2013 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1304

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1304
February 7, 2013
Job 18557

☐ Conference Committee

Explanation or reason for introduction of bill/resolution:

Relating to the divestiture of state investment funds in certain companies liable to sanctions under the Iran Sanctions Act of 1996; and to provide an expiration date.

Minutes:

Testimony 1, 2, 3, 4, 5

Chairman Kasper opened the hearing on HB 1304.

Rep Grande introduced the bill.

Steve Hunegs, Executive Director of the Jewish Community Relations Council of Minnesota and The Dakotas (05:55) testified in support of the bill (Testimony 5).

Rep Zaiser: Is this divestiture part of the U.S. sanctions on Iran?

Hunegs: The United States, going back to 1995, has supported sanctions. The reason the legislation is so specific about companies spending $20 million in investing in Iran's energy sector is because that's what Congress set out in 1996. American companies can't directly do business with Iran, but foreign companies can and they are subjected to sanction from the U.S. government. That became the framework for the legislation for the states.

Rep Mooney: What is the association from your organization and to North Dakota's investments?

Hunegs: We have made it a goal of supporting, in coalition with other groups, this legislation. I have a deep relationship with the MN National Guard. Part of my support for this legislation is hearing about the threats that Iranian roadside bombs or bombs with Iranian components are presented to our MN National Guard in Iraq.

Chairman: If this bill were to pass, could you give us an overview of what would happen with the investment funds with the divestiture? What is the concept?

Hunegs: The state investment board identifies the companies that would be subject to the divestment. Congress was concerned about due process and wanted to give companies a chance to respond. If a company doesn't change its business practices with respect to Iran, the state board of investment then has to sell the stock. It is a fairly long process.

Chairman: Are there 24 other states that have already done this?

Hunegs: There are 24 states that have either passed it or now have an investment policy against investing in Iran. Some of those states are at different stages in the divestment.

Sparb Collins, Executive Director of the North Dakota Public Employees Retirement System (21:54) testified in opposition of the bill (Testimony 1).

Rep Zaiser: How long has it been since there has been a request such as we are hearing today?

Collins: It has been awhile. This comes in a form of a bill, but there have been other types of requests that have been discussed.

Chairman: Does your amendment put a step in front of the bill and provide the board the opportunity to do its due diligence investigate and make a determination of the result of divestiture of your holdings that might qualify?

Collins: Essentially that is correct. The exclusive benefit rule is in law. That process has to be used. This bill would potentially override that. The amendment just maintains it.

Chairman: It maintains the exclusive benefit rule. Does it give you process to investigate whether or not the divestiture would not violate the exclusive benefit rule?

Collins: Yes

Fay Kopp, Interim Executive Director - Chief Retirement Officer, ND Retirement and Investment Office - ND Teachers' Fund for Retirement (30:54) appeared in opposition of the bill (Testimony 2).

Chairman: If the amendment, suggested by Sparb, were adopted on the bill, would that solve your concern on number one?

Kopp: Yes.

Chairman: What percentage of the assets of the TFFR fund are traded or turned over on an annual basis?

Kopp: I don't know.

Chairman: The fund managers buying and selling the invested assets all the time based upon doing their fiduciary responsibility. Would it be possible to find out, both from the PERS and TFFR perspective, a percentage turnover of your invested assets and an average percentage turnover on an annual basis?

Kopp: Darren from the State Investment Board may have that information.

Chairman: In regards to number 3, in order for any slippery slope to be jumped on, it would take legislative action just like this bill, correct?

Kopp: Yes.

Kelly Schmidt, State Treasurer (37:04) testified in opposition to the bill (Testimony 3).

Chairman: You heard testimony that there are 24 states that have taken some action like this. Are you aware of any litigation in any of those states as a result of any type of a divestiture action any place in the country?

Schmidt: At this time I am not aware of any litigation.

Chairman: When the state of ND and any of the fund board who oversees our investment philosophies, do you establish the priorities and the goals and objectives of the funds?

Schmidt: In the State Investment Board, those are determined by our clients. And would include the TFFR board and the PERS board.

Chairman: There is a board that establishes the investment philosophy and the goals and guidelines of the funds.

Schmidt: Each board has their own philosophy

Chairman: If this bill were passed, the board of a fund could say their goal is to meet what the bill says and not violate our prudent person investment rule. That is then handed to the money managers, who are all over the country. If they are given an investment philosophy and guideline with which to follow which would be divestiture if it would not violate the ability for the fund to make money according to their decision, would you not then be passing that decision making process on to the people you've hired to manage the money in the first place?

Schmidt: I would say we would not. As a fiduciary of that fund, it is the responsibility of the fiduciaries, not us passing it on to our money managers. There are times when we make investment decisions. What if our money managers did miss something?

Chairman: You're implying that when you set your investment philosophy and you hand it off to money manager A, they need to manage the dollars that are under their prerogative according to the investment philosophy that you gave them. So your fiduciary responsibility is to watch to make sure they are managing the money that way, do you have a liability that if they mismanage the money, you are now responsible. Or is it the responsibility of the people you gave the directive to?

Schmidt: It would be their responsibility as it would be related to the mandate. We don't give a philosophy to a money manager; we give a mandate.

Chairman: So when the mandate is given to the money manager, there is a fiduciary responsibility that they enter into?

Schmidt: Yes.

Chairman: So the job of the people who gave the mandate to the fiduciary who manages the money is to oversee that they are doing their job according to the mandate that you gave to them?

Schmidt: Yes.

Chairman: If you determine they are not meeting that mandate, they could be fired?

Schmidt: Yes.

Darren Schulz, Interim Chief Investment Officer for the North Dakota Retirement and Investment Office and State Investment Board (50:40) testified neutrally (Testimony 4).

Rep Steiner: Would there be less cost if we didn't require immediate action? If we said rolling into future we will implement this. How would you that you don't invest in any Iranian companies if you haven't done your research yet?

Schulz: We do not invest in companies that are domiciled in Iran or state government bonds. If this were applied prospectively and not to existing holdings, the way I understand the bill, it would require divestiture based on current and prospective holdings.

Chairman: If the bill were changed to say it applied to future investment policy, you would be given the mandate to follow this investment course.

Schulz: If the bill were to apply prospectively and not to existing holdings, it may mitigate some of the transaction cost. However, it would alleviate any of the administrative burdens that would be incurred. This will require additional staff and resources.

Rep Louser: If the fiduciary duty is to maximize returns, why on page 2 do we have economically targeted investments; investments selected for collateral economic benefit apart from the return?

Schulz: Our clients' investment policy statements prohibit economically targeted investing, unless it meets the exclusive benefit rule. Essentially we're not going to sacrifice return in order to achieve a collateral economic benefit.

Rep Louser: Is there an investment that the SIB would not make, if the returns were attractive?

Schulz: We do not impose restrictions on our managers. Our goal is to maximize investment return on behalf of all of our clients.

Rep Rohr: Have you had a chance to visit with anybody in any of the 24 states that have a similar law, in terms of the impact that they've incurred based on this law?

Schulz: I've reached out directly to Ohio. One of our staff polled a national association of state investment officer group seeking feedback. Much of my testimony is modeled on input from these other states.

Rep Mooney: On the fiscal note, underneath the state's obligations, why does only the city have a cost and not the county?

Schulz: I was told that is for Bismarck, Fargo and Grand Forks clients that we have.

Chairman: Is the assumption that there are scrutinized companies out there and that you may be forced to sell various holdings?

Schulz: Yes, I am making the assumption that there may be companies on the scrutinized companies list that may not cease business activities should there be determined exposure to Iran.

Chairman: But at this time, you don't know for sure if there is even one holding out there?

Schulz: In my research, I have observed estimates provided by other state plans as far as the potential exposure. The administrative costs reflect these estimates. We simply don't know until we hire a research service.

Chairman: How do you pay your money managers?

Schulz: Most of our managers who would be affected by this bill would be equity managers. Most of our equity manager mandates are an asset based fee. A few have a base fee and a performance fee.

Chairman: So there is no individual transaction fee?

Schulz: Transaction costs are born by our SIB clients. That impact will be felt. I estimated the transaction estimate based on estimates provided by Ohio, Florida and one other state fund. Given that the transactions would occur primarily in international equity markets, those markets have a higher trading cost. I'm estimating the cost of selling a position and finding a substitute position. It would cost about 0.9%; 90 basis points. That is born by our clients.

Chairman: Could you get the past three or four years of performance information on a calendar basis for the annual returns on the various funds?

Schulz: Continued testimony (1:09:35).

Chairman: If Sparb's amendment were adopted, would that solve your last problem under the fiduciary implications?

Schulz: It would clarify that the exclusive benefit rule would supersede any pressure to invest for social or any other reasons. That is an important consideration. I struggle with the burden of determining what meets that rule. This bill would require us to make case by case determinations and perform investment analysis on a company by company basis. I see a very onerous fiduciary responsibility. I'm concerned on the impact on the staff.

Rep Boehning: Isn't there a list of these corporations out there already from the 24 states that are already doing this?

Schulz: There is no master list. Each state has various provisions to their bills. There is no commonality.

Chairman closed the hearing.

Rep Koppelman moved to adopt the amendment proposed by Sparb Collins.

Rep Louser seconded.

Voice vote: Motion carried.

2013 HOUSE STANDING COMMITTEE MINUTES

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

HB 1304
February 8, 2013
Job 18627

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the divestiture of state investment funds in certain companies liable to sanctions under the Iran Sanctions Act of 1996; and to provide an expiration date.

Minutes:

Attachment 1

Chairman Kasper: Apprised committee of an e-mail he received from someone who had testified, thanking the committee for the opportunity to be heard and for the fairness of the hearing. Reminded committee of fiscal note of $2.5 million. Summarized main concept of bill. Opened committee discussion on HB 1304.

1:25 **Rep. Laning:** I feel the theory behind this is good, but after hearing the testimony, there is too much involved in this to pursue it further. It has a lot of impact to employee retirement funds. It is not as simple as it looks at first.

2:21 **Rep. Laning** made a **motion for a Do Not Pass.**

Rep. Paur seconded the motion.

2:49 **Rep. Boehning:** Yesterday we approved the amendment that was on the back of the testimony from Sparb Collins. Is that part of this motion?

Chairman Kasper confers with committee clerk regarding the voice vote to adopt the amendment on the prior day.

3:30 **Chairman Kasper:** So we need to change the motion to reflect that the bill has been amended. Would the motioner and seconder agree to that.

Rep. Laning and Rep Paur agree to amend the motion so that it is now **a motion for a Do Not Pass as Amended.**

3:48 **Rep. Boehning:** As we heard in testimony, there are twenty-four states that have this in place already. I think it is good legislation, and I think it overblew how much it will cost. I don't think it will be overly burdensome. It will be tough, and I think the fiscal note was out of whack. I am going to vote against the do not pass.

4:48 **Rep. Rohr:** In the testimony yesterday, they kept referring to the client. That is the client body at large. I bet that if the clients at large were informed that they were investing in Iranian companies, I think they would be able to give an informed opinion.

5:14 **Rep. Mooney:** I take great stock in the people we hire as experts. We heard from all of our state experts about the complexities of moving forward with this and the volatility of this. I would be absolutely against us moving forward with this. I think they do what they can within the federal mandate to do their due diligence through that process.

6:04 **Rep. Paur:** I don't believe the funds are presently investing in Iranian companies. I believe those twenty-four states are considering legislation, not that they have legislation.

7:09 **Rep. Strinden:** The price tag is too large for me for a largely symbolic bill. In principle, I agree with not investing in Iran. But I am not sure how much money is going there. I'd rather spend the money this would cost on education or something that will stay in our state. I'm not sure if I would be willing to spend extra money in my own IRA and 401K to divest from Iran. I cannot vote to have the state to that with their funds.

7:46 **Rep. Louser:** (audio faint) The experts who testified and have fiduciary responsibilities said their job is to maximize returns. I asked them that if the return is attractive regardless of the investment, do we invest in it, and I didn't hear an answer. My question is, do we have last year's returns on ___ (audio faint). Were they not around 0% for investments?

8:26 Several individuals talk together to locate the information. **See Attachment 1.**

8:55 **Chairman Kasper:** If we look at PERS, PERS had a 13.55% return in 2012. In 2011, it was -0.72%. In 2010, 12.6%. In 2009, 15.5%. There is the big decline in 2008, when the market dove substantially. The fact of the matter is that when money managers manage accounts, they are cognizant of their fiduciary responsibility to try to protect the assets. If they are seeing placed in the world where there could be potential problems, they certainly can sell out of that position. They may sell out of that position. The implication was that you might take a loss when you sell out of a position. Money managers do that every day. They don't sit on the funds; they have a strategy for buying into a new position. I don't think there are any transaction fees in big accounts like that. The money managers are paid a percentage of assets under management.

11:57 **Rep. Dockter:** You had asked about the percentage of turnover of assets. That is already built in. If we would pass this bill, I don't think the cost would be there because it is already built in. If they would have to sell out of some holdings, that is just the nature of having that much money. Their goal is to maximum returns. The benchmark is the S&P 500. We're not even hitting that when you look at our returns. Even though our returns look good, they should be higher to meet the benchmark. This fiscal note is way out of line. The fees are already built in. They did not ask the question yesterday because, I believe, they know what the answer us.

13:20 **Rep. Louser:** (audio faint) I would like to get the interim committee's report. If I recall, the returns for three quarters were 0%, and now we're seeing an annual return of 13%.

13:41 **Chairman Kasper:** They are on different reporting cycles. If the returns should be better than what they are, it might not hurt to get out of the Iranian investments, if any.

14:09 **Rep. Mooney:** If we're going to look at is seriously for one issue, Iran, then every two years are we going to go down the road of questioning whether we invest certain things. There is a long list of items which would be socially unacceptable for any number of reasons. I question the wisdom of going down that path and superseding the experts who are telling us this is a bad idea.

14:55 **Rep. Dockter:** I would disagree. Iran is a matter of national security. I don' think we should have any investments which help their economy in any way.

15:20 **Rep. Rohr:** (audio faint)

15:41 **Rep. Mooney:** I understand that. My point is that every two years, we're going to have a series of organizations and special interest groups and people who are going to be asking us to consider legislation on our investments based on social issue or foreign politics.

16:16 **Chairman Kasper:** I understand your concern. However, we have no way of knowing what the next session will bring. It's our responsibility to listen to each bill on its own merits. We are not experts in money managing, but hopefully we are experts in setting public policy.

16:52 **Rep. B. Koppelman:** Called the question.

Roll call vote on the motion for a Do Not Pass as Amended. Motion fails.

Yes = 6
No = 7
Absent = 1

18:08 **Rep. Boehning:** Made a **motion for a Do Pass as Amended** and **Referred to Appropriations.**

Rep. Rohr: Seconded.

Roll call vote on the motion for a Do Pass as Amended. Motion passes.

