

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2302

## 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2302  
February 2, 2011  
Job Number 13834

☐ Conference Committee

Committee Clerk Signature

*Ea. Lickel*

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

Relating to the membership of the state investment board and management of the legacy fund

### Minutes:

Testimony Attached

**Chairman Klein:** Opened the hearing.

**Senator Hogue:** Introduced the bill. Testimony Attached.

**Chairman Klein:** Asked Senator Hogue if the Board they are composing now will be the Board that will oversee the Legacy Fund if he is proposing to change the whole makeup, we are talking about the Budget Stabilization and Legacy Funds.

**Senator Hogue:** He said that he felt the peoples' money should have elected representation not PERS or TFFR representation.

**Chairman Klein:** Said that there were no mechanics in place when they passed the bill for them to have a seat on this investment board. It probably was an oversight and it needs to be looked at.

**Senator Hogue:** He said he agreed.

**Senator Andrist:** He said the way he understood this is the members who represent the TFFR and the PERS would not participate in the management of this, even though they are members of the investment board. The people they would have representing the Legislature would have no seat when they are discussing TFFR and PERS retirement issues.

**Senator Hogue:** That's correct.

**Senator Andrist:** So effectively the people that would be making the decisions for this fund would be the six Legislators and the three elected officials?

**Senator Hogue:** That is correct. Everyone who would provide oversight to the Legacy Fund would be elected officials.

**Senator Larsen:** How is it determined who would sit on the board?

**Senator Hogue:** The three elected officials, the Governor, the treasurer and the Insurance Commissioner, that is set by statute. The three from each house will be appointed by their majority leaders.

Continued with questions on how this would work.

**John Geisenger, Executive Director and Chief Investment Officer for the North Dakota Retirement and Investment Office:** Neutral Testimony. He gave handouts on the North Dakota stabilization fund and the State investment board process. He said that he was here to give them some background and perspective on the investment process of the state investment board. He went through the handouts and explained the North Dakota Budget stabilization fund and the state investment board process. He said that he would propose and amendment of establishing a governing body for the Legacy Fund because at this point there is none in statute to address that and to discuss appropriate representation on the state investment board to implement those strategies.

**Chairman Klein:** Said he sensed that John was negatively neutral. The idea here is the idea elected officials need to be responsible, we are creating another board with all elected officials. He said that because the Legacy Fund is totally different from the other issues, is why they are trying to establish another board. He also said that John being the head of the organization would still have the same responsibilities. They also have in the bill that if it is advantages to use some of that money. Why does he not want to establish this other board?

**John:** He said that he is not negatively neutral and that he thinks it is a form over substance. The concept he agrees with and there should be a governing body. He said they are talking about creating a separate state investment board which is duplicative, where as having a Legislative committee providing the strategies, the guidelines, all the information that needs to be done. Having representation on the board would be appropriate and he is not opposing that. He said that by having these two state investment boards under the code is a problem. He felt amendments will have to be made to clarify what SIB has responsibilities for different things. He feels the form can be more efficient in a different manner.

**Chairman Klein:** The concern is that the board looks tilted to non-elected officials and he believes the elected officials want to be able to take the heat, if things go bad.

**Chairman Klein:** Closed the hearing.

## 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2302  
February 2, 2011  
Job Number 13867

☐ Conference Committee

Committee Clerk Signature

*Erin Lutell*

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

Relating to the membership of the state investment board and management of the legacy fund

### Minutes:

Discussion and Vote

**Chairman Klein:** Stated that he visited with the leadership on the Fiscal Notes and the money would come from the Legislative pool. They need to move this bill forward because of the way it is written.

**Senator Nodland:** Moved a do pass and Rerefer to Appropriations.

**Senator Andrist:** Seconded the motion.

Discussion

Roll Call Vote: Yes-6 No-1

Senator Laffen to carry the bill

# FISCAL NOTE

Requested by Legislative Council  
03/30/2011

Amendment to: Engrossed  
SB 2302

**1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	\$0	\$0	\$6,750	\$0	\$6,750	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

Engrossed Senate Bill No. 2302 with House amendments creates a legacy and budget stabilization fund advisory board.

**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.*

Engrossed Senate Bill No. 2302 with House amendments creates a legacy and budget stabilization fund advisory board which includes 2 legislative members who would be entitled to receive compensation and expense reimbursement for attending meetings.

**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.*

Assuming the legacy and budget stabilization fund advisory board meets four times a year, the fiscal impact on expenditures is estimated to be \$6,750 from the general fund for each of the 2011-13 and 2013-15 bienniums.

**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.*

No additional appropriation of funds is necessary relating to this bill.

<b>Name:</b>	Allen H. Knudson	<b>Agency:</b>	Legislative Council
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Phone Number: 328-2916

Date Prepared: 04/01/2011

**FISCAL NOTE**  
Requested by Legislative Council  
02/23/2011

Amendment to: SB 2302

**1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>	\$0	\$0	\$0	\$51,324	\$0	\$51,324
<b>Appropriations</b>	\$0	\$0	\$0	\$51,324	\$0	\$51,324

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

Subsection 1a as amended of NDCC Section 21-10-01 calls for creating a second state investment board for the budget stabilization fund and legacy fund which would include 4 legislative members who would be entitled to compensation and reimbursement for attending meetings and related events.

**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.*

Subsection 1a as amended of NDCC Section 21-10-01 calls for creating a second state investment board for the budget stabilization fund and legacy fund which would include 4 legislative members. These members would be allowed compensation at \$148 per meeting plus FICA tax at \$11.32 for a total cost of \$159.32 per member per meeting. This results in a total compensation estimate of \$14,020 for the biennium assuming the current 11 meetings per fiscal year.

These members would also be allowed reimbursement of travel related expenses to attend these meetings. Assuming current state reimbursement rates for one day/night of reimbursement and average mileage of 200 miles round trip, this would result in total travel reimbursement for meetings for the biennium of \$17,864.

Additionally, RIO currently budgets for board member investment related education at 2 trips per member per biennium. This would result in reimbursment of \$15,840 and conference fees paid of approximately \$3,600 for these 4 members.

**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.*

Appropriations for state investment board program expenditures are typically paid from special funds. Actual expenditures paid are allocated to each investment client fund affected by the expenditure on a pro rata basis. However, due to limitations on expending funds from the Legacy Fund, it is unclear where expenditures associated with this fiscal note would be paid from.

**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.

**Compensation**

Salary 148.00 x 4 members x 22 meetings = 13,024

FICA 11.32 x 4 members x 22 meetings = 996

Total Compensation 14,020

**Travel Reimbursement to attend meetings**

Lodging 76.00 x 4 members x 22 meetings = 6,688

Meals 25.00 x 4 members x 22 meetings = 2,200

Mileage 102.00 x 4 members x 22 meetings = 8,976

(mileage is assumed to be 200 miles round trip per member)

Total Travel Reimbursement 17,864

Travel for Education (2/member) 1,980.00 x 4 x 2 = 15,840

Conference Fees 450.00 x 4 x 2 = 3,600

Total Special Fund 51,324

**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.*

Total additional costs associated with this fiscal note are \$51,324 as detailed above. It is unclear at this time where the funding will come from since it cannot be paid from the Legacy Fund.

<b>Name:</b>	Connie Flanagan	<b>Agency:</b>	RIO
<b>Phone Number:</b>	328-9892	<b>Date Prepared:</b>	02/23/2011



# FISCAL NOTE

Requested by Legislative Council  
01/26/2011

Bill/Resolution No.: SB 2302

**1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures	\$0	\$0	\$0	\$76,986	\$0	\$76,986
Appropriations	\$0	\$0	\$0	\$76,986	\$0	\$76,986

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

Subsection 2 of NDCC Section 21-10-01 calls for creating a second state investment board for the budget stabilization fund and legacy fund which would include 6 legislative members who would be entitled to compensation and reimbursement for attending meetings and related events.

**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.*

Subsection 2 of NDCC Section 21-10-01 calls for creating a second state investment board for the budget stabilization fund and legacy fund which would include 6 legislative members. These members would be allowed compensation at \$148 per meeting plus FICA tax at \$11.32 for a total cost of \$159.32 per member per meeting. This results in a total compensation estimate of \$21,030 for the biennium assuming the current 11 meetings per fiscal year.

These members would also be allowed reimbursement of travel related expenses to attend these meetings. Assuming current state reimbursement rates for one day/night of reimbursement and average mileage of 200 miles round trip, this would result in total travel reimbursement for meetings for the biennium of \$26,796.

Additionally, RIO currently budgets for board member investment related education at 2 trips per member per biennium. This would result in reimbursment of \$23,760 and conference fees paid of approximately \$5,400 for these 6 members.

**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.*

Appropriations for state investment board program expenditures are paid from special funds. Actual expenditures paid are allocated to each investment client fund affected by the expenditure on a pro rata basis. Expenditures associated with this fiscal note would be paid from the budget stabilization fund and legacy fund assets.

**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.*

**Compensation**

Salary 148.00 x 6 members x 22 meetings = 19,536  
FICA 11.32 x 6 members x 22 meetings = 1,494  
Total Compensation 21,030

**Travel Reimbursement to attend meetings**

Lodging 76.00 x 6 members x 22 meetings = 10,032  
Meals 25.00 x 6 members x 22 meetings = 3,300  
Mileage 102.00 x 6 members x 22 meetings = 13,464  
(mileage is assumed to be 200 miles round trip per member)  
Total Travel Reimbursement 26,796  
Travel for Education (2/member) 1,980.00 x 6 x 2 = 23,760  
Conference Fees 450.00 x 6 x 2 = 2,700

Total Special Fund 76,986

- 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.*

Total anticipated expenditures of \$76,986 would need to be appropriated for Fund 207 of the Retirement and Investment Office. The source for this appropriation is all special funds.

Name:	Connie Flanagan	Agency:	Retirement and Investment Office
Phone Number:	328-9892	Date Prepared:	01/26/2011

Date: 2-2-2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2302

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

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

☒ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Andrist

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

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Laffen

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

**REPORT OF STANDING COMMITTEE**

**SB 2302: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2302 was rereferred to the Appropriations Committee.**

2011 SENATE APPROPRIATIONS

SB 2302

# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2302  
02-09-2011  
Job # 14233

☐ Conference Committee

Committee Clerk Signature



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

A bill relating to the membership of the state investment board and management of the legacy fund

### Minutes:

You may make reference to "attached testimony."

**Chairman Holmberg** called the committee to order on Wed, February 9, 2011 at 8:30 am in reference to SB 2302. Roll call was taken. Sheila Peterson, OMB and Roxanne Woeste, Legislative Council were present.

**Chairman Holmberg:** We have an intention to pass out bills tomorrow close to 90 bills in committee. We are doing ok. After another day, I will pass out this worksheet, numerical order. We have 2302, a re-referral Senators Hogue.-We want to look at the financial aspect of this bill if that is a wise use of the state's money.

**Senator David Hogue, District 38** testified in favor of SB 2302 and Testimony attached # 1. What the bill does it recognizes that the State Investment Board is an eleven member board that manages funds that the Legislature tells it to manage. Each time there is a substantial fund there seems to be a history of a stakeholder in that fund going onto that board. For example, when the teachers fund for retirement went into that fund, three representatives from the teachers were added, when the PERS 3 representatives from were added. In 1999, WSI, they added a representative. Now we have the Legacy Fund who bears responsibility for providing some oversight and direction for that fund. Legacy Fund is a very unique fund compared to the other funds. One key feature, by Constitution the principle cannot be spent until 2017. The Legacy fund will have to be managed in a way that's fundamentally different. It's the people's money, only spent by Leg Assembly; they need to have a direct oversight over that fund. Purpose of SB 2302. It puts 3 from House 3 from Senate on State Investment Board to provide direct oversight and revenue of the State Legacy Fund. We've had some discussion with Lieut. Governor about the composition of the board and whether we really want to add three from each side or whether we want to add three at all. My belief is we need to have a direct oversight. It has a fiscal note that arises from the fact the legislators would attend the Investment Board Meetings during the Interim and be entitled to compensation to go to these meetings.

**Chairman Holmberg:** The budget, the money \$76,000 that comes out of Leg Assembly's money or does it comes out of the Legacy Fund? Where does the dollars come from to pay these expenses?

**Senator Hogue:** I would assume it would come out of legislature's budget.

**Roxanne Woeste, Legislative Council:** If you look on fiscal note 3A it says Appropriations for the Investment Board Program expenditures are paid from special funds. Actual expenditures are allocated to each investment client fund that there effected so in effect the expenditures would be paid from the Budget Stabilization Fund and Legacy Fund assets. The Legislators would be paid from RIO using special funds. This would not be something that the legislators would be reimbursed through the Legislative Assembly's budget.

**Chairman Holmberg:** The only ones that this impacts are the legislative members.

**V. Chair Grindberg:** Question for Roxanne Woeste-Would this be a departure from normal practice? This seems unusual why we would require from Investment Income when we could budget for it in the council? In Legislative Management?

**Roxanne Woeste:** Typically, yes the Legislators do receive their compensation for the other meetings through the Legislative Councils' budget but there would be some instances where legislators are paid, for instance, on the Commission for Education Improvement, from DPI. Our office doesn't have money in our budget for this funding. It would be depending on the purpose of the meeting and Chairman of Legislative Management authorizes the reimbursement.

**Senator Hogue:** It could not come out of Legacy Fund until July of 2017.

**Senator Krebsbach:** I do not see in the retirement area of the funds, nothing to do with retirement of the state employees or the sub political subdivisions people or teachers.

**Chairman Holmberg:** It is the State Investment Board, and this narrow focus having some different members? Is this a departure from how when the State Investment Board is meeting and talking about PERS, that they get any reimbursement, or is just because its legislators?

**Senator Krebsbach:** Hearing this for the first time, the TFFR have a committee that directs how that money goes. But not that entire committee sits on the board.

