

2019 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1130

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1130
1/17/2019
30980

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the authority of the administrative committee on veterans' affairs to establish goals and objectives for expenditures of the veterans' postwar trust fund

Minutes:

Attachments 1, 2, 3, 4, 5

Chairman Kasper opened the hearing on HB 1130.

Rep. Laning appeared in support of HB 1130. (:18-3:14) Attachment 1.

Rep. Vetter: Are they trying to pick the investments?

Rep. Laning: Everybody would like the maximum return they can on investments. Nobody likes to see them crash. The veterans' organization would like to see the maximum return, because the return they get from the trust fund is what they use in the next biennium for expenses and support of their programs.

Rep. Rohr: The first statement talks about the expenditures of the fund. The second statement talks about the investment of the fund. Could you expound on the relationship there?

Rep. Laning: On the expenditure side, ACOVA would establish their goals and objectives or how they would like to see future funds spent. The return on the investment is the investments that the treasurer makes with the postwar trust fund. The gain on that fund is what is transferred to the next biennium. The principal of the fund stays the same.

Rep. Rohr: Those goals and objectives were not in existence prior to this bill?

Rep. Laning: I can't respond to that. You will have to ask others.

Jim Nelson, ND Veterans' Legislative Council, appeared in support. The key to any investment strategy is based on a clearly defined set of short- and long-term goals, objectives, and asset allocation plans. This bill takes away nothing from the role of the state treasurer, but rather adds to it. This bill provides a collaboration between the treasurer and

the ACOVA to come up with the best strategy possible for benefit of the state's veterans and their dependents. We want to be part of the discussion.

Vice Chair Steiner: This is "may" which is just a suggestion in law. "Shall" is when it has to happen. If we didn't pass this, are you able to sit down with her and go through goals and objectives, and that she is obviously going to know and consider without going through and codifying it?

Mr. Nelson: I can't answer that question, but Mr. Wangen probably can.

Rep. Schauer: I sense the underlying issue here is a communication problem. Is that the issue?

Mr. Nelson: That is my understanding. It is just to create the ability to have a discussion.

Rep. Schauer: Do we need to codify that? To put it into law seems like this is a broken relationship. Is that your understanding of the situation right now?

Mr. Nelson: I don't work with that area personally. That perhaps is best left to the commissioner to answer that question.

Lonnie Wangen, Commissioner of Veterans' Affairs, appeared in support. The Dept. of Veterans' Affairs works with Treasurer Schmidt frequently, and get quick responses to my concerns. This has come up in the past history. This was discussed during our audit. It was a concern the treasurer has sole responsibility to determine what the needs are and to invest for them. The idea is where do we want this fund to go? Six years ago it was held at a \$4.1 million corpus and that is where it is at. The treasurer has brought that up to \$6 million. The boards say we would like to see this much growth for our future and this much to take care of today's needs, and then the state investment board goes out and does that. It is all about what our needs are, and we are seeing we want to take care of future veterans and by growing it by \$2 million, the treasurer has really set us up in a lot better position than we have been in the past. It is to continue that in the future to have that mechanism and to clarify as new members come in and take over the roles of treasurer or ACOVA and that their duties and responsibilities are laid out and clear.

Chairman Kasper: Could you provide a copy of the auditor's report.

Mr. Wangen: Most of that was verbal conversation with the auditors at the time.

Rep. Vetter: You are looking at how the money is spent?

Mr. Wangen: The ACOVA is just looking at setting the goals and objectives of the postwar trust fund.

Rep. Vetter: I am really confused on what you are asking for.

Mr. Wangen: We do not want to tell anyone how to invest. That is up to the treasurer. We want to set the goals and objectives.

Rep. Schauer: If this is passed, how would you envision it?

Mr. Wangen: I would see it as a review by the ACOVA annually or biannually.

Rep. Schauer: Is there a certain amount of frustration that you have had that this communication has not happened and the door has been closed to you for input?

Mr. Wangen: I wouldn't say the communication is closed on that, but the law is the way it sits and the treasurer does say she has full discretion on this. The ACOVA just wants to be heard on that.

Chairman Kasper: Anything stopping from sending an email to the treasurer after one of those meetings?

Mr. Wangen: There is nothing stopping us from doing that. We are going to address everything that was brought up in the audit. This was one area that needed to be addressed.