Yes = 8
No = 5
Absent = 1

Carrier: Rep. Dockter

FISCAL NOTE
Requested by Legislative Council
02/01/2013

Revised
Bill/Resolution No.: HB 1304

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$2,203,553	$0	$321,846
Appropriations	$0	$0	$0	$283,553	$0	$300,846

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	$0	$0	$0
Cities	$0	$55,000	$8,050
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

In order to comply with the language in HB1304, the SIB would require assistance from a consultant with expertise in identifying these companies and internal staff resources to perform the on-going analysis and reporting at both the board and legislative levels.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB1304 would require the State Investment Board (SIB) to follow specific procedures for identifying, analyzing, engaging, monitoring and divesting in companies subject or liable to sanctions. In order to identify these companies, the SIB would require assistance from a consultant with expertise in this area. The estimated cost of this type of consulting relationship is $10,000+ per year. Per NDCC 21-10-06.2, this expenditure would fall under continuing appropriation authority. Additionally, once the companies are identified, internal staff time would be required to provide analysis of the companies reported by the consultant to the SIB, engage these companies directly, monitor and analyze the responses received from these companies, provide reports to the SIB and legislative management, and supervise the divestment process to ensure transaction costs are minimized. Based on information received from other states' investment offices, it is estimated that up to 25% of an FTE's time would be required to ensure compliance with this bill. The SIB has recently discussed the anticipated need for additional staff for the investment program at RIO. Testimony provided on HB1022 (RIO budget bill) to the House Appropriations-Government Operations Committee on January 16, 2013, included discussion regarding this anticipated need in the near future, based on the significant growth of the Legacy Fund in addition to the overall growth of the assets under management (AUM) of the SIB. The SIB program appropriation request currently funds 5.75 FTEs responsible for current AUM of just over $6 billion. Estimates indicate AUM to be over $8 billion by the end of the 2013-15 biennium. RIO did not request an additional FTE in the budget request in HB1022, preferring to wait until the vacant Executive Director/CIO position is filled, but if HB1304 were passed, the current 5.75 FTEs would not have the capacity to absorb the additional responsibilities as described. Unfortunately, the requirements within HB1304 to meet certain deadlines would not provide the luxury of waiting to assess staffing needs until that time. RIO would therefore request an additional FTE to provide the necessary staff to properly implement HB1304 as well as to provide support for the anticipated growth in AUM over the next biennium. Estimated salary and benefits for this position are $265,400 for the 2015-17 biennium and $291,500 for the 2015-17 biennium. Estimated additional operating expenses for this position are approximately $18,200 for the 2015-17 biennium and $9,300 for the 2015-17 biennium. Additional costs: There are no pre-established screening criteria or industry lists that fully comply with this

bill's language. The development of a customized analysis was not possible within the timelines established for this fiscal note's completion, so RIO relied upon a survey of other state retirement plans that restrict investment in companies with Iranian ties with exceptions for humanitarian providers. Accordingly, additional companies could meet the parameters set forth in this bill. Transactions costs of divestment cannot be estimated with precision given the uncertainty surrounding divestment activity needed to comply with HB 1304. Most SIB clients invest a large portion of their assets in equity markets, and in international securities, which would likely be most impacted by the divestment bill. Based on a survey of other state retirement plans, approximately 7.5% of the public equity portfolio and 1% of the fixed income portfolio may be subject to divestment. Using a midpoint of transaction costs provided by California, Florida and Ohio pension officials, the transaction costs for selling the scrutinized companies and purchasing replacement securities is estimated to be $1.9 million.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   While the variety of provisions in the divestment bills among various retirement systems make developing a rule of thumb nearly impossible, estimates of lost investment earnings range from no impact to approximately 30 basis points per annum.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

Name: Connie Flanagan

Agency: Retirement and Investment

Telephone: 328-9892

Date Prepared: 02/06/2013

Fiscal Impact of HB 1304
Department 190/Fund 207

	2013-15 Biennium	2015-17 Biennium
Outside Consulting Services	20,000.00	21,000.00
Salary (1 additional FTE)	205,000.00	226,012.50
Benefits	60,395.87	65,543.63
Total Salaries and Benefits Appropriation	265,395.87	291,556.13
Operating		
Telecom	960.00	988.80
ITD Data Processing	2,547.00	2,651.22
Travel	4,000.00	4,200.00
Software	600.00	-
Professional Development	1,000.00	1,000.00
Operating Fees (advertising)	300.00	300.00
Office Supplies	150.00	150.00
IT Equipment <$5000	2,650.00	-
Other Equipment <$5000	5,950.00	-
Total Operating Appropriation	18,157.00	9,290.02
Total Appropriated Expenditures Dept. 190/Fund 207	**283,552.87**	**300,846.15**
Total Continuing Appropriation Expenditures	**20,000.00**	**21,000.00**
Total Expenditures	**303,552.87**	**321,846.15**
Est. investment transaction costs related to divestiture	**1,900,000.00**	

13.0352.01002
Title.02000

Adopted by the Government and Veterans Affairs Committee
February 8, 2013

2/8/13
GVAC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304

Page 4, after line 19, insert:

"**21-13-10. Divestment of public employee retirement funds.**

Notwithstanding any other law to the contrary, the state investment board shall apply the exclusive benefit rule in investing any public employees retirement system fund created by the laws of this state. The state investment board is not required to engage a scrutinized company under section 21-13-02 or proceed with divestment under section 21-13-03 if the board determines doing so would violate the exclusive benefit rule."

Renumber accordingly

Date: 2-7-13
Roll Call Vote #: ______

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1304

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By ______ Seconded By ______

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chairman Randy Boehning			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Marie Strinden		
Rep. Karen Karls			Rep. Steven Zaiser		
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Gary Paur					
Rep. Karen Rohr					
Rep. Vicky Steiner					

Voice vote to adopt amendment motion carried

Total (Yes) ______ No ______

Absent ______

Floor Assignment ______

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

Date: 2-8-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1304

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

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

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Laning Seconded By Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper		X	Rep. Bill Amerman		
Vice Chairman Randy Boehning		X	Rep. Gail Mooney	X	
Rep. Jason Dockter		X	Rep. Marie Strinden	X	
Rep. Karen Karls	X		Rep. Steven Zaiser	X	
Rep. Ben Koppelman		X			
Rep. Vernon Laning	X				
Rep. Scott Louser		X			
Rep. Gary Paur	X				
Rep. Karen Rohr		X			
Rep. Vicky Steiner		X			

motion failed

Total (Yes) 6 No 7

Absent 1

Floor Assignment Dockter

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

Date: 2-8-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1304

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

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

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Boehning Seconded By Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman		
Vice Chairman Randy Boehning	X		Rep. Gail Mooney		X
Rep. Jason Dockter	X		Rep. Marie Strinden		X
Rep. Karen Karls	X		Rep. Steven Zaiser		X
Rep. Ben Koppelman	X				
Rep. Vernon Laning		X			
Rep. Scott Louser	X				
Rep. Gary Paur		X			
Rep. Karen Rohr	X				
Rep. Vicky Steiner	X				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Dockter

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

REPORT OF STANDING COMMITTEE

HB 1304: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1304 was placed on the Sixth order on the calendar.

Page 4, after line 19, insert:

"**21-13-10. Divestment of public employee retirement funds.**

Notwithstanding any other law to the contrary, the state investment board shall apply the exclusive benefit rule in investing any public employees retirement system fund created by the laws of this state. The state investment board is not required to engage a scrutinized company under section 21-13-02 or proceed with divestment under section 21-13-03 if the board determines doing so would violate the exclusive benefit rule."

Renumber accordingly

2013 HOUSE APPROPRIATIONS

HB 1304

2013 HOUSE STANDING COMMITTEE MINUTES

House Appropriations Committee
Roughrider Room, State Capitol

HB 1304
2/14/13
Job 18987 and 19010

☐ Conference Committee

Committee Clerk Signature Meredith Trautsolt

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subdivision a of subsection 2 of section 54-03-20 of the North Dakota Century Code, relating to lodging reimbursement for legislators attending legislative sessions; to provide for retroactive application; and to declare an emergency.

Minutes:

You may make reference to "attached testimony."

Recording job 18987
Rep. Jim Kasper, District 46: Introduced the bill.

03:05
Chairman Delzer: Did you ask RIO about what they ask of their money managers when they change investments currently?

Rep. Kasper: I have a series 7 securities license, so I know a little about this. When an investment board has dollars to manage, they will set an investment policy. You can have multiple objectives. The money managers they select will manage the dollars that is their share of the pot according to the investment objectives of the board.

Chairman Delzer: If the board said you didn't want money invested in a coal company, e.g., they would simply tell them to do that.

Rep. Kasper: Correct, it is the money manager's job to do that. Where will be the cost to make the change? I couldn't get a straight answer. Generally it is a percentage of assets under management, there are not fees charged for different transactions.

Chairman Delzer: They must do some sort of scrutinizing of their investments before they make them.

Rep. Kasper: Yes. They do all kinds of research and due diligence before they make their investment choices. I think the FN is ridiculous, but the truth is in the pudding.

Rep. Skarphol: The state department on a federal level has a list of individuals and corporations that are not allowed to do business in the US. Did your committee have any discussion about utilizing that list as well as specifically naming a country?
06:55
Rep. Kasper: When we asked, it was difficult to get a straightforward answer. I believe you're right. To me it's not hard; the question is, do the people who manage the money want to make the effort to follow the legislative body's desire for how our dollars are invested? That's a policy decision we have the opportunity to make.

Rep. Grande: I did look at various forms of sanctions online; Iran was the only one that came up as far as divestiture. MN, SD, CA, IN, FL, to begin the list, have all done this and have not run into the financial issues that were brought up by our investment board. I asked if they had an issue with the timelines in here, but they said they would work with it. I'm not sure they understood that aspect of it. The investment board is aware of the timeline issues, and I would like them to address it if it's an issue for them.

Rep. Glassheim: I got a letter from somebody pushing this saying 3,4,5 other states have passed this and they must already have lists.

Chairman Delzer: We can discuss this further later. Further questions for Rep. Kasper? Thank you. The committee continued on to the next bill.

Recording job 19010
Chairman Delzer: Any further discussion or desire for more information on this bill?

Rep. Pollert: Isn't there federal law about this already?

Chairman Delzer: I don't know that federal law would tell us we have to do it, but federal investments could be affected.

Rep. Grande moved Do Pass, seconded by **Rep. Thoreson**, and added that she has the divestiture sheets that state the federal government would like each state to divest.

Chairman Delzer: Discussion?

Rep. Sanford: The timeline for the divestiture, I'm not sure I understand it. What I'm seeing is 15 months, on page 3. If it was a 15 month time frame, I would think it would be ample time.

Chairman Delzer: I would guess it is whenever they come up for reissuance that they would be scrutinized before they reinvest the money.

Rep. Grande: That's correct, they give them a time frame and it is fairly open ended to that point, to prevent forcing turnovers. There's only 5% that's really in international investment, it's a very small piece within the funds.

Rep. Monson: So we do have investments in ND in there? If we have any investments, it will cost us nothing. If we have investments in a mutual fund, that might have something in.

Rep. Grande: Exactly. We do not know if we do. I don't think we are, but we are in some really large funds. They would need to pull that back.

Chairman Delzer: There is quite a list of funds that RIO invests.

Rep. Skarphol: I don't see anything in here about a penalty for noncompliance.

Chairman Delzer: The expiration says if this country ever goes off of that list, there is no more divestiture.

Rep. Sanford: The reason I am asking about the 15 months is international investments would probably be obvious, but you could have companies domiciled here that still have relationships with Iran. That's what would take time to check and do the divestiture.

Chairman Delzer: Further discussion? Seeing none, a roll call vote was done. The motion carried 20 Yes, 2 No, 0 Absent. **Rep. Thoreson** will be our carrier, and we'll return it to the policy committee carrier, Rep. Dockter.

FISCAL NOTE
Requested by Legislative Council
02/01/2013

Revised
Bill/Resolution No.: HB 1304

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$2,203,553	$0	$321,846
Appropriations	$0	$0	$0	$283,553	$0	$300,846

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	$0	$0	$0
Cities	$0	$55,000	$8,050
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

In order to comply with the language in HB1304, the SIB would require assistance from a consultant with expertise in identifying these companies and internal staff resources to perform the on-going analysis and reporting at both the board and legislative levels.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB1304 would require the State Investment Board (SIB) to follow specific procedures for identifying, analyzing, engaging, monitoring and divesting in companies subject or liable to sanctions. In order to identify these companies, the SIB would require assistance from a consultant with expertise in this area. The estimated cost of this type of consulting relationship is $10,000+ per year. Per NDCC 21-10-06.2, this expenditure would fall under continuing appropriation authority. Additionally, once the companies are identified, internal staff time would be required to provide analysis of the companies reported by the consultant to the SIB, engage these companies directly, monitor and analyze the responses received from these companies, provide reports to the SIB and legislative management, and supervise the divestment process to ensure transaction costs are minimized. Based on information received from other states' investment offices, it is estimated that up to 25% of an FTE's time would be required to ensure compliance with this bill. The SIB has recently discussed the anticipated need for additional staff for the investment program at RIO. Testimony provided on HB1022 (RIO budget bill) to the House Appropriations-Government Operations Committee on January 16, 2013, included discussion regarding this anticipated need in the near future, based on the significant growth of the Legacy Fund in addition to the overall growth of the assets under management (AUM) of the SIB. The SIB program appropriation request currently funds 5.75 FTEs responsible for current AUM of just over $6 billion. Estimates indicate AUM to be over $8 billion by the end of the 2013-15 biennium. RIO did not request an additional FTE in the budget request in HB1022, preferring to wait until the vacant Executive Director/CIO position is filled, but if HB1304 were passed, the current 5.75 FTEs would not have the capacity to absorb the additional responsibilities as described. Unfortunately, the requirements within HB1304 to meet certain deadlines would not provide the luxury of waiting to assess staffing needs until that time. RIO would therefore request an additional FTE to provide the necessary staff to properly implement HB1304 as well as to provide support for the anticipated growth in AUM over the next biennium. Estimated salary and benefits for this position are $265,400 for the 2015-17 biennium and $291,500 for the 2015-17 biennium. Estimated additional operating expenses for this position are approximately $18,200 for the 2015-17 biennium and $9,300 for the 2015-17 biennium. Additional costs: There are no pre-established screening criteria or industry lists that fully comply with this

bill's language. The development of a customized analysis was not possible within the timelines established for this fiscal note's completion, so RIO relied upon a survey of other state retirement plans that restrict investment in companies with Iranian ties with exceptions for humanitarian providers. Accordingly, additional companies could meet the parameters set forth in this bill. Transactions costs of divestment cannot be estimated with precision given the uncertainty surrounding divestment activity needed to comply with HB 1304. Most SIB clients invest a large portion of their assets in equity markets, and in international securities, which would likely be most impacted by the divestment bill. Based on a survey of other state retirement plans, approximately 7.5% of the public equity portfolio and 1% of the fixed income portfolio may be subject to divestment. Using a midpoint of transaction costs provided by California, Florida and Ohio pension officials, the transaction costs for selling the scrutinized companies and purchasing replacement securities is estimated to be $1.9 million.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   While the variety of provisions in the divestment bills among various retirement systems make developing a rule of thumb nearly impossible, estimates of lost investment earnings range from no impact to approximately 30 basis points per annum.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

Name: Connie Flanagan

Agency: Retirement and Investment

Telephone: 328-9892

Date Prepared: 02/06/2013

Fiscal Impact of HB 1304
Department 190/Fund 207

	2013-15 Biennium	2015-17 Biennium
Outside Consulting Services	20,000.00	21,000.00
Salary (1 additional FTE)	205,000.00	226,012.50
Benefits	60,395.87	65,543.63
Total Salaries and Benefits Appropriation	265,395.87	291,556.13
Operating		
Telecom	960.00	988.80
ITD Data Processing	2,547.00	2,651.22
Travel	4,000.00	4,200.00
Software	600.00	-
Professional Development	1,000.00	1,000.00
Operating Fees (advertising)	300.00	300.00
Office Supplies	150.00	150.00
IT Equipment <$5000	2,650.00	-
Other Equipment <$5000	5,950.00	-
Total Operating Appropriation	18,157.00	9,290.02
Total Appropriated Expenditures Dept. 190/Fund 207	**283,552.87**	**300,846.15**
Total Continuing Appropriation Expenditures	**20,000.00**	**21,000.00**
Total Expenditures	**303,552.87**	**321,846.15**
Est. investment transaction costs related to divestiture	**1,900,000.00**	

Date: 2/14/13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1304

House Appropriations 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. Grande Seconded By Rep. Thoreson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Rep. Streyle	X	
Vice Chairman Kempenich	X		Rep. Thoreson	X	
Rep. Bellew	X		Rep. Wieland	X	
Rep. Brandenburg	X				
Rep. Dosch	X				
Rep. Grande	X		Rep. Boe	X	
Rep. Hawken	X		Rep. Glassheim	X	
Rep. Kreidt		X	Rep. Guggisberg	X	
Rep. Martinson	X		Rep. Holman	X	
Rep. Monson	X		Rep. Williams	X	
Rep. Nelson		X			
Rep. Pollert	X				
Rep. Sanford	X				
Rep. Skarphol	X				

Total Yes 20 No 2

Absent 0

Floor Assignment Rep. Thoreson

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

REPORT OF STANDING COMMITTEE

HB 1304, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **DO PASS** (20 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1304 was placed on the Eleventh order on the calendar.

