

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1469

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1469
2/6/2023

Relating to the investment and management of public funds.

Chairman Louser called to order 11:20 AM

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

Discussion Topics:

- Barriers
- Technical concern
- Investment vs Debt
- Bond issuance
- ESG policies
- Conduct of the industry
- Potential bank run
- Consumer confidence
- Safety and soundness

In favor:

Representative Anna Novak, District 33, Hazen, proposed amendment #19331, and testimony, #19328
Brent Bennett, Policy Director, Life:Powered, #19222
Geoff Simon, Representing Western Dakota Energy Association, #19220

Opposed:

Karen Tyler, Commissioner, ND Securities Department, #19246, #19247
Lise Kruse, Commissioner of ND Department of Financial Institutions, #19327
Rick Clayburgh, President and CEO, ND Bankers Association (no written testimony)
Todd Steinwand, President and CEO, Bank of North Dakota (no written testimony)
Janilyn Murtha, Executive Director ND Retirement, and Investment Office, #19243

Chairman Louser adjourned the meeting 12:28 PM

Diane Lillis, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1469
2/6/2023

Relating to the investment and management of public funds.

Chairman Louser called to order 2:49 PM

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

Discussion Topics:

- Fiscal note
- ESG movement
- In house investments

Representative Schauer moved a do not pass.
Representative Thomas seconded.

Roll call vote:

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

Motion 8-5-1

Representative Thomas will carry the bill.

Chairman Louser adjourned the meeting 3:03 PM

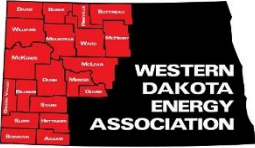
Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1469: Industry, Business and Labor Committee (Rep. Louser, Chairman)
recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB
1469 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1469



WESTERN DAKOTA ENERGY ASSOCIATION

February 6, 2023

EXECUTIVE COMMITTEE

Trudy Ruland
President
Mountrail County

Supt. Leslie Bieber
Vice President
Alexander PSD

Zach Gaaskjolen
City of Stanley

Keith Harris
Dickinson PSD

Supt. Tim Holte
Stanley PSD

Shannon Holter
City of Bowbells

Lyn James
City of Bowman

Nick Klemisch
Garrison PSD
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 1469 – Stick to the Prudent Investor Rule
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 strong support for HB 1469 which simply reaffirms the state’s commitment to follow the prudent investor rule when investing state employee and teacher retirement funds.

This legislation contains definitions for esoteric terms such as fiduciary, pecuniary and non-pecuniary factors, but its premise is direct and easily understood. It specifies that fiduciaries (individuals charged with investing state retirement funds) strictly adhere to the prudent investor rule established in North Dakota Century Code 21-10-07:

“... The "prudent investor rule" means that in making investments the fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. The retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives.”

The point of the legislation is ensuring that firms investing retirement funds on behalf of North Dakota teachers and state and local government employees closely follow the provisions of 21-10-07, and not engage in what we would term “feel-good” investments. WDEA would emphasize subsection (4) which states:

“The shares held directly or indirectly by a plan may be voted only in the pecuniary interest of the plan ... the share may not be voted to further non-pecuniary, environmental, social, political, ideological, or other benefits or goals and plan assets may not be entrusted to any fiduciary that has a practice of ... engaging with companies or voting shares based upon non-pecuniary factors.”

WDEA applauds Representative Novak for introducing this bill and urges the committee to give it a strong DO Pass recommendation.



February 6, 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 1469 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 provide some guidance as to how North Dakota can implement this legislation in an effective manner that will benefit North Dakota taxpayers and pensioners.

At this point, Texas is in the process of implementing two elements that are contained in HB 1469: divesting in part from investments with firms that are deemed to be boycotting energy companies and reforming proxy voting practices. The divestment element is a result of Senate Bill 13 from 2021 and follows the creation of a restricted company list similar to what is required by Section 2 of this bill. I say "divesting in part" because the bill provides wide latitude not to move funds if it cannot be done in an economically practicable manner or if doing so conflicts with other statutory duties.

To date, West Virginia has also created a similar list, and Kentucky and Oklahoma are in the process of doing so. The estimated cost to create the list given by the fiscal note for HB 1469 seems in line with the experience of other states, but North Dakota may be able to lean on that experience to achieve greater efficiency. The policy goals of this bill can be accomplished without a restricted company list, as exemplified by Florida and a few other states. However, Texas and these other states have determined that the clarity of the list and the public awareness of the activities of firms that are boycotting and sanctioning important industries is worth the effort to create the list.

Certainly, it would seem unwise, as suggested by the fiscal note, to implement this legislation such that 100% of the activities of the State Investment Board would be internalized, given its existing practice of using outside managers. Nothing in this legislation requires that change, and the application of this fiduciary standard should only apply to investment managers that are already fiduciaries under existing federal and state law. It should not burden entities such as private equity firms that are not subject to existing fiduciary requirements or force the SIB to avoid external managers.

Texas pensions are moving money away from some investment managers, but in the vast majority of cases, they are not changing the balance of internal versus external management. Even companies that are on the Texas restricted list are not summarily excluded because in some cases switching managers

would be too expensive or simply impossible. [Florida has moved \\$2 billion](#) out of BlackRock funds while maintaining more than \$12 billion with the firm and ensuring those funds are managed according to a stricter fiduciary standard, particularly with regard to how their shares are voted in corporate elections, which is known as proxy voting. If it is not clear that the existing language in HB 1469 allows for this level of discretion, perhaps an explicit opt out clause could be added that would allow for it.