Chairman Kasper: It appears to me the audit seems to be a primary focus of this bill. When you are a fiduciary and you have the responsibility to invest funds, you have to look at a whole lot of the responsibilities of a fiduciary. I see a huge difference in people who do not have background or knowledge in the area of fiduciary responsibility wanting to direct anything. I understand your goal, but sometimes it is going to be impossible to achieve other than please do the best you can.

Mr. Wangen: We understand that.

Rep. C. Johnson: Are you the only organization that receives that income from that trust fund?

Mr. Wangen: In a way yes and no. We are the Department of Veterans' Affairs. The Administrative Committee on Veterans' Affairs has control of where those funds go. The treasurer moves them into an account that is called Fund 410, and the ACOVA will direct our department on where to utilize those funds. We are the ones who write the checks, but the ACOVA directs where they go.

Chairman Kasper: How much of the investment return on the fund is distributed? Is it annually?

Mr. Wangen: At the end of every biennium, the treasurer will provide to the ACOVA the spendable income, and those funds are used for the ACOVA for the next biennium. This current biennium we have about \$218,000. The prior biennium we received \$247,000, and the biennium before that was \$262,000.

Chairman Kasper: The current biennium is down from the previous two?

Mr. Wangen: That is correct.

At one point during the hearing Chairman Kasper asked the law intern to provide the chapter on the State Investment Board. Attachment 2.

Opposition

Kelly Schmidt, State Treasurer, appeared in opposition. Attachment 3. (24:19-34:57)

Rep. Schauer: It seems this bill would add to that communication issue. Don't you believe so?

Kelly Schmidt: I agree. I don't think we should be putting into law to make two state agencies have to communicate.

Rep. Schauer: Wouldn't that solve the problem of communication for you and future administrations in your area?

Kelly Schmidt: I don't believe it will change anything other than the perceived authority that the ACOVA wants a say in how the investments can be made. I believe there is such a disconnect between the fiduciary responsibility and how the treasurer is required to invest this fund. The fiduciary has to take a neutral position on that. The role of the treasurer is to protect the integrity of the fund, and by looking at the earnings and the volatility of the market in the last several years, we have balanced that extremely well.

Rep. Schauer: The state treasurer may consider the committee's goals and objectives, and you have taken to your conclusion, perceived authority. Can you tell me the difference how you go from this to perceived authority, and how do you define the word perceived?

Kelly Schmidt: It probably is a personal bias because I have been a treasurer for 15 years and working with ACOVA for as long as that time. This has been a challenge with my office and me personally since 2007, and it has been related to this fund. When we give someone the opinion or the authority as they see it where they have a stronger say and should be able to give expectations to the fiduciary, there is going to be an expectation that the earnings and what they are going to receive is going to be increased. That is a concern for me because a trustee cannot look at what you invest for current veterans more so than what you invest for future veterans. You have to invest relating to the integrity of every single dollar in the pool of the veterans' postwar fund.

Rep. Laning: Can you explain the income to the trust fund as far what income adds to the principal versus the gain or interest the ACOVA uses?

Kelly Schmidt: I will defer to my finance director.

Ryan Skor, Finance Director, Office of State Treasurer, appeared. My team and I do the reconciliation when we get the investment reports back. Under the Uniform Principal and Income Act the earnings that are considered distributable earnings are interest, dividends, etc. that goes back to the principal of the fund, and then the expenses are split evenly between that.

Chairman Kasper: Is what you told us statutory or constitutional?

Ryan Skor: The Uniform Principal and Income Act is in statue. Chairman Kasper asked for a copy. Attachment 4. Also, a copy of Article X of the ND Constitution was provided by the law intern at the request of Chairman Kasper. Attachment 5.

Rep. Laning: A capital gain would go back to the principal? Any dividends or interest would go to ACOVA's next term?

Ryan Skor: That is correct.

Chairman Kasper: What is the balance of the fund right now?

Ryan Skor: It was just over \$6 million at the end of December.

Chairman Kasper closed the hearing.

Chairman Kasper: This bill has great intentions. I have asked for some additional information. He reopened the hearing.

Joshua Gallion, State Auditor, appeared. The only audit we really looked at for the postwar trust fund was the audit of ACOVA. In that we made no recommendations. We started with surveys. We surveyed the 53 county tribal veteran service officers. That is the input that came into this audit. The summation of this just talks about some of the issues, and the communication problems that were alluded to today. It really just comes down to the two groups need to talk. The auditor's office being brought into this is probably not correct.