**Senator Christmann:** If I understood correctly, the money to pay legislators, for travel as well as for per diem, that money would come from Legacy Fund and Budget Stabilization fund. As of now with the existing membership, now when they do these trips and I assume some of them are paid per diem, which fund is that taken from? They manage a lot of funds. How do they decide which fund to take it from?

**Senator Wardner:** Isn't there some administrative fee for managing these funds that would take care of travel and expenses for whoever it may be? Whether its legislators or someone else?

**Connie Flannagan, Representing the Retirement and Investment Office (RIO):** What we did we treated this second State Investment Board the same that we treat the current State Investment Board. The Representatives: that sit on that board that are non elected officials they get payment for attending meeting, travel, attend investment conferences. All the funds we pay out to cover these expenses are allocated prorata to all of the funds of the State Investment Funds invest, on behalf they are special funds. They are all special funds, they are appropriated as special funds but they ultimately come out of each of the funds that are invested under the State Investment Board. They would be allocated to all of the funds under the State Investment Board. If the expense is particular to one or two of the funds, then only those funds would be allocated those expenses.

**Chairman Holmberg:** Does this money then come from the Legacy Fund itself?

**Connie:** Correct, it would. The appropriated funds for the meetings and expenses and conference expenses would come from that fund. Also there will be investment management custodian fees also that will be continuing appropriations. That would also be paid directly from the funds that are invested.

**V. Chair Grindberg:** The Legacy Fund we can't use anything until 2017. Whether we can take a portion of that fund for this purpose? You're saying that we can.

**Connie:** We haven't thought about it from that perspective. This is just how all of the funds are currently handled. The fees for the investments come out of those funds.

**V. Chair Grindberg:** Regarding the Budget Stabilization Fund, the interest earnings comes back to the general fund off of that so that \$350 M is managed by your office. What amount that constitutes over a biennium could be used and dedicated towards this fiscal note could it not? This ties both funds in under this proposal? In all actuality, the interest income or the earning off the Budget Stabilization fund could cover this fiscal note, couldn't it?

**Connie:** It could. Now the money that is being transferred out is the net income, so it's net of the expenses that are paid for it, for the Budget Stabilization Fund. So, if that would be the wishes of the legislature, to be set up that way, we could do that. That's not currently how it works.

**V. Chair Grindberg:** Pursuant, to Senator Robinson's bill last week, what portion of that fund is managed by the BND? A CD covered with the bank so the bank takes that asset and leverages it for loans around the state?

**Connie:** It is less than 50%.

**Chairman Holmberg:** We will have Roxanne have a legal look at fiscal note.

**Senator Christmann:** This fiscal note, coming from other funds was it the presumption that it would be a blending taking from all the various funds if this bill passed?



**Connie:** It would actually come all from these funds because it would be easily segregated as that board pertains only to those two funds. So, the expenses for those two funds would be from them.

**Senator Wardner:** I think this is right on. I don't care what fund it is. It has to pay its way. In the Legacy legislation that's talking about appropriating dollars for other reasons. This is talking about the Legacy Fund has to pay for its own administration and it is handling it like every other fund. I think this fiscal note is right on the money.

**Chairman Holmberg:** That is why we will have Legal Council look at it to make sure we're not out on a limb, because it hasn't been looked at by them.

**V. Chair Bowman:** Why would people vote that fund not to be touched, for so many years, nor the interest. We started paying ourselves to manage it I don't know if that will go over very well or not? I think there is a conflict of interest where you are dipping into something you're not supposed to be dipping into. We better make sure it's legally clear if we use that fund for management of that fund. We better make sure we can actually do it before we make that decision and I am not an expert lawyer so I can't make that call but just use a little common sense as it wouldn't look very good to the people out there that voted for it if we started stealing from it before it ever had an appropriation put in to it.

**Chairman Holmberg:** We will get that answer.

**Senator Wanzek:** We are going to have two compositions of the investment board. I am just wondering of those logistics of holding a meeting, duplicate members there. Does the state investment board many times just meet specifically for one of the other funds? I am kind of curious about the logistics?

**Connie:** Currently the State Investment Board meets as a full body all the time. They have representatives from the other funds that bring in their investment policies to the full board. So they have representations on the discussions of the types of investments and those types of things. But the State Investment Board (SIB) implements the policies of each of the individual funds they are responsible for. They met as one group on the whole program each month. I am not sure about the logistics of it. It would be a separate board and meeting having separate issues for those funds.

**Senator Wanzek:** The original state board would only deal with the funds except the Legacy Fund and the Budget Stabilization Fund? Than the other idea is the other, new board would deal with those two funds. He was told yes.

**Senator Christmann:** The groups from the various funds that advise the investment board, are they called Policy Committees? Do they go for this training too or just the eleven investment board people?

**Connie:** They attend the investment training. The TFFR and PERS board have their own budget for retirement related which can be overlap with the investment program as well. The members of the state investment board attend conferences that would pertain to the investments.

**Senator Christmann:** Not the policy committee people?

**Connie:** The policy committee people are the TFFR and PERS Board so they are attending conferences that are retirement program related which will include investments because in a lot of cases, the retirement boards around the country do both.

**Senator Christmann:** To rephrase, the training and compensation for policy committee people who are not in the eleven investment board members, those costs are paid for by something else than the investment board money? He was told that is correct.

**Drew Wrigley, Lieutenant Governor** testifies neutrally, not quite accurate because we have what we have identified are significant constitutional salutatory and policy issues with this proposal. They have been identified by several of the senators that have raised questions today. One that the policy of each is set by the Policy Committee not the State Investment Board. When Senator Hogue discusses that issue of that the legislature should have oversight of those funds, the group that will have oversight of those funds and decide how they will be invested and what the policy will be, and the theory and philosophy will be, will be the Policy making Committee on behalf of the Legacy Fund, not the State Investment Board. The State Investment Fund is an executive function. It executes the policy given to it by each of those policy committees. We are having ongoing discussions on the matter. This would just create a second state investment board, there would be a loss of efficiency, there are a whole host of reasons, constitutional, statutory, and policy wise why this legislation in its current form would not even capture the objectives of what we believe are the objectives of its proponents. However, we think it's easily cured. We really think it pretty easily cured and we have several proposals that we continue to deal with on there. They would change the fiscal note somewhat. I just say again, the very problems that the Senators pointed out with their questions are the same issues we have that again they are all three though, constitutional, policy wise, and statutory.

**Chairman Holmberg:** First time before us.

**V. Chair Grindberg:** As U.S. Attorney he was here and testified years ago.

**Lt. Gov. Wrigley:** I do remember that, I was here to testify and I think the room was configured differently or I was configured differently.

**Senator Kilzer:** On the other direction. Which policy committee did this come from that you must have also testified at?

**Lt. Gov. Wrigley:** No actually, we went to the hearing, we didn't want to appear to be negative, which has to have an overseer; all funds have to have that, who better than to have legislative influence over that. It would make sense. We thought we would have some discussion there and the timing was an issue, so it wasn't that we weren't having the discussion. The timing has to come to your committee by a certain date. We are still discussing this we are neutral as to the ideas? If it feels like we're pushing back then I am not communicating. It is trying to satisfy the desire to have legislative oversight of the Legacy Fund dollars, but then have it carried out by an executive committee which is constituted of officials

who are executing the policy. That's where the constitutional infirmity comes in. I've spoken to Attorney General about this matter as well and we think it is a clean constitutional principle that you cannot place legislators on the state investment board. It is an Executive Board, an executive function. But that doesn't address the issue of having legislators call the shots or participate in calling the shots for the Legacy Fund dollars. Then saying, here's how the manner, in which we would like them to be invested. We are welcoming that, it just has to be in the appropriate form. The existing structure for the investment of dollars in the state works very well having the State Investment Board simply to carry out objectives. We would constitute in law an additional degree of legislative oversight by having the state investment board report directly to Legislative Audit, Fiscal Review Committee (LAFRC) for the purposes of giving them an update on the point of where are all the funds, how is their performance, etc. And also obviously, that be oversight of to how are they doing in carrying out the objectives of the policy board for the Legacy Fund in particular. We've build in an enormous amount of transparency, we do that in a way that captures wanting to have legislative oversight in a constitutional way so the State Investment Board still does its' job. I've likened it to having an investment advisor. The investment advisor just carries out the objectives of each of these policy making groups. There have been no complaints, so within the existing structure, in our proposal direct mandated reporting to Legislative Audit and Fiscal Review Committee (LAFRC).

**Senator Warner:** Hold discussions with somebody, some legislators, it would be nice to be included in those discussions at some point. Can you give us some sort of time table as to where those meetings are, when they are, when you will have some recommendations to come before the Legislature? The Legislature is still the policy making branch.

**Lt Governor Wrigley:** The bill sponsors of 2344 Senator Christmann. I didn't mean to be secretive about it. We've talked to Senator Hogue and Senator Christmann, Senator Stenehjem, Senator Klein, and anyone who is interested about it. We do recognize that the Legislature is the policy making body and if they want to set the policy for the Legacy Fund, and I gather there is some strong sense of that should be the case, then it's the policy committee that does that, that will set that policy under the structure we have in North Dakota. They will set that policy. The State Investment Board is charged with carrying it out.

**Chairman Holmberg:** Other group is the policy committee. Our job is to work and look at the money, the funding and see if for example the issue of the \$76,000 is legally able to be taken from the fund or it has to come from some other source. But, as far as the policy changes that would be interested to be pursued by the Governor's office or whomever, that would be through the Policy Committee.

**V. Chair Grindberg:** The appropriate folks are in the room, the point with the PERS and TFFR funds, by and large the majority of those assets, those cash assets go out of state. They leave the state and are managed with an expectation on return, for the portfolio. Some of that is higher risk profile. Those are retirement funds. There is a whole different mindset that goes into managing and minimizing risk, but achieving an expected return that is going to provide reward. The Legacy Fund presents a unique opportunity obviously the potential to where that is going to go. But we need to make sure that we're looking at alternative to keeping that capital in ND, to reinvest. If the BND takes \$500 M from the Legacy Fund and agrees to a 3 or 4% CD rate, that is \$500 M capital goes back into ND business. If we lose that then we're

really short changing the opportunity what the Legacy Fund presents. That is what needs to be sorted out as well.

**Lt. Gov. Wrigley:** He appreciated everyone's patience.

**Chairman Holmberg:** Anyone testifying in opposition.

**Chairman Holmberg** closed the hearing on SB2302. Roxanne Woeste will have legal look at it and they will get back for an analysis of the issue.

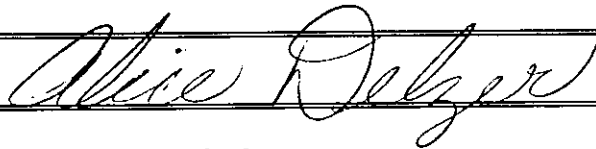
# 2011 SENATE STANDING COMMITTEE MINUTES

## Senate Appropriations Committee Harvest Room, State Capitol

SB 2302  
02-22-2011  
Job # 14792

☐ Conference Committee

Committee Clerk Signature



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

A Roll call vote on State Investment board membership & legacy fund management (RIO)

### Minutes:

See attached testimony.

**Chairman Holmberg** opened the hearing on SB 2302.

**Senator Hogue:** Prime sponsor of the Bill passed out his proposed amendment #11.0324.03002. Testimony attached # 1 and explained the amendments. They are the product of some discussions by myself and Senator Christmann have had with the President of the Senate, the Governor's Deputy Chief of Staff and some others and there are still some agreements. I thought it would be appropriate to suggest amendments to move the two sides closer together and that is what this amendment attempts to do. The first thing it does is to reduce the membership from three members of each House to two members of each House. Each majority leader would appoint two. And probably the more significant one for our discussions between the governor's office and ourselves is to render the two members of each legislative body to be non-voting members of the State Investment Board. Senator Christmann has a Bill in that would remove representatives of the PERS system and representatives of the TFFR from the investment board, the governor's office is very reluctant to do that so that Bill I think should go forward as well. This one tries to manage that reality by saying "OK" if that's not in cards, the legislative body should have some representatives with oversight over those two funds which are the people's money and the legacy fund will be the largest segment of that fund in 4 or 5 biennium if things continue.

**Chairman Holmberg:** This is unique in the philosophy behind the Bill is that instead of mixing them with the other two boards, that the TFFR board is constituted and talked about separately as is the PERS board, this is a board that deals with two areas that are direct responsibility of the legislature being the budget stabilization and the legacy fund and we already had the discussion that we know at the end of the day, the budget stabilization fund is going to have to pay the management kinds of fees for the legacy fund because no money can be taken out of that as we have found from legal for the maintenance of it.

**Senator Robinson:** In the drafting of amendment was there any discussion or consideration to including members of the minority party on the board?

**Senator Hogue:** Yes it was discussed in the IBL Policy Committee. In fact that was the reason for having 3 from each body. The idea there would be two from the majority and one from the minority. I have no opposition to that. I don't think it is a partisan issue at all. It's a function of the legislature to have oversight over these funds.

**V. Chair Grindberg:** You mentioned there is some agreement on the amendment you presented. Does that mean there is still disagreement?

**Senator Hogue:** Yes. The governor's office has objections to any tinkering with the State Investment Board. Their position is there hasn't been a performance issue, let's leave it alone. They recognize the legacy fund is a unique fund. Every large fund that the State Investment Board manages has a constituency and the history of the State Investment Board has that constituency has entrusted the management of their funds to the State Investment Board, the last one is WSI. Their fund is over \$1 billion and they put a representative on. When the teachers and the PERS put their investment in to the management of the State Investment Board they talked about the value of their fund relative to all assets under management of the State Investment Board and that is how they got 3 and 3. So now they have 6 of the 11 seats. There is still disagreement.

**Senator Wardner:** I really don't think this is necessary because we have the employees benefit committee, everybody reports in there, I've been on that committee the actuaries come they tell you everything that's going on, Senator Krebsbach may have a different opinion, she still serves on that committee. And when it comes to the legacy fund, I'd like to think it isn't only the legislators that wanted that fund, but the people, and the governor, and those people would represent all of us as far as making sure that that's invested. I am not real fired up making the changes either.