In addition to the fiduciary standards that this bill establishes, the proxy voting reforms in Section 1 are absolutely critical. Shareholder resolutions requiring extra reporting and changes in corporate policies surrounding many environmental and social issues are becoming increasingly common and are being used to push progressive political agendas onto corporations. These practices must be monitored and countered by our states who do not want to espouse the values or the activities of these activist investors and their supporters.

Our examination of the [proxy voting](#) of Texas's two largest pensions found that they were frequently voting their shares in favor of resolutions to sanction companies for not reducing greenhouse gas emissions, not providing support for employees who wanted to cross state lines to receive abortions, or not adopting board diversity requirements. Subsequent investigation by the Texas Senate State Affairs Committee has revealed that the pensions were not properly monitoring the application of their policies by their proxy advisor, Institutional Shareholder Services, and ISS was voting their shares improperly. It's not that the pensions had bad policies or that they themselves wanted to vote for these activist resolutions. Their votes were being misapplied, and they were not exercising proper oversight.

I'll reiterate from my testimony on HB 1429 that market competition is the antidote to the collusive action through which progressive activists seek to impose. Our states will either be swept up in these investing practices or not, and our states must actively be on guard given the propensity of external managers and advisors to adopt these practices when they can benefit financially or virtue signal to their own clients and investors. States collectively control more than [\\$4 trillion in pension assets](#) and play an important role in setting trends within the investment industry. By adopting these reforms, North Dakota will provide important protections for its pensioners, taxpayers, and industries, and it will send an important message to its citizens about sound investment practices that will reverberate across the country as more states adopt a strong stance against the encroachment of woke capitalism.

Sincerely,

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

House Bill 1469
North Dakota Retirement and Investment Office (RIO) on behalf of the
State Investment Board
Testimony in opposition to HB 1469 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 an overall fund value of approximately \$18.5 billion as of November 30, 2022.

These assets under management have 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 1469

Opposition to HB 1469 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. As such 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.

A. Non-uniform regulatory requirements

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 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. Specifically, the proposal expands the obligations of a fiduciary in way that may conflict with federal law or regulatory requirements.

B. Conflicts within the proposal

A conflict in law and implementation exists within the proposed legislation itself. Section 1 subsection 2(c) requires that the state not consider non-pecuniary factors when making an investment. Whereas Section 2 requires the state to consider non-pecuniary factors when determining the eligibility of vendors to provide investment services.

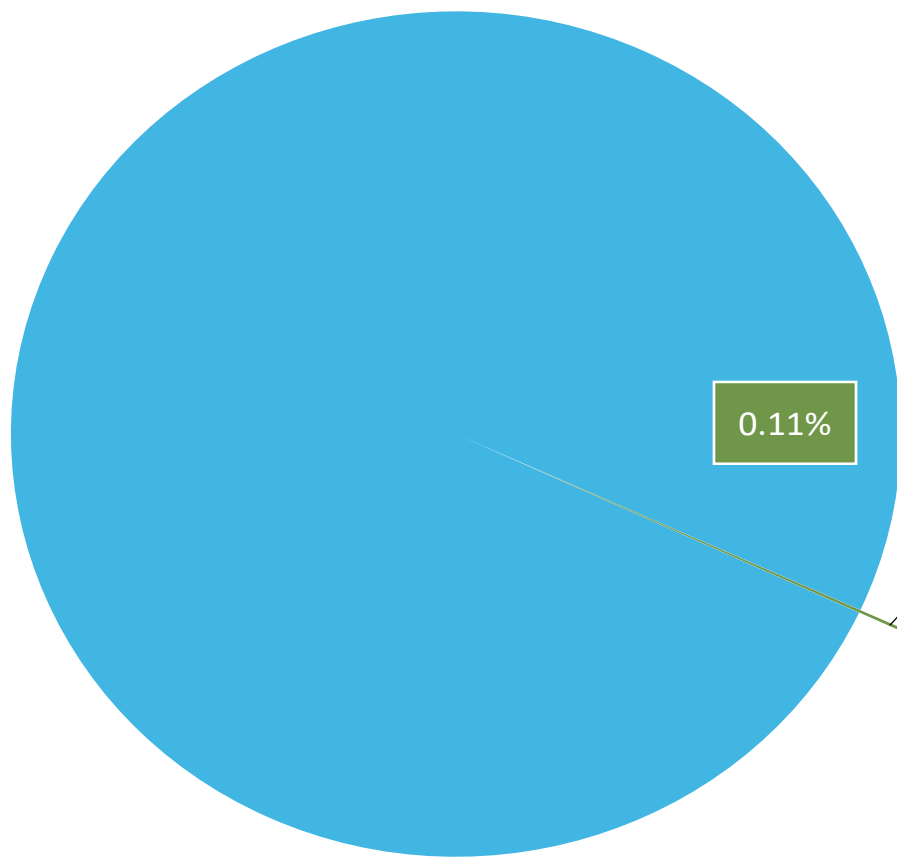
C. Infeasibility of administration

Section 2 lacks clarity regarding the scope of the SIB's review and the selection criteria of financial institutions prohibited from offering investment services to the state. The SIB is not a regulatory agency and therefore does not have an identified set of financial institutions under review. We question whether the proposal requires that RIO identify current vendors and only place vendors on a list if issues arise while in the process of vendor selection? Or if the provision requires a more expansive review such that the SIB start to research and evaluate financial institutions with whom the SIB or state currently does no business? Further, the creation and maintenance of the list implies an obligation to monitor the public statements and private contracts 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 at a significantly increased pace and with a significant increased cost 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 or the agriculture sectors for non-pecuniary reasons. The proposal, though well intentioned imposes non-uniform regulatory requirements on vendors that may conflict with federal law; imposes contradictory conduct requirements between sections 1 and 2; and may be infeasible to administer by significantly increasing 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 at an imprudent pace and significantly increased cost.

