



MINNESOTA STATE BOARD OF INVESTMENT

# REQUEST FOR PROPOSAL FOR INVESTMENT CONSULTING SERVICES

## **Minnesota's Commitment to Diversity and Inclusion**

The State of Minnesota is committed to diversity and inclusion in its public procurement process. The goal is to ensure that those providing goods and services to the State are representative of our Minnesota communities and include businesses owned by minorities, women, veterans, and those with substantial physical disabilities. Creating broader opportunities for historically under-represented groups provides for additional options and greater competition in the marketplace, creates stronger relationships and engagement within our communities, and fosters economic development and equality.

To further this commitment, the Department of Administration operates a program for Minnesota-based small businesses owned by minorities, women, veterans, and those with substantial physical disabilities. For additional information on this program, or to determine eligibility, please call 651-296-2600 or go to [www.mmd.admin.state.mn.us/mn02001.htm](http://www.mmd.admin.state.mn.us/mn02001.htm).

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# Minnesota State Board of Investment

## Investment Consulting Services Overview

### Project Overview

The Minnesota State Board of Investment (SBI) is charged with the investment of approximately \$82.3 billion for the State of Minnesota and related constituents.

The selected consultant(s) will report to the Board and its individual members. In carrying out its responsibilities, the consultant(s) will work closely with individual Board members and their staffs, the SBI's Executive Director and SBI staff, and members of the SBI's Investment Advisory Council.

The SBI has established performance objectives for each of the funds under its control. A brief description of each fund and its performance objectives is included as **Exhibit A**. In its efforts to meet or exceed these objectives, the SBI has sought and will continue to seek consultants' advice and recommendations in the design, development and implementation of its investment programs.

The primary advisory responsibilities of the consultant(s) selected through this RFP shall include, but are not limited to, investment objectives and asset allocation, management structures, performance measurement and analytics, manager search and evaluation, risk management and analysis, and other operational needs.

The SBI has retained the services of consulting firms since 1982. Currently, the firm of Callan Associates, Inc., Chicago IL serves as the SBI's primary consultant. Pension Consulting Alliance, Portland, Oregon serves as the SBI's consultant for special projects.

The SBI is issuing this RFP to comply with State law which requires all consultant contracts be rebid every two years with a potential extension out to a maximum of five years. The SBI always is open to new and creative approaches and encourages consulting organizations to respond to this RFP.

The SBI has established a Consultant Review Committee to prepare and distribute a formal RFP to evaluate available consulting services. The Committee will review responses and will recommend one or more candidates to the SBI for approval. The SBI assumes that the process for evaluating and selecting a consultant or consultants will proceed expeditiously and anticipate it will be completed by March 2017.

## **GOAL**

The SBI utilizes qualified consultants to provide independent, objective and creative input in the process of fulfilling its fiduciary responsibility and to maintain performance history for reporting and analysis.

The consultant(s) employed by the SBI through this RFP will be expected to offer analysis, advice and recommendations with respect to one or more of the following:

- Investment Policies
- Investment Strategy
- Investment Management Structures
- Assist in Manager Selection
- Private Markets
- Performance Evaluation
- Risk Management and Analysis
- Operations and Resources
- Special Projects
- On-Site Consultation and Assistance

Detailed requirements are set forth in the Consultant Tasks section on page 5 of this RFP.

## **CONSULTANT RELATIONSHIP**

The selected Consultant(s) will report to the Board. However, the Consultant(s) will bear the responsibility for maintaining direct communication with members of the Board and their staffs, the SBI's Executive Director and other SBI staff and members of the SBI's Investment Advisory Council.

The SBI recognizes that more than one consulting firm may be required to fulfill the duties described in the Consultant Tasks section on page 5 of this RFP. The SBI's goal is to hire a consultant or consultants whose experience, whether broad-based or specialized, can best satisfy its needs.

Consultants are encouraged to respond to each of the duties cited in the Consultant Tasks section in which they have special expertise.

## **BACKGROUND REGARDING THE SBI**

### **A. Legal Authorization**

The SBI was created pursuant to Article XI, Section 8, of the Minnesota Constitution for the purpose of "administering and directing the investment of all state funds." Statutory provisions relating to fiduciary responsibility, portfolio composition, and the types of securities in which the SBI may legally invest are set forth in Minnesota Statutes Chapter 11A and 356A, copies of which are attached as **Exhibit B**.

## B. Composition

By constitutional requirement, the SBI is composed of four (4) elected officials: Governor, State Auditor, Secretary of State, and State Attorney General.

The SBI has established a Consultant Review Committee to prepare and distribute a formal RFP to evaluate available consulting services.

## C. Investments and Managers

Currently, the SBI invests in domestic and international equities, fixed income, real estate, private equity, venture capital, resource funds, mezzanine debt, and derivative securities.

The state's cash account and some non-retirement assets (one equity and two bond portfolios) are managed internally. The balance of the assets, approximately \$69.3 billion, are managed externally by firms retained by the Board.

<u>Numbers of Managers</u>	<u>Asset Class</u>
19	Domestic Equity (14 active, 4 semi-passive and 1 passive)
10	Foreign Equity (6 active/semi-passive developed, 1 passive/semi-passive developed/emerging, 1 semi-passive developed, and 2 active emerging)
8	Fixed Income (5 active and 3 semi-passive)
7	Real Estate
53	Private Equity and Venture Capital
9	Resource
17	Yield Oriented
1	Stable Asset/GIC
5	Deferred Compensation Mutual Fund
1	Target Date Fund Family
1	529 College Savings Plan (TIAA)

In addition, the SBI utilizes a master custodian, currently State Street Bank to provide a variety of administrative and management functions.

## D. Staffing and Support Services

The SBI has a staff of twenty-four (24) persons supervised by an Executive Director. The staff is responsible for the implementation of Board policies on an on-going basis. The Executive Director reports investment performance and makes policy recommendations to the SBI at quarterly and special meetings. As part of their on-going duties, the SBI staff maintains close contact with the Board members and their staffs, the State Legislature, the state-wide and local retirement systems whose assets are managed by the SBI, and the other organizations with interest in the operations and results of the Board.

The SBI also utilizes the services of its 17-member Investment Advisory Council (IAC) whose duties are set forth in Minnesota Statutes 11A.08. The IAC is composed of the State Commissioner of Management and Budget, the Executive Directors of the three statewide retirement systems, one governor designated retiree representative, two governor designated active employee representatives and ten persons knowledgeable in general investment matters.

The IAC's duties are to advise the SBI on general investment policy matters and perform other advisory tasks as the SBI requests. The IAC meets quarterly prior to the SBI's quarterly meeting.

The SBI has established an Administrative Committee to oversee the Executive Director's annual work plan and administrative budget. The Committee is comprised of each Board member (or his/her designee) as well as the chair and vice chair of the IAC and the Executive Directors of the three statewide retirement systems.

The Proxy Committee establishes guidelines for voting shares held by the SBI.

At times, the SBI may establish ad hoc committees to carry out specific tasks which it may assign.

Charts illustrating the SBI's functional organizational structure and decision-making process are included as **Exhibits C and D**.

#### **E. Funds Invested by the SBI**

The funds invested by the SBI are listed below, along with their June 30, 2015 market values.

	Market Value ( <u>Billions</u> )
Combined Retirement Funds	\$60.1
Supplemental Investment Fund	1.9
State Deferred Compensation Plan SIF Assets	5.8
Assigned Risk Plan	0.3
Permanent School Fund	1.2
Environmental Trust Fund	0.9
State Cash Accounts	10.2
Minnesota College Savings Plan	1.2
Miscellaneous Accounts	<u>0.7</u>
Total	\$82.3

A brief description of each fund is included as **Exhibit A**.

## **Consultant Tasks**

- I. The SBI has established performance objectives for each of the funds under its control (See **Exhibit A**). In its efforts to meet or exceed these objectives, the SBI has sought and will continue to seek consultants' advice and recommendations in the design, development and implementation of its investment programs.

The following list of duties represents the consultant(s) primary areas of responsibility. The SBI expects the consultant(s) selected through this RFP to provide independent, prudent, objective and creative input to its decision making process.

Most of the duties outlined in this section have been addressed by the SBI in the past or are being addressed now. However, during the contract period the consultant(s) may be required to perform any or all of the following tasks:

### **A. Investment Policies:**

1. Prepare a comprehensive review or analysis of the investment policies established for the Combined Funds and recommend changes, if appropriate. The review should address investment objectives, asset allocation and management structure. Performance benchmarks at each management level (total fund, asset class segment, individual manager) should be reviewed as well.
2. Conduct a similar review for other funds managed by the SBI, as requested.

### **B. Investment Strategy:**

1. Provide technical assistance in analyzing the investment characteristics of available asset classes and alternative asset mixes for each fund managed by the SBI.
2. Assist in the consideration of asset classes not already included in SBI funds.
3. Advise in the development of guidelines and procedures for rebalancing the asset mix of each fund and for evaluating the effectiveness of such procedures.
4. Assist in developing or updating a comprehensive written investment policy statement for each fund managed by the SBI.