Chairman Kasper asked for a copy of the audit.

Chairman Kasper reclosed the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

HB 1130
1/18/2019
31045

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hart

Explanation or reason for introduction of bill/resolution:

Relating to the authority of the administrative committee on veterans' affairs to establish goals and objectives for expenditures of the veterans' postwar trust fund

Minutes:

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Chairman Kasper opened the meeting on HB 1130. He reviewed the highlights of the hearing held the day before.

Rep. Louser made a motion for a DO NOT PASS.

Rep. Rohr seconded the motion.

Rep. Laning: This was my sponsored bill. In all reality I think Rep. Louser is making the right motion.

A roll call vote was taken. 12-1, 1 absent.

Rep. C. Johnson will carry the bill.

Date: 1-18-19
Roll Call Vote #: 6

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1130

House Government and Veterans Affairs Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Louser Seconded By Rep. Rohr

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Pamela Anderson	X	
Vice Chair Vicky Steiner	X		Rep. Mary Schneider	X	
Rep. Jeff Hoverson	X				
Rep. Craig Johnson	X				
Rep. Daniel Johnston	X				
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning		X			
Rep. Scott Louser	X				
Rep. Karen Rohr	X				
Rep. Austen Schauer	A				
Rep. Steve Vetter	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. C. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1130: Government and Veterans Affairs Committee (Rep. Kasper, Chairman)
recommends **DO NOT PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING).
HB 1130 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

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Testimony for HB 1130

Good Morning Mr. Chairman and GVA Committee,

I'm Rep. Vernon Laning from District 8, and I'm here to introduce HB 1130. HB 1130 deals with the Administrative Committee on Veterans Affairs, or ACOVA as its commonly referred to, and its relationship with the veterans post war trust fund.

The trust fund was established by the citizens of ND in 1996 as a permanent fund to provide benefits to existing and future veterans and their families. The State Treasurer is the trustee of the fund and oversees the investment and distribution of the funds. At the beginning of each biennium, the treasurer transfers the earnings from this fund to the ACOVA for their use in veterans programs.

The ACOVA was legally established in 1971 to be responsible for the organization, policy, and general administration of veterans affairs in ND. It has 15 voting members and 3 non-voting members. The 15 members are appointed by the governor from each of the 5 major veterans groups in ND. There would be 3 each from the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the AMVETS, and the Vietnam Veterans of America. The three non-voting members are representatives of the ND Adjutant General, the Center Director of Federal Veterans Affairs, and the Executive Director of Job Service. These three act in an advisory role.

The change that HB 1130 makes is the addition of subparagraph 2 to section 37-14-14. The paragraph is fairly short but in essence dictates that the ACOVA must establish goals and objectives for the expenditure of the post war trust fund monies and communicate those to the State Treasurer. The intent would then be that the treasurer may consider those when making trust fund investments. Admittedly, the treasurer does not have a great deal of latitude with these investments per law but being made aware of the ACOVA desires could be useful.

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Mr. Chairman, I will be followed by Jim Nelson, the lobbyist for the veteran's legislative council, who may be able to fill in gaps of my testimony.

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**CHAPTER 21-10
STATE INVESTMENT BOARD**

21-10-01. State investment board - Membership - Term - Compensation - Advisory council.

1. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the director of workforce safety and insurance, the insurance commissioner, three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, two of the elected members of the public employees retirement system board as selected by that board, and one member of the public employees retirement system board as selected by that board. The director of workforce safety and insurance may appoint a designee, subject to approval by the workforce safety and insurance board of directors, to attend the meetings, participate, and vote when the director is unable to attend. The teachers' fund for retirement board may appoint an alternate designee with full voting privileges to attend meetings of the state investment board when a selected member is unable to attend. The public employees retirement system board may appoint an alternate designee with full voting privileges from the public employees retirement system board to attend meetings of the state investment board when a selected member is unable to attend. The members of the state investment board, except elected and appointed officials and the director of workforce safety and insurance or the director's designee, are entitled to receive as compensation one hundred forty-eight dollars per day and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 for attending meetings of the state investment board.
2. The state investment board may establish an advisory council composed of individuals who are experienced and knowledgeable in the field of investments. The state investment board shall determine the responsibilities of the advisory council. Members of the advisory council are entitled to receive the same compensation as provided the members of the advisory board of the Bank of North Dakota and necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09.

