

Fiscal Note 2027 Biennium

ation:				
evise laws related to investme	ents made by the board of in	nvestments		
As Introduced	Sen.	Bogner		
ant Local Gov Impact	□Needs to be included in HB 2		Technical Concerns	
d in the Executive Budget	□Significant Long-Term Impacts □Dec		dicated Revenue Form Attached	
	FY 2024	FY 2025	FY 2026	FY 2027
	Difference	Difference	Difference	Difference
res:				
Fund	\$0	\$0	\$0	\$0
ecial Revenue	\$0	\$0	\$0	\$0
Special Revenue	\$0	\$0	\$0	\$0
roprietary	Unable to Determine	Unable to Determine	Unable to Determine	Unable to Determine
Fund	\$0	\$0	\$0	\$0
ecial Revenue	\$0	\$0	\$0	\$0
Special Revenue	\$0	\$0	\$0	\$0
Proprietary	Unable to Determine	Unable to Determine	Unable to Determine	Unable to Determine
ct-General Fund Balance	\$0	\$0	\$0	\$0
	As Introduced ant Local Gov Impact d in the Executive Budget res: Fund ecial Revenue pecial Revenue roprietary Fund ecial Revenue roprietary	As Introduced As Introduced Sect. As Introduced Sect. As Introduced Sect. As Introduced Needs to be included in the Executive Budget FY 2024 Difference res: Fund Social Revenue Froprietary Unable to Determine Social Revenue Social Revenue	As Introduced As Introduced Sen. Bogner	As Introduced Sen. Bogner ant Local Gov Impact Needs to be included in HB 2 Meeds and the Executive Budget Significant Long-Term Impacts Dedicated Revenue Form FY 2024 FY 2025 FY 2026 Difference Difference Difference Found \$0

<u>Description of fiscal impact:</u> SB 459 revises the Montana Board of Investments (BOI) laws to limit state investment in any security listed on a security exchange in a jurisdiction in which the Public Company Accounting Oversight Board (PCAOB), created by the Sarbanes-Oxley Act of 2002, has not or is prohibited from conducting oversight.

FISCAL ANALYSIS

Assumptions:

Board of Investments

The Board of Investments holds \$2.139 billion in securities potentially impacted by this bill through BOI's
management of international equities as represented by the ACWI ex US IMI Index which captures large, mid
and small cap representation across 22 of 23 Developed Markets countries (excluding the United States) and

- 24 Emerging Markets Countries. With 6,319 constituents, the index covers approximately 99% of the global equity opportunity set outside the US. (Source: MSCI)
- 2. These holdings are solely in the Consolidated Asset Pension Pool (CAPP).
- 3. In order for their securities to be traded in US capital markets, public companies, whether located in the United States or abroad, must comply with certain US legal requirements, including the requirement to periodically file audited financial statements with the US Securities and Exchange Commission (SEC). As required by the Sarbanes-Oxley Act of 2002, the auditor of those financial statements whether a US auditor or a non-US auditor must be registered with, and therefore subject to the jurisdiction of, the Public Company Accounting Oversight Board (PCAOB). This requirement includes undergoing regular PCAOB inspections to assess the auditor's compliance with US law and professional standards in connection with its audits of public companies.
- 4. BOI would need to divest from certain markets if this bill passed.
- 5. The fiscal impact of SB 459 to the invested funds cannot be estimated.

Technical Concerns:

- 1. Article VIII, Section 13 (3) states "...Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock."
- 2. Article VIII, Section 15 states "Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses."
- 3. The bill may conflict with the board's constitutional obligation of acting as a prudent fiduciary. The bill may unconstitutionally encumber the board's decision abilities regarding pension assets.
- 4. If SB 459 is passed and approved, BOI would consult with the SEC as required, however, it is assumed they would not respond to BOI compliance inquiries. Based on past experience, that level of involvement is not feasible on an ongoing basis.

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