### **C. Investment Management Structures:**

1. Assist in developing an appropriate investment management structure for each fund and asset class considering the role of passive versus active management, the range and mix of available management styles, as well as the number of managers hired.
2. Assist in developing criteria for evaluating the effectiveness of the current investment management structure for each fund and asset class.

3. Inform the SBI of new developments in investment management techniques within each asset class and each fund as a whole. Analyze how these new techniques might enhance the SBI's investment program and how they might best be implemented.

**D. Manager Selection:**

1. Assist in designing and implementing manager selection processes.
2. Assist in analyzing the SBI's needs for particular managers within each asset class.
3. Assist in establishing appropriate qualitative and quantitative requirements for reviewing potential candidates.
4. Assist in screening prospective managers and recommending finalists which meet stated requirements.

**E. Private Markets:**

1. Assist in the development of private market investment policies, investment objectives, investment guidelines, investment procedures and portfolio strategy.
2. Research private market trends and capital market trends.
3. Identify, analyze and report on new investment trends in the private market space.
4. Assist staff in reviewing investment proposals and transactions from potential and existing investment managers.
5. Assist staff in conducting manager due diligence on an as needed basis.
6. Assist with the negotiation of partnership terms and legal documents as needed.
7. Provide quarterly monitoring, performance review and written reporting of the private market portfolio and underlying private market funds.

**F. Performance Evaluation:**

1. Assist in developing a composite index for each fund to measure total fund performance relative to its established target asset mix.
2. Have the ability to calculate the performance at the total fund, asset class, and individual manager levels based on accounting data provided by the SBI's custodial bank.
3. Analyze actual performance relative to the composite indices established for the Combined Funds on an on-going basis.

4. Assist in analyzing the performance of other SBI funds, as requested.
5. Where appropriate, provide performance attribution for each manager in each asset class utilized in the Combined Funds. Provide an analysis of the individual and aggregate risk positions of the above managers on a periodic basis.
6. Provide a performance database and analytical system that can be accessed by the SBI.
7. Assist in establishing appropriate performance benchmarks at the asset class and individual manager level in all asset classes.
8. Assist in evaluating manager performance and consistency relative to guidelines, standards, and desired characteristics.
9. Assist the SBI in continued implementation of performance-based fees. Currently, only active domestic equity managers utilize performance-based fees.

#### **G. Risk Management and Analysis**

1. Assist in developing and maintaining comprehensive risk measurement systems for each fund, asset class and individual manager under SBI management.
2. Analyze the risk exposure of each fund, asset class and individual manager under SBI management.
3. Assist the SBI to develop an agency wide risk analysis program that includes both investment and non-investment risk.

#### **H. Operations and Resources:**

1. Review the Executive Director's annual work plan and recommend modifications, where appropriate.
2. Comment on the adequacy of the operational resources available to carry out the plan (e.g. budget, staffing, analytical systems technology).
3. Recommend new technologies which may be available to enhance the productivity of the operation.
4. The investment consulting firm must be able to maintain a satisfactory electronic interface with SBI's custodian bank through an online connection at the firm's expense.

**I. Special Requests:**

1. Prepare comprehensive analyses of specific issues designated by the SBI. For example, these may include topics such as tobacco related investments, ESG (Environmental, Social, and Governance) related investments, custodial relationships or data processing needs.
2. Present such analyses to the SBI and IAC when requested.

**J. On-Site Consultation and Assistance:**

1. Attend all quarterly and special meetings of the SBI and the Investment Advisory Council (IAC).

The consultant may be called upon to comment on specific items presented to the SBI for approval and to review trends in the economy and capital markets.

Board meetings (subject to change) are scheduled for the first Wednesday of March, June, September, and December. The IAC meetings (subject to change) are scheduled for the third Tuesday of February, May, August, and November. A schedule of Board and IAC meetings for the following year is presented to the Board at its December meeting.

2. Be available to meet with each member of the SBI or their designee on a quarterly basis, or as requested, to discuss pertinent investment management issues.
3. Meet with SBI staff, as requested, to assure timely completion of the tasks set forth in this section.

II. The contract shall be for a period of five (5) years commencing on or about July 1, 2017. By Minnesota law, the contract may be canceled by the Minnesota State Board of Investment, the Commissioner of Administration of the State of Minnesota, or the contractor, at any time, with or without cause, upon thirty (30) days written notice to the other party.

III. Responders are encouraged to propose additional tasks or activities if they will substantially improve the results of the project. These items should be separated from the required items on the cost proposal.

IV. This RFP does not obligate the SBI to complete the project and the SBI reserves the right to cancel or postpone the solicitation if the SBI considers it to be in the best interest of the SBI.

V. Questions regarding information to be presented in response to the RFP or requesting clarification about this RFP may only be submitted via e-mail to LeaAnn Stagg at: [minn.sbi@state.mn.us](mailto:minn.sbi@state.mn.us) no later than Friday, August 19, 2016. For the subject line in the e-mail please use Consultant RFP 2016. SBI will consolidate all questions and its answers into a single Q&A document without divulging the source of the query. The Q&A document will be distributed via e-mail to all firms who received the RFP.

## INFORMATION CONTACTS

The SBI's exclusive agents for purposes of responding to consultants' inquiries on RFP requirements are:

**Mansco Perry**

Executive Director and Chief Investment Officer

**LeaAnn M. Stagg**

Assistant Executive Director and Chief Operating Officer

Minnesota State Board of Investment  
60 Empire Drive, Suite 355  
St. Paul, MN 55103

[minn.sbi@state.mn.us](mailto:minn.sbi@state.mn.us)

Other Personnel are NOT authorized to discuss this request for proposal with responders, before the proposal submission deadline. Contact regarding this RFP with any personnel not listed above could result in disqualification. The SBI shall not be bound by and responders may not rely on information regarding RFP requirements obtained from non-authorized persons.

## Proposal Content

The consultant's response to this RFP shall be organized in the following manner. **Please observe the page limits shown for each section.** Please note that consultants will be evaluated, in part, on their ability to communicate clearly and succinctly. **Brevity will be appreciated and considered in the evaluation of the RFP responses.**

**Executive Summary**

**Page Limit: One**

**Section 1: Consulting Services Provided**

**Page Limit: No more than 30 (excluding manager due diligence reports and performance report samples)**

**Investment Policies and Asset Allocation**

1. Describe the theory and methodology of the asset allocation models the firm employs. How often does your firm recommend a formal asset allocation review? Discuss your firms' views, capabilities and experience in the following concepts:
  - a. Mean Variance Optimization
  - b. Risk Factor Asset Allocation

- c. Risk Parity
  - d. Plan Level Leverage
  - e. Liquidity Requirements
  - f. Risk Budgeting
2. Which asset classes does your firm currently incorporate directly into the asset allocation model? How do you incorporate alternative assets - including real estate, private equity credit, real assets, hedge funds, commodities, infrastructure and timber?
  3. Discuss your firms' process for analyzing a client's investment portfolio structure. Describe the process for recommending modifications to the portfolio structure as warranted by changes in the long-term expectations of asset markets. Provide examples of such recommendations made to clients and the underlying reasons.
  4. Discuss your firms' views on active vs. passive management and when it is appropriate to use each and how to determine the optimum mix. Discuss your firm's views on the following concepts:
    - a. Portable Alpha Strategies
    - b. Fundamental Indexing and Smart Beta type Strategies
    - c. Low Volatility Strategies
  5. Describe in detail the methods for determination of capital market assumptions.
    - a. How are risk, return, correlation and constraint assumptions determined for the asset allocation model? Please discuss the assumptions for each asset class included.
    - b. How often are the numbers updated?
    - c. How far forward are projections?
    - d. How do the assumptions differ from the market consensus? From the firm's competitors?
    - e. Please analyze and discuss the accuracy of your historical, long-term capital market assumption for each asset class and at the total fund level.
    - f. To what extent do you involve staff in discussing the economic climate and asset return assumptions that form the basis of your asset allocation model?

6. Discuss your firms' capabilities in performing scenario analysis. How are factors for scenario analysis determined? Provide an example.
7. What is your firms' approach to addressing Environmental, Social, and Governance issues for client investment programs? Does your firm provide climate risk and other forms of ESG analysis to clients?
8. Describe your approach to the development of an investment policy statement. Detail your process for the development of asset class structures, investment objective, and risk control policies (including derivative, securities lending etc.).
9. Describe your firm's capabilities and experience in illiquid investments such as real estate, private equity and opportunistic investments. List the factors you would consider in recommending these investments.
10. Describe your firm's capabilities and experience in the area of derivatives. List the factors you would consider in recommending derivative strategies.
11. Describe your firm's methodology for incorporating liabilities into an asset/liability study. What are your firm's capabilities for analyzing the liabilities of a large public pension plan? Does your firm have experience in customizing asset/liability studies for individual clients? How often does your firm recommend that a client should update their asset/liability study?
12. What systems does the firm have, if any, that are accessible to clients so they can evaluate the impact of different scenarios ("what if?") on their funded status?
13. Describe your firm's view of market timing and portfolio rebalancing.
14. Explain your firm's position/approach regarding internal and external investment management.
15. What trends, changes or key issues do you believe will impact public pension funds going forward?