21-10-02. Board - Powers and duties.

The board is charged with the investment of the funds enumerated in section 21-10-06. It shall approve general types of securities for investment by these funds and set policies and procedures regulating securities transactions on behalf of the various funds. Representatives of the funds enumerated in section 21-10-06 may make recommendations to the board in regard to investments. The board or its designated agents must be custodian of securities purchased on behalf of funds under the management of the board. The board may appoint an investment director or advisory service, or both, who must be experienced in, and hold considerable knowledge of, the field of investments. The investment director or advisory service shall serve at the pleasure of the board. The investment director or advisory service may be an individual, corporation, limited liability company, partnership, or any legal entity which meets the qualifications established herein. The board may authorize the investment director to lend securities held by the funds. These securities must be collateralized as directed by the board. The board may create investment fund pools in which the funds identified in section 21-10-06 may invest.

21-10-02.1. Board - Policies on investment goals and objectives and asset allocation.

1. The governing body of each fund enumerated in section 21-10-06 shall establish policies on investment goals and objectives and asset allocation for each respective fund. The policies must provide for:
 - a. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.

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- b. Rate of return objectives, including liquidity requirements and acceptable levels of risk.
 - c. Long-range asset allocation goals.
 - d. Guidelines for the selection and redemption of investments.
 - e. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.
 - f. The type of reports and procedures to be used in evaluating performance.
2. The asset allocation and any subsequent allocation changes for each fund must be approved by the governing body of that fund and the state investment board. The governing body of each fund shall use the staff and consultants of the retirement and investment office in developing asset allocation and investment policies.

21-10-03. Cooperation with Bank of North Dakota.

Repealed by S.L. 1987, ch. 190, § 14.

21-10-04. Board - Meetings.

The state investment board shall select one of its members to serve as chair, one to serve as vice chair, and shall meet at the call of the chair or upon written notice signed by two members of the board.

21-10-05. Investment director - Powers and duties.

Subject to the limitations contained in the law or the policymaking regulations or resolutions adopted by the board, the investment director may sign and execute all contracts and agreements to make purchases, sales, exchanges, investments, and reinvestments relating to the funds under the management of the board. This section is a continuing appropriation of all moneys required for the making of investments of funds under the management of the board. The investment director shall see that moneys invested are at all times handled in the best interests of the funds. Securities or investments may be sold or exchanged for other securities or investments.

The investment director shall formulate and recommend to the investment board for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions, and restrictions upon the methods, practices, or procedures for investment, reinvestment, purchase, sale, or exchange transactions that should govern the investment of funds under this chapter.

21-10-06. Funds under management of board - Accounts.

1. Subject to the provisions of section 21-10-02, the board shall invest the following funds:
- a. State bonding fund.
 - b. Teachers' fund for retirement.
 - c. State fire and tornado fund.
 - d. Workforce safety and insurance fund.
 - e. Public employees retirement system.
 - f. Insurance regulatory trust fund.
 - g. State risk management fund.
 - h. Budget stabilization fund.
 - i. Health care trust fund.
 - j. Cultural endowment fund.
 - k. Petroleum tank release compensation fund.
 - l. Legacy fund.
 - m. A fund under contract with the board pursuant to subsection 3.
2. Separate accounting must be maintained for each of the funds listed in subsection 1. The moneys of the individual funds may be commingled for investment purposes when determined advantageous.

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3. The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

21-10-06.1. Board - Investment reports.

The board shall annually prepare reports on the investment performance of each fund under its control. The reports must be uniform and must include:

1. A list of the advisory services managing investments for the board.
2. A list of investments at market value, compared to previous reporting period, of each fund managed by each advisory service.
3. Earnings, percentage earned, and change in market value of each fund's investments.
4. Comparison of the performance of each fund managed by each advisory service to other funds under the board's control and to generally accepted market indicators.

21-10-06.2. Investment costs.

The amounts necessary to pay for investment costs, such as investment counseling fees, trustee fees, custodial fees, performance measurement fees, expenses associated with money manager searches, expenses associated with onsite audits and reviews of investment managers, and asset allocation expenses, incurred by the state investment board are hereby appropriated and must be paid directly out of the funds listed in section 21-10-06 by the fund incurring the expense.

21-10-07. Legal investments.

