

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1309

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1309
1/29/2025

A BILL for an Act to create and enact a new section to chapter 54-06 of the North Dakota Century Code, relating to state contracts with certain companies that boycott energy, mining, and production agriculture; and to provide for application.

9:49 a.m. Chairman Warrey opened the hearing.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Christy, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Discussion Topics:

- Align with values
- Free speech violation
- Vague provision
- All State entities
- BND Study
- 67th Legislature HB 1429
- Study

9:49 a.m. Representative Matthew Heilman, District 7, Bismarck ND, introduced, testified and submitted testimony #32417.

9:53 a.m. Sherry Neas, Director of Shared Services Division, Office of Management and Budget, testified in opposition and submitted testimony #32139

10:01 a.m. Jodi Smith, Interim Executive Director, Retirement & Investment Office (RIO), testified in opposition and submitted testimony #32267.

10:04 a.m. Representative Schauer moved a Do Not Pass.

10:04 a.m. Representative Grandberg seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Landon Bahl	AB
Representative Collette Brown	AB
Representative Josh Christy	Y
Representative Lisa Finley-DeVille	AB
Representative Karen Grindberg	Y
Representative Jorin Johnson	Y

Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Mike Schatz	Y
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 11-0-3.

10:05 a.m. Representative Schauer will carry the bill.

10:03 a.m. Chairman Warrey closed the hearing.

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1309 ([25.0082.01000](#))

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **DO NOT PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1309 was placed on the Eleventh order on the calendar.



Management
and Budget

Testimony in Opposition of
House Bill 1309
House Industry, Business and
Labor Committee
January 29, 2025

TESTIMONY OF

Sherry Neas, Director, Shared Services Division

Good morning, Chairman Warrey and members of the committee. My name is Sherry Neas, Director of Shared Services Division and Chief Procurement Officer under the Office of Management and Budget (OMB). OMB opposes HB 1309.

HB 1309 would further complicate the procurement and contracting process and impact thousands of state contracts annually. It would create a new section Chapter 54-06 General Provisions that would broadly apply to all contracts for all state agencies and political subdivisions when entering contracts valued at \$100,000 or more with a company with ten or more full-time employees.

The bill prohibits a government entity from contracting with a company unless verified that the company does not boycott energy and production agriculture. The bill requires a list of financial institutions not eligible to receive investments of state funds by the state investment board and prohibits government entities from contracting with companies on that list.

The bill provides an exception if the government entity determines that the goods or services are not otherwise available.

This bill is structured like HB 1368 bill last session, which was related to investments and purchasing contracts regarding companies that boycott Israel.

This bill, however, may raise Constitutional concerns of First Amendment free speech violations and possible risk of a federal 42 USC sec. 1983 claim. An individual or organization's expressions of their opinions and beliefs is a constitutionally protected activity. Any consequences to be applied to vendors that refuse to agree to this provision must be carefully crafted by legal counsel to avoid risk of restriction of freedom of speech, potentially exposing the state, political subdivisions and their employees to liability.

Last session, there were several environmental social governance (ESG) bills, including HB 1429 which was like this bill. HB 1429 was hog-housed, and the enrolled version of the bill required the Bank of North Dakota to conduct a study on environmental, social, and governance trends and report to legislative management. The study included trends, laws, and policies that impact businesses and industries of this state, with input from experts in energy, agriculture, investment, insurance, economic development, finance, procurement, contracting and laws related to these areas.

In the final report issued by the Bank of North Dakota, a recommendation is made on page 54:

"It's recommended to avoid the use of blacklists for state contracts or investments. Blacklists have the potential to increase fees, limit investment opportunities, and reduce investment returns."

Best practices in government procurement requires purchasing and contract decisions based upon the business requirements, quality and price of offered bids or proposals, and the evaluation criteria set forth in the solicitation.

This bill would deny a company the opportunity to contract with a government entity based upon the opinions of the company, related to environmental social governance concerns. Government entities attempting to negotiate contracts would certainly find businesses hesitant to sign this vague provision, and others would refuse to agree to this provision altogether.

Mr. Chairman and committee members, this concludes my testimony. While this bill is well-intended to support North Dakota's energy and agriculture industries, it would complicate procurement and contracts for all state agencies and political subdivisions and could have legal implications. OMB stands in strong opposition to HB 1309.

I would be happy to answer any questions.



House Bill 1309
North Dakota Retirement and Investment Office (RIO)
Testimony before Industry, Business and Labor
Representative Jonathan Warrey, Chair

Jodi Smith – Interim Executive Director
Scott Anderson, CFA, MBA – Chief Investment Officer
Chad Roberts, MAC – Deputy Executive Director/Chief Retirement Officer

I. RIO Statutory Authority and Responsibilities

The Retirement and Investment Office (hereinafter “RIO”) was created by the 1989 Legislative Assembly to capture administrative and investment cost savings in the management of the investment program of the State Investment Board (SIB) and the retirement program of the Teachers’ Fund for Retirement (TFFR). Statutory authority for the agency is found in North Dakota Century Code chapter 54-52.5 and the programs are governed by chapters 21-10 (SIB) and 15-39.1 (TFFR).

The SIB has the statutory responsibility to administer the investment program for 31 funds including the Legacy Fund, TFFR, PERS, and WSI. It also maintains contractual relationships for the investment management of multiple political subdivisions and governmental funds. Currently SIB is responsible for the investment of the Legacy Fund, seven pension funds and 23 other non-pension funds for a total of 31 separate client funds with an overall fund value of roughly \$23 billion as of October 31, 2024.

II. Opposition to H.B. 1309

Over the past two legislative sessions, North Dakota thoroughly evaluated its approach to investing state funds, prioritizing strategies to maximize financial returns and increase transparency.

