund. To assist you in defining "earnings" as it relates to the Legacy Fund, I would like to provide you with a quick review of some accounting terminology.

Realized gains and losses on sales of investments are the differences between the original cost of a security and the amount received upon sale of that security. **Unrealized** gains and losses (also called appreciation/depreciation in fair value) are changes in the value of securities in a portfolio. Those securities fluctuate in value over time. Realized gains result in cash proceeds, while unrealized gains are simply accounting gains and do not result in cash proceeds available for transfer to the General Fund.

In the original version of this bill, "earnings" was defined as interest income and dividends and specifically excluded capital gains. Depending upon the source, the definition of "capital gains" may include only realized gains or may include both realized and unrealized gains. Therefore, in order to ensure clarity, testimony provided by RIO staff to the House Finance and Taxation Committee in January suggested that earnings as defined in this section should specifically exclude net unrealized gains. We did not at that time, nor do we now, make a recommendation on whether net realized gains should be included.

However, in looking at the amended version of this bill, there is still some ambiguity regarding its implementation. As engrossed HB1167 is currently worded, earnings specifically includes interest and dividends and specifically excludes net unrealized gains but is silent regarding net realized gains and is also silent regarding any offsetting expenses.

To aid you in visualizing this issue, the following table provides two hypothetical examples of the summarized financial information, following generally accepted accounting principles, which would affect the calculation of the earnings that would be required to be transferred to the General Fund at the end of the 2017-19 biennium.

Interest, Dividend and Other Misc. Investment Income	\$ 50	\$ 50
Investment Expenses	(8)	(8)
Administrative Expenses	(2)	(2)
(1) Net income excluding net realized and unrealized gains	\$ 40	\$ 40
Realized Gains	100	50
Realized Losses	(30)	(70)
<i>Net Realized Gains(Losses)</i>	<u>70</u>	<u>(20)</u>
(2) Net income excluding net unrealized gains	\$ 110	\$ 20
Unrealized Gains	70	20
Unrealized Losses	(20)	(30)
<i>Net Unrealized Gains(Losses)</i>	<u>50</u>	<u>(10)</u>
(3) Total Net Income	<u>\$ 160</u>	<u>\$ 10</u>

We have asked our legal counsel to draft two amendments for your review. The first amendment (on page 3) assumes that you would prefer to exclude both **realized** and **unrealized** gains and losses from the definition of earnings. That would correspond to the line noted as (1) in the example above.

The second amendment (on page 4) assumes that you would prefer to exclude only **unrealized** gains and losses from the definition of earnings. That would correspond to the line noted as (2) in the example above.

In conclusion, I would respectfully ask this committee to consider one of the two amendments presented here to ensure there is no confusion when the time comes to begin transferring the earnings of the Legacy Fund to the General Fund at the end of the 2017-19 biennium. I would be happy to answer any questions you may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1167

Page 1, line 8, replace "interest" with "net"

Page 1, line 8, replace "and dividends and does not include" with "in accordance with generally accepted accounting principles, excluding"

Page 1, line 8, after "any" insert "realized and"

Page 1, line 8, replace "on" with "or losses"

Page 1, line 9, remove "investments"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1167

Page 1, line 8, replace "interest" with "net"

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Page 1, line 9, remove "investments"

Renumber accordingly

ND Retirement and Investment Office



State Investment Board
Teachers' Fund for Retirement

1930 Burnt Boat Drive
P.O. Box 7100
Bismarck, ND 58507-7100
Telephone 701-328-9885
Toll Free 800-952-2970
Fax 701-328-9897
www.nd.gov/rio

April 3, 2013

via email

Chairman Dick Dever
Senate Government and Veterans Affairs Committee
ND Legislative Assembly
600 East Boulevard Avenue
Bismarck, ND 58503

Chairman Dever:

Thank you for the opportunity to provide you and your committee with information and proposed amendments on House Bill 1167 on Friday, March 22. As you recall, during my testimony, a question was raised as to whether the State Investment Board (SIB) manages any other funds that have a similar issue regarding transfer of earnings.

The SIB is also responsible for the investment of the Budget Stabilization Fund. ND Century Code section 54-27.2-01 states: *The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than nine and one-half percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.*

The issue we've had with the current language is that it is not specific as to the time frame in which the balance cannot exceed nine and one-half percent of the current general fund budget. We are currently reviewing the balance in June of each fiscal year and transferring appropriate amounts to the general fund. Every two years, once the new general fund budget is finalized, the state treasurer transfers an additional amount back into the fund to bring it to nine and one-half percent of that new budget amount. What actually occurs in the second year of a biennium is the SIB transfers the earnings to the general fund in June and the state treasurer transfers funds back to the SIB in August or September to meet the requirements of this section.

I have attached a new amendment, which I have discussed with representatives from OMB, for consideration by your committee. This amendment specifies that the balance would only be compared at the end of each biennium. The additional language would also allow us to compare the balance against the new general fund budget and if it was greater than nine and one-half percent of the most recent general fund budget, the SIB would transfer appropriate funds to the general fund and no additional funds would be added. But if the balance was less than nine and one-half percent of the most recent general fund budget, the state treasurer would simply need to transfer in the difference and no funds would be transferred to the general fund from the invested balance. This would allow for one net transfer to be made, after the end of the biennium, to bring the balance in line with the nine and one-half percent requirement. It would also allow the funds to stay invested for a longer period of time, maximizing the return on the larger balance.

Chairman Dever, thank you for your patience and consideration of this additional amendment to HB1167. If you or your committee members have any questions, I would be very happy to answer them.

Sincerely,

CONNIE L. FLANAGAN
Fiscal and Investment Officer

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1167

Page 1, line 2. after "fund" insert, "; and amend and reenact sections 54-27.2-01 and 54-27.2-02 of the North Dakota Century Code, relating to the balance of and transfers to the budget stabilization fund"

Page 1, after line 9 insert:

SECTION 2. AMENDMENT. Section 54-27.2-01 of the North Dakota Century Code is amended and reenacted as follows.

54-27.2-01. Budget stabilization fund.

The budget stabilization fund is a special fund in the state treasury. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10. Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund at the end of any biennium to an amount greater than nine and one-half percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

SECTION 3. AMENDMENT. Section 54-27.2-02 of the North Dakota Century Code is amended and reenacted as follows.

54-27.2-02. Certain general fund revenues to be deposited in the budget stabilization fund.

Notwithstanding any other provision of law except section 54-27.2-01, any amount in the state general fund in excess of sixty-five million dollars at the end of any biennium, after deducting any amounts that would otherwise be transferred to the general fund under section 54-27.2-01, must be transferred by the state treasurer to the budget stabilization fund. For purposes of this section, "at the end of any biennium" means after cancellation of unexpended appropriations under section 54-44.1-11."