The state investment board shall apply the prudent investor rule in investing for funds under its supervision. The "prudent investor rule" means that in making investments the fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. The retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives.

21-10-08. Reserves - Percentage limitations.

In order to meet claims and liabilities, reserves must be established and maintained in each of the funds in accordance with the investment policy and asset allocation established for each fund.

21-10-09. Personal profit prohibited - Penalty.

No member, officer, agent, or employee of the state investment board may profit in any manner from transactions on behalf of the funds. Any person violating any of the provisions of this section is guilty of a class A misdemeanor.

21-10-10. State investment board fund - Cost of operation of board.

Repealed by S.L. 1989, ch. 667, § 13.

21-10-11. Legacy and budget stabilization fund advisory board.

The legacy and budget stabilization fund advisory board is created to develop recommendations for the investment of funds in the legacy fund and the budget stabilization fund to present to the state investment board. The goal of investment for the legacy fund is principal preservation while maximizing total return. The board consists of two members of the

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senate appointed by the senate majority leader, two members of the house of representatives appointed by the house majority leader, the director of the office of management and budget or designee, the president of the Bank of North Dakota or designee, and the tax commissioner or designee. The board shall select a chairman and must meet at the call of the chairman. The board shall report at least semiannually to the budget section. Legislative members are entitled to receive compensation and expense reimbursement as provided under section 54-03-20 and reimbursement for mileage as provided by law for state officers. The legislative council shall pay the compensation and expense reimbursement for the legislative members. The legislative council shall provide staff services to the legacy and budget stabilization fund advisory board. The staff and consultants of the state retirement and investment office shall advise the board in developing asset allocation and investment policies.

21-10-12. Legacy fund - Earnings defined.

For the purposes of section 26 of article X of the Constitution of North Dakota, the term "earnings" means net income in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.



STATE OF NORTH DAKOTA
OFFICE OF STATE TREASURER
KELLY L. SCHMIDT, STATE TREASURER

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Kelly Schmidt, State Treasurer

In Opposition to HB 1130

House Government & Veterans

Rep. Jim Kasper, Chair

Rep. Vicky Steiner, Vice-Chair

January 17, 2019

Mr. Chairman, members of the committee, I am Kelly Schmidt, State Treasurer.

HISTORY

The Veterans Postwar Trust Fund was created by constitutional amendment and placed on the ballot in November of 1996. This effort was referred by you, the Legislative body, and fully supported by our North Dakota Veterans. The people wholeheartedly supported this measure as it passed with a 76% approval. Measure 4 became Article X, Section 25, of the ND Constitution giving the State Treasurer full authority to invest the Veteran's Postwar Trust Fund in the same manner as the State Investment Board. The Treasurer is the trustee and the Administrative Committee of Veteran's Affairs (ACOVA) is the beneficiary entitled to use the income for programs to benefit our current veterans. This has been affirmed several times by Attorney General opinions issued over the history of this fund.

Just as the Office of State Treasurer provides the checks and balances between OMB and the Bank of North Dakota...the accounting system and the checkbook. Just as the Office of State Treasurer is the distributor, communicator and manager of state funds after the Tax Department collects the revenue. We too, provide the checks and balances as the trustee (investor) of the Veteran's Postwar Trust Fund and the ACOVA as beneficiary (expenditures). This is the checks and balances provided for by our Constitution.

INVESTMENTS/COSTS

The Treasurer serves on 6 Boards including the State Investment Board (SIB) which manages the investment oversight of \$10B including the Legacy Fund. The Treasurer also serves on the Land Board which oversees the investments of over \$5B of the Common Schools Trust Fund. The Veterans' Postwar Trust Fund, under my administration, has been invested with the utmost care and with the guidance of investment professionals including the Retirement and Investment Office (RIO) RVK Consulting, (Land Board/Legacy Fund), Callan and Associates (SIB) and Edward Jones.

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Fees are less than 1% including transaction costs. As a comparative, the average mutual fund incurs fees of 2% plus transaction costs.

Since establishing an asset allocation in 2007 we have experienced profits over \$1.7M, net of fees. It is important to note this time period includes 2008 -2009, two of the worst years for the US stock market in the history of our country.

Investments are limited to those legal investments available to the State Investment Board as guided by NDCC 21-10-07.