**Chairman Holmberg:** Are you talking about the amendments or the Bill itself?

**Senator Wardner:** I would support the amendments because it makes it better incase the Bill passes but I'm not going to vote for the Bill either way. Do you want a motion?

**Chairman Holmberg:** Let's discuss this more. Senator Robinson made a point that has some validity and what is your thought on having two more non-voting members because the legislators are non-voting for one from each minority party and I speak on that from the only person on this committee who's ever been on the minority on our side of the isle and I know that there are two on the minority who have been in the majority in the past. V. Chair Bowman has been in the minority, as was Senator Krebsbach. So I throw that out as a point if we are going to amend it there has to be a majority that want that and if you do, let's find that out.

**Senator Christmann:** On that subject, I think with travel and a lot of other appointments I know I was on a committee that was chaired by a minority party senator for several biennium in a row and those are essentially chosen by the majority as I travel, and I haven't seen the majority people put them as chairs. If everyone is picking their own person that's when you end up with all of a sudden 4 caucuses, each chose 1 person, and here you have all four people

from Minot, or something like that and you have no mix of work backgrounds, or geography, all you have is a mix of parties. I think we've had a pretty long tradition of treating the interim assignments fairly.

**Senator Wardner** I would move the amendment # 11.02324.03002. seconded by **Senator Fischer**.

**A Roll Call vote was taken on the amendment # 11.02324.03002. Yea: 13; Nay: 0; Absent 0.**

**Senator Wardner moved Do Not Pass on SB 2302. Seconded by Senator Krebsbach.**

**Senator Christmann:** I really hope if we defeat this motion, there is people that went out and promoted development of the legacy funds and certainly promoted the budget stabilization fund by making sure money got into there in the first place I think we have a responsibility to do this.

**Senator Wardner:** I guess I respectfully disagree. I think those funds will be taken care of. We have good people. Their track record is there on managing these funds. I just want to remind everybody when we talk about those pension funds, everybody is all worried, just remember if they hadn't been managed as well as they were where would this state be. When I talked with someone from Oklahoma, their teacher's fund was at 47% funded. Keep in mind after the 1978 bailout of the TFFR things were put in place. For example the employees benefit committee is a statutory committee and they go through those actuaries on every fund to make sure they are actuarially sound. Now the only thing you can maybe fault the funds for, and I am talking about the pension is the fact they wanted to get to the multiplier of 2 a little quick, and to get at the multiplier of 2 they had to have a 8% profit margin. If they would have kept that down to 7 we probably would be in excellent shape. But just remember we don't have ACOLA, we don't have health insurance tied to this thing, I think the legislature is the one that decides whether those things are going to happen. The legislature will decide if there is any changes in these funds. The legislature is still in charge; however, they are managed by the will of the legislature. I don't think we are giving up anything here and I think we have a record that these funds are well managed by the people that are on the Investment Board.

**Chairman Holmberg: Call the Roll on a DO NOT PASS ON 2302. A Roll Call vote was taken. Yea: 7; Nay: 6; Absent 0. Senator Wardner will carry the Bill.**

The hearing was closed on SB 2302.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2302

Page 2, line 5, remove "For the purposes of management of the budget stabilization fund and the legacy fund."

Page 2, replace lines 6 through 16 with:

- "a. For purposes of management of the budget stabilization fund and the legacy fund, the state investment board consists of:
  - (1) The governor;
  - (2) The state treasurer;
  - (3) The insurance commissioner;
  - (4) Two members of the senate, appointed by the senate majority leader, who shall serve as nonvoting members of the board; and
  - (5) Two members of the house of representatives, appointed by the house majority leader, who shall serve as nonvoting members of the board.
- b. The members of the board under this subsection shall select from among themselves one member to serve as chairman for the purposes of this subsection.
- c. The members of the state investment board who are appointed by the senate majority leader and the house majority leader are entitled to compensation as provided under subsection 1 of section 54-35-10 for each day spent in attending meetings of the board and necessary lodging and travel expenses as provided in sections 44-08-04 and 54-06-09.
- d. The state investment board as constituted under this subsection is solely responsible for the management of the budget stabilization fund and the legacy fund."

Renumber accordingly



Date: 2-22-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2302

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0324.03002

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

Motion Made By Wardner Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Warner	✓	
Senator Bowman	✓		Senator O'Connell	✓	
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓				
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓				
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13 No 0

Absent 0

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

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

Date: 2-22-11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2302

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number SB on 2302

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

Motion Made By Wardner Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg		✓	Senator Warner	✓	
Senator Bowman		✓	Senator O'Connell		✓
Senator Grindberg	✓		Senator Robinson	✓	
Senator Christmann	✓	✓			
Senator Wardner	✓				
Senator Kilzer	✓				
Senator Fischer	✓	✓			
Senator Krebsbach	✓				
Senator Erbele	✓				
Senator Wanzek		✓			

Total (Yes) 7 No 6

Absent 0

Floor Assignment Wardner

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

**REPORT OF STANDING COMMITTEE**

**SB 2302: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). SB 2302 was placed on the Sixth order on the calendar.

Page 2, line 5, remove "For the purposes of management of the budget stabilization fund and the legacy fund."

Page 2, replace lines 6 through 16 with:

- "a. For purposes of management of the budget stabilization fund and the legacy fund, the state investment board consists of:
  - (1) The governor;
  - (2) The state treasurer;
  - (3) The insurance commissioner;
  - (4) Two members of the senate, appointed by the senate majority leader, who shall serve as nonvoting members of the board; and
  - (5) Two members of the house of representatives, appointed by the house majority leader, who shall serve as nonvoting members of the board.
- b. The members of the board under this subsection shall select from among themselves one member to serve as chairman for the purposes of this subsection.
- c. The members of the state investment board who are appointed by the senate majority leader and the house majority leader are entitled to compensation as provided under subsection 1 of section 54-35-10 for each day spent in attending meetings of the board and necessary lodging and travel expenses as provided in sections 44-08-04 and 54-06-09.
- d. The state investment board as constituted under this subsection is solely responsible for the management of the budget stabilization fund and the legacy fund."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2302

# 2011 HOUSE STANDING COMMITTEE MINUTES

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

SB 2302  
March 28, 2011  
16072

☐ Conference Committee

Committee Clerk Signature

*Ellen Letang*

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

Membership of the state investment board and management of the legacy fund

## Work Session Committee Minutes:

**Chairman Keiser:** Opens the work session of SB 2302.

**Representative N Johnson:** The big picture is that my amendment would remove any reference to state reference to state investment board. It would create a new advisory committee for making recommendation to the state investment board on how they would like Legacy Fund and the Budget Stabilization Funds. Goes over the amendments (see attached amendments).

**Chairman Keiser:** Explains the principle preservation as the goal and where did we come up with that?

**Representative N Johnson:** During the subcommittee met, we invited the Attorney General's office was represented by John Trentbeth and John Geisinger, who oversees the state investment board to come down. The Attorney General's office said that as a legislative body, we need to give some direction to the people on this advisory board. At this point, there is no direction on what kind of investments should be made, what kind of risk tolerance level should be. In talking with the Attorney's Generals office, they thought we needed to give some direction but wanted to leave it kind of open. What I ran by was that with John, the principle preservation was the language we came up with is that the Legacy Funds, if you are going to invest, you want to make sure we retain that preservation of the principle. We don't want to get too risky. As the same time, we want to maximize whatever investments we can but we wanted to reserve the principle and that would give legislative direction.

**Chairman Keiser:** I want to compliment the committee; it's a stroke of genius to designate two specific ones from each chamber. They are over appropriations; they are the ones that are in charge of distributing dollars throughout the interim.

**Representative Nathe:** They can keep an eye on what's happening and report back. The principle preservation term in the world of finance gives Mr Geissinger directions for investing.

**Representative Ruby:** One concern with designating just the chairmen of the House and Senate Appropriations committees is that it pretty much eliminates anybody from the minority party.

**Representative N Johnson:** If the Senate is Democratic, as the chambers would changes, it would involve representation from different parties.

**Chairman Keiser:** That would be an option to say the majority and minority shall nominate one. They both have advantages and disadvantages, I don't know.

**Vice Chairman Kasper:** This amendment does not remove the state investment board, this is a separate board?

**Representative N Johnson:** Yes, this would be called the Legacy and Budget Stabilization Fund Advisory Board.

**Chairman Keiser:** This flow chart they gave us, they all had investment groups. This is creating a new box.

**Representative M Nelson:** I guess I'm wondering why a policy board needs to report semi-annually?

**Representative N Johnson:** The concept was the people on the policy committee are going to get monthly reports on how the fund is doing. To keep the legislature in the loop, we are going to ask them to report what they are doing and what they are hearing to the budget sections, so we can get the legislatures into the loop.

**Representative M Nelson:** What you are after is reports on how the funds are doing not the policy per say.

**Representative N Johnson:** Correct.

**Chairman Keiser:** I don't think it could happen, but technically the BND President could designate a banker to serve on this board. Would they be compensated for mileage, etc, it implied.

**Representative N Johnson:** We didn't think that all the way through. We just allowed the BND President to designate somebody. Each individual has been asked to be on this committee and they all agreed to it.

**Chairman Keiser:** What did Pam Sharp say?

**Representative N Johnson:** She is welcoming other people to work with and she brought some suggestions to the committee.

**Chairman Keiser:** What are the wishes of the committee?

**Representative Kreun:** Moves to adopt amendment 11.0324.04003.

**Representative Clark:** Further discussion?

**Representative M Nelson:** What is the overlap of this board and the state investment board?

**Representative N Johnson:** None and that was on purpose.

**Chairman Keiser:** Further discussion?

**Voice roll call, motion carries with two nays.**

**Chairman Keiser:** The amendment is on the bill, what are the wishes of the committee?

**Representative Vigesaa:** Did you have any discussion on how does the state investment board always take the recommendations of the policy committee or how does that interaction work?

**Representative N Johnson:** I can't say that we actually had a lot of conversations?

**Representative Clark:** The state investment board manages 12 or 13 different funds and each fund has their own investment advisory advice. They get their advice from PERS and TFFR but that is how they determine the goals of those funds.

**Representative Clark:** All the other boards have stakeholders, like the teachers or the state employees but the legacy fund, the only stakeholder is the legislature, that's why this advisory board would advise the state investment board.

**Representative Nathe:** Motions for a Do Pass as Amended.

**Representative N Johnson:** Second.

**Chairman Keiser:** Further discussion?

**Representative M Nelson:** Could the situation happen where the chairman of the House and Senate Appropriate committee for a designee for a replacement if one dies, does that mean there is a vacancy?

**Chairman Keiser:** The chairman of the Legislative Council has full authority to make any appointment during the interim.

**Roll call was taken for a Do Pass as Amended on SB 2302 with 11 yeas, 2 nays, 1 absent and Representative Clark is the carrier.**

VR  
3/28/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2302

Page 1, line 1, after "to" insert "create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to"

Page 1, line 1, remove "21-10-01,"

Page 1, line 1, remove the second comma

Page 1, line 2, replace "the membership" with "meetings"

Page 1, line 3, after "fund" insert "; and to declare an emergency"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 30

Page 3, line 27, remove "Except for the budget stabilization fund"

Page 3, line 28, remove "and the legacy fund"

Page 3, line 28, overstrike ", the" and insert immediately thereafter "The"

Page 4, after line 5, insert:

"**SECTION 3.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**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 the chairmen of the house and senate appropriations committees, the commissioner of financial institutions or designee, the director of the office of management and budget or designee, the president of the Bank of North Dakota or designee, the tax commissioner or designee, and one member appointed by the governor to serve at the pleasure of the governor. 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.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



Date: March 28, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2302

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0324.04003

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

Motion Made By Kreun Seconded By Clark

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

voice vote -

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: March 28, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2302

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

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

Motion Made By Rep Nathe Seconded By Rep Johnson

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

Total Yes 11 No 2

Absent 1

Floor Assignment Rep Clark

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

**REPORT OF STANDING COMMITTEE**

**SB 2302, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2302 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "to" insert "create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to"

Page 1, line 1, remove "21-10-01,"

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**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2302

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2302  
April 11, 2011  
Job Number 16472

☒ Conference Committee

Committee Clerk Signature



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

Relating to the membership of the state investment board and management of the legacy fund

## Minutes:

Conference Committee Discussion

**Chairman Laffen:** Called the meeting to order.

**Representative Johnson:** She was chairman of the subcommittee. She gave a handout and spoke about the changes the House made to the bill, Attachment (1).

**Chairman Laffen:** He referred to a handout given out by John Geisenger and what the handout showed. He asked her if she was suggesting that there would be an added board at the top of the state investment board handout.

**Representative Johnson:** Said yes there would be another one that would give the direction to the state investment board, this group the state investment board would still continue to make the investments.

**Senator Klein:** Said that it was their understanding that they were creating a new investment board outside of the state investment board and that this would be a board that was going to be responsible for the legacy fund outside of TFFR and PERS and it would just have the responsibility of managing the fund and that the legislature felt strongly about providing. He said that the legislature has no membership not even nonvoting membership on the board.

**Representative Johnson:** She referred to the bill as it came from the Senate and said that it stated that they were using the current state investment board and not setting up a separate state investment board. She said a lot of these are the same membership that is on the state investment board.

**Chairman Laffen:** Said that they questioned whether the state investment board typically makes investment decisions or sets the policy, they make the decision of what funds to invest in following a policy recommendation that comes from one of the boards. He said

that there was discussion in their committee on who actually makes the policy decision if you don't have that extra board.

**Representative Ruby:** Said that their intent was to have an advisory for the legacy and budget stabilization fund and that is where some of the legislative members become part of the process. He said that they had it consist of the House and Senate appropriation committees and felt that because they look at the numbers they would be the most helpful and would be on this advisory board to make recommendations or at least oversee some of the discussions that went on and where the funds are at, more so than what they do now. They thought that was a good way to get some legislative involvement.

