# TESTIMONY OF SCOTT MILLER

## House Bill 1231 – Investment Director Requirements

Good Morning, my name is Scott Miller. I am the Executive Director of the North Dakota Public Employees Retirement System, or NDPERS. I am here to testify in a neutral position regarding House Bill 1231.

HB 1231 splits NDCC section 21-10-05 into several subsections. The first sentence of subsection 2 provides direction in regard to the Internal Revenue Code's (IRC) "exclusive benefit rule": "The investment director shall see that moneys invested are at all times handled in the best interests of the funds." The exclusive benefit rule is also reflected in NDCC section 21-10-07, relating to the investments by the State Investment Board (SIB): "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." The IRC requires that monies held in trust for retirement plan participants be held and invested for the "exclusive benefit" of the members, retirees and beneficiaries. The above provisions are clearly in compliance with the exclusive benefit rule.

The new second sentence in subsection 2 isn't as clear. It provides: "<u>The investment director shall consider the benefits of investing moneys locally before investing moneys outside the state.</u>" We are concerned about whether this sentence is in compliance with the exclusive benefit rule. The sentence is not clear regarding what "benefits" must be considered. Is it benefits to our members, which would be consistent with the exclusive benefit rule, if somewhat redundant? Is it benefits to the locality in which the investment would be made, which would potentially not be consistent with the exclusive benefit rule? We are just not clear.

Aside from the potential exclusive benefit rule issue, I also question whether this new provision would affect the investment process at all. As I understand the process, the NDPERS Board creates an asset allocation and sends it to the SIB. The SIB reviews and approves that asset allocation. The SIB then looks at investment managers and chooses those managers that they believe are the best choice for the required asset allocation. The exclusive benefit rule provided in NDCC section 21-10-07 guides the SIB's decision regarding what investment managers to retain. The SIB then delegates to the Investment Director the responsibility for the contracting process with those successful investment managers, and executing the resulting contract.

Note the absence of a time in which the investment director could possibly “consider the benefits of investing moneys locally”. The investment decision-making process is reserved for the SIB, not the investment director. As such, this provision does not seem like it would impact the process. However, it may bring into question our compliance with the IRC’s “exclusive benefit rule”. If the Internal Revenue Service were to determine that it violated the exclusive benefit rule, we may lose our qualified status.

That concludes my testimony.