### **Performance Measurement and Portfolio Analytics**

1. Describe your process for evaluation benchmark selection for individual investment strategies. How are performance benchmarks for the total fund, asset classes and investment managers chosen and constructed? Please differentiate your approach for public and private markets.
2. Describe your access to private market database(s) for benchmarking.
3. Describe your firm's view of the most critical factors and methods of evaluating performance.

4. Do you calculate performance independently of the custodian? If so, do you reconcile your calculated performance to the custodians' reports? If yes, please describe.
5. Describe the methodology of your performance calculations. Describe the firm's ability to modify these conventions.
6. Do you have the capability of using rates of return calculated by the SBI's custodial bank in your performance evaluation reports?
7. What performance and portfolio analytic systems and reports (including attribution analysis) of your firm can be accessed on-line by the SBI staff?
8. Describe your firm's performance attribution process and provide sample reports with a breakdown of capabilities by total fund, asset class and investment manager level.
9. What portfolio analytics is your firm capable of providing at the total fund, asset class and investment manager level?
10. Describe your capabilities in the development of risk/return characteristics at the total fund, asset class and investment manager level.
11. Do you have the ability to customize reports? Are there charges for additional customization? In general, how long does it take to implement changes?
12. How soon at the end of a month are the reports generally available?
13. Please provide samples of return attribution performance reports.
14. As custodians are the primary source for the SBI's performance data, which custodians have you worked with?

### **Manager Search and Evaluations**

1. Discuss the steps your firm would take to analyze SBI's current investment managers within the portfolio.
2. Describe your firm's philosophy with respect to manager evaluations.
3. Does your firm maintain a proprietary database of investment manager information?
4. Are investment managers charged direct or indirect fees to be included in the database? If so, describe the fees. If not, how are managers added/deleted from your database?

5. For firms that have a proprietary database, describe your methodology and criteria for classification of managers. Describe how your firm gathers, verifies, updates and maintains the data collected for managers in the database. How do you monitor consistency of style? How often are the managers reviewed?
6. Provide a copy of a recently completed investment manager's due diligence report for a fixed income, domestic equity, and international equity manager.

### **Private Markets**

1. What services are included in a general retainer relationship (or other) related to alternative assets (i.e. real estate, infrastructure, timber, farmland, commodities, private equity, oil and gas, hedge funds, mezzanine funding etc.)?
2. Describe your capabilities to evaluate and monitor alternative asset classes. Describe the resources dedicated to this area including staff and their experience.
3. How does your firm approach asset allocation within a private equity or other private market portfolio?
4. Describe your firm's process for performing investment and operational due diligence on potential managers. Describe the process used to monitor existing manager relationships and client performance.
5. Does your firm advocate allocation of capital to first time funds?
6. Describe our firm's view regarding geographic allocations.
7. Describe your firm's view regarding both fund size and capital commitment size.
8. Provide two (2) due diligence reports within the alternative asset class, one of which should be for a private equity manager.
9. Provide the typical quarterly performance report, and portfolio review, that your firm currently provides to clients with large private equity or private market portfolios.

### **Risk Management**

1. Describe your firms' definition of risk and strategies that have been recommended to mitigate risks. Explain your firms' views on currency hedging overlays and tail risk hedging strategies. List what measurements are used when evaluating risk at the total fund, asset class and investment manager level.
2. What is your firm's opinion on risk allocation and risk budgeting at the total fund, asset class and investment manager level?

## **SBI Portfolio (Combined Funds Pension Portfolio)**

After reviewing the SBI's Combined Funds pension portfolio and other publicly available information, what changes, if any, would your firm recommend the Board and Staff consider to the SBI's strategic asset allocation and manager line-up?

### **Section 2: Organization and Personnel**

**Page Limit: No more than 10 (excluding audited financial statements and resumes)**

1. Provide the date business commenced.
2. Provide details of the ownership structure including any parent, affiliated or subsidiary company, and any business partners or joint ventures.
3. Describe the services your firm provides. Specify and detail any and all lines of business in which your firm participates.
4. Provide an organizational chart of your firm and describe the relationship between each component and your consulting group. List the address of your corporate headquarters and indicate which office(s) will service the SBI.
5. How many employees does your firm have? Please break this number into specific functions, strategic areas and delineate which are support staff, analysts and investment professionals.
6. Provide a brief description of the firm's growth plan and capacity to undertake this consulting relationship. Discuss limits you have in the "client to consultant ratio."
7. Within the past three years have there been significant changes in your organization such as ownership, restructuring or personnel organization.
8. Describe the firm's financial position and sources of revenue. Include a copy of the firm's most recent audited financial statements.
9. Describe the key features of your firm's business continuation and disaster recovery plans.
10. Describe any litigation against the firm in the last three (3) years.
11. Has there been any SEC or other regulatory action against the firm or its principals/owners/officers?
12. Briefly describe the level of coverage for errors and omissions insurance and any fiduciary or professional liability insurance your firm carries. List the insurance carrier(s) supplying coverage.

13. What limitation on liability, if any, does your firm impose through your contract?
14. Provide a list of current clients, the size of the funds and inception date of the relationships.
15. Provide the number of consulting relationships gained and lost in each of the following periods:
  - January - December 2013
  - January - December 2014
  - January - December 2015
  - January - June 2016
16. Provide the number and title of professional personnel gained and lost in the same periods. Explain the circumstance for any departure by investment professionals.
17. Describe the firm's compensation and incentive program, and any other programs for hiring and retaining key personnel. How does the firm tie client performance and satisfaction to a consultant's compensation?
18. What is the average and maximum number of clients assigned per consultant? How many clients would the lead consultant to the SBI be assigned? Describe your firm's backup procedures in the event the key personnel in this assignment should leave the firm?
19. Provide a resume or biography of each professional staff person to be assigned to this consulting relationship, outlining their qualifications, previous experience in similar tasks or engagements with institutional investors and name the clients they currently service. State whether the individuals assigned to the work have responsibilities other than providing consulting services and, if so, specify those responsibilities.
20. Does your firm accept investment managers as clients? If so, for what products? Does your firm conduct or sponsor investment manager or client conferences? If so, please describe all such conferences in the past two years.
21. What percentage of your clients utilize money managers, investment funds, brokerage service, or other service providers from whom you receive fees?
22. Do you have any arrangements with broker dealers under which you or a related company will benefit if firms place trades for their clients with them?
23. Are there any other circumstance under which your firm, or any individual in your firm receives compensation, finder's fees, or any other benefit from investment managers or third parties? If so, describe in detail.

24. Please describe your policies and/ or procedures to address perceived or actual conflicts of interest when you provide advice to clients?

**Section 3: Research**

**Page Limit: No more than 5 (excluding research reports provided)**

1. Describe how internal research is structured and organized within your firm. Please describe how your research fits into the overall organizational structure of the firm.
2. Describe how any external resources and sources of information are used in the research process.
3. Describe your ability to provide customized computer based analytical tools.
4. Describe your firm's process for monitoring industry and market trends that impact investment funds.
5. Describe your firm's process for monitoring political, legislative and media environments that may impact a client's investment program.
6. Please provide some recent research reports that will provide an indication of the range and depth of your research.
7. Provide a list of research reports prepared by the consultant for use by its clients within the last three (3) years.

**Section 4: Computer Capability**

**Page Limit: No more than 3**

1. Describe the databases, software and hardware that will be used to support the delivery of investment consultant services.
2. Describe how the databases and software will be accessed by SBI staff. Specify the hardware necessary to accomplish such access.
3. Describe the plan to keep data processing systems, databases, software and hardware current and secure. Please reference how your organization determines the need to upgrade existing systems and when to introduce new applications.
4. Describe how your organization will maintain an electronic interface with the SBI's custodian bank through an online connection at the organization's expense.

**Section 5: Miscellaneous**  
**Page Limit: No more than 2**

1. What are your firm's consulting specialties and strengths that differentiates your firm from your competitors? What are your firm's limitations?
2. Describe how your firm will manage its advisory role to the Board with its supportive role with Staff.
3. Please describe educational resources that are available to Board and Staff members.
4. Briefly describe how a new client would transition to your firm. What problems have you encountered in transitioning a new client to your firm from their previous consultant?

**Section 6: References**  
**Page Limit: No more than 1**

1. Provide a list of at least five references for whom you provide full retainer investment consulting services. It is preferable that at least three of these references be current public pension fund clients that have accounts of similar size and complexity as those described in this RFP. The references shall include the name, title, organization, address, e-mail and phone number of the responder's primary contact at the client organization.