**Chairman Laffen:** Said that Senator Klein mentioned that part of the issue that we are struggling with here is ultimately even an advisory board would say this is where we think the legacy and budget stabilization fund should be invested, then it goes to a board that has all retirement people making up that board. He said that is part of the discussion, even if we did create that advisory board we still won't have the right representation for this kind of fund at the state investment board.

**Senator Klein:** Said that is exactly the discussion we had, were going to have within a couple of session probably one of the larger amounts of cash in there with no one on the board. That was there attempt with nonvoting members which hopes to eliminate this constitutional issue that some had but yet keeping it flexible because this will require eleven meetings per year. The question he had was how much knowledge do they have on the board now?

**Representative Gruchalla:** Said that he didn't know if they had that debate on the constitutional issue and asked what the point was.

**Senator Klein:** Said he recalled that the lieutenant governor had some issues with them being elected and serving on the state investment board. He didn't recall the separation from the executive to the legislative that separation was no longer there, that the state investment board is primarily made up of appointees of the governor and thus functions as an arm of the executive branch. That is why they put the legislative members as nonvoting members to try to appease the executive folks.

**Chairman Laffen:** Said he isn't sure any of these are right yet. The other bill was to change the makeup of the current board and is that dead? He said it almost seems that the right answer is that you need an advisory or policy board and it needs to feed into the state investment board so there is some kind of representation by some legislators whether they are voting or nonvoting. He said right now having all the decisions being made by retirement people doesn't seem like the right mix.

**Senator Murphy:** Said it does make it cleaner and neater to go with the version that the House has brought to us. He said it is more traditional and doesn't have trouble with the state investment board staying as it is with the advisory capacity of the legislators being involved. It will give them some input and keeps it simpler.

**Chairman Laffen:** Said that he would like to visit with the sponsor of the bill and the lieutenant governor.

**Senator Klein:** Asked if the House members wanted to maintain the state investment board as we currently have it and use the advisory commission that they created. He said that he felt that they had enough governor appointees. He feels that it is critical that they take the heat on because it is a fund that they have created.

**Chairman Laffen:** Said he agrees and feels they are close but would like to visit with these people. He wonders if there would be enough legislative oversight on the board if that is the way they set it up.

**Representative Ruby:** Said they were looking at keeping the board. He said that some of the funds did go down and some didn't. He said he does acknowledge that there is a difference in whether you are looking at investments for growth or investments for retirement and trying to make sure it isn't as risky. He said each fund or each group that has had control in the past has had their own advisory whether it is formal or informal that their members bring to the table on the board. Then it goes to the experts who make the final decisions on the investments and how to manage the funds. He said they are willing to hear proposals and work with the senate on the makeup of the advisory board. He said they could hear proposals to the state investment board too but said it doesn't seem to have the support from their committee.

**Representative Johnson:** Said that the budget stabilization fund has been one of those who hasn't had an advisory committee and asked if it was because of the amount and if that made any difference to the legislature before.

**Representative Ruby:** Said that from the eighties to 2005 or 2003, no money was put in so there was no need to advise on how to invest until Representative Berg's proposal to start putting money in that and get it supplied. He said the legacy fund is new and it does make sense to get some advisory ones in place for those funds.

**Chairman Laffen:** Said that this whole idea has some merit. He said that so far all of the funds have been retirement funds and now there is going to be some large amounts of money that are different then retirement and that they need a different investment strategy.

**Representative Ruby:** Said there are some now that are not retirement funds. He said some of the discussion to have everyone from a retirement mind set probably isn't the best thing but that there is some representation already that isn't retirement. He said it is weighted heavily with the public employees and the teacher funds. He said from their standpoint they didn't see it as too lopsided as far as retirement but they are willing to work with the senate.

**Senator Murphy:** Said it seems to me this is stated very clearly that it is about principal preservation that means it is very conservative and that is where it seems monies have been invested in the first place. He said it will be a bigger pot but not a lot different.

**Senator Klein:** Said he didn't want to argue the point but it isn't necessarily that way. He said in the reports to the legislative audit and fiscal review they were very aggressive in their PERS and TFFR were as WSI said they didn't want to be aggressive. He said during the good years they were cashing in on the fact that they had taken some risk which cost them more on the funds because they were in a more aggressive fund. He said when the market crashed it crashed for all of them. He would suggest that Representative Ruby visit with the prime sponsor of the bill to expedite this.

**Representative Johnson:** Said that she wanted to mention that they did go in and visit with the attorney general's office and when that language of "principal preservation" was put in it was in conjunction with the attorney general's office and with Mr. Geisenger from the ROI because that does give him some understanding about how to invest those dollars and the attorney general's office was concerned that we were not as a legislative body both chambers putting any kind of direction on what type of investment this should have.

**Chairman Laffen:** Closed the meeting.



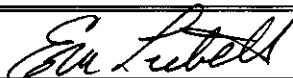
# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2302  
April 12, 2011  
Job Number 16516

☒ Conference Committee

Committee Clerk Signature



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

Relating to the membership of the state investment board and management of the legacy fund

## Minutes:

Conference Committee Discussion

**Chairman Laffen:** Called the meeting to order. He called on Senator Klein to explain the amendments.

**Senator Klein:** Said the sponsor realized we couldn't do quite what he suggested but wanted to still get the advisory board to what he believes is right. These are Senator Hogue's proposed amendment and what we propose to do is create that advisory board with a little bit of a different makeup. It will get a couple additional legislators on it. He goes over the amendment.

**Chairman Laffen:** Said it also removed the language that said the goal of the investment board for the legacy fund is "principal preservation".

**Representative Ruby:** Said that he noticed that to and they did talk about it with Senator Hogue. He said there is a couple of ways it could go without that language and they would like to keep that language in. As far as the makeup of the board, we are willing to work with you on that. We did have an issue with page four, line three. It would remove the legacy fund from being charged the fees for the management of the funds. That fee would then get passed onto the other funds and is not something they want to do. The comment was that this is a fund where you're not supposed to touch the principal but so is the school trust fund. We would like to allow the fund to be charged the fees.

**Chairman Laffen:** Said as long as it is allowable, we heard testimony that it wasn't.

**Representative Johnson:** Said that the attorney general's office has put together the opinion and it is suppose to come out this morning, where the AG's office said that the fund could do its management fees from the way they read the law.

**Chairman Laffen:** Said if that is the case it would make more sense to have it come out of this fund.

**Representative Johnson:** Said that she has been working with the attorney general's office and the "principal preservation" portion was a legislative intent and that is why it is in there to say that is what the legislature direction gives to this advisory board. Then the advisory board would make the decision on the percentage. They suggested that we need to have some kind of direction from both chambers. The last sentence on this new language was to have the state retirement investment office provide staff services to the legacy budget stabilization fund advisory board. She asked John if they were okay with doing that and he said that he didn't know what that meant. She doesn't know what kind of services the senate side was thinking needed to be in there.

**Chairman Laffen:** Said he is not sure what it means either put his question would be, do any of the other advisory boards have any staff assistance from that office?

**Connie Flannigan, Retirement Investment Office:** She said that the current practice would be the individual advisory boards would have their own staff. It is not a common practice for the agency to be handling the meeting set ups and that types of things. She said that their staff is available to attend the meetings to answer questions and assist with language. It is more of an informal process. They also provide the reporting on the investments that the state investment board manages on monthly bases to each of those advisory boards or their staff. We would be providing financial statements and investment performance reports to whoever would be the group.

**Chairman Laffen:** Said I would assume this would mostly be some paper copies occasionally, would there be a problem with leaving this authority in here to help with that?

**Connie:** Said it depends on what you are defining those services as, if they are just the services that we are currently providing to the other funds, it is certainly not an issue. If it is actually planning a meeting, scheduling, having staff at the meeting to take minutes, those types of things would be something we currently are not doing.

**Senator Klein:** Said he is trying to get to where there would be no cost to the legacy fund and it would come from something else. He asked where the other boards got the money.

**Connie:** Each of the individual boards, the agency that is responsible for the administration of that board would have budget dollars available for handling those meetings. We have in our agency because we have both the state investment board and the teacher's retirement board under our agency, we would have budget dollars for both of those boards in our real budget but workforce safety has budget dollars for their own meetings.

**Representative Gruchalla:** Said we were told the reason for not taking any fees out of the legacy fund is because the initiated measure said you couldn't, so that would be a constitutional violation. I would like to see something in writing that says the attorney general says it is okay.

**Chairman Laffen:** We had a ruling today and what was the first part?

**Representative Johnson:** Said the fund itself could pay for the management fees.

**Chairman Laffen:** Said maybe it could say we could get a ruling that the management fees and the cost for the maintenance operation of this fund can come out of there.

**Representative Johnson:** Said that was the initial question could it or couldn't it be used, that is why the ruling was requested and I think it will say you can use it for management fees but I don't know if the staff support fees should be out of legislative council. This is the first we talked about it.

**Senator Klein:** Said he would assume that there would be some cost, whether legislative council provides the staff. I think we are in agreement that, "principal preservation" should stay in and the fees may have been addressed in the ruling but I am still questioning if we could tap that fund for dollars. It shouldn't be expensive.

**Representative Johnson:** Asked how many times would this group be meeting a year.

**Connie:** Said the third fiscal note that was created for this bill by legislative council. They budgeted for quarterly meetings.

**Representative Johnson:** Said maybe we need to clarify that before we can finish up on this bill. Do we want to get our hands on the actual ruling?

**Chairman Laffen:** Said that it would make sense and asked Representative Johnson if she would be willing to take that on.

**Representative Johnson:** Said she could.

**Senator Murphy:** Said that there were a couple of things that weren't talked about. He asked if the tax commissioner was looking for something else to do or can we open that up to someone else. It was mentioned about some minority legislator membership which isn't directly mentioned here, can that be addressed?

**Representative Ruby:** Said with your proposed language allowing two members, there could be language saying one from each party but they might not be able to get someone from both parties. This language allows at least one from each party to be pointed and if one didn't want to serve they would be caught on this. He wasn't sure language like that should be added.

**Chairman Laffen:** Said the previous version it would have been mandatory and this leaves it flexible. He said that there is great merit to have both parties on this because if the funds went down and it was all from one party that party would be in some jeopardy of being criticize for that.

**Representative Gruchalla:** Asked if he was saying that he would be agreeable to Senator Murphy's suggestion.

**Chairman Laffen:** Said no I am just saying that I think the majority leaders would have some common sense and want to have more than one party in the mix.

**Representative Ruby:** Said that it is enabling legislation for it, it doesn't necessarily say it has to be but common sense would be that they would.

**Senator Murphy:** Said if you didn't want to have the majority and minority leader from both houses appoint someone we could try of the four legislative members have one be from the minority.

**Chairman Laffen:** Said we are coming back and we can discuss that as well. He adjourned the meeting.

# 2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2302  
April 13, 2011  
Job Number 16568

☒ Conference Committee

Committee Clerk Signature



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

Relating to the membership of the state investment board and management of the legacy fund

## Minutes:

Discussion, Amendments and Vote

**Chairman Laffen:** Called the meeting to order and asked Representative Johnson to share the amendments she had been working on.

**Representative Johnson:** Said that they had received an email that said the legacy fund could provide for its own management dollars out of the legacy fund. She went over the amendment she handed out, Attached (1).

**Representative Ruby:** He said the way he reads it the staff and consultants of the state retirement investment office will advise this advisory board on how the advisory board should turn around and advise the state investment board?

**Representative Johnson:** Said in essence yes, when the advisory committee meets there will be individuals that do not have a lot of background in investments and what small caps, large caps would be. The RIO would have that kind of information and could lead them. They have the "principal preservation" goal in there. They can give them some suggestions but the advisory board would have to want to go that way and pass it on. They will get the expertise from that group helping them.

**Senator Klein:** Said that he believes Connie had stated that they do that for all the groups, that they bring the notices and the portfolios to the committees. This is similar to what they already do.

**Chairman Laffen:** Asked if there was any other discussion on the amendment.

**Representative Johnson:** Said if there are no other questions I would move the amendments, the language is, the House recedes from its amendments and further amends.

**Representative Ruby:** Seconded the motion.

**Chairman Laffen:** Said the motion in for the House to recede and further amend by 11.0324.04008. He asked if there was any further discussion.

Roll Call Vote: Yes-6 No-0

**Senator Murphy:** Said he had some amendments concerning governess. He passed the first one out and went over the changes. Amendment 11.0324.04006, the board consists of two members of the senate, one appointed by the senate majority leader and one appointed by the senate minority leader; two members of the house of representatives, one appointed by the house majority leader and one appointed by the house minority leader.

**Chairman Laffen:** Said do we want to discuss that or move on that?

**Senator Murphy:** Said that this would just put it in writing.

**Chairman Laffen:** Said this is an amendment that does everything the last one did with slightly different language.

**Representative Johnson:** Said this amendment was made before mine, so it doesn't have the two different identifications of legislative council and the part about preservation of principal, it has different language.

**Chairman Laffen:** Said if we wanted to amend the language to the makeup of the board, do we need a different amendment and said we would have to amend the previous amendment.

**Senator Murphy:** Said that would be his proposition. He asked if they would have to go back to legislative council and have this redrafted.

**Representative Ruby:** Said if they understand what language needs to be added the intern could draw up an amendment that could be approved. If the fund is doing well and there is one from each side neither one could use it as a tool in an election. I probably wouldn't want to be on it but I am sure there are people who follow investment issues. He said the only risk is from one party or the other the leader asked around and kept getting turned down from the members to be on the board. I would make a motion to accept this amendment.

**Senator Murphy:** Seconded the motion.

**Senator Klein:** Said he will resist the amendment.

**Chairman Laffen:** Said he would resist as well and would prefer to let them have the option.

Roll Call Vote: Yes- 3 No-3 measure fails

**Senator Murphy:** Said he has another amendment for the same area of the bill with different wording, Amendment 11.0324.04007. He goes over the amendment.