SEC Registered Investment Advisers



Total SEC Registered Investment Advisers in US: **14,806**

Investment Adviser Firms on State Blacklists: **17**

Firms Blacklisted by TX, WV, KY

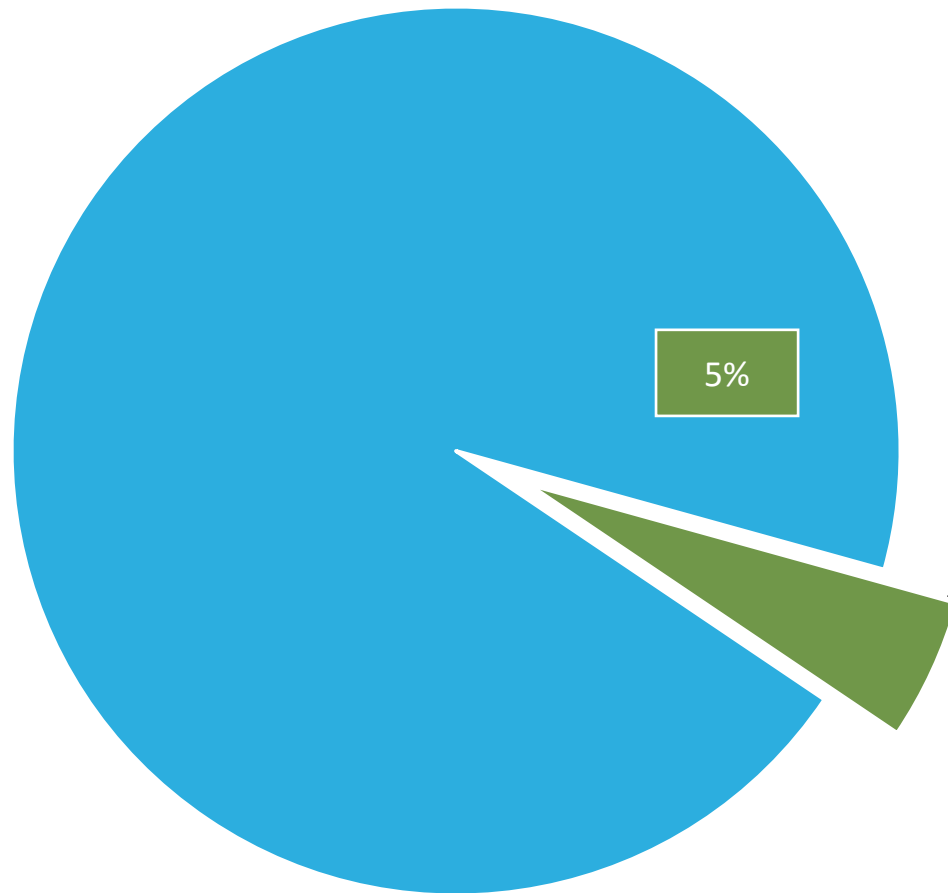
US Domiciled

- BlackRock, Inc.
- Goldman Sachs
- Citigroup
- Climate First Bank
- JP Morgan Chase
- Morgan Stanley
- Wells Fargo

Foreign Domiciled

- BNP Paribas
- Danske Bank
- HSBC
- Nordea Bank
- Schroders
- Svenska Handelsbanken
- Swedbank
- Credit Suisse Group AG
- Jupiter Fund Management PLC
- UBS Group AG

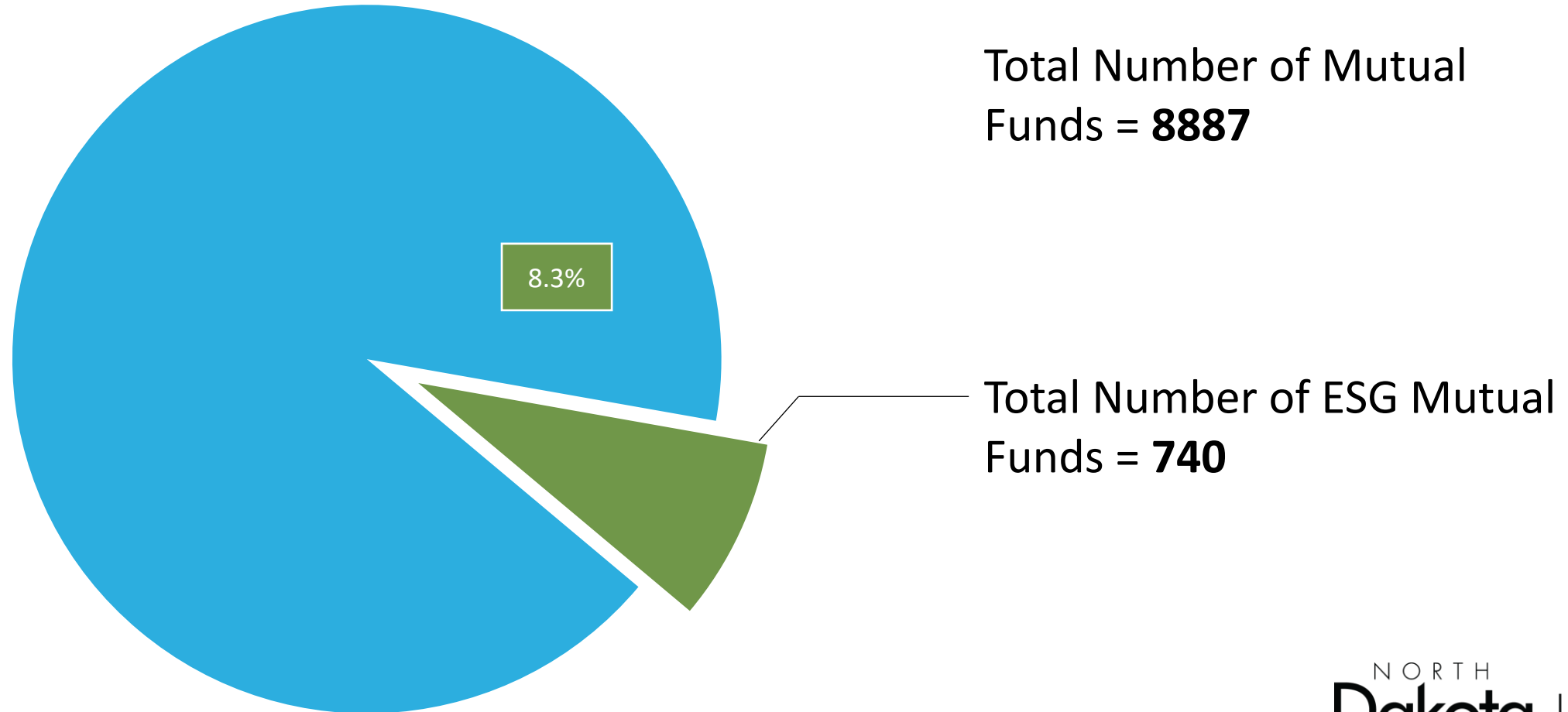
US Investment Adviser Assets Under Management



