

**2023 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1429**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1429  
01/23/2023

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
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Chairman Louser called to order 11:12 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

### Discussion Topics:

- Contracts
- Municipal bond market
- ESG impact
- Consequences
- Bid notice

### In favor:

Representative Anna Novak, District 33, prime bill sponsor, #15100  
Bette Grande, CEO of Roughrider Policy Center #15628  
Jonathan Fortner, VP Government Relations, ND Lignite Energy Council, #15146  
Geoff Simon, Western Dakota Energy Association, #15266  
Dr. Brent Bennett, Policy Director, Life:Powered, #15248  
Nephi Cole, Director of Gov't Relations – State Affairs, National Shooting Sports Foundation (“NSSF”) #15309

### Opposed:

Sherry Neas, Director of Central Services of the ND Office of Management and Budget, #15331  
Janilyn Murtha, Executive Director and Scott Anderson, Chief Investment Officer, ND Retirement, and Investment Office (“RIO”) #15342  
Andrew Alexis Varvel, District 47, #15169  
Tag Anderson, Director of Risk Management of the ND Office of Management and Budget (not written testimony)

### Neutral

Rick Clayburgh, Executive Director ND Bankers Association (no written testimony)

### Additional written testimony:

Doug Sharbono, Citizen of ND, #15283

House Industry, Business and Labor Committee

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Chairman Louser adjourned the hearing 12:38 PM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1429  
02/13/2023

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
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Chairman Louser called to order 10:07 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Dakane, Johnson, Kasper, Ruby, Schauer, Thomas, Tveit, Warrey.

Members Absent: Representative Boschee, Christy, Koppelman, Wagner.

### Discussion Topics:

- Committee action

Representative Louser presented a proposed amendment #20616, LC#23.0990.01003

Representative Schauer moves to adopt the amendment.  
Representative Tveit seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	AB
Representative Josh Christy	AB
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	AB
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 10-0-4

Chairman Louser adjourned the hearing 10:32 AM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1429  
02/14/2023

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
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Chairman Louser called to order 3:44 PM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Warrey.

Member Absent: Representative Wagner

### Discussion Topics:

- Committee action

Representative Warrey proposed amendment LC #23.0990.01004.

Janilyn Murtha, Executive Director, ND Retirement, and Investment Office available to answer questions.

Jon Godfread, Commissioner, ND Insurance Department, available to answer questions.

Representative Tveit moved to adopt the amendment.  
Representative Warry seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 12-0-2

Representative Tveit moved do pass as amended.  
Representative Dekane seconded.

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Representative Scott Louser	Y
Representative Mitch Ostlie	Y
Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	AB
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	AB
Representative Jonathan Warrey	Y

Motion passed 12-0-2

Representative Warrey will carry the bill.

Chairman Louser adjourned the meeting 4:00 PM

*Diane Lillis, Committee Clerk*

2/14/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1429

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 7 of section 26.1-04-03 and a new section to chapter 54-06 of the North Dakota Century Code, relating to unfair discrimination in the business of insurance and the investment and management of public funds; to amend and reenact section 21-10-08.1 of the North Dakota Century Code, relating to the prohibition on social investments; and to provide for a legislative management study.

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

**SECTION 1. 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 2.** 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 3.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Proxy voting.**

1. Proxy votes made on behalf of state funds or the funds of political subdivisions which receive investment management services from the state must be made in accordance with the requirements provided in section 21-10-08.1.

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2-14-23

2. A state entity 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 section 21-10-08.1.

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

Renumber accordingly

1/2



**REPORT OF STANDING COMMITTEE**

**HB 1429: Industry, Business and Labor Committee (Rep. Louser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1429 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subdivision to subsection 7 of section 26.1-04-03 and a new section to chapter 54-06 of the North Dakota Century Code, relating to unfair discrimination in the business of insurance and the investment and management of public funds; to amend and reenact section 21-10-08.1 of the North Dakota Century Code, relating to the prohibition on social investments; and to provide for a legislative management study.

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

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**21-10-08.1. Social investment - Prohibition.**

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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.

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**SECTION 3.** A new section to chapter 54-06 of the North Dakota Century Code is created and enacted as follows:

**Proxy voting.**

1. Proxy votes made on behalf of state funds or the funds of political subdivisions which receive investment management services from the state must be made in accordance with the requirements provided in section 21-10-08.1.
2. A state entity 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 section 21-10-08.1.

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

Renumber accordingly

**2023 SENATE INDUSTRY AND BUSINESS**

**HB 1429**

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1429  
3/15/2023

A bill relating to unfair discrimination in the business of insurance and the investment and management of public funds; relating to the prohibition on social investments; and to provide for a legislative management study.

10:40 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### **Discussion Topics:**

- Free market
- Fossil fuel companies
- ESG Laws and policy
- State industries
- Energy discrimination

10:40 AM Representative Anna Novak, District 33, introduced HB 1429 and testified in favor. No written testimony.

10:55 AM Travis Zabloutney, from District 5, verbally testified in favor.

10:57 AM Jon Godfread, North Dakota Insurance Commissioner, testified and provided an amendment to HB 1429. #25624.

10:59 AM Thomas Beadle, North Dakota Treasurer, verbally testified in support of HB 1429.

11:02 AM Janylyn Murtha, Retirement and Investment Office, testified in support. #25151

11:09 AM David Snyder testified in opposition to HB 1429. #24954, #24955

11:15 AM Rick Clayburgh, ND Bankers Association, verbally testified neutral on HB 1429.

11:17 AM Dr. Brent Bennett testified online in support of HB 1429, #25116

10:23 AM Craig Rucker, Testified online in support of HB 1429, #24508

### **Additional written testimony:**

Geoff Simon #25166

Jonathan Fortner #25115

11:25 AM Chairman D. Larsen closed the hearing.

*Brenda Cook, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1429  
3/27/2023

A bill relating to unfair discrimination in the business of insurance and the investment and management of public funds; and relating to the prohibition on social investments; to provide an appropriation; and to provide for a legislative management study.
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11:23 AM Chairman D. Larsen called the Committee Work meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### **Discussion Topics:**

- ESG study
- Proxy voting
- Redundancy of bills

11:31 AM Jonathan Fortner, Lignite Energy Council, provided information for the committee.

11:31 AM Committee Discussion.

11:34 AM Chairman D. Larsen adjourned the meeting.

*Brenda Cook, Committee Clerk*

# 2023 SENATE STANDING COMMITTEE MINUTES

## Industry and Business Committee Fort Union Room, State Capitol

HB 1429  
3/28/2023

A bill relating to unfair discrimination in the business of insurance and the investment and management of public funds; and relating to the prohibition on social investments; to provide an appropriation; and to provide for a legislative management study.
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10:01 AM Chairman D. Larsen called the meeting to order. Members present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Klein, Senator Boehm.

### Discussion Topics:

- Committee action

10:14 AM Senator Barta moved to adopt an amendment # LC23.0990.02003 (#27205) and referenced an amendment from the North Dakota Insurance Commissioner's Office. #25624

10:15 AM Senator Klein seconded the motion to adopt the amendment to HB 1429.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0 Motion passed.

10:16 AM Senator Kessel moved to DO PASS AS AMENDED HB 1429.

Senator Klein seconded the motion.

Roll call vote:

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Vote: 5-0-0- Motion passed.

Senator Klein will carry the bill.

10:17 AM Chairman D Larsen closed the meeting.

*Brenda Cook, Committee Clerk*

March 28, 2023

24  
3-28-23

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1429

Page 1, line 5, after the semicolon insert "to provide an appropriation;"

Page 1, line 15, after "board" insert ", or any other state entity investing public funds,"

Page 1, line 18, after "board" insert ", or other state entity,"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "refusing" with "Refusing"

Page 1, line 24, after "insure" insert "or charging a different rate"

Page 2, line 2, after "factors" insert ", unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience"

Page 2, line 12, remove "DIVESTMENT OF COMPANIES"

Page 2, line 13, replace "THAT BOYCOTT ENERGY OR COMMODITIES" with  
"ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS"

Page 2, line 13, remove "During the 2023-24 interim, the legislative"

Page 2, replace lines 14 through 26 with:

- "1. During the 2023-24 interim, the legislative management shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance, economic development, finance, procurement, and contracting, and laws related to these areas.
2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
4. The legislative management shall report its findings and recommendations, together with any legislation and appropriation requests required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 4. APPROPRIATION - LEGISLATIVE MANAGEMENT - ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS STUDY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$45,000, or so much of the sum as may be necessary, to the legislative management for the purpose of defraying costs associated with the study of current environmental, social, and governance policies, trends, and issues that impact citizens, businesses, and industries of this state, for the biennium beginning July 1, 2023, and ending June 30, 2025."

24  
3-28-23

Renumber accordingly



**REPORT OF STANDING COMMITTEE**

**HB 1429, as engrossed: Industry and Business Committee (Sen. Larsen, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1429 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 5, after the semicolon insert "to provide an appropriation;"

Page 1, line 15, after "board" insert ", or any other state entity investing public funds."

Page 1, line 18, after "board" insert ", or other state entity."

