

HB 457-FN - AS INTRODUCED

2023 SESSION

23-0444

08/04

HOUSE BILL

***457-FN***

AN ACT

relative to state treasury pension and insurance fund management.

SPONSORS:

Rep. Bernardy, Rock. 36; Rep. Greeson, Graf. 6; Rep. Hill, Merr. 2; Rep. Hobson, Rock. 14; Rep. Kofalt, Hills. 32; Rep. Porcelli, Rock. 19; Rep. Spillane, Rock. 2; Rep. A. Turcotte, Merr. 11; Rep. Vose, Rock. 5; Rep. Weyler, Rock. 14; Sen. Gannon, Dist 23

COMMITTEE:

Executive Departments and Administration

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ANALYSIS

This bill prohibits the state treasurer and the retirement system conducting business with any financial institution or proxies which prioritize social, political, or ideological interests above or in concert with the traditional fiduciary duty to maximize financial benefit

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Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struckthrough.]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Three*

AN ACT                      relative to state treasury pension and insurance fund management.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            1 New Subparagraph; Investment of Funds; State Treasurer; Conditions. Amend RSA 6:8, II by  
2 inserting after subparagraph (e) the following new subparagraph:

3                      (f) Notwithstanding the other provisions of this paragraph, all investments and their  
4 management shall be governed by the fiduciary duty to maximize benefits for the state or the  
5 beneficiaries of the state's trust funds. Such duty precludes conducting business with any financial  
6 institution or proxies which prioritize social, political, or ideological interests above or in concert  
7 with the traditional fiduciary duty to maximize financial benefit.

8            2 New Subparagraph; Retirement System; Management of Funds. Amend RSA 100-A:15, I-a(b)  
9 by inserting after subparagraph (4) the following new subparagraph:

10                      (5) Notwithstanding the other provisions of this paragraph, all investments and  
11 their management shall be governed by the fiduciary duty to maximize benefits for the state or the  
12 beneficiaries of the state's trust funds. Such duty precludes conducting business with any financial  
13 institution or proxies which prioritize social, political, or ideological interests above or in concert  
14 with the traditional fiduciary duty to maximize financial benefit.

15            3 Effective Date. This act shall take effect 60 days after its passage.

**HB 457-FN- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT relative to state treasury pension and insurance fund management.

**FISCAL IMPACT:**    ☒ **State**                    ☒ **County**                    ☒ **Local**                    ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill prohibits the state treasurer and the retirement system from conducting business with any financial institution or proxies which prioritize social, political, or ideological interests above or in concert with the traditional fiduciary duty to maximize financial benefit.

The New Hampshire Retirement System (NHRS) states the proposed bill contains several ambiguities that would make it unfeasible to administer. It lacks both a definition of what constitutes a “proxy” for an investment institution and an objective standard for determining what constitutes “social, political, or ideological interests”. In addition, it is unclear what terms “prioritize” and “above or in concert with” mean. It would be very difficult, if not impossible, for NHRS to determine which factors a particular investment institution prioritizes or otherwise considers in concert with more traditional factors.

Pursuant to RSA 100-A:15, I-a(a)(1), NHRS fiduciaries, including its Board of Trustees and members of its Independent Investment Committee, have a duty to make all its decisions “[s]olely in the interest of the participants and beneficiaries.” The requirements of this bill conflicts with these constitutional and statutory fiduciary duties, as well as general trust law

and the Internal Revenue Code, each of which requires fiduciaries to follow a duty of loyalty and prudence at all times. This bill would limit the options available to maximize investment returns and the ability of NHRS to consider all factors, both positive and negative, that could affect the value of its investment portfolio. Due to the above factors the NHRS states it is impossible to determine if there would be any fiscal impact on employer contribution rates. Any impact on the New Hampshire Retirement System would impact county and local expenditures to the extent they are members of the System.

The State Treasury Department states it is unclear whether this directive would affect revenues and expenditures of the State Treasury. The State Treasury would need to first research whether current financial partners prioritize social, political, or ideological interest above the fiduciary duty to maximize benefits for the State or the beneficiaries of the State's trust funds. If they learned that financial institutions they already work with have a social, political, or ideological interest or mandate of their own and they do not act on the State's best interest, they would need to determine whether the existing contract/agreement could be terminated and issue an RFP to find a financial institution that would satisfy this requirement. A change in current service provider(s) to re-implement commercial banking services, while indeterminate, could create additional transition costs.

The State Treasury conducts business with financial institutions that have a large footprint in the state to accommodate State agency deposits, sufficiently robust infrastructure to handle the volume of deposits and payments the State requires, and offers fraud prevention products and services to protect public funds (i.e. positive pay services, etc.); therefore, it is unclear whether the State would incur higher costs or miss on earnings opportunities as result of potentially excluding certain financial institutions.

**AGENCIES CONTACTED:**

Treasury Department and New Hampshire Retirement System