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Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1429

Introduced by

Representatives Novak, Koppelman, Louser, J. Olson, S. Olson, Porter, M. Ruby, Thomas
Senators Elkin, Magrum, Rummel

1 A BILL for an Act to create and enact a new section to chapter 54-06 of the North Dakota
2 Century Code, relating to state contracts with certain companies that boycott energy, mining,
3 and production agriculture; for an Act to create and enact a new section to chapter 21-06 and a
4 new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code.
5 relating to the investment and management of public funds and unfair discrimination in the
6 business of insurance; to amend and reenact section 21-10-08.1 of the North Dakota Century
7 Code, relating to the prohibition on social investments; and to provide for a legislative
8 management study.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 ~~SECTION 1. A new section to chapter 54-06 of the North Dakota Century Code is created~~
11 ~~and enacted as follows:~~
12 ~~Prohibition on contracts – Boycotting critical state sectors.~~
13 ~~1. As used in this section:~~
14 ~~a. "Boycott" means without any ordinary business purpose, refusing to deal with,~~
15 ~~terminating business activities with, or otherwise taking any action intended to~~
16 ~~penalize, inflict economic harm on, or limit commercial relations with a company~~
17 ~~because the company:~~
18 ~~(1) Engages in the exploration, production, utilization, transportation, sale, or~~
19 ~~manufacturing of fossil fuel-based energy or mining and does not commit or~~
20 ~~pledge to meet environmental standards beyond applicable federal and~~
21 ~~state law;~~
22 ~~(2) Engages in production agriculture;~~

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1 ~~(3) Engages in, facilitates, or supports the manufacture, import, distribution,~~
2 ~~marketing, advertising, sale, or lawful use of firearms, ammunition, or~~
3 ~~components, parts, and accessories of firearms or ammunition; or~~
4 ~~(4) Does business with a company engaged in the activities described in this~~
5 ~~subdivision;~~

6 ~~b. "Company" means a for profit organization, association, corporation, partnership,~~
7 ~~joint venture, limited partnership, limited liability partnership, or limited liability~~
8 ~~company, including a wholly owned subsidiary, majority owned subsidiary, parent~~
9 ~~company, or affiliate of those entities or business associations which exists to~~
10 ~~make a profit. For purposes of this section, "company" does not include a sole~~
11 ~~proprietorship.~~

12 ~~c. "Governmental entity" means a state agency or political subdivision of this state.~~

13 ~~2. This section applies to a contract between a governmental entity and a company with~~
14 ~~ten or more full time employees which has a value of one hundred thousand dollars or~~
15 ~~more which is to be paid wholly or in part from public funds.~~

16 ~~3. Except as provided in subsection 4, a governmental entity may not enter a contract~~
17 ~~with a company for goods or services unless the contract contains a written verification~~
18 ~~the company:~~

19 ~~a. Does not boycott energy and production agriculture;~~

20 ~~b. Will not boycott energy and production agriculture during the term of the contract;~~
21 ~~and~~

22 ~~c. Is not included on a list of financial institutions not eligible to receive investments~~
23 ~~of state funds by the state investment board.~~

24 ~~4. Subsection 3 does not apply to a contract if the governmental entity determines and~~
25 ~~documents the goods or services are not otherwise available on commercially~~
26 ~~reasonable terms or if subsection 3 is inconsistent with the governmental entity's~~
27 ~~constitutional or statutory duties.~~

28 **SECTION 1.** A new section to chapter 21-06 of the North Dakota Century Code is created
29 and enacted as follows:

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Public funds - Investment.

1. As used in this section, "plan" means any plan, fund, or program established or maintained by the state or a political subdivision, including any public university, to do any of the following:
 - a. Provide retirement income or other retirement benefits to employees or former employees.
 - b. Defer income by employees for a period of time extending to the termination of covered employment or beyond.
 - c. Invest taxpayer funds for any purpose.
2. Unless a person follows guidelines consistent with the governmental entity's obligation to act on pecuniary factors, the governmental entity that establishes, maintains, or manages a plan may not grant proxy voting authority to a person that is not part of the governmental entity.
3. The shares held directly or indirectly by a plan may be voted only in the pecuniary interest of the plan. Notwithstanding section 21-10-07, the share may not be voted to further nonpecuniary, environmental, social, political, ideological, or other benefits or goals and plan assets may not be entrusted to any fiduciary that has a practice of or commits to engaging with companies or voting shares based upon nonpecuniary factors.
4. Notwithstanding section 21-01-07, a fiduciary may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless the proxy advisory firm's or the service provider's voting guidelines are consistent with the fiduciary's obligation to act solely based on pecuniary factors.
5. Proxy votes made on behalf of client funds under section 21-10-06 must be made in accordance with sections 21-10-07 and 21-10-08.1.
6. The state investment board may not adopt a practice of following the recommendations of a proxy advisory firm or other service provider unless the proxy advisory firm's or the service provider's voting guidelines comply with the requirements of sections 21-10-07 and 21-10-08.1.

SECTION 2. AMENDMENT. Section 21-10-08.1 of the North Dakota Century Code is amended and reenacted as follows:

21-10-08.1. Social investment - Prohibition.

1. As used in this section, "social investment" means the consideration of socially responsible criteria and environmental, social, and governance impact criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return at a prudent level of risk to the state.
2. Except as otherwise provided in a state investment policy relating to the investment of the legacy fund and unless the state investment board can demonstrate a social investment would provide an equivalent or superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, the state investment board may not invest state funds for the purpose of social investment.

SECTION 3. A new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Unless the refusal is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience, refusing to insure solely in consideration of the risk's environmental, social, and governance criteria; diversity, equity, and inclusion policies; or political and ideological factors.

SECTION 4. LEGISLATIVE MANAGEMENT STUDY - DIVESTMENT OF COMPANIES THAT BOYCOTT ENERGY OR COMMODITIES. During the 2023-24 interim, the legislative management shall study environmental social governance as it pertains to a set of nonspecific, quantifiable, and nonquantifiable criteria with attributing factors used for making determinations, decisions, or investments as it pertains to government and private industry in the state. The study must include an evaluation of investment policy as it relates to environmental social governance and the level of involvement the state has with companies that use environmental social governance in their ranking when making business or investment decisions. The study also must include the potential implications for the state as it relates to the boycott of energy or production agriculture commodities by companies that intend to penalize, inflict economic harm on, or limit commercial relations. All aspects of boycotts, including the transport, sale, utilization, production, or manufacturing of natural gas, oil, coal, petrochemicals, or production agricultural commodities must be evaluated. The legislative management shall report its findings and

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- 1 recommendations, together with any legislation required to implement its recommendations, to
- 2 the sixty-ninth legislative assembly.