**Representative Ruby:** Moved to adopt the amendment.

**Senator Murphy:** Seconded the motion and said it would take away the heartburn you folks had.

Roll Call Vote: Yes-4 No-2 measure fails

**Chairman Laffen:** Closed the meeting.

**Senator Laffen** to carry the bill for the Senate

**Representative Ruby** to carry the bill for the House

93  
4-13-11  
1012

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2302

That the House recede from its amendments as printed on page 1057 of the Senate Journal and page 1186 of the House Journal and that Engrossed Senate Bill No. 2302 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to"

Page 1, line 1, remove "21-10-01,"

Page 1, line 1, remove the second comma

Page 1, line 2, replace "the membership" with "meetings"

Page 1, line 3, after "fund" insert "; and to declare an emergency"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 30

Page 3, line 27, remove "Except for the budget stabilization fund"

Page 3, line 28, remove "and the legacy fund"

Page 3, line 28, overstrike ", the" and insert immediately thereafter "The"

Page 4, after line 5, insert:

"**SECTION 3.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**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 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.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."



Renumber accordingly

2 of 2

# 2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: IBL

Bill/Resolution No. SB 2302 as (re) engrossed

Date: 4/13/11

Roll Call Vote #: 1

## Action Taken

- ☐ SENATE accede to House amendments  
☐ SENATE accede to House amendments and further amend  
☐ HOUSE recede from House amendments  
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on (S)/HJ page(s) 1057 --

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the calendar

Motion Made by: Representative Johnson Seconded by: Representative Ruby

Senators	$\frac{1}{11}$	$\frac{1}{12}$	$\frac{1}{13}$	Yes	No		Representatives	$\frac{1}{11}$	$\frac{1}{12}$	$\frac{1}{13}$	Yes	No
Chairman Senator Laffen	✓	✓	✓	✓			Representative Ruby	✓	✓	✓	✓	
Senator Klein	✓	✓	✓	✓			Representative Johnson	✓	✓	✓	✓	
Senator Murphy	✓	✓	✓	✓			Representative Gruchalla	✓	✓	✓	✓	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Senator Laffen House Carrier Representative Ruby

LC Number 11.0324.04008 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment Representative Johnson's amendments.

**REPORT OF CONFERENCE COMMITTEE**

**SB 2302, as engrossed:** Your conference committee (Sens. Laffen, Klein, Murphy and Reps. Ruby, N. Johnson, Gruchalla) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ page 1057, adopt amendments as follows, and place SB 2302 on the Seventh order:

That the House recede from its amendments as printed on page 1057 of the Senate Journal and page 1186 of the House Journal and that Engrossed Senate Bill No. 2302 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to"

Page 1, line 1, remove "21-10-01,"

Page 1, line 1, remove the second comma

Page 1, line 2, replace "the membership" with "meetings"

Page 1, line 3, after "fund" insert "; and to declare an emergency"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 30

Page 3, line 27, remove "Except for the budget stabilization fund"

Page 3, line 28, remove "and the legacy fund"

Page 3, line 28, overstrike ", the" and insert immediately thereafter "The"

Page 4, after line 5, insert:

"**SECTION 3.** A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

**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 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.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Engrossed SB 2302 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2302

1 **TESTIMONY OF DAVID HOGUE REGARDING SENATE BILL 2302**

2 **SENATE INDUSTRY, BUSINESS, AND LABOR COMMITTEE**

3 **February 2, 2011**

4 **9:00 am**

5  
6  
7 Good Morning Chairman Klein and members of the Senate IBL Committee. My  
8 name is David Hogue. I am a North Dakota Senator representing District 38, which  
9 includes Northwest Minot and the city of Burlington. I appear before your committee to  
10 seek support for SB 2302.

11 SB 2302 proposes to appoint three members of the house and three members of  
12 the senate to the State Investment Board for the purpose of providing legislative  
13 oversight of the newly created Legacy Fund and the Budget Stabilization Fund. I want  
14 to take a few minutes to explain the reason for the proposed change.

15 **The Legacy Fund**

16 The Legacy Fund was created by an amendment to the North Dakota  
17 Constitution. The voters approved the constitutional amendment in the most recent  
18 election. That amendment, Measure 1, provides that 30% of all oil and gas tax  
19 revenues must be deposited into the Legacy Fund. The Legacy Fund cannot be tapped  
20 until July of 2017.

21 The Legacy Fund also contains two principal spending restrictions. First, the  
22 Legacy Fund requires a two thirds majority to approve expenditures from the principal of

1 the Legacy Fund. Second, only 15% of the principal of the Legacy Fund may be  
2 expended in any one biennium.

3 The Legacy Fund is the people's money. It can only be appropriated by the  
4 North Dakota Legislative Assembly. The Legacy Fund has no natural stakeholders like  
5 most of the other funds managed by the State Investment Board.

6 There are several estimates about how large the Legacy Fund will be when it is  
7 first tapped, but conservative estimates place the fund balance in excess of \$ 1 billion  
8 dollars. I believe there is a reasonable possibility the Legacy Fund will exceed \$1.3  
9 billion by July 2017.

#### 10 **The State Investment Board**

11 Mr. Chairman the State Investment Board is comprised of eleven members. The  
12 three elected officials are the governor, state treasurer, and insurance commissioner.  
13 There are eight other members, three of whom represent the Public Employees  
14 Retirement System ("PERS), three of whom represent the Teachers' Fund For  
15 Retirement board ("TFFR), a representative of the Workforce Safety and Insurance, and  
16 the Commissioner of University and School Lands. The Workforce representative was  
17 added to the statute in 1999.

18 The State Investment Board employs an executive director and support staff.  
19 The State Investment Board is led by the governor. The State Investment Board selects  
20 asset managers to manage the various funds designated by statute. The Board

1 currently manages 12 different funds and by Measure 1, the Board will also manage the  
2 Legacy Fund.

3 **SB 2302**

4 SB 2302 would designate the three state wide elected officials, three  
5 representatives, and three senators as the State Investment Board for purposes of  
6 managing the Legacy Fund and the Budget Stabilization Fund. We should recognize,  
7 Mr. Chairman, that the objectives of PERS and TFFR funds are fundamentally different  
8 than the objective of the Legacy Fund. We should also recognize Mr. Chairman that the  
9 Legacy Fund's uses may vary based on future events that are difficult to predict. How  
10 much will the state need to spend for a Fargo diversion? How much in resources will  
11 the state spend for outlets for Devil's Lake? Those questions cannot be answered  
12 today. Those questions do not lend themselves to the same actuarial precision used to  
13 determine the funds necessary for retirement pensions.

14 Mr. Chairman, because the Legacy Fund is the people's money and appropriated  
15 only by the legislative assembly, I feel strongly that members of the legislative assembly  
16 should have a role in its oversight. This concludes my testimony and I would be happy  
17 to try to answer any questions you may have. I attach to this testimony the whole  
18 chapter of the law relating to the State Investment Board.

19

20

21



**21-09-04. Matters validated.** It is the intent hereof that, without limiting the generality of the foregoing:

1. This chapter applies to all defects, irregularities and omissions, other than constitutional, in the calling, notice, or conduct of any election, any public hearing, or any meeting of a governing board, council, or commission held for the purpose of authorizing bonds or any project financed by bonds; in the creation of an improvement district, the determination of the necessity and the making of contracts for the acquisition or construction of such project; in the levy of any tax or special assessment appropriated for the payment of bonds; in the establishment of rates and charges for the service of any project; in the pledge of net revenues derived therefrom to the payment of bonds, and in the making of covenants securing such payment.
2. This chapter applies notwithstanding any lack of power, other than constitutional, to engage in a project or any portion thereof, or to finance the same by issuing bonds; to combine two or more projects or bond issues in the same proceedings; to conduct proceedings in the sequence actually followed; or to exercise jurisdiction over the site at which any project is located, within or without the corporate limits of the public body or of the county in which it is situated or of the state of North Dakota.

Source: S.L. 1961, ch. 193, § 4.

**21-09-05. Application of chapter.** The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, 1999.

Source: S.L. 1963, ch. 204, § 2; 1965, ch. 186, § 2; 1967, ch. 196, § 2; 1969, ch. 250, § 2; 1971, ch. 254, § 2; 1975, ch. 221, § 2; 1981, ch. 277, § 1; 1983, ch. 285, § 1; 1987, ch. 287, § 1; 1989, ch. 294, § 1; 1991, ch. 255, § 1; 1993, ch. 244, § 1; 1999, ch. 229, § 1.

**Effective Date.**

The 1999 amendment of this section by section 1 of chapter 229, S.L. 1999 became effective August 1, 1999.

## CHAPTER 21-10

### STATE INVESTMENT BOARD

**Section**

- 21-10-01. State investment board — Membership — Term — Compensation — Advisory council.
- 21-10-02. Board — Powers and duties.
- 21-10-02.1. Board — Policies on investment goals and objectives and asset allocation.

**Section**

- 21-10-03. Cooperation with Bank of North Dakota — Repealed.
- 21-10-04. Board — Meetings.
- 21-10-05. Investment director — Powers and duties.
- 21-10-06. Funds under management of board — Accounts.

# STATE INVESTMENT BOARD

21-10-01

Section  
21-10-06.1. Board — Investment reports.  
21-10-06.2. Investment costs.  
21-10-07. Legal investments.  
21-10-08. Reserves — Percentage limitations.

Section  
21-10-09. Personal profit prohibited — Penalty.  
21-10-10. State investment board fund — Cost of operation of board — Repealed.

## 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 the workers compensation bureau, 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, and three of the elected members of the public employees retirement system board as selected by that board. The director of the workers compensation bureau may appoint a designee, subject to approval by the workers compensation 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 the workers compensation bureau or the director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents 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.

Source: S.L. 1963, ch. 205, § 1; 1985, ch. 284, § 1; 1987, ch. 190, § 4; 1989, ch. 295, § 1; 1989, ch. 667, § 4; 1991, ch. 628, § 2; 1993, ch. 245, § 1; 1997, ch. 432, § 12; 1999, ch. 230, § 1.

section 1 of chapter 230, S.L. 1999 became effective August 1, 1999.

Collateral References.  
States ⇐ 124.  
81A C.J.S. States, § 225.

### Effective Date.

The 1999 amendment of this section by

**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.

Source: S.L. 1963, ch. 205, § 1; 1969, ch. § 1; 1987, ch. 190, § 5; 1989, ch. 667, § 5; 121, § 5; 1975, ch. 222, § 1; 1977, ch. 217, 1991, ch. 256, § 1; 1993, ch. 54, § 106.

**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.
  - b. Acceptable rates of return, liquidity, and 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 for each fund, to be effective, must be approved by the governing body of that fund and the state investment board by January first of each year. If the asset allocation is not approved, the previous asset allocation remains effective. 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.

Source: S.L. 1985, ch. 285, § 1; 1989, ch. 667, § 6; 1991, ch. 628, § 3.

STATE INVESTMENT BOARD

21-10-06

**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, investment director, or upon written notice signed by two members of the board.

Source: S.L. 1963, ch. 205, § 1; 1975, ch. 222, § 3; 1985, ch. 284, § 2; 1987, ch. 190, § 6; 1991, ch. 256, § 2.

**21-10-05. Investment director — Powers and duties.** Subject to the limitations contained in the law or the policymaking regulations or resolutions promulgated by the board, the investment director shall have the power to make purchases, sales, exchanges, investments, and reinvestments of the funds under the management of the board. This section shall constitute 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 which should govern the investment of funds under this chapter.

Source: S.L. 1963, ch. 205, § 1; 1987, ch. 190, § 7; 1991, ch. 256, § 3.

**21-10-06. Funds under management of board — Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. Veterans' cemetery trust fund.
10. Health care trust fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

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.

**Source:** S.L. 1963, ch. 205, § 1; 1969, ch. 173, § 8; 1973, ch. 280, § 2; 1983, ch. 419, § 1; 1985, ch. 394, § 1; 1985, ch. 395, § 1; 1985, ch. 397, § 2; 1987, ch. 190, § 8; 1987, ch. 288, § 2; 1989, ch. 69, § 13; 1989, ch. 667, § 7; 1995, ch. 329, § 2; 1997, ch. 329, § 1; 1999, ch. 50, § 38; 2001, ch. 431, § 7.

**Effective Date.**

The 2001 amendment of this section by section 7 of chapter 431, S.L. 2001 became effective July 1, 2001.

The 1999 amendment of this section by section 38 of chapter 50, S.L. 1999 became effective August 1, 1999.

**Note.**

This section remained effective after July 31, 1997, upon the disapproval of chapter 648, S.L. 1995 (Senate Concurrent Resolution No. 4014), by Measure No. 2, November 5, 1996.

**Cross-References.**

Highway patrolmen's retirement fund, see N.D.C.C. ch. 39-03.1.

State bonding fund, see N.D.C.C. ch. 26.1-21.

State fire and tornado fund, see N.D.C.C. ch. 26.1-22.

Workmen's compensation fund, see N.D.C.C. ch. 65-04.

**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.

**Source:** S.L. 1985, ch. 285, § 2; 1991, ch. 256, § 4.

**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.

**Source:** S.L. 1987, ch. 288, § 3; 1989, ch. 667, § 8.



**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.

Source: S.L. 1963, ch. 205, § 1; 1983, ch. 286, § 1; 1985, ch. 286, § 1; 1987, ch. 190, § 9; 1989, ch. 667, § 9.

**Cross-References.**

Investment of agricultural commodity assessment funds, see § 4-24-09.

**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.

Source: S.L. 1963, ch. 205, § 1; 1967, ch. 197, § 1; 1987, ch. 190, § 10; 1991, ch. 256, § 5.

**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.

Source: S.L. 1963, ch. 205, § 1; 1975, ch. 222, § 4; 1989, ch. 667, § 10.