**Section 7: Fee Proposal** (*Provide one copy of the cost proposal in a separately sealed envelope clearly marked on the outside "Cost Proposal" along with the firm's name*)

**Page Limit: No more than 1**

- Proposed fees shall be stated for a time period of July 1, 2017 to June 30, 2022 in one of the following alternatives:
  - (1) Total fee to be charged and a list of the services to be provided. Please provide quotes for any additional services not included in this fee.
  - (2) Individual costs related to each service the consultant proposes to provide. (All proposed fees should be all inclusive. No additional charges such as travel will be accepted).
- A statement that the fee estimate is valid for a minimum of one hundred and eighty (180) days. This period may be extended by mutual agreement between a responder and the Consultant Review Committee.

**Section 8      Submit the following forms:**

- A. Affidavit of Non Collusion
- B. Certificate Regarding Lobbying (if proposal exceeds \$100,000, including extension options)
- C. Affirmative Action Certification (if proposal exceeds \$100,000, including extension options)
- D. Equal Pay Certificate Form (if proposals exceeds \$500,000, including extension options)
- E. Veterans Preference Form (if applicable)
- F. Resident Vendor Form (if applicable)

**Proposal Instructions**

The responder shall submit twenty (20) bound copies of its RFP response to the SBI at the following address:

LeaAnn Stagg, CFA  
Assistant Executive Director and Chief Operating Officer  
Minnesota State Board of Investment  
60 Empire Drive, Suite 355  
St. Paul, MN 55103-3555

[minn.sbi@state.mn.us](mailto:minn.sbi@state.mn.us)

- All costs incurred in responding to this RFP will be borne by the responder.
- Fax or e-mail responses will not be considered.
- No proposal received after 3:00 P.M. Central Time on Friday, September 9, 2016 will be considered. (Early submissions are encouraged).
- One (1) copy of the response must be unbound and signed in ink by an authorized officer of the responding firm.
- Two copies on disk or CD. One readable by Microsoft Word and one PDF.
- Each copy of the proposer's response must be sealed in a mailing envelope or package with the responder's name and address clearly written on the outside. Please identify the unbound copy on the outside of its envelope as well.

- In addition to the proposal, provide one copy of the cost proposal in a separately sealed envelope clearly marked on the outside “Cost Proposal” along with the firm’s name. For purposes of completing the Cost Proposal, the state does not make regular payments based upon the passage of time, it only pays for services performed or work delivered after it is accomplished.

### **Project Timetable**

RFP Issued.	August 15, 2016
Consultants' proposals due.	September 9, 2016
<b>NO PROPOSALS RECEIVED AFTER 3:00 P.M. CENTRAL TIME ON SEPTEMBER 9, 2016 WILL BE CONSIDERED.</b>	
Proposals evaluated.	November 2016*
Finalist presentations at SBI offices.	November 2, 2016 – November 10, 2016*
Consultant selected by the SBI.	December 2016*
Contract completed and executed.	March 2017*

\* Projected dates, subject to change.

### **Proposal Evaluation**

All responses received by the deadline will be evaluated by representatives of the Minnesota State Board of Investment designated as the Consultant Review Committee. First, the RFP responses will be evaluated to ensure that the minimum requirements have been met. Proposals that fail to meet the minimum requirements will not advance to the next phase of the evaluation. For those proposal advancing to the next phase of the evaluation, the Committee will review the proposals submitted and score the work plan and cost proposals. The State reserves the right, based on the scores of the proposal, to create a short list of proposers receiving the highest scores and to interview or conduct presentations. All scores will be compiled and the Committee will then make a final recommendation to the SBI Board based upon the best value to the State. Final selection is subject to approval of the SBI Board and successful contractual negotiation and execution by the SBI Executive Director.

## **Pass/Fail - Minimum Requirements**

The proposer must meet all of the following minimum qualifications to be given further consideration. Failure to satisfy each of the minimum qualifications will result in the immediate rejection of the proposal.

The following will be considered on a pass/fail basis:

1. The primary consultant assigned to the SBI account must have a minimum of five (5) years of experience providing consulting services to large institutional plan sponsors.
2. As of June 30, 2016 and for at least the three (3) most recent continuous years, the firm must have a verifiable operating history with at least three (3) institutional fund clients with at least \$20 billion in assets.
3. Proposals must be received on or before the due date and time specified in this solicitation.

## **The Factors and Weightings on which the Proposals will be judged in are as follows:**

- 1. The consultant's ability to precisely and clearly respond to the Proposal Content section of the RFP as it relates to the prescribed duties. (10%)**

The approach, methodology and techniques should be appropriately specific, logical and organized. The consultant must demonstrate the capability to gather the necessary information, develop fully supportable conclusions, and communicate findings and recommendations clearly and succinctly. The consultant's ability to effectively communicate to audiences with varying levels of investment expertise will be evaluated.

- 2. The consultant's demonstrated knowledge and experience in investment consulting. (25%)**

It is imperative that the consultant has been frequently and recently engaged in the field of investment consulting for large pension plan sponsors. In addition, knowledge and experience with respect to endowments, cash accounts, and insurance portfolios is desirable.

- 3. The quality of staff to be assigned to fulfill this contract and available support. (25%)**

The consultant must assign to this contract, in terms of numbers and quality, sufficient staff with experience in the fields of financial and investment analysis, data processing and systems support, and general pension fund management. The consultant should explain to the best of its ability to what extent back-up professional personnel are available to substitute for loss of professional personnel identified as necessary in the proposal. *Please note that if the candidate is selected for an interview or presentation, (i.e. finalist interviews), the primary consultant(s) must be a key presenter to the Consultant Review Committee.*

**4. The quality of the data processing and analytical systems necessary to support the consulting services. (10%)**

The consultant should demonstrate its ability to manage and maintain the computer software, hardware and databases referenced in its proposal. The consultant's commitment to upgrade existing systems and to introduce new applications which will enhance its ability to perform its duties also will be assessed.

**5. The consultant's demonstrated ability to manage the assignment effectively and assure the successful delivery of the services provided. (20%)**

The plan for performing and managing the contract, including the framework within which the project team will function relative to the State, will be evaluated. The consultant should demonstrate its ability to manage and control its duties, including specification of the reporting mechanisms and inter-relationships between the consultant, the SBI and its staff, and outside vendors of the SBI.

**6. Cost Detail and Method of Payment (10%)**

1. All costs relating to the proposal shall be explained in detail.
2. Payment shall be made on a pro rata quarterly basis billed in arrears.
3. The evaluation team reserves the right to reject unreasonable costs proposed by responders. Specifically, the evaluation team will not consider any proposed costs that are, at the sole discretion of the state, not rational or are not competitively priced. Such proposals will be regarded as non-responsive and receive no further consideration.

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## **EXHIBIT A**

### **SUMMARY OF FUNDS MANAGED BY THE SBI**

(Please also see the enclosed SBI Annual Report for Fiscal Year 2015. The report will give a history of the SBI and detailed facts pertaining to the current management structure.)

#### **COMBINED FUNDS**

The Combined Funds represent the assets of both active and retired public employees who participate in the defined benefit plans of the major statewide public employee retirement plans. All assets of the Combined Funds are managed externally using multiple managers.

#### **Performance Objectives**

The Board has established several long term investment objectives for the Combined Funds. Monitoring actual performance against these return objectives helps the Board to ensure that the Combined Funds meet their respective long-term funding objectives:

1. Provide Real Returns. Over a twenty year period, the Combined Funds are expected to exceed inflation by 3-5 percentage points.
2. Exceed Market Returns. Over a ten year period, the Combined Funds are expected to outperform a composite of market indices weighted in a manner that reflects the asset mix of the Combined Funds.

**COMBINED RETIREMENT FUNDS (\$60.1 billion)**

The Combined Funds contain the pension assets of the currently working and retired participants in the major statewide public employee retirement plans:

<b><u>Retirement System</u></b>	<b><u>Plans</u></b>
<b>Teachers Retirement</b>	Teachers Retirement Plan
<b>Public Employees Retirement</b>	Public Employees Plan Police and Fire Plan Public Employees Correctional Plan
<b>Minnesota State Retirement</b>	State Employees Plan Highway Patrol Plan Judges Plan Correctional Employees Plan Legislative Retirement Plan

**Combined Fund Long Term Policy Mix (as of 7/1/2016)**

<b>Asset Class</b>	<b>Allocation</b>	<b>Asset Class Target</b>
<b>Public Equities</b>	<b>58%</b>	
Domestic Stocks	39%	Russell 3000
International Stocks	19%	MSCI ACWI Free ex-U.S.
<b>Private Markets*</b>	<b>20%</b>	
Private equity		Composite of SBI Funds
Real Estate		Composite of SBI Funds
Resources		Composite of SBI Funds
<b>Fixed Income</b>	<b>22%</b>	
Domestic Bonds	20%	Barclays Capital Aggregate
Cash Equivalentents	2%	91Day T-Bills
<b>Total</b>	<b>100%</b>	

\* Unallocated portion of Private Markets allocated are invested in Public Equities.