2013 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1304

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1304
03/07/2013
Job Number 19544

☐ Conference Committee

Committee Clerk Signature	

Explanation or reason for introduction of bill/resolution:

A BILL for an Act relating to the divestiture of state investment funds in certain companies liable to sanctions under the Iran Sanctions Act of 1996; and to provide an expiration date.

Minutes:

Chairman Dever: Opened the hearing on HB 1304.

Representative Bette Grande, District 41: Testified as sponsor and in support of the bill, and explained the bill. This is as a result of the federal government asking us to divest from Iran. The federal government declared and asked that each state take upon these sanctions. This is put in place for one way of trying to peacefully explain to the nation of Iran that we will not have dealings with them as then develop nuclear powers that would be used against us and other entities. This is taking place in many other states. I am hoping that each of you received an e-mail from Steve Huggins (Spelling?). He is an expert in this area. He has worked in multiple states across the nation on this issue and he is with the Jewish Council Relations Committee. He is very good at explaining a great deal of this bill to you. I want to point out that throughout this you are going to hear various things about how this will take place and what you need to understand for those that have not spent a lot of time in employee benefits committee, our investment board is basically managers of money managers. We don't physically touch the money here. We ask the managers to handle the money for us when we do the investments inside things. There are directives that are given from our advisement boards but yet we do not touch that money because we hand it to the money managers. In that the directives would go from our boards to the managers and request to divest from particular areas. This bill lays out a time frame as to how this is to take place, who and how things are notified, and what type of exemptions are in place. I think it is important to realize that we do have on page 3, exemptions in the fact that we are certainly not doing this to be punitive to the people of Iran. This is a governmental issue back and forth and that we would continue in our relief of human suffering for Iranian people, promotion of health education, and various freedoms that are needed for the people. This is to face the problems that the government is causing around the world with their nuclear developments.

(4:55) Chairman Dever: Is it easy to identify companies that should be divested?

Representative Grande: From what I understand, the federal government has their list and that comes in that second smaller packet. All the other states that have participated in this have been able to do so. I have spoken with other money managers groups that worked with the Minnesota side on this and they were able to receive those lists. It is the responsibility of the money managers to know what and how they are investing things. They should come forth as a part of their job to do this. These larger companies should have that at their fingertips for us.

Chairman Dever: I recall in an employee benefits committee meeting that you asked a question about to what extent we might be invested in companies that deal with Iran but I don't recall the response.

Representative Grande: They did not have an answer at that time.

Chairman Dever: Do we have any idea now?

Representative Grande: I would hope they would have figured that out by now since this has been on the table for a couple of months. As we heard this on the other side, there was great discussion on the fiscal note and the discussion on that. I have asked them to continue to look into this because the fiscal note does not seem to compare to what other states have come up with. I don't know if there is a misunderstanding of what the expectation is or not clearly speaking to the money managers that they are managing that it would be their role to take and do this - not the role of our department to do that.

Chairman Dever: Is it safe for me to assume that sanctions right now would prevent directly investing in Iranian companies, but the concern here is with the businesses that do business in Iran?

Representative Grande: You are looking at direct holdings in here and these have been earmarked and noted in the money managing companies. With that, the state investment board is to ask their money managers who have these scrutinized, direct holdings. The reports would come to the board and they would look at the scrutinized list and then moves that list forward to their managers. There is a nice timeframe in here that lays it out so that they have plenty of time to deal with these. They are not immediate removals. With that you are not looking at the losses with the transfers. There are 90 day time frames that keep flowing out and it turns into about an 18 month process. You should not see that faltering of that type of thing. On the last page where it talks about exemption from legal obligations, the state board of investment is exempt from any statutory or common law obligations that conflict with any actions required under this chapter including any good faith determination regarding a company and/or obligations regarded the choice of the asset managers or investment funds in other investments. Throughout this process the state board of investment would be held harmless throughout that process to possible lawsuit. That is not what this is trying to promote.

(9:44) Chairman Dever: Could you explain to me Subsection 21-13-10, I see it was added as the amendment in the house?

Representative Grande: I do not know what they amended. I believe Sparb Collins brought that in on that side after I had left. We are trying to narrow down the ability of that lawsuit. We have exclusive things that we need to do. They can explain why they have exclusives; that part I do not understand. This does expire when Iran comes about and understands what the rest of the world is asking of them. I want to be clear about is that this piece of legislation comes off of federal public law. We are not dealing with social issues here; we are dealing with a dangerous nation that has killed and helped participate in killing our people. Our soldiers on the ground in Iraq and Afghanistan were killed by IED's made by this country. These are not our friends and they need to be made noted by all states with the guidance of the federal government saying that we are not going to participate in helping them fund the killing of our soldiers.

Chairman Dever: Does that federal law apply to state investments?

Representative Grande: The federal law is when they take the public law, the federal government divests their holdings from that and then they request in the next portion that the states do the same.

Chairman Dever: It is your understanding that some states have successfully completed that divestiture.

Representative Grande: Many states have. I do know that Minnesota, South Dakota, Florida, California, and Indiana are the ones that come to the forefront. I can get that list for you.

Chairman Dever: They have made a list of the companies that they have divested from.

Representative Grande: Correct.

Chairman Dever: If we follow that list, could we accomplish what you are seeking to accomplish?

Representative Grande: It should come very close.

(13:55) Darren Schulz, Interim Chief Investment Officer for the North Dakota Retirement and Investment Office and North Dakota State Investment Board: See Attachment #1 for testimony in opposition to the bill.

(31:45) Senator Nelson: There are a lot of mutual funds out there that are a composite of a lot of stuff and looking at those lists of 300 plus; if you were to divest everything dealing with Iran, what would be left in the New York stock exchange?

Darren Schulz: It is comprehensive and far reaching implications if we were forced to implement this bill. The administrative burden is significant. We would be required to perform fiduciary analysis on each and every one of these holdings to determine whether divestment would impair diversification for our client portfolios. That is a significant burden on staff.

Chairman Dever: Representative Grande mentioned federal law; is it safe for me to assume that these companies are not excluded from those investments?

Darren Schulz: The Iran act applies to companies that have direct and indirect ties to Iran. It is not a matter of simply the 14 companies on the maintained sanction list. It is really the only list of scrutinized companies that have born sanctions. This applies to companies that may be liable to. It is far reaching in determining who has ties. It is really something that we would have to hire a consulting service to determine. If you look at each of that states that maintain list, they are all different. (Gives an example) I make the point that these larger plans do have internal investment management to perform that fiduciary analysis to determine what the impact might be from divestment.

Senator Marcellais: The bottom line is what would it cost the state if we pass this bill?

Darren Schulz: There is a fiscal note in which we have listed the cost of the additional FTE as well as the operating cost. In terms of the explicit cost, we have in the fiscal note for the 2013-2015 biennium the expenditures for the state fiscal impact as well as the city pensions in which we manage. When we get into the transaction costs, it is really a huge unknown because of really having to do that fiduciary analysis in order to comply with the exclusive benefit rule on behalf of our retirement system clients.

Vice Chairman Berry: We heard that other states have done this and that there are lists out there; is there not a good guideline to go by out there?

Darren Schulz: Each state has written their bills differently. Some have targeted specifically the petroleum and natural gas sector. Some have exemptions. It has forced them each individually develop a scrutinized list based on the specifics of their law. We have a bill before us that there are exemptions for companies that have ties to retail gasoline and related products. There are humanitarian exemptions. We would need to retain an external vendor to develop our list.

Vice Chairman Berry: My understanding is that the federal act does not require the states to do anything, however, it indemnifies them if they choose to do so based on the rules that you mentioned, is that correct?

Darren Schulz: The exemption applies to fiduciaries that wish to adopt social criteria that do not violate the exclusive benefit rule, but it does not provide protection for any impairment that may occur to diversification under federal law.

Vice Chairman Berry: You are saying that it may force you do things that you do not have protection for?

Darren Schulz: Yes, the indemnification is not all encompassing. If there were a fiduciary breech that results from a significant divestment program that impairs the diversification benefits of the plan, there would be no protections.

Vice Chairman Berry: Has this been a problem in these other state and have there been lawsuits to this effect?

Darren Schulz: I am not aware of specific litigation that has occurred. I have not done any studies to determine that. I have mainly studied the implementation costs of a divestment bill. There is a wide range of different impacts in the other states. (Gives a few figures)

Vice Chairman Berry: Do you have any knowledge on how much fiscal impact this has on the Iranian government? Is it felt that this going to make a significant impact?

Darren Schulz: I have read academic studies that cast an unfavorable light on the impact of the divestment bills historically. They basically say at the end of the day that there will be little impact and I would argue that it is ineffective.

Chairman Dever: Would it be safe for me to assume that companies that are prevented by sanction from doing business with Iran are associated with things like military armaments and those kinds of things?

Darren Schulz: The 14 companies are emerging market, private companies that are primarily in the petroleum sector.

Chairman Dever: If we applied this to Iran, aren't there others that we should apply it to?

Darren Schulz: State sponsored terrorism is not confined to Iran. You could include other countries as well.

Chairman Dever: I believe that the biggest importer of our refined gasoline is Iran.

(44:15) Fay Kopp, Interim Executive Director, North Dakota Retirement and Investment Office: See Attachment #2 for testimony in opposition to the bill representing TFFR.

(47:55) Chairman Dever: I agree with the intent of the bill. Do you feel there is a way to amend the bill to narrow its focus in order to preserve that intent?

Fay Kopp: There was an amendment in the house that would allow for the fact that divestment would only occur if the exclusive benefit rule was met. That was an amendment intended to preserve the idea of this, but the fact remains is that there is still going to be a cost even with the amendment and divestment doesn't occur. I would rather have state investment board staff working to make sure that they can minimize risk and maximize returns of the pension plan for the benefit as opposed to trying to analyze whether or not particular investments are meeting the exclusive benefit rule in order to determine whether they should be divested or not. I am afraid that there is a conflict there. I believe it would be difficult to amend the bill to keep the intent without requiring the costs. If there are divestment costs, they certainly could be significant. If divestment doesn't take place, then you have a bill on the books that isn't doing what it was intended to do. I am aware that there are some states that have a similar law on the books, but because of the exclusive benefit rule, they find that they can't really implement it because of the costs.

(49:57) Kelly Schmidt, State Treasurer: See Attachment #3 for testimony in opposition to the bill.

(56:15) Chairman Dever: I am curious if the investment board has a policy that would address this kind of investment?

Kelly Schmidt: I think our stance in opposing this bill speaks on behalf of the board and how we feel about the role of divesting.

Chairman Dever: Otherwise, is there a general philosophy that says that we are not going to invest in certain kinds of companies that do things we don't agree with?

Kelly Schmidt: We do not have a social divesting policy today.

Vice Chairman Berry: (reads from page 2 of testimony) Of all of the things I have heard this morning, that seems to make the most sense. There is no way we know what is going on behind those doors internationally. It would seem to me that the federal government should be putting forth that guidance on which companies that we should divest from.

Kelly Schmidt: I believe the lists are ever moving and a company could come and go from the list and if we do not catch it, at what time table do we address it and are we going to be held responsible for it. There is not a lot of guidance from the federal government on this issue.

Vice Chairman Berry: Has anyone pushed them for more guidance?

Kelly Schmidt: I believe there is a lot of push in Washington on a lot of issues and this is just one of many.

Chairman Dever: Closed hearing on HB 1304.

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1304
03/21/2013
Job Number 20340

☐ Conference Committee

Committee Clerk Signature	Carrie Winings

Minutes:

Chairman Dever: Opened HB 1304 for committee discussion.

Senator Cook: Moved a Do Not Pass.

Senator Poolman: Seconded.

Chairman Dever: I was a co-sponsor on the bill so I will support the bill only to suggest that another bill in the next session with a more narrow focus and it might find a different reception.

A Roll Call Vote Was Taken: 5 yeas, 2 nays, 0 absent.

Senator Cook: Carrier.

2013 SENATE STANDING COMMITTEE MINUTES

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

HB 1304
03/29/2013
Job Number 20668

☐ Conference Committee

Committee Clerk Signature Carie Winings

Minutes:

Chairman Dever: Opened HB 1304 for committee discussion. (Asked Representative Grande to answer a few questions of the committee)

Representative Grande: I went through the fiscal note and I had an opportunity to visit with Mr. Schultz and I talked to legislative council and he has not gotten back to me to change the fiscal note but he was aware of that. Mr. Schultz thought the bill did not address petroleum and IED's. He thought it was bigger and broader than that. So I asked council and they have stated that it is the understanding that HB 1304 which is limited as this applies to the development production and export of refined petroleum resources. The definition in the bill of Iran Sanctions Act 1996 is with respect to scrutinized business operations. It goes on to say that it is strictly there and you duly note that the exemptions are in the bill where we don't have to worry about it affecting humane goods and that this really goes towards the stopping of IED's and the development of mass destruction. When I explained that to Darren, he said that if we were aware of that, we would be able to adjust that. So I went back and in looking at their fiscal note and if you go back to the last lines of the fiscal note, section C, an FTE has already been put in place and they are going to utilize the person that is already there. That FTE will use a quarter of their time to apply it to this bill. They were applying it to this bill when they thought they were doing social investment issues. They are not doing those. I have contacted the DCRC who works on this in every state in the nation and there has yet to be a money manager that has charged or that they have had to hire someone separate. It is the job of the money managers to tell them who is in their portfolios that need to be divested from. I don't know where the confusion comes with.

(3:23)Chairman Dever: Would it be your expectation that we probably don't have any holdings that would need to be divested?

Representative Grande: According to his testimony it appears that we don't.

Senator Cook: You are saying that if the bill is out of here with a do not pass, that we can reconsider the bill and the fiscal note would get changed - then the bill can pass the bill out as is?

Representative Grande: Correct; according to legislative council. That is how the bill was drafted and that was the intent of the bill and that is how it is read. I think the difficulty comes in that Iran sanction is very thick but it is very specific to petroleum and unless you go back and read that, you don't understand those words inside the bill.

Senator Cook: Don't you think that we should have some concern of a bill that is such that people might read it and come to different conclusions on what it says?

Representative Grande: I can have legislative council draft the amendments that utilizes the words "development, production, and exportation of refined petroleum resources" to limit it down to that?

Chairman Dever: The bill right now has a Do Not Pass recommendation which means it does not need to go to appropriations. If we amend it to remove the fiscal note it still does not go to appropriations. So, I don't know that we are necessarily subject to today's deadline which would mean that we can do what needs to be done and come back with it next Thursday.

Representative Grande: That sounds good.

Chairman Dever: Unless the committee sees it otherwise. I think the real concern was the expense of going through and determining where they would need to divest.

Representative Grande: They would need that employee to take the quarter time to do that.

Chairman Dever: I think that most of us agree with the intent of this. It is just a matter of how onerous it is. You are suggesting it is not and they are suggesting it is.

Representative Grande: I know we have never looked into something like this and other states have done it enough that they were not intimidated by the ideas. I have also asked that maybe Mr. Schultz visit with South Dakota because our plans are very similar.

Committee Discussion: The committee briefly discussed page 2, line 6 and decided to wait and see if an amendment comes to the committee or the bill will stay with the "do not pass" already voted on.

Chairman Dever: Closed the committee discussion.