Page 1, remove lines 22 and 23

Page 1, line 24, replace "refusing" with "Refusing"

Page 1, line 24, after "insure" insert "or charging a different rate"

Page 2, line 2, after "factors" insert ", unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience"

Page 2, line 12, remove "**DIVESTMENT OF COMPANIES**"

Page 2, line 13, replace "**THAT BOYCOTT ENERGY OR COMMODITIES**" with "**ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS**"

Page 2, line 13, remove "During the 2023-24 interim, the legislative"

Page 2, replace lines 14 through 26 with:

- "1. During the 2023-24 interim, the legislative management shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance, economic development, finance, procurement, and contracting, and laws related to these areas.
2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
4. The legislative management shall report its findings and recommendations, together with any legislation and appropriation requests required to implement the recommendations, to the sixty-ninth legislative assembly.

**SECTION 4. APPROPRIATION - LEGISLATIVE MANAGEMENT - ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS STUDY.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$45,000, or so much of the sum as may be necessary, to the legislative management for the purpose of defraying costs associated with the study of current environmental, social, and governance policies, trends, and issues that impact citizens, businesses, and industries of this state, for the biennium beginning July 1, 2023, and ending June 30, 2025."

Renumber accordingly

**2023 CONFERENCE COMMITTEE**

**HB 1429**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1429  
04/12/2023

Conference Committee

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
---

Chairman Warrey called to order 2:35 PM

Members Present: Chairman Warrey, Representatives Tveit, Senators Larsen, Kessel, Boehm.

Member absent: Representative Schauer

### Discussion Topics:

- Readily available
- Investment details
- Perpetual contracts
- Treasurer information
- Investment reports
- Agriculture language

Committee discussion.

Chairman Warrey adjourned the meeting 2:45 PM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

**Industry, Business and Labor Committee**  
Room JW327C, State Capitol

HB 1429  
04/13/2023

Conference Committee

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
---

Chairman Warrey called to order 2:40 PM

Members Present: Chairman Warrey, Representatives Schauer, Tveit, Senators Larsen, Kessel, Boehm.

**Discussion Topics:**

- Study language
- Accessibility
- Information

Committee discussion.

Chairman Warrey adjourned the meeting 3:02 PM

*Diane Lillis, Committee Clerk*

# 2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Room JW327C, State Capitol

HB 1429  
04/17/2023

Conference Committee

Relating to state contracts with certain companies that boycott energy, mining, and production agriculture.
---

Chairman Warrey called to order 9:06 AM

Members Present: Chairman Warrey, Representatives Schauer, Tveit, Senators Kessel, Boehm.

Member absent: Senator Larsen

**Discussion Topics:**

- Committee work

Representative Schauer moved the Senate recede from Senate amendments and amend as follows; #27614, LC 23.0990.02007

Senator Kessel seconded.

Motion passed 5-0-1

House carrier Representative Warrey.  
Senate carrier Senator Klein

Chairman Warrey adjourned the meeting 9:11 AM

*Diane Lillis, Committee Clerk*

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4/17/23  
P-1902

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1429

That the Senate recede from its amendments as printed on pages 1487 and 1488 of the House Journal and pages 1215-1217 of the Senate Journal and that Engrossed House Bill No. 1429 be amended as follows:

Page 1, line 4, after "21-10-08.1" insert "and subsection 10 of section 54-44.4-02"

Page 1, line 5, after "investments" insert "and restrictions on perpetual contracts"

Page 1, line 5, replace "study" with "report"

Page 1, line 15, after "board" insert ", or any other state entity investing public funds."

Page 1, line 18, after "board" insert ", or other state entity."

Page 1, remove lines 22 and 23

Page 1, line 24, replace "refusing" with "Refusing"

Page 1, line 24, after "insure" insert "or charging a different rate"

Page 2, line 2, after "factors" insert ", unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience"

Page 2, after line 11 insert:

**"SECTION 4. AMENDMENT.** Subsection 10 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services. Nothing in this subsection may be construed to allow an agency to create or renew a contract perpetually and without limitation.

Page 2, line 12, replace "**LEGISLATIVE MANAGEMENT**" with "**BANK OF NORTH DAKOTA**"

Page 2, line 12, remove "**DIVESTMENT OF COMPANIES** "

Page 2, line 13, replace "**THAT BOYCOTT ENERGY OR COMMODITIES**" with "**ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS - REPORT TO LEGISLATIVE MANAGEMENT**"

Page 2, line 13, remove "During the 2023-24 interim, the legislative"

Page 2, replace lines 14 through 26 with:

- "1. During the 2023-24 interim, the Bank of North Dakota shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance,

economic development, finance, procurement, and contracting, and laws related to these areas.

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4/17/23  
P. 2002

2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study must identify a strategy to make the delivery of investment reports relating to state funds available and readily consumable to the public.
4. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
5. Before June 1, 2024, the Bank of North Dakota shall provide a report of its findings and recommendations to the legislative management, together with any legislation and appropriation requests required to implement the recommendations."

Renumber accordingly



**2023 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL NO. HB 1429 as engrossed

**House Industry Business and Labor Committee**

- Action Taken**
- HOUSE accede to Senate Amendments
  - HOUSE accede to Senate Amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows
  - Unable to agree**, recommends that the committee be discharged, and a new committee be appointed

Motion Made by: Representative Schauer      Seconded by: Senator Kessel

Representatives	4-12	4-13	4-17	Yes	No	Senators	4-12	4-13	4-17	Yes	No
Chairman Warrey	X	X	X	X		Senator Larsen	X	X	AB	AB	
Representative Schauer	AB	X	X	X		Senator Kessel	X	X	X	X	
Representative Tveit	X	X	X	X		Senator Boehm	X	X	X	X	
Total Rep. Vote				3		Total Senate Vote				2	

Vote Count      Yes: 5      No: 0      Absent: 1

House Carrier Warrey      Senate Carrier Klein

LC Number #23.0990 . .02007 of amendment

LC Number #23.0990 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**HB 1429, as engrossed:** Your conference committee (Sens. Larsen, Kessel, Boehm and Reps. Warrey, Schauer, Tveit) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1487-1488, adopt amendments as follows, and place HB 1429 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1487 and 1488 of the House Journal and pages 1215-1217 of the Senate Journal and that Engrossed House Bill No. 1429 be amended as follows:

Page 1, line 4, after "21-10-08.1" insert "and subsection 10 of section 54-44.4-02"

Page 1, line 5, after "investments" insert "and restrictions on perpetual contracts"

Page 1, line 5, replace "study" with "report"

Page 1, line 15, after "board" insert ", or any other state entity investing public funds,"

Page 1, line 18, after "board" insert ", or other state entity,"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "refusing" with "Refusing"

Page 1, line 24, after "insure" insert "or charging a different rate"

Page 2, line 2, after "factors" insert ", unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience"

Page 2, after line 11 insert:

**"SECTION 4. AMENDMENT.** Subsection 10 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services. Nothing in this subsection may be construed to allow an agency to create or renew a contract perpetually and without limitation.

Page 2, line 12, replace "**LEGISLATIVE MANAGEMENT**" with "**BANK OF NORTH DAKOTA**"

Page 2, line 12, remove "**DIVESTMENT OF COMPANIES** "

Page 2, line 13, replace "**THAT BOYCOTT ENERGY OR COMMODITIES**" with "**ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS - REPORT TO LEGISLATIVE MANAGEMENT**"

Page 2, line 13, remove "During the 2023-24 interim, the legislative"

Page 2, replace lines 14 through 26 with:

- "1. During the 2023-24 interim, the Bank of North Dakota shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance,

economic development, finance, procurement, and contracting, and laws related to these areas.

2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study must identify a strategy to make the delivery of investment reports relating to state funds available and readily consumable to the public.
4. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
5. Before June 1, 2024, the Bank of North Dakota shall provide a report of its findings and recommendations to the legislative management, together with any legislation and appropriation requests required to implement the recommendations."

Renumber accordingly

Engrossed HB 1429 was placed on the Seventh order of business on the calendar.

**TESTIMONY**

**HB 1429**



# North Dakota House of Representatives

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

#15100



## Representative Anna S. Novak

District 33  
1139 Elbowoods Drive  
Hazen, ND 58545-4923  
[anovak@ndlegis.gov](mailto:anovak@ndlegis.gov)

## COMMITTEES:

Education  
Energy and Natural Resources

January 23, 2023

### Testimony for HB1429 – ESG and State Contracts

Mr. Chairman, members of the committee, for the record my name is Anna Novak, Representative from District 33. I am sponsoring HB1429. This bill essentially tells the Procurement Department with the state of North Dakota that they are not able to do business with companies that boycott critical state sectors based on Environmental and Social Governance, also known as ESG. Examples of critical state sectors would be those dealing with our fossil fuel industries, agriculture and firearms.

ESG is meant to be a framework within an organization to focus on environmental and social issues. It's put in place to encourage companies to "do the right thing" and invest in companies that want to reduce their carbon emissions and act in a way that is viewed to be socially responsible. Companies are evaluated and given scores based on applying ESG within their organization. Those scores are highly subjective. For instance, companies are allowed to purchase renewable energy credits or hire a diverse workforce to increase their ESG score.

It's admirable when companies try to do things in a way that's better for our environment. And as one of the few young women serving in the North Dakota legislature, of course I think it's great for all views to be heard and for all to have a seat at the table. But ESG is meant to not only discourage, but to penalize investments in fossil fuels and agriculture. It focuses on championing social issues that oftentimes are not in line with family values, which are cherished by the people we represent. There is also an emphasis on equity instead of equality. As a North Dakota native, I believe that flies in the face of encouraging hard work and merit-based accomplishments.