All assets of the Combined Funds are managed externally using multiple managers.

## SUPPLEMENTAL INVESTMENT FUND (\$1.9 billion)

The Supplemental Investment Fund is a multi-purpose investment program that offers a range of investment options to various state and local public employee participant driven plans. The accounts have different investment emphases designed to meet a wide range of investor needs and objectives.

<b>Account</b>	<b>Assets Mix</b>	<b>Objective</b>
Balanced Fund	Balanced - Stocks and Bonds	Exceed Composite Index: 60% Russell 3000 35% Barclays Capital Aggregate 5% 91 Day T-Bills
US Stock Actively Managed Fund	All Stock - Active	Exceed Russell 3000
US Stock Index Fund	All Stock - Passive	Track Russell 3000
Broad International Stock Fund	All Stock - Active and Passive	Exceed MSCI ACWI Free ex-U.S.
Bond Fund	All Bonds - Active	Exceed Barclays Capital Aggregate
Money Market Fund	All Short Term Debt	Exceed 91 Day T-Bills
Stable Value Fund	Stable Value Investments	Exceed 3 year Constant Maturity Treasury +45 basis points
Volunteer Firefighter Account	Balanced - Stocks and Bonds	Exceed composite Index: 35% Russell 3000 15% MSCI ACWI Free ex U.S. 45% Barclays Capital Aggregate 5% 91Day T-Bills

Nearly all assets in the Fund are managed externally using the same firms retained for the Combined Funds.

## **STATE DEFERRED COMPENSATION PLAN (\$5.8 billion)**

The Deferred Compensation Plan provides public employees with a tax-sheltered retirement savings plan that is a supplement to their primary retirement plan. (In most cases, the primary plan is a defined benefit plan administered by TRA, PERA, or MSRS.)

Participants choose from a menu of 4 actively managed mutual funds and 5 passively managed mutual funds, a money market option, a fixed interest option and a set of target date funds. All provide daily pricing needs of the plan administrator. Participants may also choose from hundreds of funds in a mutual fund window. The current plan structure became effective July 1, 2011.

## **PERMANENT SCHOOL FUND (\$1.2 billion)**

The Permanent School Fund is a trust established for the benefit of Minnesota public schools. Investment income is appropriated directly to school districts. The entire fund is managed internally.

### **Performance Objectives**

The fund is invested in a balanced portfolio of common stocks and bonds. The bond segment is actively managed to add incremental value through sector, security and yield curve decisions. The stock segment is passively managed to track the performance of the S&P 500.

## **ENVIRONMENTAL TRUST FUND (\$0.9 billion)**

The Environmental Trust Fund is a trust established to provide a long-term, consistent and stable source of funding for activities that protect and enhance the environment. The entire fund is managed internally.

### **Performance Objectives**

The fund is invested in a balanced portfolio of common stocks and bonds. The bond segment is actively managed to add incremental value through sector, security and yield curve decisions. The stock segment is passively managed to track the performance of the S&P 500.

## **ASSIGNED RISK PLAN (\$0.3 billion)**

The Minnesota Workers Compensation Assigned Risk Plan is the insurance company of last resort for companies unable to obtain insurance coverage from private issuers. The portfolio is managed externally by two managers with one focusing on the bond segment and the other managing the equity segment.

The plan has two investment objectives: to minimize the mismatch between assets and liabilities and to provide liquidity for the payment of on-going claims and operating expenses.

## **Performance Objectives**

The Plan's assets are invested in a portfolio of bonds and common stocks. Its target asset mix and performance objective will fluctuate in response to changes in the Plan's liability stream. At present, the performance objective is to exceed a composite index weighted 20% in the S&P 500 and 80% against the Barclay's Capital Intermediate Government Index.

### **STATE CASH ACCOUNTS (\$10.2 billion)**

These accounts represent the cash balances in more than 400 separate accounts that flow through the Minnesota State Treasury. These accounts include the Trust Fund Pool (cash balances of internally managed retirement-related accounts and the Permanent School), the Treasurer's Cash Pool (cash balances of special or dedicated accounts of State agencies and the balance of the Invested Treasurer's Cash), bond proceeds, the debt reserve transfer, and small legally restricted cash accounts. All of these accounts are managed internally.

## **Performance Objectives**

The majority of the assets of the cash accounts are invested in the Invested Treasurer's Cash Pool with the objectives, in order of priority, to preserve capital, meet the cash needs without the forced sale of securities at a loss and to provide a competitive rate of return.

The Invested Treasurer's Cash Pool is measured against the IMoneyNet, All Taxable Money Fund Report Average which appropriately reflects the maturity structure of the Pool.

### **MINNESOTA COLLEGE SAVINGS PLAN ACCOUNTS (1.2 billion)**

The Minnesota College Savings Plan, established under the provisions of the Internal Revenue Code Section 529, is an education savings plan designed to help families set aside funds for future college costs. The SBI is responsible for the investments and the Minnesota Office of Higher Education (OHE) is responsible for the overall administration of the Plan. The SBI and OHE contract jointly with TIAA to provide administrative, market, communication, recordkeeping and investment management services.

The objective of the Plan is to be competitive in the market place by providing quality investment options with low fees to its participants. The Plan offers nine (9) Age Based Managed Allocation Options, three (3) Risk-Based Allocation Options and seven (7) Static Investment Options. The TIAA managed investment options are a combination of both active and passive.

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## CHAPTER 11A

### INVESTMENT OF STATE AND PENSION ASSETS

11A.01	STATEMENT OF PURPOSE.	11A.16	PERMANENT SCHOOL FUND.
11A.02	DEFINITIONS.	11A.17	MINNESOTA SUPPLEMENTAL INVESTMENT FUND.
11A.03	STATE BOARD; MEMBERSHIP; ORGANIZATION.	11A.20	INVESTMENT OF STATE TREASURY FUNDS NOT CURRENTLY NEEDED.
11A.04	DUTIES AND POWERS; APPROPRIATION.	11A.21	INVESTMENT OF HIGHWAY FUNDS.
11A.07	EXECUTIVE DIRECTOR.	11A.23	INVESTMENT OF RETIREMENT FUNDS AND PLANS.
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11A.08	INVESTMENT ADVISORY COUNCIL.	11A.24	AUTHORIZED INVESTMENTS.
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11A.10	DUTIES OF OTHER OFFICIALS.	11A.243	INVESTMENT IN SUDAN.
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11A.12	GAINS AND LOSSES; DISPOSITION.	11A.25	ADDITIONAL INVESTMENT PROVISIONS.
11A.13	ASSETS AND DOCUMENTATION.	11A.27	REPORT ON INVESTMENT CONSULTANT ACTIVITIES AND DELIVERABLES.
11A.14	MINNESOTA COMBINED INVESTMENT FUNDS.		
11A.15	STATE BOND FUND.		

#### 11A.01 STATEMENT OF PURPOSE.

The purpose of this chapter is to establish standards, in addition to the applicable standards of chapter 356A, to ensure that state and pension assets subject to this legislation will be responsibly invested to maximize the total rate of return without incurring undue risk.

**History:** 1980 c 607 art 14 s 1; 1989 c 319 art 8 s 2

#### 11A.02 DEFINITIONS.

Subdivision 1. **Applicability.** For the purposes of sections 11A.01 to 11A.25, the terms defined in this section shall have the meanings given them.

Subd. 2. **State board.** "State board" means the Minnesota State Board of Investment created by article XI, section 8 of the Constitution of the state of Minnesota for the purpose of administering and directing the investment of all state funds and pension funds.

Subd. 3. **Council.** "Council" means the Investment Advisory Council created by section 11A.08.

Subd. 4. **Fund.** "Fund" means any of the individual funds, including but not limited to the permanent school fund, general fund of the state, retirement funds and other funds and accounts for which the state board has responsibilities.

Subd. 5. **Director.** "Director" means the executive director of the state board.

Subd. 6. **Management.** "Management" means the performance or delegation of general management duties relating to any fund established pursuant to this chapter.

**History:** 1980 c 607 art 14 s 2

**11A.03 STATE BOARD; MEMBERSHIP; ORGANIZATION.**

Pursuant to article XI, section 8, of the Constitution of the state of Minnesota, the state board shall be composed of the governor, state auditor, secretary of state, and attorney general. The governor shall serve as ex officio chair of the state board.

**History:** 1980 c 607 art 14 s 3; 1986 c 444; 1998 c 387 art 2 s 3

**11A.04 DUTIES AND POWERS; APPROPRIATION.**

The state board shall:

(1) Act as trustees for each fund for which it invests or manages money in accordance with the standard of care set forth in section 11A.09 if state assets are involved and in accordance with chapter 356A if pension assets are involved.

(2) Formulate policies and procedures deemed necessary and appropriate to carry out its functions. Procedures adopted by the board must allow fund beneficiaries and members of the public to become informed of proposed board actions. Procedures and policies of the board are not subject to the Administrative Procedure Act.

(3) Employ an executive director as provided in section 11A.07.

(4) Employ investment advisors and consultants as it deems necessary.