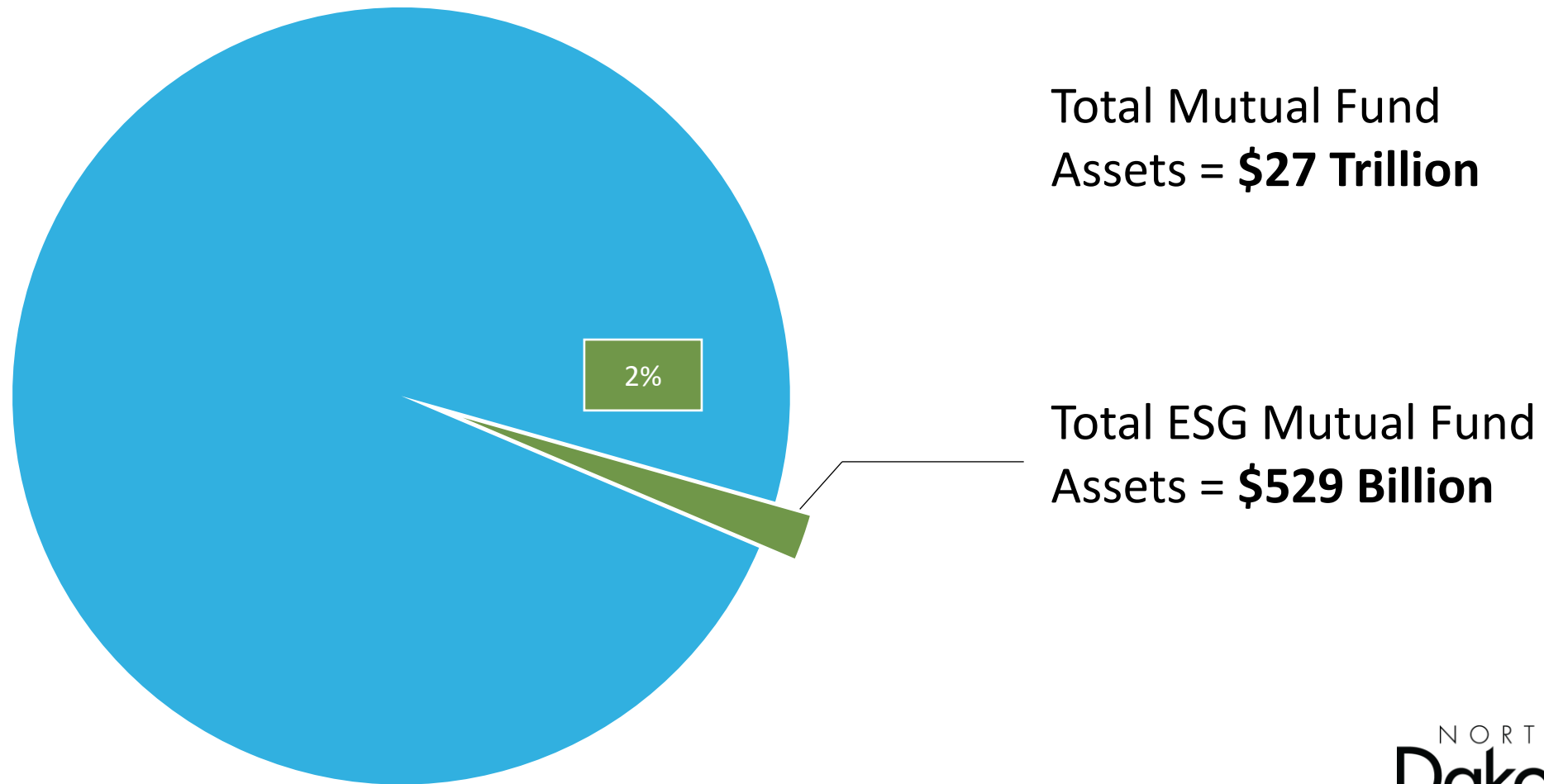
Total Assets Under Management
by SEC Registered Investment
Advisers = **\$128.4 Trillion**

Total Institutional Investor
Assets Managed for ESG
Objectives = **\$6.6 Trillion**