FISCAL NOTE
Requested by Legislative Council
02/28/2013

Amendment to: HB 1304

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$90,888	$0	$96,212
Appropriations	$0	$0	$0	$0	$0	$0

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	$0	$0	
Cities	$0	$2,272	$2,405
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

In order to comply with the language in HB1304, the SIB would require assistance from a consultant with expertise in identifying these companies and internal staff resources to perform the on-going analysis and reporting at both the board and legislative levels.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB1304 would require the State Investment Board (SIB) to follow specific procedures for identifying, analyzing, engaging, monitoring and divesting in companies subject or liable to sanctions. In order to identify these companies, the SIB would require assistance from a consultant with expertise in this area. The estimated cost of this type of consulting relationship is $10,000+ per year. Additionally, once the companies are identified, internal staff time would be required to provide analysis of the companies reported by the consultant to the SIB, engage these companies directly, monitor and analyze the responses received from these companies, provide reports to the SIB and legislative management, and supervise the divestment process to ensure transaction costs are minimized. Based on information received from other states' investment offices, it is estimated that approximately 25% of an FTE's time would be required to ensure compliance with this bill. The House Appropriations Committee has approved an additional FTE for an Investment Analyst within the RIO appropriation bill (HB1022). With the addition of this position, no further FTEs are being requested specifically for HB1304, however, 25% of the cost of this position is being considered a cost of this bill. In the fiscal note submitted to the House Government and Veterans Affair Committee on the original version of HB1304, it was estimated that approximately 7.5% of the aggregate public equity portfolio and 1% of the aggregate fixed income portfolio may be subject to divestment, resulting in transaction costs of $1.9 million from selling the scrutinized companies and purchasing replacement securities. With the approval of the amendment to House Bill 1304, however, which would require the state investment board to apply the exclusive benefit rule to any public employees retirement system fund created by the laws of this state, we are unable to make any reliable estimate of transaction costs given the uncertainty surrounding divestment activity needed to comply with the bill to the extent that it does not result in a breach of the exclusive benefit rule. As with any divestment program, a great deal rides on the fiduciary analysis of offending securities to assess the potential costs, market impact and potential to affect risk and return associated with divestment.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   N/A

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   Expenditures for this bill include 25% of one FTE estimated to be $66,349 for the 2013-15 biennium and $72,889 for the 2015-17 biennium, plus 25% of the associated operating costs for that position of $4,539 for the 2013-15 biennium and $2,323 for the 2015-17 biennium. A consultant would also be required to assist in developing and maintaining the list of scrutinized companies. The cost of this service is estimated at $20,000 for the 2013-15 biennium and $21,000 for the 2015-17 biennium. With the approval of the amendment to House Bill 1304, however, which would require the state investment board to apply the exclusive benefit rule to any public employees retirement system fund created by the laws of this state, we are unable to make any reliable estimate of transaction costs given the uncertainty surrounding divestment activity needed to comply with the bill to the extent that it does not result in a breach of the exclusive benefit rule. Without an amendment for the non-pension funds, we expect there will still be costs to those funds for divestment and there may still be costs for the pension funds if the divestment meets the exclusive benefit rule.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

   An FTE for an Investment Analyst was approved and included in the RIO appropriation bill (HB1022), therefore no additional appropriation authority would be required in HB1304. The consulting expenses and any resulting investment transaction costs are covered under continuing appropriation per NDCC 21-10-06.2.

Name: Connie Flanagan

Agency: Retirement & Investment Office

Telephone: 328-9892

Date Prepared: 03/06/2013

FISCAL NOTE
Requested by Legislative Council
02/01/2013

Revised
Bill/Resolution No.: HB 1304

1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$2,203,553	$0	$321,846
Appropriations	$0	$0	$0	$283,553	$0	$300,846

1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties	$0	$0	$0
Cities	$0	$55,000	$8,050
School Districts	$0	$0	$0
Townships	$0	$0	$0

2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

In order to comply with the language in HB1304, the SIB would require assistance from a consultant with expertise in identifying these companies and internal staff resources to perform the on-going analysis and reporting at both the board and legislative levels.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

HB1304 would require the State Investment Board (SIB) to follow specific procedures for identifying, analyzing, engaging, monitoring and divesting in companies subject or liable to sanctions. In order to identify these companies, the SIB would require assistance from a consultant with expertise in this area. The estimated cost of this type of consulting relationship is $10,000+ per year. Per NDCC 21-10-06.2, this expenditure would fall under continuing appropriation authority. Additionally, once the companies are identified, internal staff time would be required to provide analysis of the companies reported by the consultant to the SIB, engage these companies directly, monitor and analyze the responses received from these companies, provide reports to the SIB and legislative management, and supervise the divestment process to ensure transaction costs are minimized. Based on information received from other states' investment offices, it is estimated that up to 25% of an FTE's time would be required to ensure compliance with this bill. The SIB has recently discussed the anticipated need for additional staff for the investment program at RIO. Testimony provided on HB1022 (RIO budget bill) to the House Appropriations-Government Operations Committee on January 16, 2013, included discussion regarding this anticipated need in the near future, based on the significant growth of the Legacy Fund in addition to the overall growth of the assets under management (AUM) of the SIB. The SIB program appropriation request currently funds 5.75 FTEs responsible for current AUM of just over $6 billion. Estimates indicate AUM to be over $8 billion by the end of the 2013-15 biennium. RIO did not request an additional FTE in the budget request in HB1022, preferring to wait until the vacant Executive Director/CIO position is filled, but if HB1304 were passed, the current 5.75 FTEs would not have the capacity to absorb the additional responsibilities as described. Unfortunately, the requirements within HB1304 to meet certain deadlines would not provide the luxury of waiting to assess staffing needs until that time. RIO would therefore request an additional FTE to provide the necessary staff to properly implement HB1304 as well as to provide support for the anticipated growth in AUM over the next biennium. Estimated salary and benefits for this position are $265,400 for the 2015-17 biennium and $291,500 for the 2015-17 biennium. Estimated additional operating expenses for this position are approximately $18,200 for the 2015-17 biennium and $9,300 for the 2015-17 biennium. Additional costs: There are no pre-established screening criteria or industry lists that fully comply with this

bill's language. The development of a customized analysis was not possible within the timelines established for this fiscal note's completion, so RIO relied upon a survey of other state retirement plans that restrict investment in companies with Iranian ties with exceptions for humanitarian providers. Accordingly, additional companies could meet the parameters set forth in this bill. Transactions costs of divestment cannot be estimated with precision given the uncertainty surrounding divestment activity needed to comply with HB 1304. Most SIB clients invest a large portion of their assets in equity markets, and in international securities, which would likely be most impacted by the divestment bill. Based on a survey of other state retirement plans, approximately 7.5% of the public equity portfolio and 1% of the fixed income portfolio may be subject to divestment. Using a midpoint of transaction costs provided by California, Florida and Ohio pension officials, the transaction costs for selling the scrutinized companies and purchasing replacement securities is estimated to be $1.9 million.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

   While the variety of provisions in the divestment bills among various retirement systems make developing a rule of thumb nearly impossible, estimates of lost investment earnings range from no impact to approximately 30 basis points per annum.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

   Dept. 190/Fund 207 - 2013-15 Biennium Total Appropriated Expenditures $283,553 (See detail attached) Outside Consulting Service(continuing appropriation)$20,000 Total Expenditures 2013-15 Biennium $303,553 As per 2B above - there are additional transaction and opportunity costs that are difficult to estimate. An additional $1.9 million in continuing appropriation for these types of costs are used for estimation purposes. Dept. 190/Fund 207 - 2015-175 Biennium Total Appropriated Expenditures $300,846(See detail attached) Outside Consulting Service(continuing appropriation)$21,000 Total Expenditures 2013-15 Biennium $321,846

Name: Connie Flanagan

Agency: Retirement and Investment

Telephone: 328-9892

Date Prepared: 02/06/2013

Fiscal Impact of HB 1304
Department 190/Fund 207

	2013-15 Biennium	2015-17 Biennium
Outside Consulting Services	20,000.00	21,000.00
Salary (1 additional FTE)	205,000.00	226,012.50
Benefits	60,395.87	65,543.63
Total Salaries and Benefits Appropriation	265,395.87	291,556.13
Operating		
Telecom	960.00	988.80
ITD Data Processing	2,547.00	2,651.22
Travel	4,000.00	4,200.00
Software	600.00	-
Professional Development	1,000.00	1,000.00
Operating Fees (advertising)	300.00	300.00
Office Supplies	150.00	150.00
IT Equipment <$5000	2,650.00	-
Other Equipment <$5000	5,950.00	-
Total Operating Appropriation	18,157.00	9,290.02
Total Appropriated Expenditures Dept. 190/Fund 207	**283,552.87**	**300,846.15**
Total Continuing Appropriation Expenditures	**20,000.00**	**21,000.00**
Total Expenditures	**303,552.87**	**321,846.15**
Est. investment transaction costs related to divestiture	**1,900,000.00**	

Date: 3/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1304

Senate Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ____________

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Cook Seconded By Senator Poolman

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) 5 No 2

Absent 0

Floor Assignment Senator Cook

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

REPORT OF STANDING COMMITTEE

HB 1304, as engrossed: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1304 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

HB 1304

Attachment 1

TESTIMONY OF SPARB COLLINS

HOUSE BILL 1304

Mr. Chairman, members of the committee, good morning my name is Sparb Collins and I am the Executive Director of the North Dakota Public Employees Retirement System (PERS). Today I appear before you in opposition to this bill because it supersedes the existing requirements in state statute relating to retirement plan investing and the existing process for consideration of the provisions in this bill. State law presently sets the standard for investing retirement funds in NDCC 54-52-14.3 and consideration of proposals such as that in HB 1304:

> *All moneys from any source paid into any public employees retirement system fund created by the laws of this state must be used and invested only for the* ***exclusive benefit*** *of the members, retirees and beneficiaries of that system....*

The "exclusive benefit rule" is the generally accepted standard for retirement plan investing and guides plan fiduciaries. Specifically, this provision instructs fiduciaries that the interests they represent are exclusively those of the funds' members and not other non-retirement interests which may relate to broader social or economic considerations separate from the retirement interests of the members. If the exclusive benefit rule is overridden as proposed in this bill, the list of other possible exceptions is long and each has its own merits embraced by those who propose them. The following are only a few examples:

1. *Tobacco free investing* – It has been suggested that, due to the documented health implications of addiction, funds should not invest in any firm that engages in the manufacture and sale of tobacco products. Several years ago it was suggested that PERS should not allow our managers to invest in these companies because it was in conflict with our responsibilities to promote wellness and other cost effective efforts for the health plan.
2. *Economically-targeted investments* – Around the country there have been discussions about requiring that funds be invested in-state. Periodically this has come up in North Dakota.
3. *Sudan Free* – No investment in companies that aid the government of Sudan.
4. *South Africa Free* – Several years ago there were discussions around the country about having a South Africa Free provision. It was discussed here as well but was not adopted.
5. *Gun manufacturers* – Recently the Mayor of Chicago and other supporters have encouraged funds not to invest in companies that manufacture guns.

6. *Other provisions* – Other interest groups have advocated nationally for restrictions related to companies that produce alcohol or have interests related to gambling companies.

The dilemma is that once we introduce social or economic investing criteria that override the "exclusive benefit rule" for retirement fund investing, the potential list becomes long, the decisions difficult since they are made based upon the merits of each proposal not necessarily the needs of the fund and the overall cost implications are not considered. If the list expands significantly over time, the exclusive benefit provisions could become secondary as could the retirement interests of the members.

Consequently, we believe that retirement funds should be guided primarily by the historical legislative standard of the "exclusive benefit rule" since it provides a sound framework for consideration of these proposals. Therefore, we would respectfully offer the attached amendment that would maintain the "exclusive benefit rule" standard for retirement fund investing and allow the provisions of this bill if that standard is met. According to our investment policies, the "exclusive benefit rule" is met if the following four conditions are satisfied:

(1) The cost does not exceed the fair market value at the time of investment.
(2) The investment provides the Fund with an equivalent or superior rate of return for similar investments with similar time horizons and risk.
(3) Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan.
(4) The safeguards and diversity that a prudent investor would adhere to are present.

Mr. Chairman, members of the committee, the NDPERS Board and I agree with the concerns this bill represents and to insure that all it's implications are considered fully, we would request the attached amendment be added to the bill. Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304

Page 4, after line 19, insert:

"**21-13-10. Divestment of public employee retirement funds.**
Notwithstanding any other law to the contrary, the state investment board shall apply the exclusive benefit rule in investing any public employee retirement system fund created by the laws of this state. The state investment board need not engage a scrutinized company under section 21-13-02 or proceed with divestment under section 21-13-03 if the board determines doing so would violate the exclusive benefit rule."

Renumber accordingly

Attachment 2

HB 1304

HOUSE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
February 7, 2013

Fay Kopp, Interim Executive Director - Chief Retirement Officer
ND Retirement and Investment Office - ND Teachers' Fund for Retirement

Thank you for the opportunity to provide testimony on HB 1304. On behalf of the Teachers' Fund for Retirement (TFFR) Board, I appear today in opposition to the provisions in HB 1304 which would require divestment of TFFR pension assets of holdings in companies which are, or may be subject to, sanctions under the Iran Sanctions Act.

It is important to note at the outset that TFFR does not support terrorism, nor countries that sponsor terrorism. However, in considering the potential effects of a statutory requirement that TFFR assets be divested, it appears there could be both costs to TFFR and fiduciary implications for the TFFR Board, unless the investment meets the "exclusive benefit rule."

The TFFR Board of Trustees is responsible for administering the retirement plan for our state's public school educators. As part of its statutory board responsibilities, the TFFR Board must establish investment policy for the trust fund (NDCC 15-39.1-05.2). State law also requires that TFFR funds be invested by the State Investment Board (NDCC 15-39.1-26 and 21-10-06)). By state law, and in order to maintain its tax qualified status, TFFR funds must be used and invested exclusively for the benefit of its members (NDCC 54-52-14.3 and 21-10-07). This is known as the exclusive benefit rule.

Divestment, which is the subject of HB 1304, is one example of social investing. Social investing is "the investment or commitment of public fund money for the purpose of obtaining an effect other than a maximized return for the intended beneficiaries."

TFFR's investment policy does not allow social investing UNLESS it meets the exclusive benefit rule. Four conditions are required to be met to ensure that investments meet the exclusive benefit rule: (1) The cost does not exceed the fair market value at the time of investment. (2) The investment provides the Fund with an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk. (3) Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan. (4) The safeguards and diversity that a prudent investor would adhere to are present.

The TFFR Board has the following concerns with the implementation of HB 1134:

1. Divestment may violate fiduciary standards.

TFFR pension funds are held in trust. Once member and employer contributions are transferred to the pension fund, they belong solely to the participants of the plan. As noted earlier, state law establishes the TFFR Board as fiduciaries of the pension fund. As such, they are subject to certain fiduciary responsibilities which require them to operate prudently and solely in the best interest of the plan's participants and beneficiaries. The use of TFFR trust fund assets to achieve a social or political cause, no matter how worthy, may be a violation of their fiduciary role, unless it meets the exclusive benefit rule. By imposing a restriction such as divestment with no consideration of whether the investment meets the exclusive benefit rule, the Legislature would tie the hands of those fiduciaries and require divestment, regardless of the financial or fiduciary consequences.

2. Divestment comes with a cost.

SIB staff will provide details on the divestment process, economic effects, and potential costs of HB 1304. However, it is our understanding that implementation of a divestment program as required in this bill could be costly. These divestment costs will, in turn, be passed on to SIB clients. Consequently, TFFR will bear a large proportional share. If divestment produces investment losses, either through higher costs or lower returns, TFFR plan participants, employers, or sponsor may have to pay more.

3. Increased potential for future divestment requirements.

Efforts requiring pension funds to divest assets in holdings of companies alleged to be engaged in objectionable activities is not new. During the past few decades, efforts have been made across the country to require public pension funds to divest of their holdings in Iran, Sudan, and South Africa; in tobacco, alcohol, and gambling; and most recently, in gun companies.

While each of these efforts may have the very best of intentions, targeted divestiture could be a "slippery slope" opening the door to a wide variety of special interest calls for divestment (or investment) of particular asset types. While each individual initiative may appear to be relatively small, the cumulative impact of several statutory requirements or restrictions could increase costs over time.

Summary

Pension plans exist to provide retirement income to pension plan members. Trustees of a pension plan are fiduciaries and can only use and invest trust fund assets in a way which will exclusively benefit the beneficiaries of the trust. As currently drafted, it appears that implementation of HB 1304 could increase TFFR costs and could violate fiduciary standards.

Thank you for your thoughtful consideration of this testimony.