(5) Prescribe policies concerning personal investments of all employees of the board to prevent conflicts of interest.

(6) Maintain a record of its proceedings.

(7) As it deems necessary, establish advisory committees subject to section 15.059 to assist the board in carrying out its duties.

(8) Not permit state funds to be used for the underwriting or direct purchase of municipal securities from the issuer or the issuer's agent.

(9) Direct the commissioner of management and budget to sell property other than money that has escheated to the state when the board determines that sale of the property is in the best interest of the state. Escheated property must be sold to the highest bidder in the manner and upon terms and conditions prescribed by the board.

(10) Undertake any other activities necessary to implement the duties and powers set forth in this section.

(11) Establish a formula or formulas to measure management performance and return on investment. Public pension funds in the state shall utilize the formula or formulas developed by the state board.

(12) Except as otherwise provided in article XI, section 8, of the Constitution of the state of Minnesota, employ, at its discretion, qualified private firms to invest and manage the assets of funds over which the state board has investment management responsibility. There is annually appropriated to the state board, from the assets of the funds for which the state board utilizes a private investment manager, sums sufficient to pay

the costs of employing private firms. Each year, by January 15, the board shall report to the governor and legislature on the cost and the investment performance of each investment manager employed by the board.

(13) Adopt an investment policy statement that includes investment objectives, asset allocation, and the investment management structure for the retirement fund assets under its control. The statement may be revised at the discretion of the state board. The state board shall seek the advice of the council regarding its investment policy statement. Adoption of the statement is not subject to chapter 14.

(14) Adopt a compensation plan setting the terms and conditions of employment for unclassified board employees who are not covered by a collective bargaining agreement.

(15) Contract, as necessary, with the board of trustees of the Minnesota State Universities and Colleges System for the provision of investment review and selection services under section 354B.25, subdivision 3, and arrange for the receipt of payment for those services.

There is annually appropriated to the state board, from the assets of the funds for which the state board provides investment services, sums sufficient to pay the costs of all necessary expenses for the administration of the board. These sums will be deposited in the State Board of Investment operating account, which must be established by the commissioner of management and budget.

**History:** 1980 c 607 art 14 s 4; 1982 c 587 s 1; 1986 c 444; 1987 c 372 art 8 s 1; 1989 c 319 art 8 s 3; 1993 c 244 art 2 s 1; 1998 c 254 art 1 s 2; 2003 c 112 art 2 s 50; 2005 c 55 s 1; 2006 c 277 art 4 s 2; 2009 c 101 art 2 s 109; 2010 c 359 art 8 s 1

**11A.041** [Repealed, 2009 c 169 art 1 s 77]

#### **11A.07 EXECUTIVE DIRECTOR.**

Subdivision 1. **Selection.** The state board shall select an executive director.

Subd. 2. **Qualifications.** The director of the state board shall be well qualified by training to administer and invest the money available for investment and possess experience in the management of institutional investment portfolios. The director shall be in the unclassified state service and serve at the pleasure of the state board.

Subd. 3. [Repealed, 1983 c 305 s 28]

Subd. 4. **Duties and powers.** The director, at the direction of the state board, shall:

(1) plan, direct, coordinate, and execute administrative and investment functions in conformity with the policies and directives of the state board and the requirements of this chapter and of chapter 356A;

(2) prepare and submit biennial and annual budgets to the board and with the approval of the board submit the budgets to the Department of Management and Budget;

(3) employ professional and clerical staff as necessary. Employees whose primary responsibility is to invest or manage money or employees who hold positions designated as unclassified under section 43A.08, subdivision 1a, are in the unclassified service of the state. Other employees are in the classified service. Unclassified employees who are not covered by a collective bargaining agreement are employed under the terms and conditions of the compensation plan approved under section 43A.18, subdivision 3b;

(4) report to the state board on all operations under the director's control and supervision;

(5) maintain accurate and complete records of securities transactions and official activities;

(6) establish a policy relating to the purchase and sale of securities on the basis of competitive offerings or bids. The policy is subject to board approval;

(7) cause securities acquired to be kept in the custody of the commissioner of management and budget or other depositories consistent with chapter 356A, as the state board deems appropriate;

(8) prepare and file with the director of the Legislative Reference Library, by December 31 of each year, a report summarizing the activities of the state board, the council, and the director during the preceding fiscal year. The report must be prepared so as to provide the legislature and the people of the state with a clear, comprehensive summary of the portfolio composition, the transactions, the total annual rate of return, and the yield to the state treasury and to each of the funds whose assets are invested by the state board, and the recipients of business placed or commissions allocated among the various commercial banks, investment bankers, money managers, and brokerage organizations and the amount of these commissions or other fees. The report must include an executive summary;

(9) include on the state board's Web site its annual report and an executive summary of its quarterly reports;

(10) require state officials from any department or agency to produce and provide access to any financial documents the state board deems necessary in the conduct of its investment activities;

(11) receive and expend legislative appropriations; and

(12) undertake any other activities necessary to implement the duties and powers set forth in this subdivision consistent with chapter 356A.

Subd. 5. **Apportionment of expenses.** The annual expenses incurred by the State Board of Investment will be apportioned among the state general fund, the retirement funds administered by the Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association, and all other funds as follows:

(1) on a biennial basis, the State Board of Investment, in accordance with biennial budget procedures established by the commissioner of management and budget, may request a direct appropriation that represents the portion of the State Board of Investment expenses necessary to provide investment services to the state general fund. This appropriation must be deposited in the State Board of Investment operating account;

(2) the executive director shall apportion the actual expenses incurred by the State Board of Investment, less the charge to the state general fund, among the funds whose assets are invested by the State Board of Investment, with the exception of the state general fund, based on the weighted average assets under management during the fiscal year. The amounts necessary to pay these charges are apportioned from the investment earnings of each fund. Receipts must be credited to the State Board of Investment operating account;

(3) the actual expenses apportioned and charged to the funds, with the exception of the state general fund and the retirement funds administered by the Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association, must be calculated, billed, and paid on a quarterly basis in accordance with procedures for interdepartmental payments established by the commissioner of management and budget; and

(4) the annual estimated expenses to be incurred by the State Board of Investment that will be payable by the retirement funds administered by the Minnesota State Retirement System, Public Employees Retirement Association, and Teachers Retirement Association must be deposited in the State Board of Investment operating account on the first business day of each fiscal year. A reconciliation of the actual expenses compared to the estimated costs must occur at the end of each fiscal year with any surplus or deficit being credited or debited to each of the respective funds. The State Board of Investment must present a statement of accrued actual expenses to each fund at the end of each quarter during each fiscal year.

**History:** 1980 c 607 art 14 s 5; 1982 c 560 s 3; 1983 c 324 s 1; 1Sp1985 c 13 s 76; 1986 c 444; 1989 c 319 art 8 s 4; 1990 c 594 art 1 s 40; 2003 c 112 art 2 s 50; 2005 c 55 s 2; 2006 c 277 art 4 s 3,4; 2009 c 101 art 2 s 19,109; 2012 c 286 art 10 s 1

### 11A.075 DISCLOSURE OF EXPENSE REIMBURSEMENT.

(a) A member or employee of the state board must annually disclose expenses paid for or reimbursed by: (1) each investment advisor, consultant, or outside money manager under contract to the state board; (2) each investment advisor, consultant, or outside money manager that has bid on a contract offered by the state board during that year; and (3) each business, including officers or employees of the business, in which the state board has invested money under the board's control during the annual reporting period. The disclosure requirement of this paragraph does not apply to expenses or reimbursements from an investment advisor, consultant, money manager or business if the board member or employee received less than \$50 during the annual reporting period from that person or entity.

(b) For purposes of this section, expenses include payments or reimbursements for meals, entertainment, transportation, lodging, and seminars.

(c) The disclosure required by this section must be filed with the Campaign Finance and Public Disclosure Board by April 15 each year. Each disclosure report must cover the previous calendar year. The statement must be on a form provided by the Campaign Finance and Public Disclosure Board. An individual who fails to file the form required by this section or who files false information, is subject to penalties specified in sections 10A.09 and 10A.025, subdivision 2.

**History:** 1993 c 192 s 37; 1997 c 202 art 2 s 63; 1999 c 220 s 50

### 11A.08 INVESTMENT ADVISORY COUNCIL.

Subdivision 1. **Membership.** There is created an Investment Advisory Council consisting of 17 members. Ten of these members must be experienced in general investment matters. The state board must appoint the ten members. The other seven members are: the commissioner of management and budget; the executive director of the Minnesota State Retirement System; the executive director of the Public Employees Retirement Association; the executive director of the Teachers Retirement Association; a retiree currently receiving benefits from a statewide retirement plan; and two public employees who are active members of funds whose assets are invested by the state board. The governor must appoint the retiree and the public employees for four-year terms.