DISTRIBUTIONS

The Attorney General has confirmed in numerous communications distributions to the ACOVA and to the principal of the Fund are determined by NDCC 59-04.2 known as the Uniform Principal and Income Act. This act defines how to characterize receipts between the principal and income. When investing a fund in perpetuity, it would be irresponsible for a trustee to take additional risk to benefit one class of beneficiaries. In this case active vs. future veterans. The SIB does not take additional risk when investing the Pension Trust to benefit retirees over those actively working. Investments must be made for the benefit of the fund, which is in the best interest of ALL veterans. For the integrity of this fund, we have segregated the duties of investing and distribution within the Office of State Treasurer.

In 2011, legislative changes were made to NDCC 37-14-14, at the request of the ACOVA, and fully supported by my administration. The law now requires the State Treasurer to retain the payable income of the Veterans Postwar Trust Fund during the current biennium. These accumulated earnings are then distributed at the beginning of the next biennium which allows the ACOVA to budget for that biennium with funds in hand. Below is a list of payments/principal increases made from 2010.

	Payable Income	Principal Increase
FY 2010	90,171.23	36,210.96
FY 2011	95,465.34	60,694.01
FY 2012	111,020.93	18,623.71
FY 2013	151,350.99	34,409.23
FY 2014	146,771.47	237,087.88
FY 2015	127,804.49	440,422.46
FY 2016	108,728.80	166,819.49
FY 2017	109,640.26	50,184.24
FY 2018	115,581.41	125,048.03
FY 2019 (thru Nov '18)	53,721.39	(75,571.32)
	1,110,256.31	1,093,928.69

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As of November 30, 2018, **estimated** total earnings for the 2017-19 biennium are \$294,750 of which \$239,000 will be distributed to ACOVA and \$56,500 will be added to the principle of the fund, mind you, these are estimates. It is important to note, there have been no changes to the asset allocation of this fund from biennium to biennium. It has been market volatility and the Uniform Principal and Income Act which has determined the change.

Calendar Year 2018 this Fund was down -5.19% or \$326,000. US Stocks posted the worst year in a decade with the S&P 500 down more than 6%. Bonds were also down slightly. It is very rare for the stock market and the bond market to go negative at the same time. A broad-based blended index, most appropriate for this comparative, was down 15%. However, the Fund was up 2% or \$123,000 in the first 10 days of 2019. A confirmation of a very volatile market.

COMMUNICATION

The Office of State Treasurer communicates regularly with the Commissioner of Veteran's Affairs and/or his staff. Monthly communications relating account balances, expenditures and CD purchases are typical. There have been questions recently relating to interest rates and investment opportunities for their expense account (410 account). We answer every and all question.

The Treasurer receives a standing invitation (form letter) to each quarterly meeting. Because this meeting typically conflicts with the State Investment Board meeting, we have asked the Commissioner to advise us if there is a specific item which needs to be addressed. Other than the letter received January 9, 2017, I do not recall a time we have been asked to address a specific issue. At the Chairman's request, OST Finance Manager, Ryan Skor, Edward Jones representative, Troy Nelson and myself attended the March 30, 2018 meeting. We presented the ACOVA with a complete explanation of the market, the investment strategy and the Uniform Principal and Income Act.

Since 2011, when the distribution schedule was changed, it has been common practice to attend ACOVA meetings at the end of the fiscal year and at the end of the biennium. We also follow up with a letter and post the information on our website.

We have found communication to be limited, therefore, we review the published minutes of the ACOVA to answer any questions which may not have been communicated to us. We respond to those questions via email to the Commissioner and the Chairman and have at times communicated directly with the Chair of the Postwar Trust subcommittee. An example of this is attached. (Item A)

It was brought to our attention in September while reviewing the June 2018 minutes, page 6, there was a discussion relating to the Postwar Trust Fund. "ACOVA to set goals, objectives and asset allocation of the PWTF. It was hoped that working with the State Treasurer will negate having to submit a bill on the issue. An MOU will be sought between the State Treasurer and

ACOVA". There was no communication from the ACOVA, the Commissioner or the Department of Veterans Affairs until I received an email on November 18, 2018 stating, "the ND State Auditor's Office brought up a concern in which they felt the ACOVA should be setting goals, objectives and asset allocations for the Post War Trust Fund." (Item B). There were no recommendations made in that audit. The audit did state "the ACOVA would like to have more input into the investment strategy of the Fund". It is my understanding this quote was taken from the ACOVA minutes.