The 68th Legislative Assembly enacted House Bill 1429. This legislation directed Bank of North Dakota (BND) to lead a comprehensive statewide Environmental, Social, Governance (ESG) study. Throughout this initiative there was a clear understanding that North Dakota is not stepping back from its commitment to energy and agriculture. Instead, it is forging a new path by outlining a blueprint that demonstrates how transformation and innovation can thrive in a world focused on carbon management.

The ESG study specifically recommended to avoid the use of blacklists for state contracts or investments. Blacklists have the potential to increase fees, limit investment opportunities, and reduce investment returns.

The ESG Study Steering Committee included representatives from government agencies, the private sector and various associations. The following were the representatives

ESG Study Steering Committee	
Tammy Miller	Lt. Governor
Dale Patten	Senator
Anna Novak	Representative
Alisa Mitskog	Representative
Kelvin Hullet	Senior VP of Business Development, Bank of North Dakota
Charlie Gorecki	CEO, Energy & Environment Research Center
Kayla Ver Helst	Sustainability Officer, Bank of North Dakota
Doug Goehring	Commissioner, North Dakota Department of Agriculture
Jon Godfread	Commissioner, North Dakota Insurance Department
Randy Christmann	Commissioner, North Dakota Public Service Commission
Thomas Beadle	Treasurer, North Dakota State Treasurer
Claire Vigesaa	Executive Director, North Dakota Transmission Authority
Dave Glatt	Director, North Dakota Department of Environmental Quality
Jan Murtha	Executive Director, North Dakota Retirement and Investment
Lynn Helms	Former Director, North Dakota Department of Mineral Resources
Reice Haase	Deputy Director, North Dakota Industrial Commission
Tom Oakland	Energy Research & Development Manager, North Dakota Department of Commerce
Ashley Zickefoose	Vice President of Environmental, Safety & Health, ONEOK
Blu Hulsey	Senior Vice President of Environmental, Safety & Health, Government & Regulation Affairs, Continental Resources
Chris Kunkle	Director of State Affairs, Apex Clean Energy
Kathy Neset	President, NESET Consulting
Nick Martin	Director of Strategy & Advocacy, Xcel Energy
Stephanie Sievert	Vice President & Chief Accounting Officer, MDU Resources Group
Chris Johnson	Senior Vice President & Chief Investment Officer, Basin Electric Power Cooperative
Jason Bohrer	CEO, North Dakota Lignite Energy Council
Jesse Beckers	Energy Program Manager, North Dakota Natural Resources Trust
Ron Ness	President, North Dakota Petroleum Council

This ESG study, noted that before ESG became mainstream, fiduciaries routinely integrated aspects of environmental, social and governance as part of their due diligence process. This included evaluating corporate governance and other relevant criteria to gauge a company's long-term solvency and sustainability. Reinforcing flexibility for investments in actively managed funds should prioritize returns over other factors, which is in the best interest of any state.

North Dakota state funds are not invested in dedicated ESG funds pursuant to state law and the prudent investor rule. State agencies employ a disciplined and rigorous manager selection process to identify investment managers for its client funds. With the exception of searches for the Legacy Fund which is required by state law to prioritize investment in the state's business economy through the in-state investment program, managers are selected with the goal of maximizing forward-looking, risk-adjusted returns.

While ESG-dedicated funds may be included in the initial list of viable investment products, ESG funds are filtered out through the selection process because other products are superior and/or these ESG funds do not maximize risk-adjusted returns. If an ESG-focused fund does meet minimum requirements, the firm that manages this fund oftentimes offers a similar non-ESG strategy that is objectively superior for maximizing risk adjusted returns.

Opposition to HB 1309 should in no way be construed as a lack of support for investment in the agriculture or energy sectors. The SIB recognizes the importance of the energy and agriculture sectors for a thriving economy and continues to invest in companies in this sector and implements business practices that would not restrict any investment or business activities within these sectors for non-pecuniary reasons.

III. Summary

Pursuant to both North Dakota law and SIB policy, RIO implements business practices that would not restrict any investment or business activities within either the energy or agriculture sectors for non-pecuniary reasons. The proposal, though well intentioned, may be infeasible to administer and significantly increase the cost and resources needed to perform compliance monitoring as well as have the unintended consequence of requiring the agency to internalize many functions that are currently performed by external partners. An additional consequence of impairment to contracting with third parties and a subsequent need to internalize operations at a speed beyond our current phased proposal would have a detrimental impact to the investment program and client fund earnings.



North Dakota
House of Representatives
STATE CAPITOL
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Representative Matthew Heilman

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COMMITTEES:

Education
Political Subdivisions

January 29th, 2025

Chairman Warrey and members of the Industry, Business and Labor Committee,

My name is Matt Heilman, and I am a state representative from North Dakota's seventh legislative district in Bismarck. I am here today to testify in favor of HB 1309 relating to state contracts. This bill was brought to me by one of my constituents. This bill caught his attention because it had passed in the state of Idaho. The goal of this bill is to have contracts with companies that have aligned values with North Dakota.

In this bill, a government entity may not enter a contract with a company if they participate in a boycott as described in subsection one. This bill applies to a contract between a government entity and a company that is paid wholly or partly by public funds. Section one number four does offer an exception.

Examples of companies doing this include Duke Energy planning to have net-zero emissions by 2050 by phasing out coal and increasing renewable energy use. Google also plans to be 100% carbon-free by 2030. Other businesses taking similar steps are Amazon, Apple, Microsoft, and PepsiCo.

Mr. Chairman and members of the committee I will certainly stand for any questions you may have.