Subd. 2. **Duties and powers.** The council shall:

(1) advise the state board and the director on general policy matters relating to investments;

(2) advise the state board and the director on methods to improve the rate of return on invested money while insuring adequate security for that money;

(3) advise the state board and the director on the form and content of the report required by section 11A.07, subdivision 4, clause (7), so that the report clearly and objectively discloses the investment activities of the state board and the director;

(4) perform other tasks of an advisory nature as requested by the state board.

Subd. 3. **Officers; meetings.** The council shall annually elect a chair and vice-chair from among its members, and may elect other officers as necessary. The council shall meet upon the call of the chair of the council or the chair of the state board.

Subd. 4. **Terms; compensation; removal; vacancies; expiration.** The membership terms, compensation, removal of members appointed by the state board, and filling of vacancies of members shall be as provided in section 15.059 except that council members shall not receive a per diem. The council is not subject to the expiration date provisions of section 15.059.

Subd. 5. **Liability; indemnification.** A member of the council shall be indemnified and held harmless by the state for any reasonable costs or expenses incurred as a result of any actual or threatened litigation or administrative proceedings arising out of the performance of the member's duties, except an action brought by the state or agency thereof arising from the failure of a council member to perform duties in the manner prescribed in section 11A.09.

Subd. 6. **Conflict of interest; economic interest statement.** No member of the council may participate in deliberations or vote on any matter before the council which will or is likely to result in direct, measurable economic gain to the member. Additionally, no member of the council appointed by the state board may participate in deliberations or vote on any matter before the council which will or is likely to result in direct, measurable economic gain to that member's employer. Members of the council shall file with the Campaign Finance and Public Disclosure Board an economic interest statement in a manner as prescribed by section 10A.09, subdivisions 5 and 6.

**History:** 1980 c 607 art 14 s 6; 1981 c 298 s 3; 3Sp1982 c 1 art 2 s 3; 1983 c 260 s 4; 1983 c 324 s 2; 1984 c 654 art 2 s 38; 1986 c 444; 1993 c 300 s 1; 2009 c 169 art 1 s 6,109

#### 11A.09 STANDARD OF CARE.

In the discharge of their respective duties, the members of the state board, director, board staff, and members of the council and any other person charged with the responsibility of investing money pursuant to the standards set forth in sections 11A.01 to 11A.25 shall act in good faith and shall exercise that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived therefrom. In addition, for the investment of pension fund assets, the members and director of the state board and members of the Investment Advisory Council shall act in accordance with chapter 356A.

**History:** 1980 c 607 art 14 s 7; 1989 c 319 art 8 s 5

#### 11A.10 DUTIES OF OTHER OFFICIALS.

Subdivision 1. **Custody of securities.** The commissioner of management and budget and other custodians of securities belonging to the various funds shall provide in the appropriate cases the state board and its delegates with reasonable access thereto. Each security shall be held as an asset of the fund from which the investment expenditure was made.

Subd. 2. **Escheated property.** The commissioner of management and budget shall report immediately to the state board all personal property other than money received by the state of Minnesota as escheated property. If the state board elects to sell escheated property, all money received from the sale shall be credited to the general fund of the state.

Subd. 3. **Audits.** State audits of the activities of the state board and its delegates shall be conducted by the legislative auditor.

Subd. 4. **Office space.** The commissioner of administration shall provide the director and staff with suitable office and storage space in the State Capitol complex as near as practicable to the office of the commissioner of management and budget.

**History:** 1980 c 607 art 14 s 8; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109

#### 11A.11 INVESTMENT AND EXPENSE APPROPRIATION.

There is appropriated to the state board annually, and from time to time, the various moneys as are available for investment in the various funds subject to their supervision and control, for the purposes of the purchase, sale, exchange and lending of securities, reinvestment activities, payment of the execution expenses of securities transactions, amortization of premiums or accumulation of discounts, and contribution and redemption of participation in the funds.

**History:** 1980 c 607 art 14 s 9

#### 11A.12 GAINS AND LOSSES; DISPOSITION.

All interest and profit accruing from and all losses incurred by investment activity shall be credited to or borne by the fund from which the investment was made.

**History:** 1980 c 607 art 14 s 10

#### 11A.13 ASSETS AND DOCUMENTATION.

Subdivision 1. **Legal title to fund assets.** Legal title to the assets of state funds to be invested by the state board must be in the state of Minnesota, or its nominees. Legal title to pension funds to be invested by the state board must be as specified in section 356A.06.

Subd. 2. **Rights of employees; validity of documentation.** The rights of any public employee to any assets in the retirement funds shall be as fixed by the law or laws authorizing or requiring a retirement fund to purchase or order the redemption of investment participations or units on behalf of the public employee. The state board may rely on the documents, forms and applications of the various retirement funds which accompany money for investment or orders to redeem assets as being made in concert with the applicable law and with the rights of the public employees concerned. Accordingly, the state board need not inquire into the legality or validity of any documents, forms and applications.

**History:** 1980 c 607 art 14 s 11; 1989 c 319 art 8 s 6

#### 11A.14 MINNESOTA COMBINED INVESTMENT FUNDS.

Subdivision 1. **Establishment.** The Minnesota combined investment funds are established for the purpose of providing investment vehicles for assets of the participating public retirement plans and non-retirement funds. The assets of participating nonretirement funds may not be commingled with the assets of participating public retirement plans. The combined funds shall consist of the following investment

accounts: cash management accounts, equity accounts, fixed income accounts, and any other accounts determined appropriate by the state board.

Subd. 2. **Assets.** The assets of the combined investment funds shall consist of the money certified to and received by the state board from participating retirement plans and nonretirement funds which shall be used to purchase investment shares in the appropriate investment accounts. Each participating plan or fund shall own an undivided participation in all the assets of the particular accounts of the combined funds in which it participates. As of any date, the total claim of a participating plan or fund on the assets in each account shall be equal to the ratio of units owned by a plan or fund in each account to the total issued units then outstanding.

Subd. 3. **Management.** The combined investment funds shall be managed by the state board.

Subd. 4. **Investments.** The assets of the combined investment funds shall be invested by the state board subject to the provisions of section 11A.24, except that any individual account may be completely invested in a single asset class or managed in a separate account by the state board at its discretion.

Subd. 5. **Participation in Minnesota combined investment funds.** Any public retirement plan or non-retirement fund authorized by law to have its assets managed by the state board may participate in the Minnesota combined investment funds.

Subd. 6. **Initial transfer of assets.** As of July 1, 1980, or a later date as determined by the state board, the participating funds shall transfer to the combined investment funds all appropriate securities then held together with cash necessary for the purchase of units in the combined fund accounts.

Subd. 7. **Initial valuation of assets and units.** All assets transferred to the Minnesota combined investment funds shall be valued at their current market value as determined by the state board, including accrued interest. The initial value of each account unit shall be \$1,000 with each participating fund allocated units in the various accounts of the Minnesota combined investment funds in the same proportion as their assets are to the total assets in each account.

Subd. 8. **Realized appreciation or depreciation.** Any realized gains or losses in the value of investments incurred by a transferring fund pursuant to subdivision 7 shall be recognized on the date of the transfer.

Subd. 9. **Valuation of units.** (a) Valuation of units for the accounts in the Minnesota combined investment funds shall be performed as of the last business day of each month, or more frequently should the state board determine that additional valuation dates are necessary.

(b) The value of a unit for each account shall be determined by the following procedure:

(1) As of the close of business on the valuation date the state board shall determine the fair market value of each asset in each account, using the references, pricing services, consultants, or other methods as the state board deems appropriate.

(2) The sum total of the market value of all securities plus cash, less the value of undistributed income in each account, shall be divided by the number of units issued and outstanding for the account to determine the value per account unit.

Subd. 10. **Purchase and redemption of units.** Purchase and redemption of units shall be on the first business day following the valuation date. All transactions shall be at the unit value established on the

immediately preceding valuation date. Except for the initial purchase of units by an authorized participant, all purchases and redemptions shall be made in cash unless the state board determines that an exception is necessary.

Subd. 11. **Earnings defined.** Investment earnings shall be the sum total of the following of each account:

(1) Dividends receivable on securities trading ex-dividend to and including the valuation date.

(2) Cash dividends received to and including the valuation date that were not accounted for on a previous valuation date.

(3) Accrued interest to and including the valuation date.

(4) Interest received which had not been accrued and accounted for on a prior valuation date.

(5) Income from the sale of options, rights, warrants, or security lending.

(6) Other income received to and including the valuation date.

Subd. 12. **Distribution of earnings.** At least once each year the state board shall distribute to each participant net earnings determined proportionately in accordance with their average unit holdings in each account during the period. Unless otherwise directed by the participating fund, any distributions shall be used to purchase additional units in the accounts.

Subd. 13. **Records required.** The executive director of the state board shall keep accounting records. The records shall reflect the number of units in the Minnesota combined investment funds owned by each participating fund. No certificates or other evidence of ownership shall be required.

Subd. 14. **Reports required.** As of each valuation date, or as often as the state board determines, each participant shall be informed of the number of units owned and the current value of the units.