A-tachment 3

STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
Kelly L. Schmidt, State Treasurer

House Bill 1304

Testimony in Support

Committee: Government and Veteran Affairs

Kelly Schmidt, State Treasurer

Mr. Chairman, Members of the Committee, I am Kelly Schmidt, State Treasurer.

I stand before you as the custodian of all state funds and a Fiduciary of many. I stand in opposition to HB 1304.

I have great concern when we steer from our investment objectives in the name of Social issues. Social investing is a movement that advocates incorporating social, political, economic and environmental considerations, positive or negative, as well as financial factors, when making investment decisions. The emotional appeal of such actions is powerful, but strong arguments also exist against using public funds to accomplish domestic or foreign policy goals

The trustees and staff of our state's financial pools have a statutory fiduciary obligation that includes a duty to manage our funds for the exclusive benefit of the funds objects. It may be a pension fund, a trust fund or any state fund. We have a duty of prudence that encompasses an obligation to act in an economically rational way. Divesting assets for non-economic reasons is inconsistent with fiduciary responsibility. In effect, mandated divestment would supersede the duty to manage a pension fund for the exclusive benefit of the membership.

Enactment of any divestment bill would mark the first set of restrictions placed upon the investment authority within our state since the adoption of the "prudent person rule" and could set a costly precedence for further restrictions.

In the event this legislation is enacted, The State Investment Board and the staff at RIO would face the daunting task of determining exactly which companies from which they are mandated to divest (recognizing that inadvertently divesting a non-mandated company could be a breach of fiduciary duty for which there would be no statutory protection). This is a matter of concern because no authoritative, universally agreed upon list exists. Because this mandate would be dependent upon the business activities of multi-national companies, any list would have to be continuously updated; a stock purchased today might have to be sold tomorrow; stock sold today might go off the list and need to be repurchased tomorrow.

600 E. Boulevard Ave, Dept. 120 • Bismarck, North Dakota 58505-0600
Phone: 701.328.2643 • Fax: 701.328.3002 • www.nd.gov/ndtreas/

The issue of the potential effectiveness of any proposed divestment mandate is central to a rational discussion of the merits of divestment as public policy. If a divestment campaign is unlikely to achieve its stated goals, the enactment of such divestment legislation would be illogical and would represent little more than a symbolic gesture rather than a rational strategy for achieving political, social or economic change.

There is a wealth of literature on all sides of the divestment issue. Although there is substantial information supporting the effectiveness of economic sanctions, there appears to be little evidence to support the position that divestment has any significant economic effect on the company whose stock is sold, let alone on the country or individuals whose behavior is intended to be influenced.

Divestment raises numerous legal issues that, left unresolved, could expose the funds to, at a minimum, litigation costs and, at worst, adverse court rulings holding board and staff members personally liable for losses.

The United States Constitution provides that the U.S. federal government has authority over foreign affairs and commerce with foreign countries. The federal government alone has the power to decide whether U.S. companies can do business in other countries based on national security interests. State and local investors are neither positioned nor equipped to make foreign policy judgments as to which multinational companies (foreign and domestic) are operating for or against the national security interests of the United States. The federal government should provide guidance to ensure that any divestment efforts to influence foreign policy are uniform throughout the nation and consistent with the objectives of the United States. There are substantial disagreements among available lists as to which companies should be targeted for divestment.

Any divestment determinations would have to be made on an ongoing basis. To stay abreast of changes in global market and geopolitical conditions, would leave our funds permanently vulnerable to accusations of error.

I could go on and on in this discussion as it relates to cost, performance, risk and volatility or the impact of indirect investments. But, I won't...

Fund trustees are fiduciaries; our funds are not agents of social change. Divestment is a distraction that takes us away from our mission. Our Boards are in place to make money, and when you restrict our ability to choose investments, you likely restrict our ability to gain returns.

If social investing produces losses either through higher administrative costs or lower returns, tomorrow's taxpayers may have to ante up to regain those loses.

This is a slippery slope. Divestment "terror-free" discussions began with Sudan and involved only a few stocks. It has quickly spread to Iran, where the issues are even more complicated and the number of companies substantially greater. Should we be adding Saudi Arabia, original home of 15 of the 19 hijackers involved in the 9/11 terrorist attacks to the list?

I leave you with this…

The US Department of States website includes the country list of "State Sponsors of Terrorism" they are Iran, Sudan, Syria and Cuba. If HB 1304 is enacted why would you not include the entire list? If we take it a step further should we then prohibit our state from trade activities with Cuba? In the name of "responsible investing" should we include fossil fuels as it relates to climate change, gun companies in response to the tragic events in Connecticut? Perhaps we should add tobacco companies in response to North Dakota's recently passed Constitutional Amendment or Cocoa/Textile companies in the of name of child labor. This list could go on and on. At some point, the administrative costs of broad-based divesting will balloon and exclude large numbers of companies which will definitely hurt returns. Where does it begin? That will depend on HB 1304.

Attachment 4

HB 1304

North Dakota State Investment Board
Testimony to the House Government and Veteran Affairs Division

February 7, 2013

Good afternoon Mr. Chairman and members of the committee. My name is Darren Schulz and I serve as the Interim Chief Investment Officer for the North Dakota Retirement and Investment Office (RIO) and State Investment Board (SIB). I am here today to provide neutral testimony concerning House Bill 1304.

Before I address the impact of HB 1304, I would like to provide some background on the State Investment Board.

The SIB is responsible for setting policies and procedures guiding the investment of over $6 billion in assets for eight pension funds and 15 other non-pension funds. Their investments are divided into two investment trust funds and one individual investment account. All the funds are invested in accordance with the "Prudent Investor Rule". The governing bodies of each of the funds invested with the SIB, or clients as we call them, are responsible for setting the investment guidelines and asset allocations of their respective funds. Examples of these clients include TFFR, PERS, WSI, and the Cities of Bismarck and Fargo. Some of these clients are statutorily required to be managed by the SIB while others have chosen to do so under contract as allowed by state statute. Exceptions to this process are the Legacy and Budget Stabilization funds. By state constitution and statute, the SIB is the governing body of these funds; however a seven member Advisory Board has been created to make recommendations to the SIB regarding investment guidelines and asset allocation for these two funds.

Once the guidelines and asset allocations are determined by the clients or recommended by the Advisory Board, they are turned over to the SIB for implementation. The SIB selects investment managers to manage different types of portfolios within each asset class with the goal of maximizing return under the clients' acceptable risk levels. Similar client funds are pooled together when possible to receive lower fees from investment managers.

It is important to note that fiduciary standards do not allow SIB to select or reject investments based solely on social criteria. As it relates to social investing, all of the SIB's contracted and statutorily required clients and the Legacy and Budget Stabilization funds currently prohibit social investing within their respective investment policy statements unless it meets the Exclusive Benefit Rule. Social investing is defined as "The investment or commitment of public fund money for the purpose of obtaining an effect other than a maximized return to the intended beneficiaries."

According to the Exclusive Benefit Rule, the State Investment Board must act in a manner that benefits only its clients, defrays the reasonable expenses of administering funds under its authority and avoids unnecessary costs. If other parties benefit by its actions as plan fiduciary, such benefits must be merely incidental to the greater benefits its clients receive.

This fiduciary standard also applies to economically targeted investing, which is prohibited as well within all SIB client investment policy statements unless it meets the Exclusive Benefit Rule. Economically targeted investments are investments selected for collateral economic benefits they create apart from their investment return to the plan. Examples of ETIs include affordable housing, small business loans, and geographically targeted venture capital.

HB 1304 would require the State Investment Board, by November 1, 2013, to identify all direct holdings in "scrutinized companies," which are defined as companies having "any active business operation subject to or liable to sanctions under the Iran Sanctions Act of 1996, as amended, and which involve the maintenance of a company's existing assets or investments in Iran, or the deployment of new investments to Iran which meet or exceed the $20 million threshold under the Iran Sanctions Act of 1996, as amended." Once those companies are identified, the State Investment Board would be required to engage the "scrutinized companies" within 90 days, encouraging them to cease their scrutinized business activities or make them inactive, in order to avoid divestment. If the "scrutinized companies" fail to do so within 90 days, the Board would be required to divest of 50% of the holdings in the offending securities within 9 months after the first appearance on the scrutinized company list and the remaining 50% within 15 months. House Bill 1304 requires the Board to file an annual report to legislative management listing the "scrutinized companies," correspondence with companies engaged, a listing of investments divested and investments remaining in "scrutinized companies."

To be clear, the State Investment Board does not invest in any Iranian companies or bonds issued by the government of Iran. The State Investment Board has no desire to support terrorism or states that sponsor terrorism. However, in considering the potential effects of a requirement that the SIB proceed with divestment of scrutinized companies, there would be both costs to and fiduciary implications for the State Investment Board and its clients.

Cost to SIB

HB 1304 is expected to increase costs in several ways:

(1) Administrative costs for subscriptions to an external research service to assist in identifying the "scrutinized companies" from which to divest;

(2) Administrative costs in terms of investment staff time required to identify the "scrutinized companies," correspond with the companies, communicate required divestment to investment managers, prepare and present reports to the State Investment Board and legislative management, and monitor investment holdings;

(3) Transaction fees for the sale of investments in "scrutinized companies," and reinvestment in alternative investments; and

(4) Potential opportunity costs from lost investment opportunities due to the inability to invest in "scrutinized companies."

We are unable to provide precise estimates of each of these costs at this time. With regards to administrative costs, the divestment bill places a burden on SIB staff to determine which investments are permissible. As this determination is beyond the capacity of SIB staff, additional expenses would be incurred through the retention of an external vendor to develop and maintain a list of prohibited securities. We estimate the cost to subscribe to a third party research service would be approximately $10,000 per year.

Additionally, we expect that investment staff time required to analyze companies reported by the consultant to SIB, engage these companies directly, monitor and analyze the responses received from these companies, communicate divestment actions to managers, and generate reports for the SIB and legislative management could be as much as 25% of an FTE's time to ensure compliance with this bill.

The SIB has recently discussed the anticipated need for additional staff for the investment program at RIO. Testimony provided on HB1022 (RIO budget bill) to the House Appropriations-Government Operations Committee on January 16, 2013, included discussion regarding this anticipated need in the near future, based on the significant growth of the Legacy Fund in addition to the overall growth of the assets under management (AUM) of the SIB. The SIB program appropriation request currently funds 5.75 FTEs responsible for current AUM of just over $6 billion. Estimates indicate AUM to be over $8 billion by the end of the 2013-15 biennium. RIO did not request an additional FTE in the budget request in HB1022, preferring to wait until the vacant Executive Director/CIO position is filled, but if HB1304 were passed, the current 5.75 FTEs would not have the capacity to absorb the additional responsibilities as described. Unfortunately, the requirements within HB1304 to meet certain deadlines would not allow the luxury of waiting to assess staffing needs until that time. RIO would therefore request an additional FTE to provide the necessary staff to properly implement HB1304 as well as to provide support for the anticipated growth in AUM over the next biennium. Estimated salary and benefits for this position is $265,400 for the 2015-17 biennium and $291,500 for the 2015-17 biennium. Estimated additional operating expenses for this position (computer equipment, furniture, education, travel, telephone, IT data processing) is approximately $18,200 for the 2015-17 biennium and $9,300 for the 2015-17 biennium.

Transactions costs of divestment cannot be estimated with precision given the uncertainty surrounding divestment activity needed to comply with HB 1304. It is important to note that most SIB clients invest a large portion of their assets in equity markets, and in international securities, which would likely be most impacted by the divestment bill. As with any divestment program, a great deal rides on the fiduciary analysis of offending securities to assess the potential costs, market impact and potential to affect risk and return associated with divestment.

Based on a survey of other state retirement plans that prohibit investment in companies with Iranian ties with exceptions for humanitarian providers, approximately 7.5% of the aggregate public equity portfolio and 1% of the aggregate fixed income portfolio may be subject to divestment. Using a midpoint of transaction costs provided by California, Florida and Ohio pension officials, the transaction costs for selling the scrutinized companies and purchasing replacement securities is estimated to be $1.9 million.

The cost associated with a divestment bill is also based upon the amount of lost investment earnings due to the divestment. Some plans that have implemented an Iran divestment program claim that they can comply with a divestiture bill without sacrificing any return, while others anticipate a measurable drop in earnings. While the variety of provisions in the divestment bills among various retirement systems make developing a rule of thumb nearly impossible, estimates of lost investment earnings range from no impact to approximately 30 basis points per annum.

Fiduciary Implications

NDCC 21-10-07 requires that the State Investment Board apply the Prudent Investor Rule in investing funds under its supervision. 21-10-07 also states that the State Investment Board has a fiduciary duty to invest the TFFR and PERS assets for the exclusive benefit of its respective participants. However, the participants in these plans, and current and future taxpayers in the State of North Dakota, will bear any potential costs of divestment requirements. Restrictions which limit the SIB's ability to invest in particular assets reduce investment opportunities and can result in less efficient investment portfolios (lower expected return and/or higher investment risk). Constraints which limit the SIB's investment opportunities in order to comply with divestment requirements may cause the SIB to deviate from the principal of producing maximum total returns at a prudent level of risk.

However laudable the goal of the bill, targeted divestiture could open the door to an unanticipated series of political or social investing pressures to divest or, conversely, invest. While each initiative in isolation may seem relatively benign, the cumulative impact of several statutory divestment requirements could be quite material in nature.

Thank you for allowing me to testify on HB 1304 regarding the complex investment and fiduciary issues we have discussed today.

#5

1304

WISH COMMUNITY
ATIONS COUNCIL
MINNESOTA & THE DAKOTAS

12 North 12th St., Suite 480
Minneapolis, MN 55403
Tel: 612.338.7816
Fax: 612.349.6569
www.minndakjcrc.org

February 8, 2013
28 *Shevat* 5773

TO: Intern9@ND.gov

Testimony of Steve Hunegs before House GVA Committee: February 7, 2013

Thank you, Mr. Chairmen and members of the Committee:

I deeply appreciate the hospitality I have received since I have been in Bismarck.

I travel to Fargo and Grand Forks where there are synagogues and larger Jewish communities. This is the first time I have visited this beautiful State Capitol.

Speaking of Grand Forks and the University of North Dakota, the JCRC and the Center for Human Rights and Genocide Studies at UND are sponsoring an exhibit which opens on campus in March.

The exhibit is the "Rescuers." It tells the stories of people who risked their lives to save others during the Holocaust; and Rwanda, Bosnia and Cambodia genocides.

We have a longstanding relationship with the Center and its director Greg Gordon. (See page 7 of the annual report.) President Kelley has been a strong supporter.

I hope you'll get a chance to see the exhibit.

Thank you to Rep. Grande for her support and for introducing me to many people. I appreciate the time spent with Lt. Gov. Wrigley and Darren Schulz discussing issues associated with this legislation.

****

I take very seriously the concerns raised about inhibiting the maximum return for the pension and insurance funds of North Dakota.

I know Mr. Schulz has raised concerns about costs and staffing associated with the proposed legislation.

These are important points.

I also keep in mind that Iran is unique in the world in the threat it presents.

There are four nations listed by our State Department as "state sponsors of terror": Iran, North Korea, Sudan and Cuba.

Only Iran receives billions of dollars in foreign investment from non-American companies.

Only Iran and North Korea are developing the capacity to develop nuclear weapons.

Only Iran has threatened to destroy another country.

Only Iran has taken American diplomats hostage.

Only Iran facilitates terrorism throughout the world from South America though the Middle East through Asia.

This last point is key to me.

Minnesota and South Dakota have passed Iran divestment legislation.

Thousands of Minnesota and South Dakota National Guard members have been deployed to Iraq since 2003. (I know there has been North Dakota deployment.)

Road side bombs – the Improvised Electronic Devices – have killed and wounded Minnesota and South Dakota soldiers.

The IEDs have been found to contain Iranian components.

In this sense, Iran was at war with Minnesota and South Dakota.

(I was at Camp Arifjan in Kuwait last year and saw the vehicles used to protect soldiers from the IEDs.)

Iran is unique because it is a country in which large international companies invest in a nation of 75 million people.