**21-10-10. State investment board fund — Cost of operation of board.** Repealed by S.L. 1989, ch. 667, § 13.

## CHAPTER 21-11

### NATURAL RESOURCES DEVELOPMENT BOND ISSUE

Section	Section
21-11-01. Declaration and finding of public purpose.	21-11-05. Approved application filed with industrial commission.
21-11-02. Application for loan — Form — Contents — Preference of applications.	21-11-06. Disbursements of loan — Inspection fee.
21-11-03. Processing of application — Fee — Purpose.	21-11-07. Appropriation of funds.
21-11-04. Approval or rejection of application.	21-11-08. General obligation state of North Dakota bonds, natural resources power development series — Bond purpose.

**Effective Date.**

The 2009 amendment of this section by section 1 of chapter 514, S.L. 2009 became effective August 1, 2009.

The 2003 amendment of this section by section 3 of chapter 561, S.L. 2003 became effective August 1, 2003.

**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.

**Source:** S.L. 1963, ch. 205, § 1; 1987, ch. 228, § 7; 1991, ch. 256, § 3; 2007, ch. 228, section 1 of chapter 228, S.L. 2007 became effective August 1, 2007.

**Effective Date.**

The 2007 amendment of this section by

**21-10-06. Funds under management of board — Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workforce safety and insurance fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. Budget stabilization fund.
10. Health care trust fund.
11. Cultural endowment fund.
12. Petroleum tank release compensation fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

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.

## NORTH DAKOTA BUDGET STABILIZATION FUND

### ❖ND Budget Stabilization Fund Investment Objectives and Policy Guidelines

#### Fund Characteristics and Constraints

The Budget Stabilization Fund (Fund) is a special fund created in 1987 under Chapter 54-27.2 of the North Dakota Century Code used to deposit general fund moneys in excess of appropriations. Notwithstanding the provisions of sections 54-27.2-01 and 54-27.2-02, \$124,936,548 was required to be transferred by the state treasurer to the budget stabilization fund from the general fund on July 1, 2009. This transfer will provide for a total of \$324,936,548 in the budget stabilization fund for the biennium beginning July 1, 2009 and ending June 30, 2011. The state investment board shall supervise investment of the budget stabilization fund in accordance with chapter 21-10.

Any interest or other budget stabilization fund earnings must be deposited in the fund. Any amounts provided by law for deposit in the fund and any interest or earnings of the fund which would bring the balance in the fund to an amount greater than five percent of the current biennial state general fund budget, as finally approved by the most recently adjourned special or regular session of the legislative assembly, may not be deposited or retained in the fund but must be deposited instead in the state general fund.

If the director of the office of management and budget projects that general fund revenues for the biennium will be at least two and one-half percent less than estimated by the most recently adjourned special or regular session of the legislative assembly, and if the governor orders a transfer, the state treasurer shall transfer the appropriate funds from the budget stabilization fund to the state general fund to offset the decrease in general fund revenues. The amount transferred from the budget stabilization fund upon order of the governor may not exceed the difference between an amount two and one-half percent below the general fund revenue projections for the biennium and the general fund revenue projections for the biennium by the director of the office of management and budget.

#### Responsibilities and Discretion of the State Investment Board (SIB)

The Fund is charged by law under NDCC 21-10-02.1 with the responsibility of establishing policies on investment goals and asset allocation of the Fund. The SIB is charged with implementing these policies and asset allocation and investing the assets of the Fund in a manner consistent with the prudent investor rule as provided in NDCC 21-10-07.

At the discretion of the SIB, the Fund's assets may be pooled with other funds. In pooling funds, the SIB may establish whatever asset class pools it deems necessary with specific quality, diversification, restrictions, and

performance objectives appropriate to the prudent investor rule and objectives of the funds participating in the pools.

The SIB may delegate investment responsibility to professional money managers. When a money manager has been retained, the SIB's role in determining investment strategy and security selection is supervisory, not advisory. In accordance with this Investment Policy Statement, the Fund's assets may be invested directly or through collective investment vehicles.

The SIB is responsible for establishing criteria and procedures and making decisions with respect to hiring, maintaining, and terminating money managers. This responsibility includes selecting performance measurement services, consultants, and report formats and determining the frequency of meetings with managers.

The SIB will implement changes to this policy as promptly as is prudent.

#### Investment Objectives

The investment objectives of the Fund reflect the relatively unknown life-span and the moderate risk tolerance of the Fund. Operating and statutory considerations shape the Fund's policies and priorities as outlined below:

Objective: Sufficient liquidity is to be maintained to meet known or anticipated financial obligations and preserve the value of the surplus. Cash equivalent investments will be used to achieve this objective.

#### Standards of Investment Performance

The Fund's investment objectives and liquidity constraints give rise to an asset allocation that is considered the most likely to achieve the results desired. For evaluation purposes, the following performance targets will apply:

- a. The Fund should produce a rate of return that meets or exceeds the portfolio policy index.
- b. The annual standard deviation of total returns for the Fund should not exceed that of the policy portfolio.

#### Policy and Guidelines

The asset allocation of the Fund is established by the Office of Management and Budget, with input from the SIB. Asset allocation is based upon the appraisal of projected liquidity and income requirements, and estimates of the investment returns likely to be achieved by the various asset classes over the next five years.

In recognition of these factors, the following allocation is deemed appropriate for the fund:



Short-term Fixed Income and BND CDs	Minimum of 90%
Bank Loans w/floating yield	Maximum of 5%
Absolute Return Strategies	Maximum of 5%

Rebalancing of the Fund to this target will be done in accordance with the SIB's rebalancing policy.

While the SIB is responsible for establishing specific quality, diversification, restrictions, and performance objectives for the investment vehicles in which the Fund's assets will be invested, it is understood that:

- Futures and options may be used to hedge or replicate underlying index exposure, but not for speculation.
- Derivative use will be monitored to ensure that undue risks are not taken by the money managers.
- All assets will be held in custody by the State Investment Board's master custodian or such other custodians as are acceptable to the State Investment Board.
- No funds shall be borrowed.
- No unhedged short sales or speculative margin purchases shall be made.
- Social investing is prohibited unless it meets the Exclusive Benefit Rule and it can be substantiated that the investment must provide an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.

For the purpose of this document, Social Investing is defined as *"The investment or commitment of public pension fund money for the*

*purpose of obtaining an effect other than a maximized return to the intended beneficiaries."*

- Economically targeted investing is prohibited unless the investment meets the Exclusive Benefit Rule.

For the purpose of this document economically targeted investment is defined as an investment designed to produce a competitive rate of return commensurate with risk involved, as well as to create collateral economic benefits for a targeted geographic area, group of people, or sector of the economy.

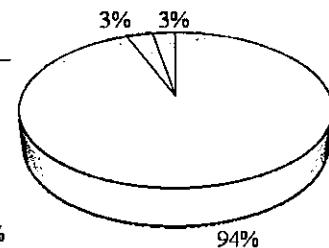
Also, for the purpose of this document, the Exclusive Benefit Rule is met if the following four conditions are satisfied:

- (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 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.

Where investment characteristics, including yield, risk, and liquidity are equivalent, the Fund's policy favors investments which will have a positive impact on the economy of North Dakota.

❖ **ND Budget Stabilization Fund**  
Actual Asset Allocation – June 30, 2010

Asset Allocation	Fair Value	Percent of Total	One Year Return
Short-term Fixed Income & BND CDs	\$ 305,656,798	94%	
Bank Loans w/floating yield	10,481,431	3%	
Absolute Return Strategies	9,039,328	3%	
<b>Total Fund</b>	<b>\$ 325,177,557</b>		<b>7.38%</b>
<b>Policy Benchmark</b>			<b>0.15%</b>



## PUBLIC EMPLOYEES RETIREMENT SYSTEM

### ❖ Public Employees Retirement System Investment Objectives and Policy Guidelines

#### Plan Characteristics and Fund Constraints

The North Dakota Public Employees Retirement System (NDPERS) and the Highway Patrol Retirement System (HPRS) are pension benefit plans established to provide retirement income to state employees and employees of participating political subdivisions. The plans are administered by a seven member Board of Trustees (the Board). The Chair is appointed by the governor, three members are elected by the active members of the plans, one member is elected by the retired members, one is appointed by the Attorney General and the seventh member is the State Health Officer or their designee.

The NDPERS plan is a multi-employer hybrid benefit public pension plan that provides retirement benefits, disability retirement benefits, and survivor benefits, in accordance with Chapter 54-52 of the North Dakota Century Code (NDCC). Monthly retirement benefits for the Main, National Guard and Law Enforcement Plans are based on the formula: number of Years of Service times 2.0% times the final average salary. For the NDPERS Judges Plan the retirement formula is: for the first ten years of service of the formula is final average salary times 3.5%, for the second ten years of service the formula is final average salary times 2.80% and for all remaining years of service the formula is final average salary times 1.25%.

The Highway Patrol plan is a single employer plan that provides retirement benefits, disability benefits, and survivor benefits in accordance with Chapter 39-03.1 of the North Dakota Century Code. Monthly retirement benefits are based upon on the formula: first 25 years of credit service times 3.25% and all remaining years of service times 1.75%.

Funding for the NDPERS plan is provided by monthly employee contributions and employer contributions with the amount varying based upon which NDPERS plan the member participates in. For the Main NDPERS plan the employee contribution is 4% and the employer contribution is 4.12%, for the Judges Plan the employee contribution is 5% and employer contribution is 14.52%, for the National Guard Plan the employee contribution is 4% and employer contribution is 6.5%, for the Law Enforcement Plan with prior service the employee contribution is 4% and the employer contribution is 8.31% and for the Law Enforcement Plan without prior service the employee contribution rate is 4% and the employer rate is 6.43%. Funding for the Highway Patrol plan is provided by a monthly employee contribution of 10.3% and an employer contribution of 16.7%

Each year the Board has an actuarial valuation performed. The current actuarial assumed rate of return on assets for all plans is 8%.

### Responsibilities and Discretion of the State Investment Board (SIB)

Aggregate plan contributions plus earnings, minus allowable expenses constitute the Fund. The Board is charged by NDCC chapters 54-52, 21-10-01, and 39-03.1 to establish policies for the investment goals and asset allocation of the Fund. The SIB is charged with implementing the asset allocation as promptly and prudently as possible in accordance with the Board's policies by investing the assets of the Fund in the manner provided in the prudent investor rule, which provides:

Fund 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. (NDCC 21-10-07)

The SIB may delegate investment responsibility of the Fund or any portion of the Fund to professional money managers. Where a money manager has been retained, the SIB's role in determining investment strategy is supervisory not advisory.

The SIB may at its discretion, pool the assets of the Fund with another fund or funds having similar investment objectives and time horizons in order to maximize returns and minimize costs. In pooling fund assets the SIB will establish asset class pools it deems necessary to achieve the specific quality, diversification, restrictions, and performance objectives subject to the prudent investor rule and the objectives of the funds participating in the pools.

The SIB is responsible for establishing the selection criteria, determining the performance measures, and retaining all fund money managers. SIB is also responsible for the selection and retention of any investment consultants that may be employed in the investment of the Fund assets.

### Delegation of Authority

Management responsibility for the investment program not assigned to the SIB in Chapter 21-10 of the North Dakota Century Code (NDCC) is hereby delegated to the SIB, who must establish written policies for the operation of the investment program, consistent with this investment policy.

Such procedures must provide for:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the SIB pursuant to NDCC 21-10-02.1(1)(a).
2. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services pursuant to NDCC 21-10-02.1(1)(e). In developing these policies it is understood:
  - a. Futures and options may be used to hedge or replicate underlying index exposure, but not for speculation.
  - b. The use of derivatives will be monitored to ensure that risks are not taken by the money managers.
  - c. All assets must be held in custody by the SIB's master custodian or such other custodians as are acceptable to the SIB.
3. Guidelines for the selection and redemption of investments pursuant to NDCC 21-10-02.1(1)(d).
4. The criteria for making decisions with respect to hiring, retention, and termination of money managers will be clearly defined. This also includes selecting performance measurements, consultants, report formats, and frequency of meetings with money managers.

All participants in the investment process must seek to act responsibly as custodians of the public trust.

#### Investment Goals

The investment goals of the Fund have been established by the NDPERS Board based upon consideration of the Board's strategic objectives and a comprehensive review of the current and projected financial requirements. These goals are to be viewed over the long term.

Goal #1: Accumulate sufficient wealth through a diversified portfolio of investments which will enable the State of North Dakota to pay all current and future retirement benefits and expense obligations of the Fund.

Goal #2: To obtain an investment return in excess of that needed to allow for increases in a retiree's annuity to maintain the purchasing power of their retirement benefit.

#### Investment Performance Objective

The NDPERS Board will seek to make investments that generate sufficient return to meet the goals outlined in this policy. The objectives established in this section are in accordance with the fiduciary requirement as set forth in federal and state law.

It is in the best interest of NDPERS and its beneficiaries that performance objectives be established for the total Fund. It is clearly understood these objectives are to be viewed over the long term and have been established after full

consideration of all factors set forth in this Statement of Investment Goals, Objectives and Policies.

- a. The funds rate of return, over the long term should equal, that of the policy portfolio which is comprised of policy weights of appropriate asset class benchmarks as set by the SIB.
- b. The annual standard deviation of total returns for the Fund should not exceed that of the policy portfolio.
- c. Over 10-year and longer periods the fund should match or exceed the expected rate of return projected in the most recent asset/liability study without exceeding the expected risk for the period as measured by standard deviation.

#### Asset Allocation

In recognition of the plan's performance objectives, benefit projections, and capital market expectations, the NDPERS Board has established the following asset allocation:

Date of last asset allocation study: NDPERS Board  
Approved December 2005 – SEI Corporation

Domestic Equities-Large Cap	30%
Domestic Equities-Small Cap	10%
International Equities	10%
Emerging Markets Equities	5%
Domestic Fixed Income	24%
High Yield Fixed Income	5%
International Fixed Income	5%
Real Estate	5%
Alternative Investments	5%
Cash	1%
Expected Return	9.3%
Standard Deviation of Returns	10.5%

Rebalancing of the Fund to this target will be done in accordance with the SIB's rebalancing policy, but not less than annually.

