

## NHRS Opposes Investment-related Legislation

Honorable members of the General Court,

The Board of Trustees of the New Hampshire Retirement System (NHRS, the retirement system) voted Feb. 13, 2024, to oppose the following 2024 legislation on fiduciary and/or plan qualification grounds.

- Senate Bill 520
- House Bill 1267
- House Bill 1421

As a general principle the retirement system has long expressed concern about any legislation that would mandate or prohibit specific investment actions, potentially limiting – or running counter to – our fiduciary duty to act solely in the best interest of our membership at all times.

Under the existing state constitutional and statutory provisions governing NHRS, as well as general trust law under the Internal Revenue Code, fiduciaries must follow the duty of loyalty at all times. Pursuant to RSA 100-A:15, I-a(a)(1), this duty requires NHRS fiduciaries, including its Board of Trustees and members of its Independent Investment Committee, to make all decisions “[s]olely in the interest of the participants and beneficiaries.”

Further, Part I, Article 36-a of the NH Constitution requires that:

*“All of the assets and proceeds, and income there from, of the New Hampshire retirement system ... and of any and all other retirement systems for public officers and employees operated by the state or by any of its political subdivisions, and of any successor system, and all contributions and payments made to any such system to provide for retirement and related benefits ... shall be held, invested or disbursed as in trust for the exclusive purpose of providing for such benefits and shall not be encumbered for, or diverted to, any other purposes.”*

In lay terms, the goal has always been – and continues to be – to make prudent, long-term investments that provide the best chance of meeting or exceeding our assumed rate of return, while balancing risk and liquidity. Environmental, Social, and Governance (ESG) or any other non-pecuniary factor is never considered as an end unto itself but is one of many factors viewed in regard to its potential impact on our ability to obtain the highest return for New Hampshire’s active and retired public employees and their beneficiaries.

Following the passage of HB 457 in 2023, NHRS has submitted quarterly statements to the office of Legislative Budget Assistant stating that it is in compliance with its duty to make all investment decisions solely in the interest of its participants and beneficiaries and does not have investments in any funds that may have mixed, rather than sole, interest investment motivations.

This is not a new position. In 1987, legislation was considered to mandate that the retirement system divest from companies that did business in Northern Ireland and failed to take substantial action regarding the “McBride Principles,” which dealt with hiring practices regarding under-represented religious groups in Northern Ireland. At the time, external legal counsel warned NHRS that legislation

adding non-fiduciary factors to the use of retirement funds would mean that these funds would be no longer used for “the exclusive purpose” of providing benefits but would also be used for the divergent collateral purpose of effecting social or political change.

In summary, we believe this legislation could only serve to limit our ability as fiduciaries to act solely in the best interest of our membership and maintain our status as a qualified pension trust, which is already clearly defined in existing law.

We respectfully request that the General Court vote inexpedient to legislation on these proposals.

– *Adopted by a 11-0 vote of the  
NHRS Board of Trustees  
February 13, 2024*