Much of the investment is targeted at the infrastructure which extracts oil and gas from Iran's huge reserves.

Oil and gas revenue finance Iran's terrorism and nuclear weapons program.

Twenty four states have now divested or have divestment policies with respect to Iran.

Divestment discourages investment in Iran: Total – the French "Super-major" oil company, one of six in the world, has ended investment in Iran.

Iran's currency, the Rial, has been devalued 350 percent in the last three years.

Here is a headline from the August 12, 2010 Wall Street Journal: "Officials Say They Will Suspend Two LNG Projects, Indicating Sanctions Have Foreign Energy Companies in Retreat."

Divestment and Sanctions have an impact.

Justice Brandeis once famously said: "the states are the laboratories of democracy."

And in this instance, the Congress has also spoken in Sec. 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010:

> "It is the sense of Congress that the United States should support the decision of any state or local government that for moral, prudential or reputational reasons diverts from international business doing business with Iran's energy sector."

Iran divestment is an opportunity for the states to protect other investments by weakening Iran through divestment.

Sincerely,

Steve Huhegs
Executive Director

Attachment 1
2-8-13

HB 1304

From: Connie Flanagan
Fiscal & Investment Office
ND Retirement & Investment Office
ND State Investment Board

State Investment Board Funds - Calendar Year Returns (net of fees)

	Year Ending 12/31/12	Year Ending 12/31/11	Year Ending 12/31/10	Year Ending 12/31/09	Year Ending 12/31/08
PERS	13.55%	-0.72%	12.60%	15.59%	-28.04%
TFFR	13.63%	-1.15%	13.85%	14.86%	-30.87%
Bismarck Employees Pension	13.32%	1.37%	12.73%	14.44%	-23.77%
Bismarck Police Pension	13.79%	0.82%	12.93%	14.73%	-25.77%
Job Service Pension	13.82%	1.17%	10.23%	16.27%	-19.13%
Fargo Pension	13.99%	-0.26%	13.05%	17.22%	-28.87%
Grand Forks Pension	14.12%	0.09%	12.98%	N/A	N/A
Grand Forks Parks Pension	13.88%	-0.79%	12.97%	N/A	N/A
WSI	12.00%	6.30%	9.16%	11.58%	-13.55%
Fire & Tornado	13.03%	3.28%	11.71%	18.45%	-18.04%
State Bonding	6.91%	4.79%	5.64%	3.82%	-18.05%
Insurance Regulatory Trust	9.69%	1.62%	8.85%	13.86%	-13.33%
Petroleum Tank Release	6.04%	4.50%	5.29%	3.01%	-17.71%
Risk Management	13.20%	5.56%	12.66%	17.96%	-16.21%
Risk Management Workers Comp	13.83%	5.11%	13.52%	18.58%	-18.54%
ND Association of Counties	12.34%	0.79%	12.12%	20.69%	-24.84%
City of Bismarck Deferred Sick Lv	13.35%	4.09%	11.85%	19.14%	-16.95%
FargoDome	14.40%	1.63%	14.68%	19.35%	-22.75%
Cultural Endowment Fund	15.22%	3.21%	14.01%	16.73%	-24.66%
PERS Retiree Health	13.34%	1.14%	15.45%	21.41%	-25.78%
Budget Stabilization Fund	2.87%	1.42%	4.57%	9.88%	-8.55%
Legacy Fund	2.13%	N/A	N/A	N/A	N/A
S&P 500 Index	16.00%	2.11%	15.06%	26.47%	-37.00%
MSCI EAFE Index	17.32%	-12.14%	7.75%	31.78%	-43.38%
Barclays Aggregate Bond Index	4.21%	7.84%	6.54%	5.93%	5.24%
3 Month T-bills	0.11%	0.10%	0.13%	0.21%	2.06%

Attachment #1

HB 1304

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

March 7, 2013

Good morning Mr. Chairman and members of the committee. My name is Darren Schulz and I serve as the Interim Chief Investment Officer for the North Dakota Retirement and Investment Office (RIO) and State Investment Board (SIB). I am here today to provide negative testimony concerning House Bill 1304.

Before I address the impact of HB 1304, I would like to provide some background on the State Investment Board.

The SIB is responsible for setting policies and procedures guiding the investment of over $6 billion in assets for eight pension funds and 15 other non-pension funds. Their investments are divided into two investment trust funds and one individual investment account. All the funds are invested in accordance with the "Prudent Investor Rule". The governing bodies of each of the funds invested with the SIB, or clients as we call them, are responsible for setting the investment guidelines and asset allocations of their respective funds. Examples of these clients include TFFR, PERS, WSI, and the Cities of Bismarck and Fargo. Some of these clients are statutorily required to be managed by the SIB while others have chosen to do so under contract as allowed by state statute. Exceptions to this process are the Legacy and Budget Stabilization funds. By state constitution and statute, the SIB is the governing body of these funds; however a seven member Advisory Board has been created to make recommendations to the SIB regarding investment guidelines and asset allocation for these two funds.

Once the guidelines and asset allocations are determined by the clients or recommended by the Advisory Board, they are turned over to the SIB for implementation. The SIB selects investment managers to manage different types of portfolios within each asset class with the goal of maximizing return under the clients' acceptable risk levels. Similar client funds are pooled together when possible to receive lower fees from investment managers.

It is important to note that fiduciary standards do not allow SIB to select or reject investments based solely on social criteria. As it relates to social investing, all of the SIB's contracted and statutorily required clients and the Legacy and Budget Stabilization funds currently prohibit social investing within their respective investment policy statements unless it meets the Exclusive Benefit Rule. Social investing is defined as "The investment or commitment of public fund money for the purpose of obtaining an effect other than a maximized return to the intended beneficiaries."

According to the Exclusive Benefit Rule, the State Investment Board must act in a manner that benefits only its clients, defrays the reasonable expenses of administering funds under its authority and avoids unnecessary costs. If other parties benefit by its actions as plan fiduciary, such benefits must be merely incidental to the greater benefits its clients receive.

This fiduciary standard also applies to economically targeted investing, which is prohibited as well within all SIB client investment policy statements unless it meets the Exclusive Benefit Rule. Economically targeted investments are investments selected for collateral economic benefits they create apart from their investment return to the plan. Examples of ETIs include affordable housing, small business loans, and geographically targeted venture capital.

HB 1304 would require the State Investment Board, by November 1, 2013, to identify all direct holdings in "scrutinized companies," which are defined as companies having "any active business operation subject to or liable to sanctions under the Iran Sanctions Act of 1996, as amended, and which involve the maintenance of a company's existing assets or investments in Iran, or the deployment of new investments to Iran which meet or exceed the $20 million threshold under the Iran Sanctions Act of 1996, as amended." Once those companies are identified, the State Investment Board would be required to engage the "scrutinized companies" within 90 days, encouraging them to cease their scrutinized business activities or make them inactive, in order to avoid divestment. If the "scrutinized companies" fail to do so within 90 days, the Board would be required to divest of 50% of the holdings in the offending securities within 9 months after the first appearance on the scrutinized company list and the remaining 50% within 15 months. House Bill 1304 requires the Board to file an annual report to legislative management listing the "scrutinized companies," correspondence with companies engaged, a listing of investments divested and investments remaining in "scrutinized companies."

To be clear, the State Investment Board does not invest in any Iranian companies or bonds issued by the government of Iran. The State Investment Board has no desire to support terrorism or states that sponsor terrorism. However, in considering the potential effects of a requirement that the SIB proceed with divestment of scrutinized companies, there would be both costs to and fiduciary implications for the State Investment Board and its clients.

Cost to SIB

HB 1304 is expected to increase costs in several ways:

(1) Administrative costs for subscriptions to an external research service to assist in identifying the "scrutinized companies" from which to divest;

(2) Administrative costs in terms of investment staff time required to identify the "scrutinized companies," correspond with the companies, communicate required divestment to investment managers, prepare and present reports to the State Investment Board and legislative management, and monitor investment holdings;

(3) Transaction fees for the sale of investments in "scrutinized companies," and reinvestment in alternative investments; and

(4) Potential opportunity costs from lost investment opportunities due to the inability to invest in "scrutinized companies."

With regards to administrative costs, the divestment bill places a burden on SIB staff to determine which investments are permissible. As this determination is beyond the capacity of SIB staff, additional expenses would be incurred through the retention of an external vendor with expertise in this area to develop and maintain a list of prohibited securities. We estimate the cost to subscribe to a third party research service would be approximately $10,000 per year.

Additionally, we expect that investment staff time required to analyze companies reported by the consultant to SIB, engage these companies directly, monitor and analyze the responses received from these companies, communicate divestment actions to managers, and generate reports for the SIB and legislative management it is estimated that approximately 25% of an FTE's time would be required to ensure compliance with this bill.

The House Appropriations Committee has approved an additional FTE for an Investment Analyst within the RIO appropriation bill (HB1022). With the addition of this position, no further FTEs are being requested specifically for HB1304, however, 25% of the cost of this position is being considered a cost of this bill. Expenditures for this bill include 25% of one FTE estimated to be $66,349 for the 2013-15 biennium and $72,889 for the 2015-17 biennium, plus 25% of the associated operating costs for that position of $4,539 for the 2013-15 biennium and $2,323 for the 2015-17 biennium.

In the fiscal note submitted to the House Government and Veterans Affairs Committee on the original version of HB1304, it was estimated that approximately 7.5% of the aggregate public equity portfolio and 1% of the aggregate fixed income portfolio may be subject to divestment, resulting in transaction costs of $1.9 million from selling the scrutinized companies and purchasing replacement securities. With the approval of the amendment to House Bill 1304, however, which would require the state investment board to apply the exclusive benefit rule to any public employees retirement system fund created by the laws of this state, we are unable to make any reliable estimate of transaction costs given the uncertainty surrounding divestment activity needed to comply with the bill to the extent that it does not result in a breach of the exclusive benefit rule. Without an amendment for the non-pension funds, we expect there will still be costs to those funds for divestment and there may still be costs for the pension funds if the divestment meets the exclusive benefit rule. As with any divestment program, a great deal rides on the fiduciary analysis of offending securities to assess the potential costs, market impact and potential to affect risk and return associated with divestment.

The cost associated with a divestment bill is also based upon the amount of lost investment earnings due to the divestment. Some plans that have implemented an Iran divestment program claim that they can comply with a divestiture bill without sacrificing any return, while others anticipate a measurable drop in earnings. While the variety of provisions in the divestment bills among various retirement systems make developing a rule of thumb nearly impossible, estimates of lost investment earnings range from no impact to approximately 30 basis points per annum.

Divestment Considerations

The State Investment Board and its clients are guided by longstanding policies to maximize investments commensurate with risk. An "all things being equal" test would be imposed upon the State Investment Board in which in order to effectively comply with this standard, it must demonstrate that it would be prudent to reduce exposure to the affected assets and that portfolio performance would not be harmed. Yet the short-term transaction costs of divesting selected securities and finding suitable alternative investments present practical and serious considerations.

In the case of companies with ties to Iran, the fiduciary hurdles are much higher than other divestment campaigns, such as firearms, for example, simply because of the size of the companies involved. Attached to my testimony is a list of 382 public companies that according to United Against Nuclear Iran, an advocacy group, conduct business in or with Iran. Two of the largest companies in their database, Samsung Electronics and Royal Dutch Shell, are the 8th and 10th largest companies in the world, respectively, with market capitalizations that together total nearly half a trillion dollars. Other recognizable and sizeable names on the list include 3M, British Petroleum, Citigroup, IBM, Intel, JPMorgan, Toyota, UBS, Wells Fargo, to name but a few. All of the aforementioned companies have large representation in broadly held indices.

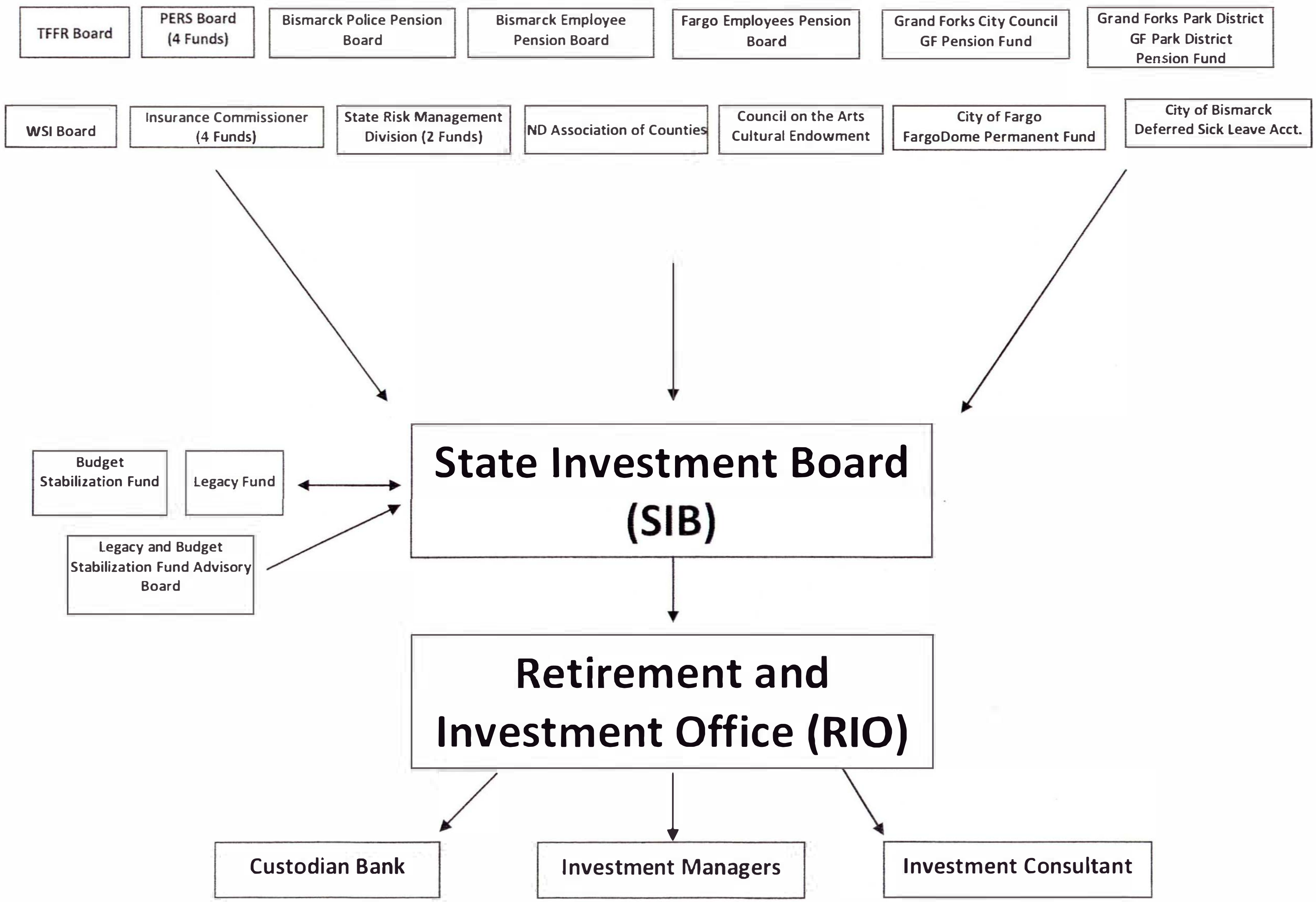
In short, should HB 1304 pass, it would place a significant administrative burden to perform detailed fiduciary analysis to study how narrowly or broadly the restrictions should be applied and the explicit trading costs that would be incurred if holdings were divested. Importantly, unlike many of the larger state plans that have internal investment management capabilities, the assets overseen on behalf of our clients are entirely managed by external managers, and as such, our agency is not well-suited to performing the company-level research that would be required as part of the fiduciary analysis if this bill were to pass. Ultimately, the decision to divest from certain securities or exclude certain securities based on social criteria and effectively comply with the "everything is equal" standard is not one to entertain without great concern.