PERS requires that in implementing this asset allocation that the State Investment Board seek to maximize return within the scope of these policies while limiting investment costs.

#### Restrictions

- A. Futures and options may be used to hedge or replicate underlying index exposure, but not for speculation.
- B. Use of derivatives will be monitored to ensure that undue risks are not taken by the money managers.
- C. No transaction may be made which threatens the tax exempt status of the Fund.
- D. No unhedged short sales or speculative margin purchases may be made.

- E. Social investing is prohibited unless it meets the Exclusive Benefit Rule and it can be substantiated that the investment must provide an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.

Social Investing is defined as *"The investment or commitment of public pension fund money for the purpose of obtaining an effect other than a maximized return to the intended beneficiaries."*

- F. Economically targeted investing is prohibited unless the investment meets the Exclusive Benefit Rule.

Economically targeted investing is defined as an investment designed to produce a competitive rate of return commensurate with risk involved, as well as to create collateral economic benefits for a targeted geographic area, group of people, or sector of the economy.

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 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.

- G. Publicly Traded REITs may not be used in the Real Estate asset allocation.

- H. Where timberland is used as part of the domestic fixed income portfolio, it may not make up more than 30% of the total asset class at the time of initial purchase. If timberland becomes 50% or more of the domestic fixed income portfolio through market appreciation, the SIB must review the situation with the goal of bringing the timberland portion of the domestic fixed income portfolio into line with this restriction and, considering market conditions at the time, take any action deemed prudent.

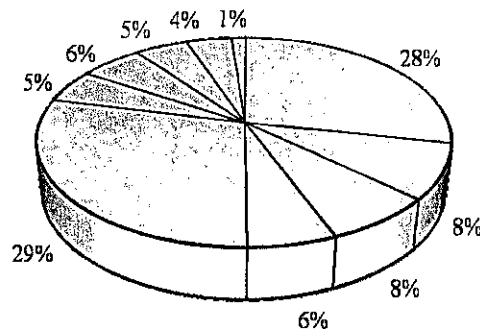
Where investment characteristics, including yield, risk, and liquidity are equivalent, the Board's policy favors investments which will have a positive impact on the economy of North Dakota.

#### Internal Controls

The SIB must have a system of internal controls to prevent losses of public funds arising from fraud or employee error. The controls deemed most important are the separation of responsibilities for investment purchases from the recording of investment activity, custodial safekeeping, written confirmation of investment transactions, and established criteria for broker relationships. The annual financial audit must include a comprehensive review of the portfolio, accounting procedures for security transactions and compliance with the investment policy.

#### ❖ Public Employees Retirement Fund Actual Asset Allocation – June 30, 2010

Asset Allocation	Fair Value	Percent of Total	One Year Return
Domestic Large Cap Equity	\$ 424,259,763	28%	
Domestic Small Cap Equity	126,647,055	8%	
International Equity	112,343,201	8%	
Emerging Markets Equity	89,148,534	6%	
Domestic Fixed Income	435,076,552	29%	
High Yield Fixed Income	79,699,338	5%	
International Fixed Income	87,110,581	6%	
Real Estate	74,160,509	5%	
Alternative Investments	63,362,337	4%	
Cash Equivalents	19,829,942	1%	
<b>Total Fund</b>	<b>\$ 1,511,637,812</b>		<b>13.67%</b>
<b>Policy Benchmark</b>			<b>13.41%</b>



## WORKFORCE SAFETY & INSURANCE FUND

### ❖ Workforce Safety & Insurance Fund Investment Objectives and Policy Guidelines

#### Introduction

North Dakota Workforce Safety & Insurance (WSI) is an exclusive state workers' compensation fund, which exists for the mutual benefit of North Dakota employers and employees. The assets of WSI are utilized to pay benefits to injured workers or their survivors.

Section 65-04-01 of the North Dakota Century Code requires WSI to establish premium rates for funding sufficiently high to provide for:

1. The payment of the expenses of administration of the organization,
2. The payment of compensation according to the provisions and schedules contained in this title, and
3. The maintenance by the Fund of adequate reserves and surplus to the end that it may be kept at all times in an entirely solvent condition.

#### Responsibilities of the North Dakota State Investment Board (SIB)

The governing body of WSI is charged by law under NDCC 21-10-02.1 with the responsibility of establishing policies on investment goals and asset allocation of the Fund. WSI fulfills this responsibility through its Board of Directors, under the oversight and approval of the Governor. The SIB is charged with implementing these policies and asset allocation and investing the assets of the Fund in a manner consistent with the prudent investor rule as provided in NDCC 21-10-07. The Fund must be invested exclusively for the benefit of the members and their beneficiaries in accordance with this investment policy.

At the discretion of the SIB, the Fund's assets may be pooled with other funds. In pooling funds, the SIB may establish whatever asset class pools it deems necessary with specific quality, diversification, restrictions, and performance objectives appropriate to the prudent investor rule and the objectives of the funds participating in the pools.

The SIB may delegate investment responsibility to professional money managers. Where a money manager has been retained, the SIB's role in determining investment strategy and security selection is supervisory not advisory.

The SIB is responsible for establishing criteria, procedures, and making decisions with respect to hiring, keeping, and terminating money managers. SIB investment responsibility also includes selecting performance measurement services, consultants, report formats, and frequency of meetings with managers. The SIB will implement changes to this policy as promptly as is prudent.

#### Investment Objectives

The investment goal of WSI is to supplement premiums, through various investments, to accomplish its statutory obligations.

The following investment objectives are established as of the date adopted and are in keeping with the fiduciary requirements as set forth in federal and state law and as expected by the members. WSI expects to receive results from the SIB that are consistent with the policies included herein. These objectives and guidelines will provide a basis for evaluating the effectiveness of the investment program over time. It is clearly understood these objectives and standards are to be viewed over the long term and have been established after full consideration of all factors set out in the Statement of Investment Policy.

The operating and liquidity needs of WSI are generally to be met by the cash equivalents allocation.

Funds in excess of those required for operating and liquidity needs will be invested in domestic equity, international equity, real estate and fixed income securities. The objective of these assets is to obtain the maximum total return on investments consistent with safety of principal on funds in excess of those required for operating and liquidity needs.

#### Standards of Investment Performance

The Fund's investment objectives and characteristics give rise to an asset allocation that is considered to have greater than a 50% probability of achieving the results desired. For evaluation purposes, the following performance targets will apply:

- a. The Fund's rate of return, over the long term, should equal that of the policy portfolio which is comprised of policy weights of appropriate asset class benchmarks as set by the SIB.
- b. The annual standard deviation of total returns for the Fund should not exceed that of the policy portfolio.

- c. Over 10 year and longer time periods the Fund should match or exceed the expected 6.4% rate of return assumed in the asset/liability study. Expected risk for the period, measured by standard deviation, is 5.5%.

#### Policy and Guidelines

The asset allocation policy developed herein is based on an evaluation of WSI's ability and willingness to assume investment risk in light of WSI's financial goals and objectives. In recognition of these goals and objectives, coupled with a liability-sensitive asset allocation study conducted by Callan Associates in May, 2005, the following asset allocation is deemed appropriate for WSI. The portfolio mix shall be in accordance with the following asset allocation and periodically reviewed by WSI.

<u>Asset Class</u>	<u>Target Allocation</u>
Large Cap Equity	9.75%
Small Cap Equity	3.25%
International Equity	7.00%
Domestic Fixed Income	51.00%
Inflation Protected Assets	22.00%
Real Estate	6.00%
Cash Equivalents	1.00%

Rebalancing of the Fund to this target will be done in accordance with the SIB's rebalancing policy, but not less than annually.

While the SIB is responsible for establishing specific quality, diversification, restrictions, and performance objectives for the investment vehicles in which the Fund's assets will be invested, it is understood that:

- a. Futures and options may be used to hedge or replicate underlying index exposure, but not for speculation.
- b. Derivatives use will be monitored to ensure that undue risks are not taken by the money managers.
- c. No transaction shall be made which threatens the tax exempt status of the Fund.
- d. All assets will be held in custody by the SIB's master custodian or such other custodians as are acceptable to the SIB.
- e. No unhedged short sales or speculative margin purchases shall be made.

- f. Social investing is prohibited unless it meets the Exclusive Benefit Rule and it can be substantiated that the investment must provide an equivalent or superior rate of return for a similar investment with a similar time horizon and similar risk.

For the purpose of this document, 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."*

- g. Economically targeted investing is prohibited unless the investment meets the Exclusive Benefit Rule.

For the purpose of this document economically targeted investment is defined as an investment designed to produce a competitive rate of return commensurate with risk involved, as well as to create collateral economic benefits for a targeted geographic area, group of people, or sector of the economy.

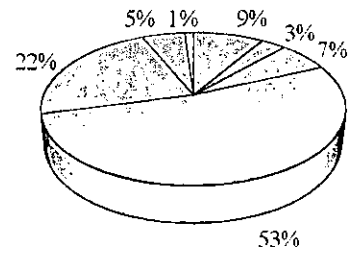
Also, for the purpose of this document, the Exclusive Benefit Rule is met if the following four conditions are satisfied:

- (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 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.

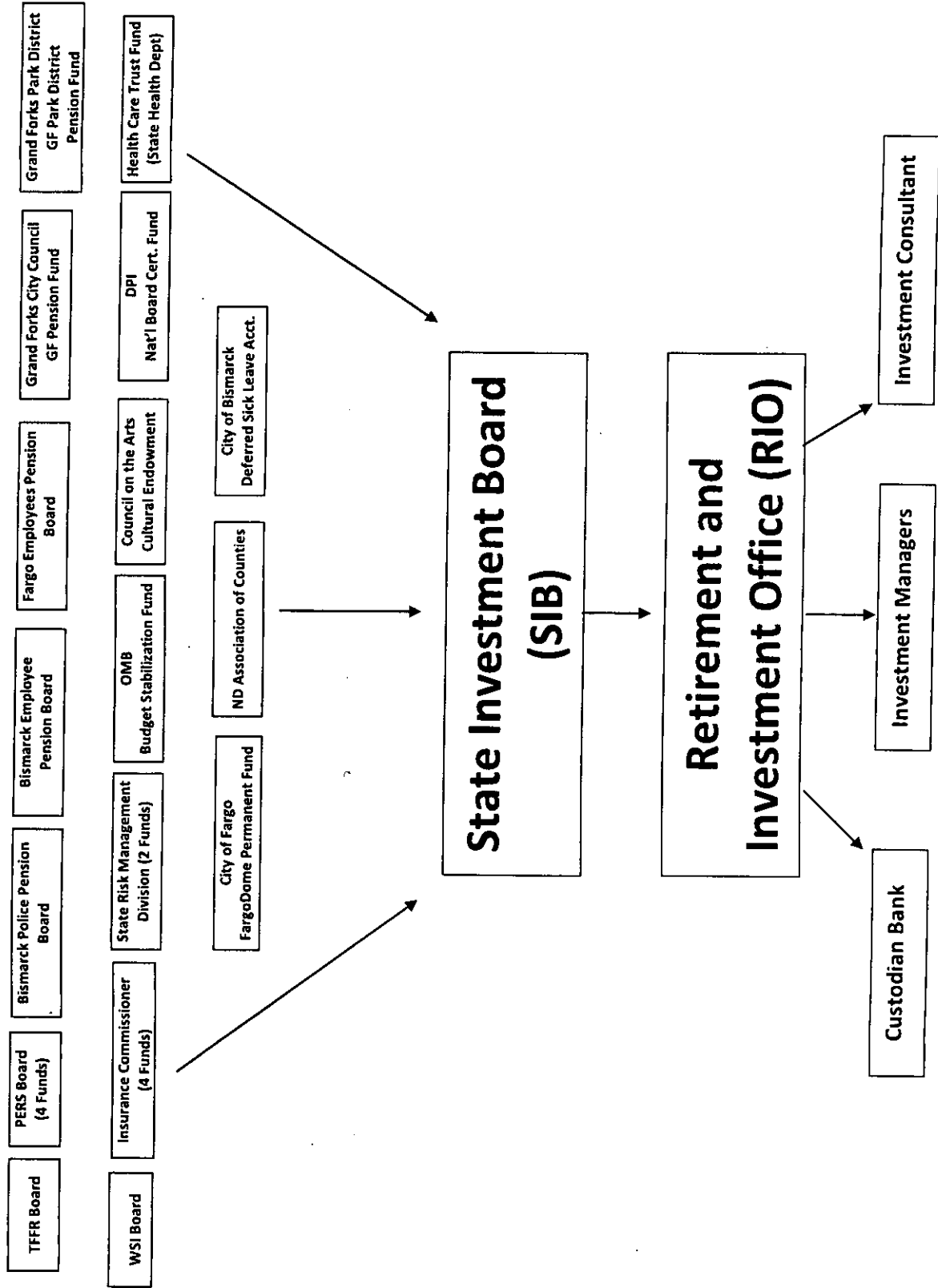
Where investment characteristics, including yield, risk, and liquidity are equivalent, the Board's policy favors investments which will have a positive impact on the economy of North Dakota.