Mr. Chairman and committee members, the ACOVA wants more input because the ACOVA wants more money. This has been a push and pull issue for years. Passage of HB 1130 gives the ACOVA perceived authority relating to the investments of the Postwar Trust Fund. This authority comes from the Constitution.

My office did not reach out to the Commissioner. Instead we waited to see if a bill would be sponsored and submitted.

At the suggestion of a legislator with history close to this issue, we communicated with our Assistant Attorney General (AAG) to confirm the roles and responsibilities of the State Treasurer and the ACOVA. We offered a friendly amendment which was presented to the Commissioner via their AG representative, they declined to accept our amendment. I was told to be prepared for a challenge in this committee.

CONCLUSION

The Constitution is very clear relating to the investments and the distributions of the Veterans Postwar Trust Fund. The State Treasurer is the trustee, the ACOVA is the beneficiary. We strongly oppose HB 1130 because it gives perceived authority and expectations to the ACOVA which conflicts with Article X Section 25 our Constitution.

The Office of State Treasurer will work with the Commissioner and the ACOVA because Collaboration, Cooperation, and Communication have always been the motto of my Administration. However, we can't dance if only one person is moving their feet and it's been a heavy lift on our end since 2007.

- Item A -

#3
HB 1130
1-17-19

Schmidt, Kelly L.

From: Schmidt, Kelly L.
Sent: Friday, November 14, 2014 1:36 PM
To: 'jverwey@csicable.net'
Cc: 'dlilleren@gmail.com'; 'halweninger@gmail.com'; Ron Otto; Wangen, Lonnie L. (lwangen@nd.gov); Trish Hodny (hodnylaw@yahoo.com); MacPherson, Lisa D.; VandeVenter, Shannon M.; Ryan Skor; Andrea Collin
Subject: Veterans' Postwar Trust Subcommittee

Hi Jim,

I was just going through the minutes of the September ACOVA meeting and noticed there were a few questions relating to the Postwar Trust Fund from the subcommittee; IE: earnings, costs and disbursement etc.

I hopes this helps to clarify:

- Earnings/Distribution - Earnings to the fund are defined by the Uniform Principle and Income Act which is found in Title 59 of the North Dakota Century Code. What is distributed to the ACOVA and what is credited to the principle of the fund is based on factors also defined in this act; type of investment, realized gains etc. This apportionment is NOT based on a percentage split as noted in your minutes.
- Fund Costs/Fee's - authority for payment of investment costs/fees are found in NDCC 21-10 and the Prudent Investor Rule. This law is applicable to all state investing.
- The payment to ACOVA is defined in NDCC 37-14-14...this distribution schedule was brought forward by the AVOCA in a prior legislative session to address budgeting requirements.

I received a request to attend the December ACOVA meeting. As I have previous discussed with Lonnie, due to workloads we will not regularly attend an ACOVA meeting unless there is a specific request for information. The December invitation did not include such a request. I will be in New York attending a National Treasurer's meeting during your December meeting, therefore unavailable. I am always willing to personally address any questions relating to the Veteran's Postwar Trust Fund and could be available at the next ACOVA meeting, if so requested.

I hope this helps clarify some of the questions of your committee.

All the best! ~K~

Kelly L. Schmidt
State Treasurer
Office of State Treasurer- North Dakota
701-328-2643 Phone
701-328-3002 Fax
klschmidt@nd.gov

Item B

#3
HB 1130
1-17-19

Schmidt, Kelly L.

From: Wangen, Lonnie L.
Sent: Wednesday, November 28, 2018 10:53 AM
To: Schmidt, Kelly L.
Cc: Overby, Dean M.; Karen M
Subject: PWTF legislation
Attachments: Bill 7 ACOVA PWTF gols.pdf

Treasurer Schmidt,

As you know during the NDDVA performance audit in 2017-2018 the ND State Auditors Office brought up a concern in which they felt the ACOVA should be setting goals, objectives and asset allocations for the Post War Trust Fund (PWTF) in the same manner as the boards and committees with funds invested by the State Investment Board (NDCC21-10-02.1). To address this issue the ACOVA and ND Veterans Legislative Council (NDVLC) have approved a legislative bill for the 2019 legislative session.

Please see attached draft of the proposed legislation.

The ACOVA and NDVLC would like your input and support on this bill.