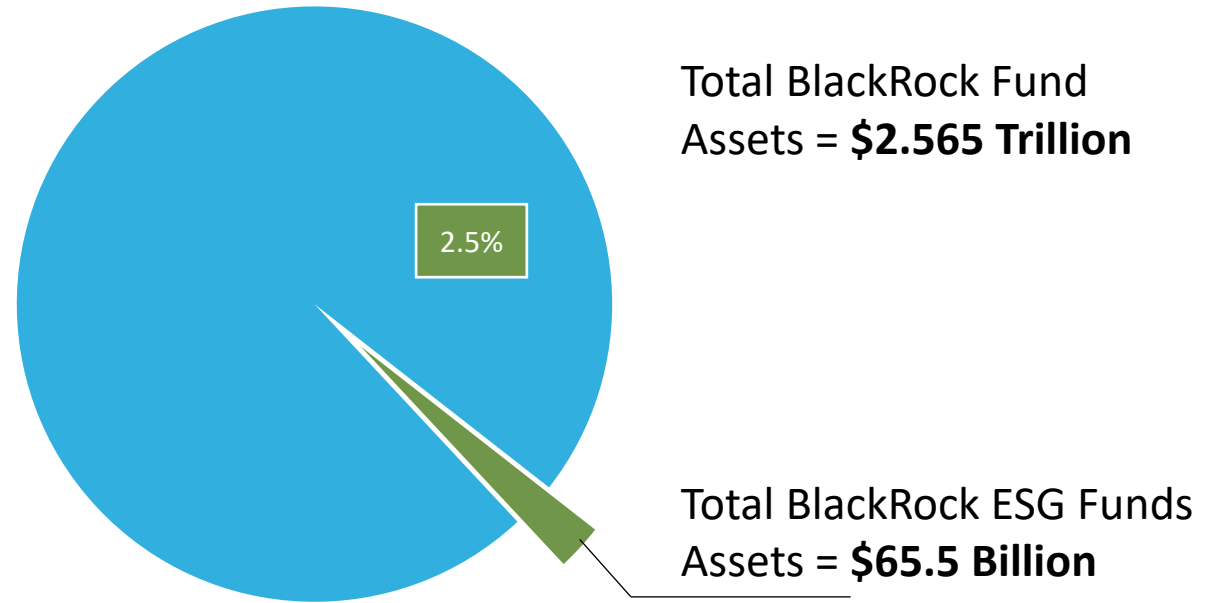
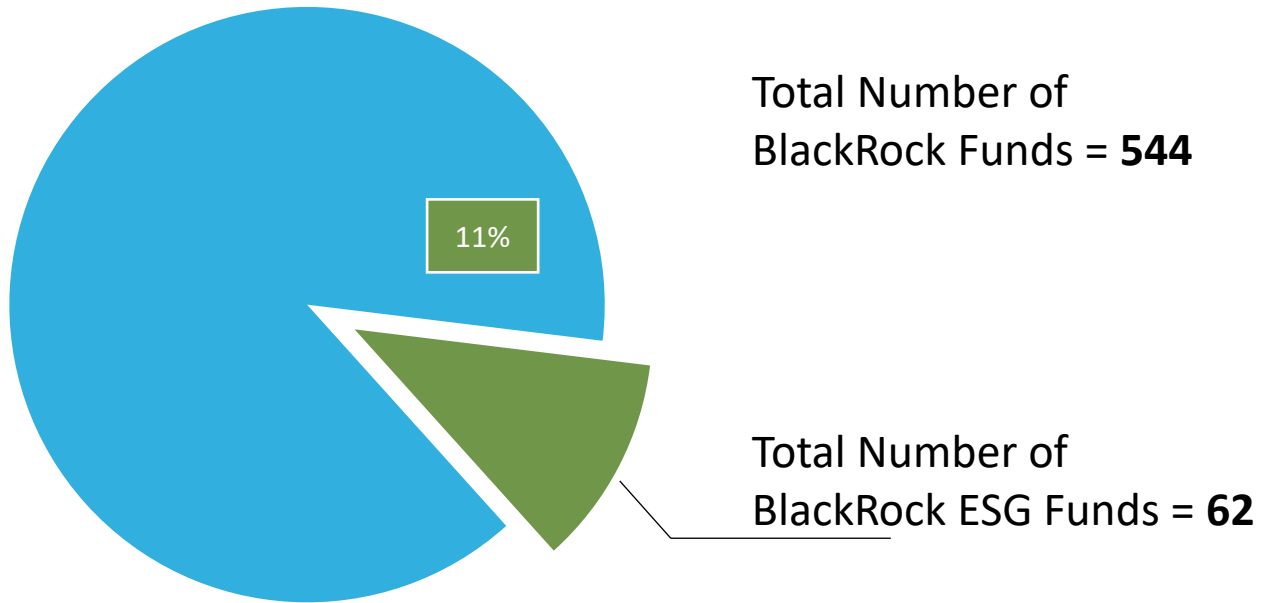
US Mutual Fund Market



US Mutual Funds Assets Under Management



BlackRock US



Testimony in Opposition to HB 1469

North Dakota Securities Commissioner Karen Tyler

House Industry, Business and Labor Committee

February 6, 2023

Good morning Mr. Chairman and members of the Committee, I am Karen Tyler, the state securities commissioner, and I am providing opposition testimony on HB 1469.

The North Dakota Securities Department is a regulatory agency responsible for, among other things, regulating investment industry firms and professionals who do business in the state – the firms and professionals who provide investment advice and other investment services to North Dakota clients. These firms and professionals can be broken down into two categories:

Broker-Dealers and their BD Agents (stockbrokers)

Investment Advisers and their Investment Adviser Representatives

My testimony will largely be focused on the latter category – Investment Adviser firms. These are the asset managers that the SIB selects and RIO contracts with to manage assets for various retirement programs and the Legacy Fund.