❖ Workforce Safety & Insurance Fund  
Actual Asset Allocation – June 30, 2010

Asset Allocation	Fair Value	Percent of Total	One Year Return
Domestic Large Cap Equity	\$ 108,511,357	9%	
Domestic Small Cap Equity	38,396,439	3%	
International Equity	78,005,116	7%	
Fixed Income	637,467,132	53%	
Inflation Protected	270,498,369	22%	
Real Estate	65,780,841	5%	
Cash Equivalents	13,846,736	1%	
Total Fund	\$ 1,212,505,990		11.94%
Policy Benchmark			7.68%



# 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

SB 2302

Legacy and Budget Stabilization Fund Advisory Board

- 1) Makes recommendations to the State Investment Board;
- 2) Establishes a goal of "Principal Preservation";
- 3) Establishes board membership (7):
  - a. Chairman of the Senate appropriations
  - b. Chairman of the House appropriations
  - c. Commissioner of Financial Institutions or designee
  - d. Director of Office of Management and Budget or designee
  - e. President of the Bank of North Dakota or designee
  - f. Tax Commissioner or designee
  - g. One member appointed by the Governor;
- 4) Board shall select a chairman;
- 5) Reports to the budget section at least semi-annually;
- 6) Allows for compensation.

1     **TESTIMONY OF DAVID HOGUE REGARDING SENATE BILL 2302**

2     **SENATE APPROPRIATIONS COMMITTEE**

3     **February 9, 2011**

4     **8:30 am**

5

6

7             Good Morning Chairman Holmberg and members of the Senate Appropriations  
8     Committee. My name is David Hogue. I am a North Dakota Senator representing  
9     District 38, which includes Northwest Minot and the city of Burlington. I appear before  
10    your committee to seek support for SB 2302.

11            SB 2302 proposes to appoint three members of the house and three members of  
12    the senate to the State Investment Board for the purpose of providing legislative  
13    oversight of the newly created Legacy Fund and the Budget Stabilization Fund. I want  
14    to take a few minutes to explain the reason for the proposed change.

15            **The Legacy Fund**

16            The Legacy Fund was created by an amendment to the North Dakota  
17    Constitution. The voters approved the constitutional amendment in the most recent  

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18    election. That amendment, Measure 1, provides that 30% of all oil and gas tax  
19    revenues must be deposited into the Legacy Fund. The Legacy Fund cannot be tapped  
20    until July of 2017.

21            The Legacy Fund also contains two principal spending restrictions. First, the  
22    Legacy Fund requires a two thirds majority to approve expenditures from the principal of

1 the Legacy Fund. Second, only 15% of the principal of the Legacy Fund may be  
2 expended in any one biennium.

3 The Legacy Fund is the people's money. It can only be appropriated by the  
4 North Dakota Legislative Assembly. The Legacy Fund has no natural stakeholders like  
5 most of the other funds managed by the State Investment Board.

6 There are several estimates about how large the Legacy Fund will be when it is  
7 first tapped, but conservative estimates place the fund balance in excess of \$ 1 billion  
8 dollars. I believe there is a reasonable possibility the Legacy Fund will exceed \$1.3  
9 billion by July 2017.

#### 10 **The State Investment Board**

11 Mr. Chairman the State Investment Board is comprised of eleven members. The  
12 three elected officials are the governor, state treasurer, and insurance commissioner.  
13 There are eight other members, three of whom represent the Public Employees  
14 Retirement System ("PERS), three of whom represent the Teachers' Fund For  
15 Retirement board ("TFFR), a representative of the Workforce Safety and Insurance, and  
16 the Commissioner of University and School Lands. The Workforce representative was  
17 added to the statute in 1999.

18 The State Investment Board employs an executive director and support staff.  
19 The State Investment Board is led by the governor. The State Investment Board selects  
20 asset managers to manage the various funds designated by statute. The Board

1 currently manages 12 different funds and by Measure 1, the Board will also manage the  
2 Legacy Fund.

3 **SB 2302**

4 SB 2302 would designate the three state wide elected officials, three  
5 representatives, and three senators as the State Investment Board for purposes of  
6 managing the Legacy Fund and the Budget Stabilization Fund. We should recognize,  
7 Mr. Chairman, that the objectives of PERS and TFFR funds are fundamentally different  
8 than the objective of the Legacy Fund. We should also recognize Mr. Chairman that the  
9 Legacy Fund's uses may vary based on future events that are difficult to predict. How  
10 much will the state need to spend for a Fargo diversion? How much in resources will  
11 the state spend for outlets for Devil's Lake? Those questions cannot be answered  
12 today. Those questions do not lend themselves to the same actuarial precision used to  
13 determine the funds necessary for retirement pensions.

14 Mr. Chairman, because the Legacy Fund is the people's money and appropriated  
15 only by the legislative assembly, I feel strongly that members of the legislative assembly  
16 should have a role in its oversight. This concludes my testimony and I would be happy  
17 to try to answer any questions you may have. I attach to this testimony the whole  
18 chapter of the law relating to the State Investment Board.

19

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21

**21-09-04. Matters validated.** It is the intent hereof that, without limiting the generality of the foregoing:

1. This chapter applies to all defects, irregularities and omissions, other than constitutional, in the calling, notice, or conduct of any election, any public hearing, or any meeting of a governing board, council, or commission held for the purpose of authorizing bonds or any project financed by bonds; in the creation of an improvement district, the determination of the necessity and the making of contracts for the acquisition or construction of such project; in the levy of any tax or special assessment appropriated for the payment of bonds; in the establishment of rates and charges for the service of any project; in the pledge of net revenues derived therefrom to the payment of bonds, and in the making of covenants securing such payment.
2. This chapter applies notwithstanding any lack of power, other than constitutional, to engage in a project or any portion thereof, or to finance the same by issuing bonds; to combine two or more projects or bond issues in the same proceedings; to conduct proceedings in the sequence actually followed; or to exercise jurisdiction over the site at which any project is located, within or without the corporate limits of the public body or of the county in which it is situated or of the state of North Dakota.

Source: S.L. 1961, ch. 193, § 4.

**21-09-05. Application of chapter.** The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, 1999.

Source: S.L. 1963, ch. 204, § 2; 1965, ch. 186, § 2; 1967, ch. 196, § 2; 1969, ch. 250, § 2; 1971, ch. 254, § 2; 1975, ch. 221, § 2; 1981, ch. 277, § 1; 1983, ch. 285, § 1; 1987, ch. 287, § 1; 1989, ch. 294, § 1; 1991, ch. 255, § 1; 1993, ch. 244, § 1; 1999, ch. 229, § 1.

**Effective Date.**

The 1999 amendment of this section by section 1 of chapter 229, S.L. 1999 became effective August 1, 1999.

## CHAPTER 21-10

### STATE INVESTMENT BOARD

**Section**

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

21-10-02. Board — Powers and duties.

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

**Section**

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

21-10-04. Board — Meetings.

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

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

**Section**

21-10-06.1. Board

21-10-06.2. Investment

21-10-07. Legal

21-10-08. Reser

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Section  
 21-10-06.1. Board — Investment reports.  
 21-10-06.2. Investment costs.  
 21-10-07. Legal investments.  
 21-10-08. Reserves — Percentage limita-  
                   tions.

Section  
 21-10-09. Personal profit prohibited — Pen-  
                   alty.  
 21-10-10. State investment board fund —  
                   Cost of operation of board —  
                   Repealed.

**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 the workers compensation bureau, 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, and three of the elected members of the public employees retirement system board as selected by that board. The director of the workers compensation bureau may appoint a designee, subject to approval by the workers compensation 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 the workers compensation bureau or the director's designee, are entitled to receive as compensation sixty-two dollars and fifty cents 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.

Source: S.L. 1963, ch. 205, § 1; 1985, ch. 284, § 1; 1987, ch. 190, § 4; 1989, ch. 295, § 1; 1989, ch. 667, § 4; 1991, ch. 628, § 2; 1993, ch. 245, § 1; 1997, ch. 432, § 12; 1999, ch. 230, § 1.

section 1 of chapter 230, S.L. 1999 became effective August 1, 1999.

**Collateral References.**  
 States — 124.

81A C.J.S. States, § 225.

**Effective Date.**

The 1999 amendment of this section by



**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.

Source: S.L. 1963, ch. 205, § 1; 1969, ch. § 1; 1987, ch. 190, § 5; 1989, ch. 667, § 5; 121, § 5; 1975, ch. 222, § 1; 1977, ch. 217, 1991, ch. 256, § 1; 1993, ch. 54, § 106.

**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.
  - b. Acceptable rates of return, liquidity, and 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 for each fund, to be effective, must be approved by the governing body of that fund and the state investment board by January first of each year. If the asset allocation is not approved, the previous asset allocation remains effective. 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.

Source: S.L. 1985, ch. 285, § 1; 1989, ch. 667, § 6; 1991, ch. 628, § 3.

**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, investment director, or upon written notice signed by two members of the board.

Source: S.L. 1963, ch. 205, § 1; 1975, ch. 222, § 3; 1985, ch. 284, § 2; 1987, ch. 190, § 6; 1991, ch. 256, § 2.

**21-10-05. Investment director — Powers and duties.** Subject to the limitations contained in the law or the policymaking regulations or resolutions promulgated by the board, the investment director shall have the power to make purchases, sales, exchanges, investments, and reinvestments of the funds under the management of the board. This section shall constitute 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 which should govern the investment of funds under this chapter.

Source: S.L. 1963, ch. 205, § 1; 1987, ch. 190, § 7; 1991, ch. 256, § 3.

**21-10-06. Funds under management of board — Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. Veterans' cemetery trust fund.
10. Health care trust fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

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.

**Source:** S.L. 1963, ch. 205, § 1; 1969, ch. 173, § 8; 1973, ch. 280, § 2; 1983, ch. 419, § 1; 1985, ch. 394, § 1; 1985, ch. 395, § 1; 1985, ch. 397, § 2; 1987, ch. 190, § 8; 1987, ch. 288, § 2; 1989, ch. 69, § 13; 1989, ch. 667, § 7; 1995, ch. 329, § 2; 1997, ch. 329, § 1; 1999, ch. 50, § 38; 2001, ch. 431, § 7.

**Effective Date.**

The 2001 amendment of this section by section 7 of chapter 431, S.L. 2001 became effective July 1, 2001.

The 1999 amendment of this section by section 38 of chapter 50, S.L. 1999 became effective August 1, 1999.

**Note.**

This section remained effective after July 31, 1997, upon the disapproval of chapter 648, S.L. 1995 (Senate Concurrent Resolution No. 4014), by Measure No. 2, November 5, 1996.

**Cross-References.**

Highway patrolmen's retirement fund, see N.D.C.C. ch. 39-03.1.

State bonding fund, see N.D.C.C. ch. 26.1-21.

State fire and tornado fund, see N.D.C.C. ch. 26.1-22.

Workmen's compensation fund, see N.D.C.C. ch. 65-04.

**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.

**Source:** S.L. 1985, ch. 285, § 2; 1991, ch. 256, § 4.

**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.

**Source:** S.L. 1987, ch. 288, § 3; 1989, ch. 667, § 8.

**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.

Source: S.L. 1963, ch. 205, § 1; 1983, ch. 286, § 1; 1985, ch. 286, § 1; 1987, ch. 190, § 9; 1989, ch. 667, § 9.

**Cross-References.**

Investment of agricultural commodity assessment funds, see § 4-24-09.

**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.

Source: S.L. 1963, ch. 205, § 1; 1967, ch. 197, § 1; 1987, ch. 190, § 10; 1991, ch. 256, § 5.

**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.

Source: S.L. 1963, ch. 205, § 1; 1975, ch. 222, § 4; 1989, ch. 667, § 10.

**21-10-10. State investment board fund — Cost of operation of board.** Repealed by S.L. 1989, ch. 667, § 13.

**CHAPTER 21-11**

**NATURAL RESOURCES DEVELOPMENT BOND ISSUE**

Section	Section
21-11-01. Declaration and finding of public purpose.	21-11-05. Approved application filed with industrial commission.
21-11-02. Application for loan — Form — Contents — Preference of applications.	21-11-06. Disbursements of loan — Inspection fee.
21-11-03. Processing of application — Fee — Purpose.	21-11-07. Appropriation of funds.
21-11-04. Approval or rejection of application.	21-11-08. General obligation state of North Dakota bonds, natural resources power development series — Bond purpose.

STATE INVESTMENT BOARD

21-10-06

**Effective Date.**

The 2009 amendment of this section by section 1 of chapter 514, S.L. 2009 became effective August 1, 2009.

The 2003 amendment of this section by section 3 of chapter 561, S.L. 2003 became effective August 1, 2003.

**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.

**Source:** S.L. 1963, ch. 205, § 1; 1987, ch. 190, § 7; 1991, ch. 256, § 3; 2007, ch. 228, § 1. section 1 of chapter 228, S.L. 2007 became effective August 1, 2007.

**Effective Date.**

The 2007 amendment of this section by

**21-10-06. Funds under management of board — Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workforce safety and insurance fund.
5. National guard tuition trust fund.
6. Public employees retirement system.
7. Insurance regulatory trust fund.
8. State risk management fund.
9. Budget stabilization fund.
10. Health care trust fund.
11. Cultural endowment fund.
12. Petroleum tank release compensation fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous, the moneys of the individual funds may be commingled for investment purposes.

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.

April 4, 2011

**PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2302**

That the House recede from its amendments as printed on page 1057 of the Senate Journal and page 1186 of the House Journal and that Engrossed Senate Bill No. 2302 be amended as follows:

Page 1, line 1, after "to" insert "create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to the legacy and budget stabilization fund advisory board; to"

Page 1, line 1, remove "21-10-01,"

Page 1, line 1, remove the second comma

Page 1, line 2, replace "the membership" with "meetings"

Page 1, line 3, after "fund" insert "; and to declare an emergency"

Page 1, remove lines 5 through 24

Page 2, remove lines 1 through 30

Page 3, line 27, remove "Except for the budget stabilization fund"

Page 3, line 28, remove "and the legacy fund"

Page 3, line 28, overstrike ", the" and insert immediately thereafter "The"

Page 4, line 3, overstrike "The" and insert immediately thereafter "Except for the legacy fund, the"


Page 4, after line 5, insert:

**"SECTION 3. A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:**

**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 board consists of two members of the 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 state retirement and investment office shall provide staff services to the legacy and budget stabilization fund advisory board.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."



Renumber accordingly



April 12, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2302

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