Energy and Agriculture are North Dakota's largest industries. They employ thousands and we have a responsibility to our citizens to protect their livelihoods. During this biennium, we have a surplus of tax revenue specifically because of the energy industry. It's my belief that with state money, we should not be doing business with companies that not only don't want to do business with us...but that want to see the demise of our critical state sectors. I'd like to note that there is a clause that allows us to do business with a company that has adopted ESG if there are no other options available.

Bette Grande from the Heartland Institute is here and will answer any technical questions you may have, as she has helped other states fight back against ESG. I urge you to give HB1429 a Do Pass vote and I'll stand for any questions. Thank you.



January 23, 2023

Chairman Louser and House Industry, Business and Labor Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of House Bill 1429 due to the experiences that the lignite industry has had as it relates to the Environmental, Social and Corporate Governance (ESG) investment principles that are used by many large multinational and national financial institutions as guidance in their investment decision-making process.

We want to be clear, the state and community level banks have not discriminated against us in this manner, this activity happens outside of North Dakota's borders.

The threat from ESG criteria is real and it is leading large financial organizations to unfairly discriminate against the fossil fuel industry which could cost North Dakota thousands of jobs, billions of dollars in capital investment and the millions in state, county and local tax revenue that our industry provides. The use of ESG criteria has directly impacted the lignite industry by drastically increasing our insurance premiums and other unnecessary costs by millions of dollars over the past few years in an attempt to put us out of business.

There is a lack of understanding by the large contingent of activist shareholders, who have demanded the multinational and national banks to adopt ESG discrimination practices, of the benefits the fossil fuel industry provides in affordable and reliable energy that powers our homes and businesses. As a result, there are now currently trillions of dollars in investment capital that are now out of reach for important investments needed for the coal industry to upgrade and improve our facilities to keep them running at our high-capacity factors while meeting or exceeding all federal and state regulations.

We applaud Representative Novak's efforts to engage in these important conversations and while we aren't experts in the details of banking legislation, we hope that stakeholders and the committee members can find common ground to help send a signal that the ESG discrimination will not continue against North Dakota's economic interests.

Thank you for your consideration,

Jonathan Fortner  
Vice President of Government Relations

1016 E. Owens Ave. | PO Box 2277 | Bismarck, ND 58502

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## House Industry, Business, and Labor Committee

### House Bill 1429

Andrew Alexis Varvel

Written Testimony

North Dakota State Capitol

Room 327C

January 23, 2023

9:00AM

### Chairman Louser and Members of the Committee:

My name is Andrew Alexis Varvel. I live in Bismarck, District 47.

I oppose House Bill 1429 on principle. I don't like the idea of the State of North Dakota imposing its ideological commitments onto private corporations. This is a slippery slope which I hope our state won't slide down.

Is “wokeism” in corporate America noxious? Of course.

This legislation is not a good way to deal with it.

And I wonder – why should the State of North Dakota refuse to do business with corporations that boycott energy, mining, firearms, and agricultural sectors – while ignoring the State of California, which has an official policy of boycotting North Dakota tourism for the express purpose of punishing our economy?

Before North Dakota defends cherished industries, it should defend itself.

Thank you, and I welcome questions from the committee.

Andrew Alexis Varvel  
2630 Commons Avenue  
Bismarck, ND 58503  
701-255-6639  
mr.a.alexis.varvel@gmail.com



January 23, 2023

Testimony of Brent Bennett, Ph.D.  
Policy Director, Life:Powered  
Texas Public Policy Foundation  
Before the  
North Dakota House  
Industry, Business and Labor Committee

Chairman Louser and Members of the Committee,

Thank you for the opportunity to testify in support of HB 1429 and to share some of our experience developing and implementing similar laws in Texas. I hope to convey to you both the importance of passing this legislation and to show how our laws are already making a difference in the fight against woke capitalism.

There are many facets to fighting the march of the progressive left through our institutions, and our states have a limited but important role to play in this fight. Ensuring that state pension dollars are not invested in politically motivated ways that harm pensioners and taxpayers is an important first step. The contracting provisions in this bill are also critical because they help ensure that *all* state and local taxpayer dollars are being spent wisely and not going to firms that use taxpayer money to act in ways that harm our taxpayers.

Our states, as active market participants controlling trillions of dollars in investments and spending, cannot be aloof or neutral as to what kinds of companies they do business with. When corporations abandon their role as the vanguards of free market capitalism and advocate for policies that erode the very foundations of capitalism, states should take their business elsewhere. As individuals, we don't want to do business with companies that harm our employees. As taxpayers, we don't want our states to do business with companies that harm our key industries and our tax bases.

**This act will accomplish two things. First, it will ensure that North Dakota state and local taxpayer dollars are not advancing the woke agenda.** Companies are taking our tax dollars and using them to support groups like [Climate Action 100+](#), which has a goal of requiring companies to create “comprehensive business strategies that fully align with the goals of the Paris Agreement and reaching net-zero emissions by 2050 or sooner.” They advocate in favor of policies like the SEC's proposed climate disclosure rule that would place onerous requirements on our businesses and extend the long arm of the federal government ever further into business activities. Some companies are enacting blanket policies restricting financing to [firearms manufacturers](#) or fossil fuel producers and then recruiting their peers to do the same. Others take federal subsidies for wind and solar and then advocate to loosen reliability standards that protect our electric grids.



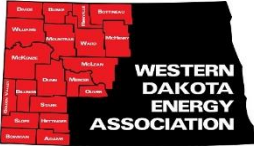
**Second, these policies will create demand for products and services that better serve the goals of North Dakota taxpayers.** Now that states are beginning to exercise their preferences in the market and not allow corporations to take their money while pushing policies that harm them, the market is responding. In just the past year, the two dominant proxy advising firms, ISS and Glass Lewis, which have used their hegemony in that market to advance ESG goals, have begun creating new non-ESG voting policies to avoid losing state pension business, and new investment managers are creating products and services that explicitly adhere to sound fiduciary principles and eschew ESG ideology. Municipal bond underwriting markets are adjusting to new laws in Texas, West Virginia, and elsewhere with new entrants replacing underwriters that can't comply with the laws and other banks rethinking some of their politically biased policies in order to remain in compliance.

Market competition is the antidote to the collusive action that progressive activists seek to impose. **States and municipalities have an important role, as market participants, in fostering competition by demanding products and services that best serve the interests of their taxpayers from companies that are aligned with their interests.**

If you haven't yet seen evidence that your constituents are being harmed by the woke agenda, we would be happy to discuss numerous examples that we've compiled from businesses and individuals from across the country. And the fight will not stop with the industries listed in this bill. Just last week, [JPMorgan](#) announced new emissions reduction targets for their lending in the aviation, cement, and steel industries. It is clear that the progressive left will not stop until they have control over all the means of production, and the fight to preserve the freedom of our businesses from being taken over by their agenda starts with using our state tax dollars wisely.

Sincerely,

Brent Bennett  
Policy Director, Life:Powered  
Texas Public Policy Foundation



# WESTERN DAKOTA ENERGY ASSOCIATION

January 23, 2023

## EXECUTIVE COMMITTEE

Trudy Ruland  
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Coal Conversion  
Counties

David Montgomery  
Williams County

Craig Pelton  
Dunn County

John Phillips  
Coal Conversion  
Counties

Testimony of:

Geoff Simon, Lobbyist #144

in support of HB 1429 – Pushing Back Against ESG Foolishness  
House Industry, Business and Labor Committee

Chairman Louser and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our support for HB 1429 and the strong message it will send to companies that take a dim view of North Dakota's appreciation of fossil fuels, production agriculture and the Second Amendment.

The essence of the bill is simple. Energy and agriculture production and the right to bear arms are fundamental to our way of life. HB 1429 simply says, if your company isn't going to respect the lifeblood of our economy and the values we hold dearly, then our government agencies are not going to do business with you. It's time for North Dakota to join other states that have begun to push back against companies that place the "feel good" policies of the environmental and social governance movement above basic economic common sense.

States that have enacted laws or regulations to discourage "woke capitalism" include:

**Arizona** announced its Investment Risk Management Committee will remove its funds from BlackRock's management because of the firm's ESG positioning.

**Florida** has divested its \$2 billion in state investment funds from BlackRock over its sustainability and ESG policies. The state has also banned the use of ESG criteria in the management of Florida's state-sponsored pension funds.

**Kentucky** notified 11 banks that their ESG policies amounted to energy boycotts that harmed the state's economy, and they would be subject to divestment within months.

**Louisiana** announced the state would either pull its investments from BlackRock and other ESG-fund providers or threatened to do so.

**Missouri** Treasurer Scott Fitzpatrick announced that he would pull his state's funds from BlackRock, Inc.'s asset management in response to the firm's ESG commitments.

**Texas** and **West Virginia** issued a list of companies and funds that were ineligible to do business with the states because of their ESG policies and/or statements.

These are just a few examples of the actions being taken at the state level. In addition, 19 state attorneys general are investigating ESG investing practices of six major banks.

WDEA urges the Industry, Business and Labor Committee to stand behind our state's energy and agriculture industries and give HB 1429 a Do Pass recommendation.

Thank you for the opportunity to offer testimony on this important issue.

