



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** SB0329

**Title:** Revise board of investment laws

**Primary Sponsor:** Molnar, Brad

**Status:** As Introduced

- Significant Local Gov Impact     
 Needs to be included in HB 2     
 Technical Concerns  
 Included in the Executive Budget     
 Significant Long-Term Impacts     
 Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Other	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	Unknown	Unknown	Unknown	Unknown
State Special Revenue	Unknown	Unknown	Unknown	Unknown
Federal Special Revenue	Unknown	Unknown	Unknown	Unknown
Other	Unknown	Unknown	Unknown	Unknown
<b>Net Impact-General Fund Balance:</b>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

**Description of fiscal impact:** SB 329 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:

- The Board holds \$1.125 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 27 Emerging

- Markets Countries. With 6,582 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 U.S. capital markets, public companies, whether located in the United States or abroad, must comply with certain U.S. legal requirements, including the requirement to periodically file audited financial statements with the U.S. Securities and Exchange Commission (SEC). As required by the Sarbanes-Oxley Act of 2002, the auditor of those financial statements – whether a U.S. auditor or a non-U.S. auditor – must be registered with, and therefore subject to the jurisdiction of, the Public Company Accounting Oversight Board (PCAOB). This includes undergoing regular PCAOB inspections to assess the auditor’s compliance with U.S. law and professional standards in connection with its audits of public companies. (Source: PCAOB)
  4. The fiscal impact of SB 329 to the invested funds cannot be estimated.

**Technical Notes:**

1. Art. VIII Sec. 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. Art. VIII Sec 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. The US Department of the Treasury, Office of Foreign Assets Control (OFAC) is primarily responsible for administering and enforcing most economic and trade sanctions through civil enforcement. The US Department of State Office of Economic Sanctions Policy and Implementation, the US Department of Commerce Bureau of Industry and Security, and US Department of Defense advise OFAC on implementation and enforcement of trade sanctions. It is unclear whether the sanctions of the US DOD, SOS or Commerce are civilly enforceable.
5. If SB 329 is passed and approved, BOI would consult with the SEC as required, however, it is assumed they would not respond to BOI compliance inquiries.

  
 Sponsor's Initials

2-26-21  
 Date

  
 Budget Director's Initials

2/25/21  
 Date