However laudable the goal of the bill, targeted divestiture could open the door to an unanticipated series of political or social investing pressures to divest or, conversely, invest. While each initiative in isolation may seem relatively benign, the cumulative impact of several statutory divestment requirements could be quite material in nature. Furthermore, requiring state funds to divest to achieve social objectives is simply ineffective. Shares sold by North Dakota funds because of divestment requirements will be purchased by other investors, leaving the funds with no ability, as shareholders, to influence the behavior of these companies.

After taking into consideration the potential costs that would be allocated to all of its clients' funds and the staff time that would be required to comply with the bill, at its last monthly board meeting, the State Investment Board voted to oppose HB 1304 and directed Staff to provide testimony in opposition to the bill.

Thank you for allowing me to testify on HB 1304 regarding the complex investment and fiduciary issues we have discussed today.

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

Investment Consultant Responsibilities:

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

United Against Nuclear Iran (UANI) Iran Business Registry (IBR)

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
1	3M	USA	NYSE:MM	
2	ABB Ltd	Switzerland	NYSE:ABB	294
3	Abbott Laboratories	USA	NYSE:ABT	
4	ABN AMRO	Netherlands	LSE: RBS	16
5	Accor	France	Euronext:	
6	Advanced Micro Devices (AMD)	USA	NYSE:AMD	2
7	Advanced Technology & Materials Co., Ltd.	China	SZSE:	
8	Aeroflot	Russia	RTS:AFLT	
9	Aeterna Zentaris	Canada	TSX:AEZ	
10	AGCO Corporation	USA	NYSE:AGC	
11	Agip	Italy	MI:ENI	102
12	Air France	France	AIRF.PA	14
13	Air Liquide	France	PA: AI	
14	Aker Solutions ASA	Norway	OSE:AKSO	6
15	Albemarle Corporation	USA	NYSE:ALB	
16	Alcatel-Lucent	France	NYSE:ALU	1
17	Alcoa	USA	NYSE:AA	
18	Alfa Laval	Sweden	OMX:ALFA	40
19	Alitalia	Italy	BIT:AZA	
20	Allianz	Germany	NYSE:AZ	50
21	Alstom	France	EPA:ALO	226
22	Alta Genetics Inc.	Canada	TSX:AGI	
23	Ameron International Corporation	USA	NYSE:AMN	3
24	Ametek	USA	NYSE:AME	5
25	AngloAmerican plc	UK	LSE:AAL.L	
26	Anhydro	Denmark	NYSE:SPW	
27	AnsaldoBreda	Italy	BIT:FNC	
28	Arbinet Corporation	USA	NASDAQ:A	2
29	ArcelorMittal	Luxembourg	NYSE:MT	37
30	Archer Daniels Midland Company	USA	NYSE:ADM	
31	Aries Maritime Transport Ltd	Greece	NASDAQ:R	
32	AsiaSat	China	HKEX:	
33	Atlas Copco	Sweden	OMX:ATCO	9
34	Audi	Germany	FWB:NSUG	
35	Australia & New Zealand Banking Group	Australia	ASX:ANZ	
36	Austrian Airlines	Austria	ETR:LHA	
37	AXA Group	France	EPA:CS	
38	Balfour Beatty	UK	LON:BBY	1.8
39	Banca Intesa	Italy	BIT:BIN	
40	Banco Santander	Spain	NYSE:STD	
41	Bank of America	USA	NYSE:BAC	
42	Bank of Ceylon	Sri Lanka	COL:COMB	
43	Bank of Tokyo-Mitsubishi UFJ	Japan	NYSE:MTU	1
44	BankMuscat SAOG	Oman	BKMB:OM	
45	Banque Marocaine du Commerce Exterieur	Spain	CSE:1100	
46	Barclays PLC	UK	NYSE:BCS	105
47	BASF	Germany	FWB:BAS	27
48	Baxter International	USA	NYSE:BAX	
49	Bayer	Germany	FWB:BAYN	58
50	BearingPoint	USA	NYSE:BE	
51	Becton, Dickinson & Company	USA	NYSE:BDX	
52	BenQ	Taiwan	TPO:8215	
53	Bharat Petroleum Corporation Limited	India	BSE:50054	
54	BHP Billiton	Australia	NYSE:BHP	

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
55	Blackstone Group LP	USA	NYSE:BX	1
56	BMW	Germany	FWB:BMW	
57	BNP Paribas	France	EPA:BNP	
58	Boeing	USA	NYSE:BA	2.7
59	Bombardier	Canada	TSE:BBD.B	
60	Bosch	Germany	BOM:5005	108
61	BP	UK	NYSE:BP	10.7
62	Brasil Foods	Brazil	NYSE: BRFS	
63	Braskem	Brazil	NYSE: BAK	
64	Bridgestone Corporation	Japan	TYO:5108	8
65	British American Tobacco	UK	LSE:BATS	
66	BT	Sweden	TYO:	
67	Bulgari	Italy	BIT: BUL	
68	Bunge Global Markets Inc.	USA	NYSE:BG	
69	Bureau Veritas	France	FP:BVI	23
70	Cabot Specialty Chemicals Inc.	USA	NYSE:CBT	
71	Cadbury	UK	NYSE:KFT	
72	Canon	Japan	NYSE:CAJ	503
73	Cargotec	Finland	FH: CGCBV	
74	Carl Zeiss Meditec	Germany	ETR:AFX	
75	Cartier	France	TSX: ECR	
76	Checkpoint Systems, Inc.	USA	NYSE:CKP	1
77	China Southern Airlines	China	NYSE:ZNH	
78	China Stationery & Office Supply, Inc	China	OTC:CSOF	
79	ChinaOil	China	NYSE:PTR	
80	Cisco Systems, Inc.	USA	NASDAQ:C	62
81	Citigroup Inc.	USA	NYSE:C	
82	Citroen	France	UG:FP	
83	CNH Global	USA	NYSE:CNH	89
84	CNPC (China National Petroleum Corporation)	China	NYSE:PTR	
85	Coca-Cola	USA	NYSE:KO	11
86	Cometals (Commercial Metals Company)	USA	NYSE:CMC	
87	Commerzbank	Germany	ETR:CBK	140
88	CommScope	USA	NYSE:CTV	10
89	Compañía Española de Petróleos (Cepsa)	Spain	MCE:CEP	63
90	ConocoPhillips	USA	NYSE:COP	1.7
91	Cosmo Oil Company	Japan	TYO:5007	308
92	Costain	UK	LON:COST	
93	CPC Corporation	Taiwan	TT:CPC	
94	Credit Agricole	France	EPA:ACA	
95	Credit Suisse	Switzerland	NYSE:CS	6
96	Cummins Inc.	USA	NYSE:CMI	66
97	Daelim	South Korea	SEO:00021	174
98	Daewoo International	South Korea	SEO:04705	12
99	Daimler	Germany	ETR:DAI	4.2
100	Danaher Corporation	USA	NYSE:DHR	203
101	Danieli	Italy	BIT:DAN	
102	Danone		EPA:BN	64
103	Danske Bank A/S	Denmark	NYSE:DB	
104	De La Rue	United Kingdom	DLAR:	
105	Del Monte	USA	NYSE:DLM	
106	Dell Computer Corporation	USA	NASDAQ:D	9.832
107	Det Norske Veritas	Norway	NO:DNVR	
108	Deutsche Bank	Germany	NYSE:DB	35
109	Deutsche Post DHL	Germany	ETR:DPW	163
110	Deutsche Telekom	Germany	ETR:DTE	2
111	DF Deutsche Forfait AG	Germany	GR : DE6	
112	DK Tech Corporation	South Korea	KQ:105740	

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
113	DnB NOR Bank ASA	Norway	OSL:DNBN	
114	Double Hull Tankers, Inc.	UK	NYSE:DHT	
115	Dow	USA	NYSE:DOW	174
116	Dresser-Rand	USA	NYSE:DRC	253
117	Dubai Islamic Bank	UAE	DFM:DIB	
118	Durr AG	Germany	FWB:DUE	
119	EADS	Netherlands	EPA:EAD	34
120	Eastman Kodak Company	USA	NYSE:EK	
121	Edison S.P.A	Italy	BIT:EDN	
122	EGL	Switzerland	SWF:EGL	
123	Eli Lilly and Company	USA	NYSE:LLY	
124	EMD USA	USA	ETR:MRK	
125	Emerson Electric Co.	USA	NYSE:EMR	184
126	Emirates Telecom	UAE	ABD:ETISA	1
127	ENI	Italy	NYSE:E	118
128	Epson	Japan	TYO:6724	
129	Ericsson	Sweden	NASDAQ:E	119
130	Essar Oil	India	NSE:ESSAR	
131	Eurocopter	France	EPA:EAD	109
132	Eutelsat	France	EPA:ETL	
133	Evergreen Marine Corporation	Taiwan	TPE:2603	
134	EXMAR	Belgium	EBR:EXM	
135	Finmeccanica	Italy	NYSE:FINM	14.4
136	Flint Group	Luxembourg	FLINP	
137	Flowserve	USA	NYSE:FLS	71
138	FMC Technologies Inc.	USA	NYSE:FTI	
139	Foster Wheeler	Switzerland	NASDAQ:F	199
140	Frontline Ltd.	UK	NYSE:FRO	
141	Fuel System Solutions, Inc.	USA	NASDAQ:F	1
142	Fuji Heavy Industries	Japan	TYO:7270	
143	Galp Energia	Portugal	ELI:GALP	11
144	Gardner Denver	USA	NYSE:GDI	6
145	Gazprom	Russia	LSE:OGZD	
146	Gazprombank	Russia	RTS: GZPR	
147	General Motors	USA	NYSE:GM	2.892
148	Genzyme	USA	NASDAQ:G	
149	Geoservices	France	NYSE:SLB	
150	Gigabyte Technology	Taiwan	TPE:2376	
151	Grant Thornton	United Kingdom	GRATP	
152	Grass Valley	USA	NYSE:TCH	
153	GS Group	South Korea	SEO:07893	
154	Gubretas	Turkey	TI:GUBRF	
155	Haier Group	China	SEHK:1169	
156	Halkbank	Turkey	IST:HALKB	
157	Hannover Re	Germany	ETR:HNR1	
158	Hellenic Petroleum S.A.	Greece	ATH:ELPE	
159	Henkel	Germany	FWB:HEN	195
160	Hill-Rom Company	USA	NYSE:HRC	
161	Hilton Worldwide	USA	NYSE:BX	5
162	Hindustan Petroleum Corp Ltd (HPCL)	India	BOM:5001	
163	Hitachi Zosen Corporation	Japan	TYO:7004	8
164	Hologic Inc	USA	NASDAQ:H	
165	Honda Motor Co.	Japan	NYSE:HMC	7
166	Honeywell	USA	NYSE:HON	12.9
167	HSBC	UK	NYSE:HBC	
168	Hyundai Corporation	South Korea	KRX:01176	129
169	Hyundai Heavy Industries	South Korea	KRX:00954	39
170	Hyundai Merchant Marine	South Korea	SEO:01120	

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
171	IBA Group	Belgium	EBR:IBAB	
172	IBM	USA	NYSE:IBM	
173	Idemitsu Kosan Co.	Japan	TYO:5019	
174	Imperial Tobacco Group PLC	UK	LSE:IMT	
175	INA	Croatia	LON:HINA	
176	Independent Petroleum Group (IPG)	Kuwait	KUW:IPG	2
177	Indian Oil Corporation	India	BOM:5309	
178	Industrial Bank of Korea	South Korea	SEO:02411	
179	ING Group	Netherlands	NYSE:ING	11
180	Inmarsat	United Kingdom	LSE:ISAT	
181	Inpex	Japan	TYO:1605	
182	INTECSEA	USA	ASX:WOR	
183	Intel Corporation	USA	NASDAQ:I	18
184	InterContinental Hotels Group	UK	NYSE:IHG	17
185	Interpublic Group of Companies	United States	NYSE:IPG	
186	Intesa Sanpaolo SpA	Italy	BIT:ISP	100
187	Invensys	UK	LON:ISYS	3
188	Iridex Corp	USA	NASDAQ:IR	5
189	Isuzu	Japan	TYO:7202	31
190	Itochu Corporation	Japan	TYO:8001	
191	James Hardie Industries NV	Australia	NYSE:JHX	
192	Japan Energy Corporation	Japan	TYO:5020	
193	Japan Tobacco	Japan	JSX:2914	
194	JGC Corporation	Japan	TYO:1963	
195	John Crane	UK	LSE:SMIN	35
196	John Wiley & Sons, Inc.	USA	NYSE:JW.A	12
197	Johnson & Johnson	USA	NYSE:JNJ	
198	JPMorgan Chase	USA	NYSE:JPM	
199	JX Group		JXHLY:US	
200	JX Nippon Oil & Energy	Japan	ETR:NIO	194
201	Kanematsu	Japan	JSX:8020	
202	Kawasaki Heavy Industries Group	Japan	TYO:7012	234
203	KCC	South Korea	KRX :	
204	KHD Humboldt Wedag	Austria	ETR:MFG	
205	Kobelco	Japan	JP: 6299	
206	Koc Holding	Turkey	KCHOL	
207	Kone Oyj	Finland	HEL:KNEBV	158
208	Konica Minolta	Japan	TSX:4902	
209	Kraft Foods International Inc.	USA	NYSE:KFT	
210	KRBL Rice	India	NSE : KRB	
211	Kumagai Gumi	Japan	TYO:1861	
212	Kuwait and Gulf Link Holding Company (KGL)	Kuwait	KSE:KGL	44
213	LG Group	South Korea	SEO:06657	
214	Linde	Germany	FWB:LIN	165
215	Liquefied Natural Gas Limited	Australia	ASX:LNG	
216	LITASCO	Russia, Switzerland	LON:LKOH	
217	Lloyd's of London	UK	LON:LLOY	
218	Lloyds TSB	UK	NYSE:LYG	28
219	Logitech International	Switzerland	NASDAQ:L	
220	Lufthansa	Germany	ETR:LHA	37
221	Lukoil	Russia	LON:LKOH	
222	Lundin Mining Corp	Canada	TSE:LUN	
223	LVMH (Moet Hennessy•Louis Vuitton)	France	Euronext:	
224	LyondellBasell	Netherlands	NYSE:LYB	
225	Maersk (AP Moller-Maersk Group)	Denmark	OMX:MAE	4.284
226	Magnitogorsk Iron & Steel Works	Russia	RTS:	
227	Maire Tecnimont	Italy	BIT:MT	
228	MAN	Germany	FWB :	