Western Dakota Energy Association  
1661 Capitol Way, Bismarck ND 58501  
www.ndenergy.org • 701-527-1832

**Do Pass Testimony  
of Doug Sharbono, citizen of North Dakota  
on HB1429  
in the Sixty-eighth Legislative Assembly of North Dakota**

Dear Chairman Louser and members of the House Industry, Business and Labor Committee,

I am writing as a citizen and believe HB1429 is beneficial legislation. This legislation expands individual freedom against larger forces that promote manipulating ESG in business.

Please give HB1429 a Do Pass.

Thank you,

Doug Sharbono  
1708 9<sup>th</sup> St S  
Fargo, ND 58103

**NEPHI COLE**

Director, Gov't Relations - State Affairs

ncole@nssf.org | 203-426-1320 x217 | nssf.org

January 23<sup>rd</sup>, 2023**Re: HB1429 Prohibition on contracts - Boycotting critical state sectors**

Dear Chairman and members of the committee,

On behalf of the Firearm Trade Association of America, the National Shooting Sports Foundation (NSSF), I write to share our support for House Bill 1429. This bill uses a market approach to disincentivize boycotts and discrimination.

The National Shooting Sports Foundation (NSSF) represents the over 9,000 manufacturers, retailers, distributors, and other businesses in the Firearm Industry. We represent entities as varied as America's largest firearm manufacturers and its smallest sporting goods stores. Our industry is unique. Our industry is essential to the exercise of a fundamental constitutional right, the 2nd Amendment. We support HB 1429 because our members have a history of being denied fair access to financial services – simply because of our industry.

In 2013, Obama Administration senior officials, unable to pass legislation, identified power in leveraging banks to implement their policy agenda. They used financial institutions to inappropriately target lawful businesses in a destructive effort termed "Operation Choke Point". The goal was denial of financial services to the firearms industry and others. Officials at both the Office of Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) insisted firearm businesses be categorically classified and disfavored. They threatened the banks who served our industry. Providers subsequently cancelled firearm industry accounts with little explanation. Others maintained accounts but demanded new collateralization, or simply began charging significantly higher rates for standard services. They de-banked us. They stopped processing legal transactions. They denied financial services. The banks acknowledge it.

Congressional awareness and oversight finally brought a small measure of relief. But hundreds of millions in damage was done, businesses lost, and certain levels of discrimination baked in. "Woke banks" routinely attack 2<sup>nd</sup> Amendment companies. It certainly is not all big banks. But many large banks take actions detrimental to our industry; policies meant to curtail the lawful right to keep and bear arms, curtail lawful commerce, and prejudicially increase costs for the firearms industry. Just last week the Texas Attorney general verified that Citibank maintains discriminatory policies against the firearms industry.

Opponents of this bill may ask for examples of discrimination by these mega banks. We have many. The discrimination is real. They don't just admit to it; in the right circles they are proud of it. We have concern that agriculture, energy, and other industries will be discriminated against as firearms companies are. This bill gives the state of North Dakota opportunity to ensure that they will not be using the services of entities that practice discrimination.

We support this bill and ask that it receive a favorable "due pass" recommendation.

A handwritten signature in black ink, appearing to read "Nephi Cole", is written over a light gray rectangular background.

Nephi Cole  
Director, Government Relations-State Affairs  
The National Shooting Sports Foundation



Testimony in Opposition to  
**House Bill 1429**  
**House Industry, Business  
and Labor Committee**  
January 23, 2023

TESTIMONY OF

**Sherry Neas, Director, Central Services Division**

Good morning, Chairman Louser and members of the committee. My name is Sherry Neas, Central Services Division Director, and Chief Procurement Officer, with the Office of Management and Budget (OMB). OMB opposes HB 1429, as introduced.

HB 1429 would create a new section in NDCC Chapter 54-06 that prohibits a government entity from contracting with a company unless verified that the company does not boycott energy and production agriculture during the term of the contract. Additionally, the bill would prohibit a government entity from contracting with a company that is a financial institution not eligible to receive investments of state funds by the state investment board.

The definition of "Boycott" in lines 9-22 of the bill is broader than the language required to be in the contract, as it also includes consideration of firearms and ammunition.

The bill impacts all government entities and all contracts over \$100,000 with companies having 10 or more employees.

The bill would allow exceptions if the governmental entity determines that the goods or services are not otherwise available on commercially reasonable terms or if the requirement is inconsistent with the government entity's constitutional or statutory duties.

HB 1429 would significantly complicate procurement and state contracting. This broad language would impact all state agencies, higher education institutions and thousands of government contracts, annually. Currently, procurement and contracts have nothing to do with a vendor's position on firearms or environmental and social governance issues.

Procurement rules require all contractual terms and conditions to be disclosed in the bid document, so vendors can review the contract before they submit a bid or proposal. This provision would impact competition on government contracts and the ease of negotiating contracts with successful vendors. Many individuals and businesses would be hesitant to sign this vague provision, and others would refuse to agree to this provision altogether. Any consequences to be applied to vendors that refuse to agree to this provision must be carefully crafted by legal counsel.

The fiscal impact of this bill cannot be calculated, but additional legal costs and time delays can be expected for contract negotiations.

OMB opposes HB 1429. While this bill is well-intended, it would complicate procurement and contracting. Procurement should be focused on getting the best value for state government and selecting the most qualified contractors. Thank you, Mr. Chairman and committee members. This concludes my testimony, and I would be happy to answer any questions.

**House Bill 1429**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony in opposition to HB 1429 before the House Industry, Business, and**  
**Labor Committee**  
**Representative Scott Louser, Chair**  
**Representative Mitch Ostlie, Vice Chair**

**Janilyn Murtha, JD, MPAP – Executive Director**  
**Scott Anderson, CFA, MBA – Chief Investment Officer**

**I. Introduction**

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 State Investment Board has the statutory responsibility to administer the investment program for 28 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 20 other non-pension funds for a total of 28 separate client funds with assets under management (AUM) of roughly \$18 billion as of October 31, 2022.

The AUM has grown from about \$4 billion in 2010 and continue to grow from investment returns and contributions to the Legacy Fund, pension plans, and insurance funds. The combination of the growth of AUM, the number of individually managed funds, and the complexity of mandates such as the Legacy Fund have increased the need for staff resources, infrastructure and new scalable investment processes that can enhance the performance of client funds while reducing the net cost of management of those funds when manager fees are considered.

Currently, the SIB relies entirely on an external investment manager structure; ie RIO does not have internal investment management authority or operations. RIO contracts with over forty investment managers, vendors, and consultants in the administration of our two programs.

**II. Opposition to HB 1429**

Opposition to HB 1429 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. The investment program as a matter of policy and in compliance with North Dakota law as set forth under NDCC Ch. 21-10, only invests for the exclusive benefit of its

beneficiaries in a way that seeks to maximize return for a given level of risk. Any restriction of its investment or commercial set of opportunities for non-pecuniary reasons such as restricting investment in either of these sectors is already prohibited by policy and law.

Our concerns relate to the potential conflict this bill may create with other existing or future legislation, or mandated business practices, the cost and complexity of implementing the bill, and the potential that the bill may unintentionally reduce commercial opportunities with vendors who support these sectors because of the cost the bill imposes on the vendor.

The vast majority of RIO's vendor's conduct business in many if not all states, and the regulation and oversight of these vendors is largely concurrent between state and federal regulatory systems, especially within the securities industry. Uniformity among regulatory requirements is therefore a critical issue for both the vendors and for government entities attempting to procure their services. The proposal, though well intentioned, would impose non-uniform conduct requirements on our vendors and require a level of administration from RIO that may be infeasible to implement. The proposal requires that RIO not only negotiate additional contract provisions with every vendor but also monitor the public statements and private contracts that the vendor may engage in with other clients or providers that have no direct business with RIO or the State of North Dakota. It would be infeasible for RIO to monitor public statements of vendors without a significant increase in compliance personnel and cost; and infeasible for RIO to access information related to the private contracts or dealings the vendor may engage in with other private third parties. In the event that outside vendors are unable or unwilling to work with RIO due to these additional requirements RIO would need to internalize functions that are currently contracted out, significantly increasing costs for the agency.

### **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 and 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.



**Testimony before the House Industry, Business and Labor Committee  
Regarding HB 1429  
January 23, 2023**

Chairman Louser and members of the House Industry, Business and Labor Committee:

My name is Bette Grande, I am the CEO of Roughrider Policy Center, and I thank you for allowing me to testify on HB 1429 this morning.

HB 1429 is a short, sweet, and powerful step to protect vital North Dakota interests against real and growing threats. It acknowledges the fact that key sectors of our state, primarily energy and agriculture, are targeted by banks, insurance companies, the largest corporations in the world, the United Nations and our federal government.

As stewards of public money government entities should be intentional when entering into contracts. HB 1429 simply tells businesses that if they participate or support efforts to penalize our farmers and energy producers, we will not contract with you.

Knowing what is at stake it is only common sense that public money does not flow to companies dedicated to harming our people, our businesses, and our economy.

Environmental, Social, and Governance (ESG) is the most prominent of many efforts to decarbonize our lives, control land use by farmers and others, and to limit choices and options for consumers. Utilizing public money to support these efforts is a violation of public trust.

HB 1429 has some important protections and provisions to limit burdens on government entities and focus the impact of the legislation on those companies with the commitment and resources to harm North Dakotans.