I will briefly cover industry conduct standards and the authority of regulators to enforce those standards, regulatory uniformity, split jurisdiction over investment advisers, and most importantly from a regulatory perspective, the fiduciary duty owed to investors by investment advisers, and how this principle is interpreted and enforced under federal and state securities law and rules.

While much of my testimony pertains to Investment Adviser firms and the asset management services they provide to investor clients like our state pension fund and the legacy fund, many large firms that offer Advisory services also offer bond underwriting services and play an important role as underwriters and investors in the process of financing critical infrastructure in the state.

I have also included some data related to the investment adviser industry in the US, how much money they manage overall, and how much they are managing to an ESG or sustainable finance objective.

Investment Industry Conduct Standards Created Outside of the Securities Act

The laws and rules governing the conduct of Investment Advisers and Broker-Dealers are set forth in and under state and federal securities laws. Here in North Dakota the Securities Act is chapter 10-04 of the NDCC. At the federal level,

relevant law is the Securities Act of 1933, the Securities and Exchange Act of 1934, the Investment Advisers Act of 1940 and the Investment Company Act of 1940. HB 1469 imposes conduct standards for the investment industry that reside outside of securities laws and rules.

Creating investment industry conduct requirements outside of a securities law construct is non-uniform and also raises questions of enforceability. I refer specifically to:

Page 1, Section 1, Subsection 1, Lines 9-17

And Page 2, Section 1, Subsection 2, Lines 9-18

Page 2, Subsection 5, Lines 29 and 30, continuing on Page 3, Lines 1 and 2

I am not commenting on the substance of the language, only that it resides outside of the body of laws and rules that govern the conduct of this industry.

Notably, up to this point ESG or Anti-ESG proposals by states have placed limitations or conduct standards on the state entity responsible for hiring the asset manager. This bill departs from that approach, and instead places the conduct requirement on the investment firm, and does so outside of the Securities Act.

Lack of Uniformity

The investment firms that RIO contracts with conduct business in many if not all states. Some aspects of their business are regulated concurrently by both state and federal securities regulators, and some aspects of their business are regulated by either the state regulator or the SEC. As such, uniformity among states, and between the state and federal regulatory systems, is a critical issue for this industry. The conduct provisions of this bill are non-uniform as they reside outside of securities laws and rules.

Split Jurisdiction Over Investment Advisers

Regulatory jurisdiction over Investment Adviser firms is split between state securities regulators and the SEC at the \$100 million of AUM level. Generally, firms with less than \$100 million of AUM are regulated by state securities regulators, and firms with greater than \$100 million AUM are regulated by the Securities and Exchange Commission. Investment Adviser firms hired by the SIB to provide asset management services are SEC regulated entities. As such, the ability to enforce the conduct requirements of this bill could reasonably be called into question. If the SIB had basis to file a complaint against an adviser, the

complaint would be filed with the SEC, and the applicable regulatory governance would be the Investment Advisers Act of 1940, not state law.

Fiduciary Duty under State and Federal Securities Law

The term “fiduciary duty” is not defined in federal securities law and is not defined under the North Dakota Securities Act. Its definition is based on equitable common law principles that provide for a fluid and elastic interpretation to be decided by the relevant governing body in each case based on principals of fairness. In any given situation, an investment adviser’s fiduciary duty is determined by reasonableness under the particular circumstances – taking into consideration the terms of the advisory agreement, the complexity of the investments, the client’s investment profile and objectives, and investment policy statements, among other factors.

Creating a prescriptive set of conduct requirements for a fiduciary as set forth in this bill is not necessarily in conflict with the precedent of applying a principles-based interpretation of the of duty of care and duty of loyalty owed by a fiduciary to their client under the terms of a contract and in a fiduciary relationship. It does however, appear to be an unnecessary duplicative requirement, and the enforceability of the conditions, as I mentioned earlier, is not clear given the fact

that enforcement powers of securities regulators are set forth under securities laws.

List of Ineligible Institutions

As states take up legislation to support or oppose ESG factors related to state assets, the primary focus has been on investment methodologies deployed by asset managers, and in some states laws have passed that create lists of institutions ineligible to provide those services.

There are of course other considerations for policy makers to weigh. Investment firms that provide asset management services may also play an important role in building out critical infrastructure and supporting the development of much needed housing inventory through their bond underwriting services and willingness to invest in the state.

In the last 3 years, over \$1 billion of bonds have been issued collectively by our Housing Finance Agency, Public Finance Authority and Building Authority. The majority of these bonds were issued on a competitive bid basis which means the investment bank buys the entire issuance up front, injecting capital into the state to be used for state building and infrastructure projects. As an example, since

2020 JP Morgan has purchased close to \$900,000,000 in bonds from our agencies, the proceeds of which are being used to fund building projects and water projects including clean water projects in Fargo, Jamestown, Cavalier, Center, Stanton, Stanley, Arnegard plus many more, and this investment by JP Morgan included the purchase of all of the Legacy Bonds the proceeds of which are being used to fund, among other things, the Fargo flood diversion project and highway bridge projects across the state. The same firms that are being deemed ineligible in other states have underwritten and invested in North Dakota to fund projects like the Science Center at NDSU, the Performing Arts Center at Valley City State, and Pulver Hall at Dickinson State.

Investment firms also buy the Mortgage Revenue Bonds and other bond issuances that support our single-family housing programs and multi-family affordable housing programs that are so critical to our lower and moderate income residents, and so critical to attracting workforce to the state.