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
229	Manitowoc Co.	USA	NYSE:MTW	2
230	Marriott	USA	NYSE:MAR	123
231	Marubeni Corporation	Japan	TYO:8002	11
232	Masimo Corporation	USA	NASDAQ:	
233	MasterCard	USA	NYSE:MA	
234	Mazda	Japan	TYO:7261	2.4
235	McCormick & Company	USA	NYSE:MKC	
236	MCI Inc.	USA	NYSE:VZ	429
237	Mechel OAO	Russia	NYSE:MTL	
238	Medtronic Inc.	USA	NYSE:MDT	
239	Mercedes-Benz	Germany	ETR:DAI	
240	Merck KGaA	Germany	NYSE:MRK	10
241	Metalloinvest	Russia	RU: METIN	
242	Mettler-Toledo	Switzerland/USA	NYSE:MTD	56
243	Millennium & Copthorne Hotels	UK	LON:MLC	
244	Millicom International Cellular SA	Luxemburg	NASDAQ:	
245	Millipore	USA	NYSE:MIL	
246	Mindray Medical International LTD	China	NYSE:MR	
247	Mitsubishi	Japan	TYO:7211	337
248	Mitsubishi UFJ Financial Group	Japan	NYSE:MTU	1
249	Mitsui & Co., Ltd.	Japan	NASDAQ:	769
250	Mitsui Sumitomo Insurance	Japan	TYO : 8309	
251	Mizuho Financial Group, Inc	Japan	NYSE:MFG	
252	Mobile TeleSystems	Russia	NYSE:MBT	
253	Motor Oil Hellas	Greece	ASE : MOH	
254	MTN	South Africa	JNB:MTN	
255	Munich Re	Germany	BIT:MUV2	
256	NEC Corporation	Japan	TYO:6701	5
257	Nestle	Switzerland	VTX:NESN	1.2
258	Nippon Yusen K.K	Japan	Nikkei:	
259	Nissan	Japan	TYO:7201	19
260	Nokia Corp	Finland	NYSE:NOK	16
261	Nokia Siemens Networks	Finland	NYSE:NOK	21
262	Nordea Bank Finland PLC		NDA	
263	Norsk Hydro ASA	Norway	OSL:NHY	4
264	NVIDIA	USA	NASDAQ:N	
265	NYK Line	Japan	JPX:9101	
266	Oil and Natural Gas Corp (ONGC)	India	NSE:ONGC	
267	Oil India Limited	India	NSE:OIL	
268	OMV AG	Austria	WBAG:OM	
269	Oriflame	Luxembourg	STO:ORI	
270	Overseas Shipholding Group (OSG)	USA	NYSE:OSG	21
271	Palfinger	Austria	WBAG: PAL	
272	Panasonic Corporation	Japan	NYSE:PC	110
273	Parker Drilling Co.	USA	NYSE:PKD	
274	Parker Hannifin Corporation	USA	NYSE:PH	1.903
275	PBT	South Africa	JSE : PBT	
276	PepsiCo	USA	NYSE:PEP	25
277	Persian Gold PLC	UK	LON:PNG	
278	Petrobras	Brazil	BUE:PESA	2
279	Petronas	Malaysia	KUL:PETGA	
280	Peugeot	France	EPA:UG	
281	Pfizer Inc.	USA	NYSE:PFE	912
282	Philip Morris International	USA	NYSE:PM	
283	Philips Electronics	The Netherlands	NYSE:PHG	3
284	Polish Petroleum and Gas Mining	Poland	WAR:PGN	
285	POSCO	South Korea	PKX	
286	POSCO E&C	South Korea	PKX	52

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
287	Precision Drilling Trust	Canada	TSE:PD	2
288	Priceline	USA	NASDAQ:P	
289	Proton Holdings Bhd	Malaysia	KUL:PROT	
290	PT Indosat Tbk	Indonesia	NYSE:IIT	
291	Qatar National Bank	Qatar	DOH:QNBK	
292	Reliance Industries	India	BOM:5003	900
293	Renault	France	EPA:RNO	
294	Repsol YPF, S.A.	Spain	NYSE:REP	450
295	Response Biomedical Corp	Canada	TSE:RBM	
296	Richemont	Switzerland	CFR.VX	
297	Riyad Bank	Saudi Arabia	SAU:1010	
298	Roctest	Canada	TSE:RTT	
299	Rohm	Japan	OSA:6963	
300	Royal Bank of Canada	Canada	NYSE:RY	3
301	Royal Bank of Scotland Group	UK	NYSE:RBS	
302	Royal Dutch Shell plc	Netherlands/UK	LSE:RDS.A	11.2
303	Samsung	South Korea	LSE:SMSN	476
304	Sandvik	Sweden	SAND.ST	2
305	Saras	Italy	MI:SRS	
306	Sasol	South Africa	NYSE:SSL	2
307	Scania	Sweden	SCVB:Stock	
308	Schlumberger	Netherlands	NYSE:SLB	31
309	Schneider Electric	France	EPA:SU	457
310	Seiko Group	Japan	TYO:8050	3
311	Sharp Corporation	Japan	TYO:6753	341
312	Siemens	Germany	NYSE:SI	3.2
313	Sinopec Corp	China	NYSE:SNP	
314	Sinotrans	China	HKE : 0368	
315	SK Energy	South Korea	KRX:09677	
316	Skandinaviska Enskilda Banken	Sweden	ETR:SEBA	
317	Skanska	Sweden	STO:SKAB	
318	Smith International, Inc.	USA	NYSE:SLB	
319	Societe Generale	France	EPA:GLE	1
320	Solar Turbines	USA	NYSE:CAT	17
321	Sony	Japan	NYSE:SNE	104
322	Sovereign Bank	USA	NYSE:STD	54
323	State Bank of India	India	LON:SBIQ	
324	Statoil ASA	Norway	NYSE:STO	
325	Stryker Corporation	USA	NYSE:SYK	35
326	Subaru	Japan	TYO:7270	
327	Sumitomo Mitsui Financial Group	Japan	TYO:8316	650
328	Sungjin Geotec Co., Ltd	South Korea	KRX:	
329	Suzuki	Japan	TYO:7269	1
330	Svenska Handelsbanken AB	Sweden	OMX: SHB	
331	Swatch Group	Switzerland	UHR.VX	
332	Syngenta AG	Switzerland	NYSE:SYT	
333	TDK Corporation	Japan	TYO:6762	6
334	Technicolor SA	France	NYSE:TMS	1
335	Technip	France	EPA:TEC	
336	Teekay Tankers Ltd	UK	TNK	
337	Telesat	Canada	NASDAQ:	
338	Thales	France	EPA:HO	1.983
339	ThyssenKrupp	Germany	ETR:TKA	151
340	Tokio Marine Holdings, Inc.	Japan	TKOMY	
341	Toshiba	Japan	LSE:TOS	672
342	Total SA	France	NYSE:TOT	1.474
343	Toyo Engineering Corporation	Japan	TYO: 6330	
344	Toyota Motor Corporation	Japan	NYSE: TM	154

	Company Name	Nationality	Stock Symbol	Value of Contracts (in millions)
345	Toyota Tsusho Corporation	Japan	TYO:8015	125
346	Transocean	Switzerland	NYSE:RIG	
347	Tupras	Turkey	IST:TUPRS	
348	Turkcell	Turkey	NYSE:TKC	1
349	Turkish Airlines	Turkey	NYSE:TKF	
350	Tyson Foods	USA	NYSE:TSN	2
351	Ubiquiti Networks	USA	NASDAQ:	
352	UBS	Switzerland	NYSE:UBS	7
353	Unilever	Netherlands/UK	NYSE:UL	842
354	Union Bank of India		BSE:	
355	Union Carbide	USA	NYSE:DOW	
356	Unipec	China	NYSE:SNP	
357	United Bank Limited	India	KAR:UBL	
358	United Technologies Corporation (UTC)	USA	NYSE:UTX	63.958
359	Valeo	France	EPA:FR	1
360	Varian Medical Systems	USA	NYSE:VAR	282
361	Vinci	France	EPA:DG	270
362	Visa	USA	NYSE:V	
363	Voestalpine AG	Austria	WBAG:	
364	Volkswagen	Germany	FWB:VOW	2
365	VTB Bank	Russia	LI:VTBR	
366	Wartsila OYJ	Finland	HEL:WRTB	95
367	Weatherford International	Switzerland	NYSE:WFT	2
368	WEG	Brazil	SAO:WEGE	
369	Wells Fargo	USA	NYSE:WFC	165
370	Whirlpool Corporation	USA	NYSE: WHR	8
371	Wincor Nixdorf	Germany	ETR:WIN	
372	Wirth	Germany	OSL:AKSO	
373	Wood Group	UK	LON:WG	21
374	World Fuel Services Corporation	USA	NYSE:INT	864
375	WWA Group Inc	UAE	OTC:WWA	
376	Wyeth	USA	NYSE:PFE	4.855
377	Yamaha	Japan	TYO:7951	
378	Zarlink Semiconductor Inc.	Canada	TSX:ZL	
379	Zarubezhneft	Russia	RU: ZRNFT	
380	Zoll Medical Corporation	USA	NASDAQ:Z	145
381	ZTE	China	SEHK: 0763	
382	Zurich Financial Services	Switzerland	SIX:ZURN	14

Attachment #2

Engrossed HB 1304

SENATE GOVERNMENT AND VETERANS AFFAIRS COMMITTEE
March 7, 2013

Fay Kopp, Interim Executive Director - Chief Retirement Officer
ND Retirement and Investment Office - ND Teachers' Fund for Retirement

On behalf of the Teachers' Fund for Retirement (TFFR) Board, I appear today in opposition to Engrossed HB 1304 due to the potential for increased costs. It is important to note at the outset that TFFR does not support terrorism, nor countries that sponsor terrorism.

The TFFR Board of Trustees is responsible for administering the retirement plan for our state's public school educators. As part of its statutory board responsibilities, the TFFR Board must establish investment policy for the trust fund (NDCC 15-39.1-05.2). State law also requires that TFFR funds be invested by the State Investment Board (NDCC 15-39.1-26 and 21-10-06)). By state law, and in order to maintain its tax qualified status, TFFR funds must be used and invested exclusively for the benefit of its members (NDCC 54-52-14.3 and 21-10-07). This is known as the exclusive benefit rule.

Engrossed HB 1304, as amended by the House, requires the SIB to determine if the investment meets the exclusive benefit rule. This is very important since TFFR pension funds are held in trust, and state law establishes the TFFR Board as fiduciaries of the pension fund. As such they are subject to certain fiduciary responsibilities which require them to operate prudently and solely in the best interest of the plan's participants and beneficiaries. The use of TFFR trust fund assets to achieve a social or political cause, no matter how worthy, may be a violation of their fiduciary role, unless it meets the exclusive benefit rule.

Under TFFR investment policy, four conditions are required to be met to ensure that investments meet the exclusive benefit rule: (1) The cost does not exceed the fair market value at the time of investment. (2) The investment provides the Fund with an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk. (3) Sufficient liquidity is maintained in the Fund to permit distributions in accordance with the terms of the plan. (4) The safeguards and diversity that a prudent investor would adhere to are present.

Consequently, the SIB must determine if the exclusive benefit rule is met before divestment can take place, or before an investment can be made. That is, if the investment in question meets the exclusive benefit rule as determined by the SIB, divestment will occur. However, if the investment in question does not meet the exclusive benefit rule as determined by the SIB, divestment will not occur.

The TFFR Board has the following concerns with the implementation of HB 1304:

1. Divestment comes with a cost.

SIB staff has provided details on the exclusive benefit rule analysis, divestment process, economic effects, and potential costs of HB 1304. These unknown costs will, in turn, be passed on to SIB clients. Consequently, TFFR will bear a proportional share of whatever costs are required, with no corresponding benefit to the plan participants. These costs, whether large or small, come at a time when TFFR can least afford it.

2. Increased potential for future divestment requirements.

Efforts requiring pension funds to divest assets in holdings of companies alleged to be engaged in objectionable activities is not new. During the past few decades, efforts have been made across the country to require public pension funds to divest of their holdings in Iran, Sudan, and South Africa; in tobacco, alcohol, and gambling; and most recently, in gun companies.

While each of these efforts may have the very best of intentions, targeted divestiture could be a "slippery slope" opening the door to a wide variety of special interest calls for divestment (or investment) of particular asset types. While each individual initiative may appear to be relatively small, the cumulative impact of several statutory requirements or restrictions could increase costs over time.

Summary

Pension plans exist to provide retirement income to pension plan members. While the bill was amended in the House to ensure that the SIB applies the exclusive benefit rule before divestment of pension assets can occur, there are still unknown costs to the bill, with no corresponding benefit to the trust fund.

Senator Dever and members of the GVA Committee, thank you for your thoughtful consideration of this testimony.

Attachment #3

STATE OF NORTH DAKOTA

OFFICE OF STATE TREASURER

Kelly L. Schmidt, State Treasurer

House Bill 1304

Testimony in Opposition

Committee: Senate Government and Veteran Affairs

Kelly Schmidt, State Treasurer

Mr. Chairman, Members of the Committee, I am Kelly Schmidt, State Treasurer.

I stand before you as the custodian of all state funds and a Fiduciary of many. I stand in opposition to HB 1304.

I have great concern when we steer from our investment objectives in the name of Social issues. Social investing is a movement that advocates incorporating social, political, economic and environmental considerations, positive or negative, as well as financial factors, when making investment decisions. The emotional appeal of such actions is powerful, but strong arguments also exist against using public funds to accomplish domestic or foreign policy goals

The trustees and staff of our state's financial pools have a statutory fiduciary obligation that includes a duty to manage our funds for the exclusive benefit of the funds objects. It may be a pension fund, a trust fund or any state fund. We have a duty of prudence that encompasses an obligation to act in an economically rational way. Divesting assets for non-economic reasons is inconsistent with fiduciary responsibility. In effect, mandated divestment would supersede the duty to manage a pension fund for the exclusive benefit of the membership.

Enactment of any divestment bill would mark the first set of restrictions placed upon the investment authority within our state since the adoption of the "prudent person rule" and could set a costly precedence for further restrictions.

In the event this legislation is enacted, The State Investment Board and the staff at RIO would face the daunting task of determining exactly which companies from which they are mandated to divest (recognizing that inadvertently divesting a non-mandated company could be a breach of fiduciary duty for which there would be no statutory protection). This is a matter of concern because no authoritative, universally agreed upon list exists. Because this mandate would be dependent upon the business activities of multi-national companies, any list would have to be continuously updated; a stock purchased today might have to be sold tomorrow; stock sold today might go off the list and need to be repurchased tomorrow.

600 E. Boulevard Ave, Dept. 120 • Bismarck, North Dakota 58505-0600

Phone: 701.328.2643 • Fax: 701.328.3002 • www.nd.gov/ndtreas/

The issue of the potential effectiveness of any proposed divestment mandate is central to a rational discussion of the merits of divestment as public policy. If a divestment campaign is unlikely to achieve its stated goals, the enactment of such divestment legislation would be illogical and would represent little more than a symbolic gesture rather than a rational strategy for achieving political, social or economic change.

There is a wealth of literature on all sides of the divestment issue. Although there is substantial information supporting the effectiveness of economic sanctions, there appears to be little evidence to support the position that divestment has any significant economic effect on the company whose stock is sold, let alone on the country or individuals whose behavior is intended to be influenced.

Divestment raises numerous legal issues that, left unresolved, could expose the funds to, at a minimum, litigation costs and, at worst, adverse court rulings holding board and staff members personally liable for losses.

The United States Constitution provides that the U.S. federal government has authority over foreign affairs and commerce with foreign countries. The federal government alone has the power to decide whether U.S. companies can do business in other countries based on national security interests. State and local investors are neither positioned nor equipped to make foreign policy judgments as to which multinational companies (foreign and domestic) are operating for or against the national security interests of the United States. The federal government should provide guidance to ensure that any divestment efforts to influence foreign policy are uniform throughout the nation and consistent with the objectives of the United States. There are substantial disagreements among available lists as to which companies should be targeted for divestment.

Any divestment determinations would have to be made on an ongoing basis. To stay abreast of changes in global market and geopolitical conditions, would leave our funds permanently vulnerable to accusations of error.

I could go on and on in this discussion as it relates to cost, performance, risk and volatility or the impact of indirect investments. But, I won't...

Fund trustees are fiduciaries; our funds are not agents of social change. Divestment is a distraction that takes us away from our mission. Our Boards are in place to make money, and when you restrict our ability to choose investments, you likely restrict our ability to gain returns.

If social investing produces losses either through higher administrative costs or lower returns, tomorrow's taxpayers may have to ante up to regain those loses.

This is a slippery slope. Divestment "terror-free" discussions began with Sudan and involved only a few stocks. It has quickly spread to Iran, where the issues are even more complicated and the number of companies substantially greater. Should we be adding Saudi Arabia, original home of 15 of the 19 hijackers involved in the 9/11 terrorist attacks to the list?

I leave you with this...

The US Department of States website includes the country list of "State Sponsors of Terrorism" they are Iran, Sudan, Syria and Cuba. If HB 1304 is enacted why would you not include the entire list? If we take it a step further should we then prohibit our state from trade activities with Cuba? In the name of "responsible investing" should we include fossil fuels as it relates to climate change, gun companies in response to the tragic events in Connecticut? Perhaps we should add tobacco companies in response to North Dakota's recently passed Constitutional Amendment or Cocoa/Textile companies in the of name of child labor. This list could go on and on. At some point, the administrative costs of broad-based divesting will balloon and exclude large numbers of companies which will definitely hurt returns. Where does it begin? That will depend on HB 1304.