Section 1 b. exempts sole proprietorships that tend to be small businesses.

Section 2 provides that this legislation only applies to contracts valued at more than \$100,000 with companies with 10 or more employees.

Section 3 states that covered contracts must include a certification from the business that it does not have policies or actions harmful to production agriculture or traditional energy.

We cannot ignore what is happening around the world and these things impact us at home. I am happy to provide any additional information on ESG and related movements if the Chairman or member's request.

Bette Grande  
CEO, Roughrider Policy Center





## ***ESG: Negative Effects on Food Supply and Agriculture***

Environmental, social, and governance (ESG) scores are an insidious mechanism by which ideologically aligned influential interests represented by unelected supranational organizations are attempting to “reset” the global financial system to their advantage. This emerging design would circumvent national and individual sovereignty by altering traditional financial methods of assessing risk and debt / capital allocation. This attempted shift from “shareholder capitalism” to a “stakeholder collectivism” model hinges upon assigning companies, and soon individuals, arbitrarily determined ESG scores. These scores would mandate subjective, difficult-to-define, and equally difficult-to-evaluate metrics assessing one’s commitment to “climate” and “social justice” issues.<sup>1</sup> Essentially, poorly scored companies suffer reduced or altogether eliminated access to capital and credit, while highly scored companies receive “preferred status” capital in-flows via traditional capital and debt markets, in addition to tax credits, grants, access to “special financial vehicles,” preferential contracting, and potentially other yet-to-be-defined advantages through future legislation, executive action, or international treaty.<sup>2</sup>

ESG’s metrics have ostensibly been designed to combat systemic global problems such as climate change, racial inequality, and world hunger—in alignment with the United Nations’ Sustainable Development Goals.<sup>3</sup> In reality, these measures will simply centralize power and control in the hands of unelected technocrats and private global institutions influenced solely by the wealthy elite who control monetary policy, capital, and credit through global central banks, where “baskets of currencies” make up the current global system. ESG is a major step toward consolidating a unitary global governance model utilizing digital identification and central bank digital currencies (CBDCs) as micromanagement tools that can be isolated upon individual transactions. ESG would therefore be a major step towards the dissolution of free markets, national sovereignty, due process under the law, and individual liberty.

Below is a brief summary of how ESG is being weaponized against farmers, food production, and the agricultural industry as a whole.

Many of ESG’s metrics, primarily those related to imposing environmental controls, are directly linked to the agricultural industry and food production.<sup>4</sup> Examples of some of these metrics include: “Paris-aligned GHG emissions targets,” “Impact of GHG [greenhouse gas] emissions,” “Land use and ecological sensitivity,” “Impact of air pollution,” “Impact of freshwater consumption and withdrawal,” “Impact of solid waste disposal,” and “Nutrients”—which, despite its innocuous-sounding name, is a metric that forces companies to estimate the “metric tonnes of nitrogen, phosphorous, and potassium in fertilizer consumed.”<sup>5</sup> Farmers and food producers use chemical fertilizers and pesticides for crop growth, in addition to producing waste byproducts, consuming substantial quantities of water, using vast swathes of land, and releasing what climate alarmists claim to be planet-ending carbon dioxide emissions.

Essentially, farmers, food producers, and other businesses involved with agricultural production and transportation are being coerced into ESG compliance, which necessitates elevating sustainability objectives above their own financial well-being—particularly damaging to an industry with razor-thin profit margins. As the ESG system dictates, those who do not transform their business model will suffer from reduced or eliminated access to capital and investment, and will lose access to any tax credits, subsidies, grants, or contracts at the hands of an array of public / private regulatory authorities.<sup>6</sup> As such, a company’s decision is “comply or die,” even though compliance may very well result in eventual financial insolvency.

The problems with ESG compliance extend beyond

### ***Contact Us***

For more information, contact The Heartland Institute at 312/377-4000 or by e-mail at [StopESG@Heartland.org](mailto:StopESG@Heartland.org).

Or you can visit our website at [Heartland.org/ESG/esg](http://Heartland.org/ESG/esg).

agricultural producers. This blind focus upon “solving” climate change inherently reduces the quantity of food supplied, which has myriad deleterious effects upon society. For one, there is simply less food available to feed people, in a world where billions are already struggling to put food on the table. ESG compliance raises food prices and exacerbates overall inflationary pressures, during a time in which inflation is already at a 40-year high. And, it naturally curtails individual choice and behavior, as many commodities cannot be produced without affecting the climate.

There are already multiple real-world examples of the chaos and damage ESG-related sustainability endeavors have wrought, with the catastrophe that has unfolded in Sri Lanka being one of the most salient. The Sri Lankan government embraced ESG at the urging of international organizations, introducing a ban on chemical fertilizers in April 2021 and signing on to a green finance taxonomy with the International Finance Corporation in May 2022 that further committed Sri Lanka to organic fertilizers.<sup>7</sup> Crop production subsequently decreased by approximately 50 percent,<sup>8</sup> resulting in complete social, economic, and political collapse amidst food shortages, energy blackouts, and hyperinflation.

A similar situation is unfolding in the Netherlands, which is attempting to remain compliant with the European Union’s stringent ESG mandates. The government of the Netherlands—the world’s second largest agricultural exporter—announced plans for a 70 percent decrease in nitrogen pollution by 2030 based on the country’s “illegally high” emissions apparently caused by livestock and chemical fertilizers.<sup>9</sup> Many Dutch farmers and ranchers were forced out of business due to these draconian policies, and tens of thousands have protested the government’s heavy-handed regulations.<sup>10</sup>

The global elites and institutions responsible for ESG are

***Continued on back***



**Continued from page 1**

proceeding with their destructive and authoritarian agenda, notwithstanding the societal consequences. This was clearly illustrated at the World Economic Forum's 2022 summit in Davos, which incorporated dozens of panels, conferences, and meetings related to reinforcing the global commitment to ESG. In one panel, Svein Tore Holsether—president and CEO of Yara International and one of the leading advocates of a centrally planned agricultural industry—said: “We have a food system that is only focused on kilos produced, not environmental impact, productivity, nutritional content, water consumption, carbon sequestration...that’s been disregarded.”<sup>11</sup> Holsether’s fellow panelist Leanne Geale—general counsel of Nestle, and another leading voice of the “sustainability” scheme—discussed how science and technology can be used to track crop growth and ensure the environment is not harmed in the process: “One [example] is remote assessment technology. Satellite monitoring...Another is digital sensors. A third is blockchain. We

are able to follow, in the Congo, the coffee bean cherries from harvest all the way to the final product. We’re doing that through blockchain and QR codes.”

Taking cues from the EU and supranational international organizations, many western governments are falling in line with the sustainability agenda and institutionalizing ESG within their regulatory frameworks. Canadian President Justin Trudeau recently announced his country would reduce fertilizer emissions by 30 percent by 2030, and 100 percent by 2050. Analysis suggests that just the 30 percent reduction would cost farmers approximately \$10 billion, with Canada losing more than 160 million metric tons of canola, corn, and spring wheat.<sup>12</sup> As for the United States, President Biden is paying farmers to cease production on their land as part of the Conservation Reserve Program, which Biden intends to increase by 4 million acres to a total of 25 million.<sup>13</sup>

If it is not stopped, ESG will continue to collapse global food supply chains and cause a global food shortage, ultimately leaving countries, businesses, and individuals devastated in its wake.

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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;~~



Sixty-eighth  
Legislative Assembly

- 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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Legislative Assembly

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





**Public Comment Submitted for  
Senate Industry and Business Public Hearing  
Re: HB 1429**

March 15, 2020

*Delivered by CFACT President Craig Rucker:*

Thank you, Chairman and Committee members.

My name is Craig Rucker and I serve as the President of the Washington, D.C. based Committee For A Constructive Tomorrow (CFACT). CFACT is a non-profit, public policy think tank that is based in Washington, D.C. and was founded in 1985 to promote a constructive, free market perspective on issues dealing with Environmental, Energy and Climate policy.

I am speaking today in support of the policies contained in HB 1429.

CFACT's interest in this bill stems from its involvement with the topic of ESG financing. There are three areas we have principally become involved with this issue.

One of them is by our long-standing participation in the United Nation's Climate, Biodiversity and Sustainability process to which CFACT is an NGO and has recognized observer status. I myself have been to roughly 30 of such conferences, most recently at the UN COP climate meeting in Sharm el-Sheikh, Egypt.

This is important, because in our opinion, the push for implementation of ESG criteria in North Dakota is not some sort of homegrown initiative that sprouted up on a farm outside Fargo. In fact, its roots are not just domestic, but international. Having participated in UN conferences where this has been discussed, we have had kind of a front row seat in witnessing some of the discussions and developments that have taken place (in our opinion regrettably) to advance the ESG cause.

A second reason we can offer some insight on HB 1429 is that we've been involved in "shareholder activism" to a degree. We hold a modest number of shares in major banks, social

media, and energy companies for the purpose of using them to partner with other like-minded pro-market organizations and speaking out against efforts by certain activist groups to push companies away from the mission of profiting their shareholders. In fact, I was a participant in the Exxon shareholder meeting when Engine No. 1 infamously removed three Exxon board members and replaced them with their allies by forging an alliance with Blackrock, State Street, CalPERS and Vanguard on May 26, 2021. That event, probably more than any other, showcased to us why we needed encourage policymakers to act and put forth bills like HB 1429.