These investment firms are also positioned to provide the necessary outside capital that will fund the development of a carbon management infrastructure that will support our fossil fuels industry and extend by decades the economic life and financial impact of the Bakken.



MEMORANDUM

DATE: February 6, 2023
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Opposition of House Bill No. 1469

Chairman Louser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify on House Bill No. 1469.

House Bill No. 1469 Section 2 requires the State Investment Board to blacklist financial institutions. Mirriam-Webster defines a blacklist as “a list of persons who are disapproved of or are to be punished or boycotted.” A blacklist by a government entity will cause citizens to lose trust and confidence in their financial institution, which will result in bank runs. Bank runs will cause bank failures, which have devastating impacts on the communities they serve and depositors who may lose their money if over the federally insured limit.

Therefore, the department respectfully opposes House Bill No. 1469.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.



North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Anna S. Novak

District 33
1139 Elbowoods Drive
Hazen, ND 58545-4923

anovak@ndlegis.gov

COMMITTEES:

Education
Energy and Natural Resources

February 6, 2023

Good morning, Mr. Chairman and members of the IBL committee! For the record, my name is Anna Novak. You have before you HB1469, which basically disallows any state dollars to be invested in funds that promote ESG. ESG stands for "Environmental and Social Governance" and it is a framework within businesses that encourage "responsible investing". At first glance, this sounds great and gives people a feeling like they are using their money to do good things for the environment and society. But the truth is, it promotes policies that damage our critical state sectors, such as energy and agriculture, and oftentimes goes against traditional family values.

We do already have some language in the Century Code that deals with ESG, but the language in Century Code Chapter 21-10 is pretty vague. The fact that we still have a fair amount of money invested in companies that promote ESG two years after the legislation was passed tells me that it didn't go far enough. This bill will create and use a list of large banks that have been very open about their support of ESG practices by their own public statements or information published by the financial institutions themselves. They are refusing to deal with or are terminating business activities with coal, oil or natural gas companies without reasonable business purposes. They basically use their capital to promote policies that encourage divestment in the fossil fuel and agriculture industries. Examples of banks on this list are Blackrock, Goldman Sachs, JP Morgan, Morgan Stanley and Wells Fargo. Vanguard was on the list but they walked back their support of ESG investing about a month ago and have been removed. Why? Because the actions that states are taking to stand up to them are hurting them and their investors financially. It's working!

The idea that North Dakota can't make a difference if we participate is simply wrong. The idea that other states say they've pulled out of ESG investing but they are still doing it is wrong too. I've had conversations with people in the legislature and at the state level and frankly, I'm disappointed because these banks are trying to damage industries that affect many, many people that we represent. Yes, this will likely cost money upfront and yes, this isn't going to be easy. There is a pretty large fiscal note attached to this bill. Honestly, when I saw it I about fell off my chair. But please, don't let that make you hesitate supporting this bill. Our energy sector is why we have

the Legacy Fund. Our energy sector is why we have a surplus in our budget this biennium. We would be foolish to not protect that industry in every way we can. The fiscal note on this bill is a drop in the bucket in terms of how financially valuable the energy sector is to our state.

Over the weekend, I realized that the bill was missing something and I have an amendment, which you all should have in front of you. It basically allows investing in one of the "blacklisted" firms if no other options are available.

You've all read and seen the stories on our local media asking why we still have investments in banks and investments that want to harm our energy and agriculture industries. The public has been very clear on wanting us to take a stand. The legislature needs to do something and the time is now. This is a good bill and I've run it by many people. I ask that you give HB1469 a strong Do-Pass Recommendation.

I have Dr. Brent Bennett online and he has helped the state of Texas with their ESG laws. I believe he will be a valuable resource to this committee in answering technical questions about this bill. Thank you, and I'll stand for any questions.



RESTRICTED FINANCIAL INSTITUTION LIST

Pursuant to West Virginia Code §§12 1C 1, et seq., the West Virginia State Treasurer is authorized to prepare and maintain a list of financial institutions engaged in a "boycott of energy companies," as defined in West Virginia Code §12 1C 1(a)(2). Financial institutions included on the list are referred to as "restricted financial institutions."

In selecting a financial institution to enter into a State "banking contract," as that term is defined in West Virginia Code §12 1C 1(a)(1), the State Treasurer is authorized to take any and all of the following actions:

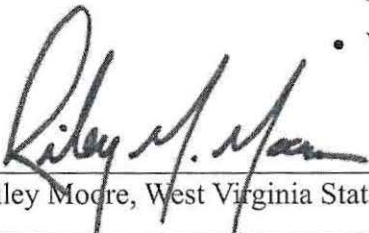
- Disqualify a restricted financial institution from the competitive bidding process or from any other official selection process.
- Refuse to enter into a banking contract with a restricted financial institution based on its restricted financial institution status.
- Require, as a term of any banking contract, an agreement by the financial institution not to engage in boycott of energy companies for the duration of the contract.

Following a financial institution's inclusion on the Restricted Financial Institution List, the State Treasurer will remove the institution from said list if the institution demonstrates that it has ceased all activity that boycotts energy companies according to West Virginia Code §§12 1C 1, et seq.

Inclusion on the restricted financial institution list is not an indication of unsafe or unsound operating conditions at any financial institution nor any risk to consumer deposits.

Pursuant to West Virginia Code §§12-1C-1, et seq., the West Virginia State Treasurer's Office has determined, based on publicly available statements published by financial institutions authorized to enter into financial services contracts with the State Treasurer's Office, that the financial institutions listed below are restricted financial institutions and are hereby placed on the West Virginia State Treasurer's Restricted Financial Institution List.