Thank you,

Lonnie Wangen
Commissioner
ND DVA
701-239-7165
701-239-7166 (fax)
lwangen@nd.gov
www.nd.gov/veterans

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North Dakota Department of Veterans Affairs is an equal opportunity employer/program provider

59-04.2-07. (302) Apportionment of receipts and disbursements when decedent dies or income interest begins.

1. A trustee shall allocate an income receipt or disbursement other than one to which subsection 1 of section 59-04.2-04 applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.
2. A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.
3. An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 59-04.2-09 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

59-04.2-08. (303) Apportionment when income interest ends.

1. In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.
2. When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.
3. When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

59-04.2-09. (401) Character of receipts.

1. In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which section 59-04.2-10 applies, a business or activity to which section 59-04.2-11 applies, or an asset-backed security to which section 59-04.2-23 applies.
2. Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
3. A trustee shall allocate the following receipts from an entity to principal:
 - a. Property other than money.
 - b. Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity.
 - c. Money received in total or partial liquidation of the entity.
 - d. Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.
4. Money is received in partial liquidation:

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1-17-19

- a. To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
 - b. If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.
5. Money is not received in partial liquidation, nor may it be taken into account under subdivision b of subsection 4, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.
 6. A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

59-04.2-10. (402) Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section 59-04.2-09 or 59-04.2-23 applies to a receipt from the trust.

59-04.2-11. (403) Business and other activities conducted by trustee.

1. If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.
2. A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.
3. Activities for which a trustee may maintain separate accounting records include retail, manufacturing, service, and other traditional business activities; farming; raising and selling livestock and other animals; management of rental properties; extraction of minerals and other natural resources; timber operations; and activities to which section 59-04.2-22 applies.

59-04.2-12. (404) Principal receipts.

A trustee shall allocate to principal:

1. To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary.
2. Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to sections 59-04.2-09 through 59-04.2-23.

ARTICLE X OF ND CONSTITUTION #5

Section 23. The legislative assembly may provide for the payment of adjusted compensation to North Dakota residents who were members of the regular active duty armed forces and who served in the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States or to heirs of North Dakota residents who were members of the regular active duty armed forces and who died while on orders to or from the Persian Gulf theatre or in the Grenada, Lebanon, or Panama areas of armed conflict as designated by the President of the United States. The legislative assembly may provide a direct appropriation or provide for the issuance, sale, and delivery of bonds of the state of North Dakota in such principal amounts as determined by the legislative assembly to be necessary for the payment of adjusted compensation under this section. Adjusted compensation under this section may be paid at such rates, terms of service, and conditions as the legislative assembly provides.

#B
1130
1-17-19

Section 24.

1. Ten percent of the revenue from oil extraction taxes from taxable oil produced in this state must be deposited in the common schools trust fund.
2. Ten percent of the revenue from oil extraction taxes from taxable oil produced in this state must be deposited in the foundation aid stabilization fund in the state treasury, the interest of which must be transferred to the state general fund on July first of each year.
 - a. Except as otherwise provided, the principal of the foundation aid stabilization fund may be expended upon order of the governor, who may direct such a transfer only to offset reductions in state aid to school districts, which were made by executive action pursuant to law, due to a revenue shortage.
 - b. Whenever the principal balance of the foundation aid stabilization fund exceeds fifteen percent of the general fund appropriation for state aid to school districts, for the most recently completed biennium, as determined by the office of management and budget, the legislative assembly may appropriate or transfer any excess principal balance. Such amount may be used for education-related purposes, as provided by law.

Section 25. The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund as authorized by legislative enactment. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in the same manner as the state investment board is authorized to make investments. All income received from investments is to be utilized for programs which must be of benefit and service to veterans, who are defined by legislative enactment, or their dependents, and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon those programs selected at the discretion of the administrative committee on veterans' affairs.

Section 26.

1. Thirty percent of total revenue derived from taxes on oil and gas production or extraction must be transferred by the state treasurer to a special fund in the state treasury known as the legacy fund. The legislative assembly may transfer funds from any source into the legacy fund and such transfers become part of the principal of the legacy fund.
2. The principal and earnings of the legacy fund may not be expended until after June 30, 2017, and an expenditure of principal after that date requires a vote of at least two-thirds of the members elected to each house of the legislative assembly. Not more than fifteen percent of the principal of the legacy fund may be expended during a biennium.