In addition to observing this issue at the UN level and participating in shareholder meetings where ESG has been pushed, we also write extensively on this issue, have published reports on it, and assisted legislators and policy makers with becoming more informed about it. You can find much of our research, articles, and other information about ESG on our website [CFACT.org](http://CFACT.org).

So what are our concerns about ESG activism and why we think this bill is a good one? We feel there are three major problems with ESG:

1. It is not concerned with advancing the economic interests of North Dakotans. Instead, it is a top-down, elitist inspired effort reflecting the interests and priorities of multi-billionaires and internationalists.
2. ESG is random with its ratings, it's not applied fairly, and it empowers America's adversaries – notably China.
3. It simply doesn't work. ESG investing is not getting the returns it promised investors, nor is it changing the world for the better. In fact, it's doing the opposite!

Now allow me to explain each of these and why I believe such claims are true.

Regarding the first point I raised, namely that the ESG cause is an elitist one. If we look at where ESG started, it was done so quite openly in 2005. It was then that former Secretary General Kofi Annan, in a highly covered media event, invited a group of the world's largest institutional investors to join a process to develop the Principles for Responsible Investment. This included a 20-person investor group drawn from institutions in 12 countries and was supported by a 70-person group of experts from the investment industry." These people put together six principles of responsible investment, the sum of which is to encourage businesses around the world to make sustainable development, a.k.a ESG, a priority in their operations.

They succeeded beyond their wildest dreams. According to the PRI website, this network now boasts 7,000 corporate signatories in 135 countries and is the world's largest voluntary corporate sustainability initiative.

My point in telling you this history lesson is to inform you that all this ESG stuff that's coming on your radar is not originating from your constituents here in North Dakota. It is coming from people on an elite level -- in Geneva, Davos, and Wall Street -- who have their own political and business priorities foremost in mind, and do not necessarily even live here in this country, nor have its interests at heart. Among their priorities, btw, is shutting down the fossil fuel industry,

which could cause significant harm to this state. This should give you pause when it comes to giving them leverage over your financial affairs, including setting rules for your investments and business activities in North Dakota.

And now we come to point number two, namely that their standards are quite random, not applied equally, and tend to help our adversaries, namely China.

If you've ever reviewed how ESG scoring is done, it's a good way to get your head spinning. This is because there are numerous firms that are involved in the business, and they each have their own way of scoring how a company is performing with respect to ESG compliance. Among the major firms doing the scoring include the CDP, Standard and Poor's, Bloomberg, the Global Reporting Initiative, and the Sustainable Accountability Standards Board, among many others. They are not consistent, and this has led to efforts to try and get them all on the same page.

The bottom line is, to get a good ESG score is a game of hit or miss, depending on who performs it. As the *Economist* magazine notes:

**The ESG rating agencies are the veritable acme of inconsistency. A study of six of them found that they used 709 different metrics across 64 categories. Only ten categories were common to all...**

I would also like to mention that while our U.S. firms are tripping all over themselves trying to get a good ESG score, foreign firms, like those in China, aren't nearly so concerned it. This is because they are often the beneficiaries of gobbling up contracts that are denied U.S. firms because of their poor ESG scores.

My final point as to why ESG should be resisted is that it doesn't offer what it promises, good returns. Yes, there are statistics used by these ESG scoring firms to highlight how they are providing great returns for their investors ... but if you look at what more neutral analysts are saying, a much different picture is painted.

- Bloomberg news reported in December 2022 that the 10 largest ESG funds by assets have all posted double-digit losses last year, with eight of them falling even more than the S&P 500's 14.8% decline.
- Bloomberg went on to say ESG advocates have gone from saying it makes more money to saying people are willing to lose money to invest in ESG:
- "University of Chicago researchers analyzed the Morningstar sustainability ratings of more than 20,000 mutual funds representing over \$8 trillion of investor savings. They found that none of the high sustainability funds outperformed any of the lowest rated funds."

ESG funds also aren't improving ESG categories:

- “Researchers at Columbia University and London School of Economics compared the ESG record of U.S. companies in 147 ESG fund portfolios and that of U.S. companies in 2,428 non-ESG portfolios. They found that the companies in the ESG portfolios had worse compliance record for both labor and environmental rules. They also found that companies added to ESG portfolios did *not* subsequently improve compliance with labor or environmental regulations.”

So in sum, the bottom line is ESG is not home grown, it doesn't serve the interests of North Dakotans, it's structure is a mess, and doesn't give a good rate of return. That pretty much covers it!

Now as to HB 1429 specifically, I think this bill does a good job with trying to reign in ESG criteria on four fronts.

First, in section one, it amends the North Dakota Century Code in Section 21-10-08.1 by clearly spelling out the words “environmental,” “social” and “governance” by name. This is good as it removes all ambiguity. This clarification is a plus.

In section two of the bill it tackles insurers, which is a good thing because they are also being urged to become activists in the ESG drama.

In section three of the HB 1429, which tackles the troublesome issue of proxy voting, this is a positive as it should be common sense to forbid management services guided by an ESG philosophy to be relied upon to make sound investment decisions – especially when they have ulterior motives beyond getting high returns for investors.

And in section 4, conducting a study to evaluate how ESG might impact North Dakota also seems like a no-brainer.

At this point, I'd like to conclude my comments, Mr. Chairman, and am happy to answer any questions that you'd like to direct my way. Thank you.



## Statement of American Property Casualty Insurance Association on House Bill 1429

The American Property Casualty Insurance Association (APCIA) includes nearly 1200 insurers and reinsurers with a wide range of sizes and business models. While we fully understand the desired outcome behind the legislation--to address pressure to adopt blanket policies adverse to industries in the state--we reluctantly must oppose Section 2 of this legislation based upon the fundamental importance of maintaining a free insurance market that best serves consumers.

Consumers are benefited when the insurance market is competitive and innovative, when it helps society identify, manage and reduce risk, and when, as we learned from the financial crisis, there is a wide variety of business models in the market where every company is NOT doing everything in exactly the same way. Contrary to this is legislation that mandates underwriting or prevents underwriting in legal industries, thereby potentially reducing competition, innovation, and capital available for the market and consumers of all types. Faced with growing activist pressure, the APCIA Board outlined basic principles in December 2020. Please see the attached release with a summary of those principles. In essence, they defend the free market and recognize the importance to consumers of flexibility and diversity in the insurance market. In my view, those principles are as valid now as they were then.

The weather/nat cat related risk for insurance is the result of climate volatility but it is also the result of development patterns, poor building codes, and inflationary pressures from litigation and the rising cost of providing insured goods and services. So, it is particularly important to maintain as large an insurance market as possible, not potentially reduce competition and capital as this legislation might inadvertently do. We are now witnessing an explosion of pro- and anti-ESG legislation proposed in more than 30 states. These recent legislative developments and generic shareholder proposals have further complicated an already complicated situation for insurers, adding political and reputational risk to the direct risk from weather related events/nat cats, including new disclosures and now additional developments reflecting the nation's growing polarization. In response, the APCIA Board has recently revisited the issue, affirmed its earlier principles, and made clear that we should continue to oppose proposals that limit underwriting flexibility.

This legislation puts insurers in a Catch 22 position, where they must either decline a risk and face regulatory investigation and possible penalties or accept risk even though they do not have the expertise, risk appetite and experience to underwrite the risk. While the language of this legislation is about the best we have seen, it still does not eliminate such issues.

Similar problems are presented by the bill's language on "social" and "diversity, equity and inclusion policies". And the phrase "political and ideological factors" is so ambiguous and subjective as to provide little real guidance.

In conclusion, for these and other reasons, we urge that Section 2 be deleted from the bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dave Snyder", with a horizontal line extending to the right from the end of the signature.

Dave Snyder  
Vice President and Counsel  
APCIA



**FOR RELEASE ON RECEIPT**

December 8, 2020

## **APCIA Announces Strong Environmental Guiding Principles**

**WASHINGTON** – The American Property Casualty Insurance Association (APCIA) today announced its Environmental Core Principles that will help shape the important policy debate on sustainability and climate policy. The principles address climate risk and support competition and free market solutions.

“Property casualty insurers have been long-time leaders in addressing the impacts of climate change by advocating for stronger mitigation, resilience efforts, and building codes,” said David A. Sampson, APCIA president and CEO. “The APCIA Board of Directors today endorsed principles that will continue our work toward reducing the losses from climate-related catastrophes, while supporting innovation and competition for the benefit of individuals, families, communities, and businesses.”

APCIA’s Board of Directors adopted and endorsed the following Environmental Core Principles:

- Risk mitigation must continue to be a shared priority.
- Insurers have a unique role in facilitating a more environmentally resilient economy by making capital and protection available to industries as they transition to a lower carbon future.
- Insurers should be proactively engaged in efforts to address long-term weather-related losses.

- Insurers should consider what existing information can be disclosed as voluntary alternatives to regulation.
- Environmental policies and actions should be science-based, provide benefits that outweigh costs, and contribute to job creation and economic growth.
- While voluntary actions are preferred, any regulation with regard to environmental issues should be proportional and flexible (not one size-fits-all), be based on materiality and respect confidentiality.
- Environmental risk-based pricing should be protected.
- Regulators should fully support environmental innovation and modeling for insurance.

Based on these principles, APCIA will engage at all levels of government in the effort to find constructive approaches to reducing and managing climate risk.