- **BlackRock Inc.**
- **Goldman Sachs Group Inc.**
- **JPMorgan Chase & Co.**
- **Morgan Stanley**
- **Wells Fargo & Co.**

Signed: 
Riley Modre, West Virginia State Treasurer

Effective Date: July 28, 2022

*Banks currently authorized to enter into financial services contracts with the West Virginia State Treasurer's Office include those institutions that are currently designated state depositories or institutions offering sweep accounts that the Treasurer is authorized to select on behalf of the Board of Treasury Investments.

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

SENATE BILL NO. 2291
(Senator Bell)

AN ACT to create and enact a new section to chapter 21-10 of the North Dakota Century Code, relating to social investments made by the state investment board; to provide for a department of commerce study of the implications of complete divestment of companies that boycott energy or commodities; to provide for reports to legislative management; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 21-10 of the North Dakota Century Code is created and enacted as follows:

Social investment - Prohibition.

1. As used in this section, "social investment" means the consideration of socially responsible criteria in the investment or commitment of public funds for the purpose of obtaining an effect other than a maximized return 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. DEPARTMENT OF COMMERCE STUDY OF DIVESTMENT OF COMPANIES THAT BOYCOTT ENERGY OR COMMODITIES - REPORT TO LEGISLATIVE MANAGEMENT. During the 2021-22 interim, the department of commerce 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 must also 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 department of commerce shall report its findings and recommendations to the legislative management by June 1, 2022.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2291 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 42 Nays 4 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 82 Nays 12 Absent 0

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State

23.0466.04001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1469

Introduced by

Representatives Novak, Dyk, J. Olson, S. Olson, Porter, Schauer, Weisz

Senators Bekkedahl, Rust

1 A BILL for an Act to create and enact a new section to chapter 21-06 and two new subsections
2 to section 21-10-02 of the North Dakota Century Code, relating to the investment and
3 management of public funds.

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

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

7 **Non-pecuniary factors - Public funds - Investment.**

8 1. For purposes of this section:

9 a. "Fiduciary" means a person that:

10 (1) Exercises any discretionary authority or discretionary control regarding the
11 management of a plan or exercises any authority or control regarding
12 management or disposition of a plan's assets;

13 (2) Renders investment advice for a fee or other compensation, directly or
14 indirectly, with respect to any funds or other property of a plan or has the
15 authority or responsibility to render investment advice; or

16 (3) Has discretionary authority or discretionary responsibility in administering a
17 plan.

18 b. "Non-pecuniary factor" means any factor intended to further or promote a
19 political, social, or other nontraditional goal or standard without regard to the
20 investment objectives and funding policy of a plan.

21 c. "Pecuniary factor" means a factor that has a material effect on the financial risk or
22 the financial return of an investment based on appropriate investment horizons
23 consistent with the investment objectives and funding policy of a plan.

- 1 d. "Plan" means any plan, fund, or program established or maintained by the state
2 or a political subdivision, including any public university, to do any of the
3 following:
- 4 (1) Provide retirement income or other retirement benefits to employees or
5 former employees.
- 6 (2) Defer income by employees for a period of time extending to the termination
7 of covered employment or beyond.
- 8 (3) Invest taxpayer funds for any purpose.
- 9 2. Notwithstanding section 21-10-07, a fiduciary:
- 10 a. Shall discharge the fiduciary's duties with respect to a plan in accordance with
11 the best interests of the participants and beneficiaries of the plan for the
12 exclusive purpose of providing pecuniary benefit to the participants and
13 beneficiaries, defraying reasonable expenses of administering the plan, and
14 earning a return on the investment.
- 15 b. Shall consider pecuniary factors when evaluating an investment or discharging its
16 duties with respect to a plan.
- 17 c. May not consider any non-pecuniary or other factors when evaluating an
18 investment or discharging its duties with respect to a plan.
- 19 3. Unless a person follows guidelines consistent with the governmental entity's obligation
20 to act on pecuniary factors, the governmental entity that establishes, maintains, or
21 manages a plan may not grant proxy voting authority to a person that is not part of the
22 governmental entity.
- 23 4. The shares held directly or indirectly by a plan may be voted only in the pecuniary
24 interest of the plan. Notwithstanding section 21-10-07, the share may not be voted to
25 further non-pecuniary, environmental, social, political, ideological, or other benefits or
26 goals and plan assets may not be entrusted to any fiduciary that has a practice of or
27 commits to engaging with companies or voting shares based upon non-pecuniary
28 factors.
- 29 5. Notwithstanding section 21-01-07, a fiduciary may not adopt a practice of following the
30 recommendations of a proxy advisory firm or other service provider unless the proxy

1 advisory firm's or the service provider's voting guidelines are consistent with the
2 fiduciary's obligation to act solely based on pecuniary factors.

3 **SECTION 2.** Two new subsections to section 21-10-02 of the North Dakota Century Code
4 are created and enacted as follows:

5 The board shall establish a list of financial institutions not eligible to receive
6 investments of state funds based on the financial institution's intended furtherance or
7 promotion of a political, social, environmental, ideological, or other nontraditional goal
8 or standard that conflicts with the state's energy or agriculture industries or the state's
9 support of the manufacture, import, distribution, marketing, advertising, sale, or lawful
10 use of firearms, ammunition, or components, parts, and accessories of firearms or
11 ammunition.

12
13 The board may enter an environmental and social governancea compact with other
14 states on behalf of the state to establish and enact fiduciary standards.

Does not apply if the government entity determines and documents the goods or services are not otherwise available on a commercially reasonable terms or is inconsistent with the governmental entity's constitutional or statutory duties.