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

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March 15, 2023

Chairman Larsen and Senate Industry and Business Committee Members,

On behalf of the members of the Lignite Energy Council, I am submitting testimony today in support of House Bill 1429 due to the experiences that the lignite industry has had as it relates to the Environmental, Social and Corporate Governance (ESG) principles which has negatively impacted the lignite industry by drastically increasing our insurance premiums, in one case by over 300%, over the past few years in an attempt to put the coal industry out of business.

The ESG movement has emboldened activist shareholders at national and international financial organizations who in turn influence insurance providers to discriminate against the coal industry for perceived environmental concerns that do not take into account the massive benefits that are provided through reliable and affordable electricity for our regions homes and businesses along with the fact that the North Dakota coal industry leads the nation in reclamation to return the mine land back to its original pristine condition. ESG principles also do not factor in that North Dakota is one of only four states who has never been in non-attainment, or has never violated federal air quality regulations. We are on the cusp of creating the largest carbon capture projects in the world that will retrofit two of our largest coal plants which will become the gold standard on how to lower carbon emissions while providing dispatchable baseload electricity to two regional grids. Unfortunately, the ESG movement does not give this kind of environmental leadership any credit for the tens of millions of dollars in investments by the state and private industry along with the vision to make this a reality.

Due to ESG market pressures, we are currently experiencing spiking insurance premiums and a lack of available alternative insurance plans moving forward. We are not sure how this situation will play out, but we appreciate that we have leaders in the legislature and in the insurance commissioners office that are willing to work on fixing this critical problem that we face as a major industry and taxpayer in this state.

We are supportive of the language found in Section 2 that provides North Dakota's Insurance Commissioner with tools to investigate and respond to the denial of insurance products due to ESG discrimination. While this is a good step in the right direction to protect the 13,000 jobs and \$5.4 billion in regional economic impact that our industry provides, we would ask that the committee amend this language to include the proposed language that was offered by the commissioner to also include the ability to investigate spikes in insurance rates that are not due to major claims.

For these reasons, the Lignite Energy Council supports HB1429 with the proposed amendment and we respectfully ask the committee to move a "Do-Pass" recommendation.

Thank you for your consideration,

Jonathan Fortner  
Vice President of Government Relations

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March 14, 2023

Testimony of Brent Bennett, Ph.D.  
Policy Director, Life:Powered  
Texas Public Policy Foundation  
Before the  
North Dakota Senate  
Industry and Business Committee

Chairman Larsen and Members of the Committee,

Thank you for the opportunity to testify in support of HB 1429 and to share some of our experience developing and implementing similar laws in Texas. I hope to convey to the committee the importance of passing this legislation, explain how we are implementing similar reforms in Texas, and suggest some further improvements to North Dakota's approach to this issue.

There are many facets to fighting the march of the progressive left through our institutions, and our states have a limited but important role to play in this fight. The provisions in this bill to help ensure that state investments are not invested or utilized in politically motivated ways that harm pensioners and taxpayers is an important first step. We also continue to encourage North Dakota to consider stronger fiduciary standards to guard against harmful ESG practices and contracting provisions that direct money away from firms that engage in economic boycotting practices.

**An important area that this bill addresses is the proxy voting practices of state investment funds and their hired managers and advisors.** For example, Glass Lewis is the proxy advisor for the Legacy Fund, and our examination the proxy votes cast by Glass Lewison on behalf of the Legacy Fund brought up several votes in favor of shareholder resolutions that pressure energy companies to either adopt greenhouse gas emissions targets or to spend considerable resources measuring and categorizing their emissions, well beyond the requirements of existing laws. These votes are consistent with Glass Lewis's benchmark policy and clearly violate both the existing prohibition on social investment in § 21-10-08.1 and amended prohibition put forward in this bill.

HB 1429 does not require North Dakota investment funds to fire Glass Lewis, which would be costly and impractical. It does require the funds to develop a custom voting policy that comports with the § 21-10-08.1 prohibitions against social investing. Fortunately, Glass Lewis offers what it calls a [governance-focused voting policy](#) that defaults more often to management recommendations on environmental and social proposals, unless otherwise directed by the client. This policy is a good starting point for a custom policy, and adopting it is a change the Legacy Fund and other funds can make immediately.

**The prohibition on using ESG criteria in insurance practices in Section 2 is a welcome addition to this bill and is something that other states are actively considering.** The Texas House Insurance Committee

just considered [HB 1239](#) yesterday, which would place a similar prohibition on using ESG criteria in ratemaking. The North Dakota Insurance Department put out an [excellent report](#) last year detailing the effects of insurance companies boycotting and sanctioning coal companies and placing a clear emphasis on the need for action in this area. Coal mines and power plants in North Dakota are down to only a couple of companies that are willing to insure their facilities and have seen their premiums increase by two or three times in some cases. The report details more than 50 “coal exit” policies from many of the world's largest insurance companies, and given the trends in investments and banking, we can expect more harm to come in insurance unless the states assert their primacy in regulating insurance practices and adopt clear prohibitions against such boycotting practices.

**Finally, we strongly encourage North Dakota to adopt investment and contracting provisions that steer money away from companies, particularly financial services firms, that are actively boycotting and sanctioning energy, firearms, and agriculture companies.** As active market participants controlling trillions of dollars in investments and spending, states cannot be aloof or neutral as to what kinds of companies they do business with. When corporations abandon their role as the vanguards of free market capitalism and advocate for policies that erode the very foundations of capitalism, states should take their business elsewhere.

We know it is a challenging task for each state to find the right cost/benefit balance when choosing not to work with certain vendors, but the contracting and investment provisions adopted Texas and other states are already having a positive effect on the marketplace. The two dominant proxy advising firms, ISS and Glass Lewis, have created non-ESG voting policies in response to our efforts, and new investment managers are creating products and services that explicitly adhere to sound fiduciary principles and eschew ESG ideology. [American banks](#) are threatening to leave the U.N.-backed effort to restrict all lending to new fossil fuel projects over antitrust and state regulatory concerns. The more states that join in this effort, the more reasons companies will have to say no to progressive activists and continue to lend and invest in the industries that are vital to our states.

Ultimately, market competition is the antidote to the collusive action that progressive activists seek to impose. **States and municipalities have an important role, as market participants, in fostering competition by demanding products and services that best serve the interests of their taxpayers from companies that are aligned with their interests.** We support North Dakota’s efforts to push back against the woke agenda that is harming its constituents and vital industries and look forward to assisting with improving these policies in the coming months and years to ensure the best outcomes for North Dakota’s citizens.

Sincerely,

Brent Bennett  
Policy Director, Life:Powered  
Texas Public Policy Foundation

**House Bill 1429**  
**North Dakota Retirement and Investment Office (RIO)**  
**Testimony in support of Engrossed HB 1429 before the Senate Industry and**  
**Business Committee**  
**Senator Doug Larsen, Chair**  
**Senator Greg Kessel, Vice Chair**

**Janilyn Murtha, JD, MPAP – Executive Director**

**I. Introduction**

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 State Investment Board has the statutory responsibility to administer the investment program for 28 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 20 other non-pension funds for a total of 28 separate client funds with assets under management (AUM) of roughly \$19.2 billion as of January 31, 2023.

The AUM has grown from about \$4 billion in 2010 and continue to grow from investment returns and contributions to the Legacy Fund, pension plans, and insurance funds. The combination of the growth of AUM, the number of individually managed funds, and the complexity of mandates such as the Legacy Fund have increased the need for staff resources, infrastructure and new scalable investment processes that can enhance the performance of client funds while reducing the net cost of management of those funds when manager fees are considered.

Currently, the SIB relies entirely on an external investment manager structure; ie RIO does not have internal investment management authority or operations. RIO contracts with over forty investment managers, vendors, and consultants in the administration of our two programs.

**II. Engrossed HB 1429**

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. The investment program as a matter of policy and in compliance with North Dakota law as set forth under NDCC Ch. 21-10, only invests for the exclusive benefit of its beneficiaries in a way that seeks to maximize return for a given level of risk. Any restriction of its investment or

commercial set of opportunities for non-pecuniary reasons such as restricting investment in either of these sectors is already prohibited by policy and law.

RIO opposed the original version of H.B. 1429 due to concerns relate to the potential conflict this bill may create with other existing or future legislation, or mandated business practices, the cost and complexity of implementing the bill, and the potential that the bill may unintentionally reduce commercial opportunities with vendors who support these sectors because of the cost the bill imposes on the vendor. Engrossed H.B. 1429 incorporates amendments that eliminated these concerns and therefore the agency supports the amendments to H.B. 1429 while recognizing that the public policy reflected is decision for the legislature.

### **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 and agriculture sectors for non-pecuniary reasons. Engrossed H.B. 1429 incorporates amendments that eliminated initial concerns with implementation. The agency supports the amendments made to H.B. 1429 while recognizing that the pubic policy reflected is a decision for the legislature.



# WESTERN DAKOTA ENERGY ASSOCIATION

March 15, 2023

**EXECUTIVE COMMITTEE**

Trudy Ruland  
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Mountrail County

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Counties

David Montgomery  
Williams County

Craig Pelton  
Dunn County

John Phillips  
Coal Conversion  
Counties

Testimony of:

Geoff Simon, Lobbyist #144

in support of HB 1429 – Pushing Back Against ESG  
Senate Industry and Business Committee

Chairman Larsen and Committee members:

On behalf of the city, county and school district members of the Western Dakota Energy Association (WDEA), we wish to express our support for HB 1429 and the message it will send to companies that take a dim view of North Dakota’s appreciation of fossil fuels and production agriculture. The amended version of the legislation reflects the state’s viewpoint of the environmental, social and governance movement (ESG).

Traditional energy and agriculture production are fundamental to our way of life. HB 1429 would put into statute a simple message: if your company isn’t going to respect the lifeblood of our economy and the values we hold dearly, then our government agencies are not going to do business with you. With passage of the legislation, North Dakota will join other states that have begun to push back against companies that place the “feel good” policies of the environmental and social governance movement above basic economic common sense.

House members put considerable work into HB 1429 before agreeing on amended language that accomplishes four things:

- 1) The bill further defines social investment to include those based on ESG criteria,
- 2) It prohibits insurance companies from discriminating based on ESG practices,
- 3) It specifies that proxy votes made by firms investing state funds must be based on the prudent investor rule and not social factors, and
- 4) It provides for an interim study of the possibility of divestment of companies that boycott fossil fuels or the state’s ag commodities.

These are excellent steps the legislature can take to stand behind our state’s fossil fuel and agriculture industries, sending a strong message to “woke” companies that base business decisions on ESG criteria. WDEA urges the Senate Industry and Business Committee to give HB 1429 a strong Do Pass recommendation.

Thank you for the opportunity to offer testimony on this important issue.

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

23.0990.02003

FIRST ENGROSSMENT

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED 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 subdivision to subsection 7 of section 26.1-04-03  
2 and a new section to chapter 54-06 of the North Dakota Century Code, relating to unfair  
3 discrimination in the business of insurance and the investment and management of public  
4 funds; to amend and reenact section 21-10-08.1 of the North Dakota Century Code, relating to  
5 the prohibition on social investments; to provide an appropriation; and to provide for a legislative  
6 management study.

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

8 **SECTION 1. AMENDMENT.** Section 21-10-08.1 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **21-10-08.1. Social investment - Prohibition.**

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

21 **SECTION 2.** A new subdivision to subsection 7 of section 26.1-04-03 of the North Dakota  
22 Century Code is created and enacted as follows:

23 Unless the refusal is the result of the application of sound underwriting and  
24 actuarial principles related to actual or reasonably anticipated loss experience.



1 refusing to insure solely in consideration of the risk's environmental, social, and  
2 governance criteria; diversity, equity, and inclusion policies; or political and  
3 ideological factors.

4 **SECTION 3.** A new section to chapter 54-06 of the North Dakota Century Code is created  
5 and enacted as follows:

6 **Proxy voting.**

- 7 1. Proxy votes made on behalf of state funds or the funds of political subdivisions which  
8 receive investment management services from the state must be made in accordance  
9 with the requirements provided in section 21-10-08.1.  
10 2. A state entity may not adopt a practice of following the recommendations of a proxy  
11 advisory firm or other service provider unless the proxy advisory firm's or the service  
12 provider's voting guidelines comply with the requirements of section 21-10-08.1.

13 **SECTION 4. LEGISLATIVE MANAGEMENT STUDY - ~~DIVESTMENT OF COMPANIES~~**  
14 **~~THAT BOYCOTT ENERGY OR COMMODITIES~~ ENVIRONMENTAL, SOCIAL, AND**

15 **GOVERNANCE TRENDS.** ~~During the 2023-24 interim, the legislative management shall study~~  
16 ~~environmental social governance as it pertains to a set of nonspecific, quantifiable, and~~  
17 ~~nonquantifiable criteria with attributing factors used for making determinations, decisions, or~~  
18 ~~investments as it pertains to government and private industry in the state. The study must~~  
19 ~~include an evaluation of investment policy as it relates to environmental social governance and~~  
20 ~~the level of involvement the state has with companies that use environmental social governance~~  
21 ~~in their ranking when making business or investment decisions. The study also must include the~~  
22 ~~potential implications for the state as it relates to the boycott of energy or production agriculture~~  
23 ~~commodities by companies that intend to penalize, inflict economic harm on, or limit commercial~~  
24 ~~relations. All aspects of boycotts, including the transport, sale, utilization, production, or~~  
25 ~~manufacturing of natural gas, oil, coal, petrochemicals, or production agricultural commodities~~  
26 ~~must be evaluated. The legislative management shall report its findings and recommendations,~~  
27 ~~together with any legislation required to implement its recommendations, to the sixty-ninth~~  
28 ~~legislative assembly.~~

- 29 1. During the 2023-24 interim, the legislative management shall study environmental,  
30 social, and governance trends, laws, and policies that impact businesses and  
31 industries of this state. The study must include input from representatives from state

1 government and industry with expertise in the areas of energy, agriculture, investment,  
2 insurance, economic development, finance, procurement, and contracting, and laws  
3 related to these areas.

4 2. The study must identify laws and regulations enacted by the federal government and  
5 other state governments related to environmental, social, and governance policies and  
6 trends which impact the state's energy and production agriculture industries. The  
7 study also must examine corporate environmental, social, and governance policies  
8 and trends impacting the state's energy and production agriculture industries,  
9 including finance, lending, insurance, and boycotts of energy or production agriculture  
10 commodities.

11 3. The study may identify industry-specific public policy strategies for immediate and  
12 long-term implementation to help the state continue to be a global leader in energy  
13 and agriculture. Strategies may include marketing and advocacy for state industries,  
14 exploration of emerging technology and practices, and examination of investment  
15 policy.

16 4. The legislative management shall report its findings and recommendations, together  
17 with any legislation and appropriation requests required to implement the  
18 recommendations, to the sixty-ninth legislative assembly.

19 **SECTION 4. APPROPRIATION - LEGISLATIVE MANAGEMENT - ENVIRONMENTAL,**  
20 **SOCIAL, AND GOVERNANCE TRENDS STUDY.** There is appropriated out of any moneys in  
21 the general fund in the state treasury, not otherwise appropriated, the sum of \$45,000, or so  
22 much of the sum as may be necessary, to the legislative management for the purpose of  
23 defraying costs associated with the study of current environmental, social, and governance  
24 policies, trends, and issues that impact citizens, businesses, and industries of this state, for the  
25 biennium beginning July 1, 2023, and ending June 30, 2025.

23.0990.02007  
Title.

Prepared by the Legislative Council staff for  
Representative Warrey  
April 14, 2023

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1429

That the Senate recede from its amendments as printed on pages 1487 and 1488 of the House Journal and pages 1215-1217 of the Senate Journal and that Engrossed House Bill No. 1429 be amended as follows:

Page 1, line 4, after "21-10-08.1" insert "and subsection 10 of section 54-44.4-02"

Page 1, line 5, after "investments" insert "and restrictions on perpetual contracts"

Page 1, line 5, replace "study" with "report"

Page 1, line 15, after "board" insert ", or any other state entity investing public funds."

Page 1, line 18, after "board" insert ", or other state entity."

Page 1, remove lines 22 and 23

Page 1, line 24, replace "refusing" with "Refusing"

Page 1, line 24, after "insure" insert "or charging a different rate"

Page 2, line 2, after "factors" insert ", unless the refusal or different rate is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience"

Page 2, after line 11 insert:

**"SECTION 4. AMENDMENT.** Subsection 10 of section 54-44.4-02 of the North Dakota Century Code is amended and reenacted as follows:

10. Employee benefit services, trust-related services, and investment management services obtained by an agency with a fiduciary responsibility regarding those services. Nothing in this subsection may be construed to allow an agency to create or renew a contract perpetually and without limitation."

Page 2, line 12, replace "**LEGISLATIVE MANAGEMENT**" with "**BANK OF NORTH DAKOTA**"

Page 2, line 12, remove "**DIVESTMENT OF COMPANIES** "

Page 2, line 13, replace "**THAT BOYCOTT ENERGY OR COMMODITIES**" with "**ENVIRONMENTAL, SOCIAL, AND GOVERNANCE TRENDS - REPORT TO LEGISLATIVE MANAGEMENT**"

Page 2, line 13, remove "During the 2023-24 interim, the legislative"

Page 2, replace lines 14 through 26 with:

- "1. During the 2023-24 interim, the Bank of North Dakota shall study environmental, social, and governance trends, laws, and policies that impact businesses and industries of this state. The study must include input from representatives from state government and industry with expertise in the areas of energy, agriculture, investment, insurance,



economic development, finance, procurement, and contracting, and laws related to these areas.

2. The study must identify laws and regulations enacted by the federal government and other state governments related to environmental, social, and governance policies and trends which impact the state's energy and production agriculture industries. The study also must examine corporate environmental, social, and governance policies and trends impacting the state's energy and production agriculture industries, including finance, lending, insurance, and boycotts of energy or production agriculture commodities.
3. The study must identify a strategy to make the delivery of investment reports relating to state funds available and readily consumable to the public.
4. The study may identify industry-specific public policy strategies for immediate and long-term implementation to help the state continue to be a global leader in energy and agriculture. Strategies may include marketing and advocacy for state industries, exploration of emerging technology and practices, and examination of investment policy.
5. Before June 1, 2024, the Bank of North Dakota shall provide a report of its findings and recommendations to the legislative management, together with any legislation and appropriation requests required to implement the recommendations."

Renumber accordingly