**History:** 1980 c 607 art 14 s 12; 1981 c 37 s 2; 1984 c 383 s 1; 1985 c 224 s 1; 1990 c 426 art 1 s 3; 1992 c 539 s 1; 1993 c 300 s 2-5; 2012 c 286 art 10 s 2

### 11A.15 STATE BOND FUND.

Subdivision 1. **Establishment.** Pursuant to article XI, section 7, of the Constitution of the state of Minnesota, there is hereby established a state bond fund for the purpose of the timely payment of principal and interest on bonds for which the full faith and credit of the state has been pledged. The state bond fund shall be a continuation of the state bond fund in existence on January 1, 1980.

Subd. 2. **Assets.** Any money appropriated to the state bond fund, any income arising from the invested assets of the state bond fund which is not immediately required to pay the principal or interest on state bonds and any proceeds arising from the sale of any securities in the state bond fund shall constitute the assets of the state bond fund.

Subd. 3. **Management.** The state bond fund shall be managed by the commissioner of management and budget who shall, from time to time, certify to the state board those portions of the state bond fund which in the judgment of the commissioner of management and budget are not required for immediate use.

Subd. 4. **Investment.** The state board shall invest assets of the state bond fund subject to the provisions of section 11A.25.

Subd. 5. **Withdrawal of assets.** Securities sufficient to equal the amount of money certified by the commissioner of management and budget as necessary to pay the principal or interest due on state bonds in excess of any cash on hand shall be sold at the request of the commissioner of management and budget and the certified amount of money shall be transferred to the commissioner of management and budget.

Subd. 6. **Credit of income towards subsequent appropriations.** Notwithstanding provisions of section 11A.12, the net income of the state bond fund after the recovery of any losses from the sale of securities shall be deducted from the amount of any subsequent appropriations for the payment of principal and interest of state bonds.

**History:** 1980 c 607 art 14 s 13; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109

#### 11A.16 PERMANENT SCHOOL FUND.

Subdivision 1. **Establishment.** Pursuant to article XI, section 8, of the Constitution of the state of Minnesota, there is hereby established a permanent school fund which shall be a continuation of the permanent school fund in existence on January 1, 1980.

Subd. 2. **Assets.** The permanent school fund shall consist of the proceeds derived from the school lands, the swamp lands and the internal improvement lands granted to the state and all cash and investments credited to the permanent school fund, to the swamp land fund and to the internal improvement land fund.

Subd. 3. **Management.** The permanent school fund shall be managed by the commissioner of management and budget.

Subd. 4. **Investment.** The permanent school fund shall be invested by the state board subject to the provisions of section 11A.24.

Subd. 5. **Calculation of income.** As of the end of each fiscal year, the state board shall calculate the investment income earned by the permanent school fund. The investment income earned by the fund shall equal the amount of interest on debt securities, dividends on equity securities, and interest earned on certified monthly earnings prior to the transfer to the Department of Education. Gains and losses arising from the sale of securities shall be apportioned as follows:

(a) If the sale of securities results in a net gain during a fiscal year, the gain shall be apportioned in equal installments over the next ten fiscal years to offset net losses in those years. If any portion of an installment is not needed to recover subsequent losses identified in paragraph (b) it shall be added to the principal of the fund.

(b) If the sale of securities results in a net loss during a fiscal year, the net loss shall be recovered first from the gains in paragraph (a) apportioned to that fiscal year. If these gains are insufficient, any remaining net loss shall be recovered from interest and dividend income in equal installments over the following ten fiscal years.

Subd. 6. **Disposition of income.** Notwithstanding provisions of section 11A.12, the income of the permanent school fund as calculated pursuant to subdivision 5, shall be credited to the permanent school fund, and transferred to the school endowment fund as needed for payments made pursuant to section 127A.32.

**History:** 1980 c 607 art 14 s 14; 1984 c 482 s 3; 1992 c 539 s 2; 1999 c 86 art 1 s 3; 2009 c 101 art 2 s 109; 1Sp2011 c 11 art 1 s 1

**11A.17 MINNESOTA SUPPLEMENTAL INVESTMENT FUND.**

Subdivision 1. **Purpose; accounts; continuation.** (a) The purpose of the supplemental investment fund is to provide an investment vehicle for the assets of various public retirement plans and funds.

(b) The state board shall determine and make available investment accounts within the supplemental investment fund. These accounts shall include an appropriate array of diversified investment options for participants of the public retirement plans under subdivision 5.

(c) The assets of the supplemental investment fund must be invested by the state board in types of investments permitted under section 11A.24.

(d) The state board shall make available a volunteer firefighter account for the voluntary statewide lump-sum volunteer firefighter retirement plan under section 353G.02.

Subd. 2. **Assets.** (a) The assets of the supplemental investment fund consist of the money certified and transmitted to the state board from the participating public retirement plans and funds and from the voluntary statewide volunteer firefighter retirement plan under section 353G.08.

(b) With the exception of the assets of the voluntary statewide volunteer firefighter retirement fund, the assets must be used to purchase investment shares in the investment accounts as specified by the plan or fund. The assets of the voluntary statewide volunteer firefighter retirement fund must be invested in the volunteer firefighter account.

(c) These accounts must be valued at least on a monthly basis but may be valued more frequently as determined by the State Board of Investment.

Subd. 3. **Management.** The supplemental investment fund shall be managed by the state board.

Subd. 4. [Repealed, 2014 c 296 art 13 s 28]

Subd. 5. **Participating public retirement plans or funds.** Any public retirement plan or fund authorized or required by law to invest its assets in the supplemental investment fund may from time to time as provided by law certify moneys to the state board for the purchase of investment shares in the investment accounts of the supplemental investment account. The state board shall credit each purchase of investment shares to the appropriate participating public retirement plan or fund and shall confirm each purchase in writing to the appropriate plan or fund. Each participating public retirement plan or fund shall maintain adequate records to account for money certified to the supplemental investment fund.

Subd. 6. **Participation in fund.** Each public retirement plan or fund which has certified money to the state board for investment in the supplemental investment fund shall have a participation in each investment account of the fund in which it has money invested. The participation shall be determined by the ratio of the number of shares credited to the public retirement plan or fund to the total number of shares in that account.

Subd. 7. **Purchase of shares.** The state board shall allocate shares in the investment account or accounts at least monthly following the receipt of the funds for purchase of shares from the public retirement plan or fund as specified in the certification. The purchase price for shares shall be determined using the procedure specified in subdivision 9.

Subd. 8. **Redemption of shares.** The state board shall redeem shares in the investment account or accounts on the first business day after the valuation date next following the receipt of the request for

redemption of shares from the public retirement plan or fund. The redemption value for shares shall be determined using the procedure specified in subdivision 9. Money representing the value of the redeemed shares shall be transmitted to the public retirement plan or fund making the request.

Subd. 9. **Valuation of investment shares.** (a) The value of shares for each investment account, excluding a money market account, must be determined by dividing the total market value of the securities constituting the respective account by the total number of shares then outstanding in the investment account.

(b) The value of shares in a money market account must be \$1 a share.

Subd. 10. **Certifications for investment and requests for redemption.** The state board may specify the required forms for certifications of money for investment and requests for redemption of investment shares and may require the filing of any other documents which it deems necessary.

Subd. 10a. [Repealed, 1998 c 390 art 2 s 21 para (a)]

Subd. 11. **Prospectus.** Annually, by July 2, the state board shall prepare and shall issue a prospectus for the supplemental investment fund with separate exhibits for each investment account. The exhibit for each account must include its investment objectives, asset allocation, and past investment performance. Upon request, the board shall provide a list of each security in the fund and show the following items, whichever are applicable:

(1) the purchase price of the security;

(2) the current market value of the security;

(3) the current dividend or interest rate of the security;

(4) the rating of a debt security issued by a nationally recognized rating agency if it is other than a security issued or guaranteed by the United States government.

The state board shall transmit sufficient copies of the prospectus to each public retirement plan or fund participating in the supplemental investment account to meet the plan or fund's distribution requirements. The prospectus must be filed with the director of the Legislative Reference Library as provided by section 3.195.

Subd. 12. [Repealed, 1988 c 453 s 12]

Subd. 13. [Repealed, 1988 c 453 s 12]

Subd. 14. [Repealed, 1998 c 390 art 2 s 21 para (a)]

**History:** 1980 c 607 art 14 s 15; 1981 c 208 s 1; 1981 c 224 s 14; 1983 c 324 s 3; 1985 c 224 s 2; 1986 c 356 s 1-5; 1988 c 453 s 1-5; 1992 c 539 s 3-7; 1994 c 604 art 1 s 1-5; 1998 c 390 art 2 s 2; 1Sp2003 c 12 art 2 s 1; 2009 c 32 s 5; 2009 c 169 art 9 s 1,2; 2014 c 296 art 13 s 1,2; 2015 c 68 art 8 s 1

**11A.18** [Repealed, 2009 c 169 art 1 s 77]

**11A.181** [Repealed, 2009 c 169 art 1 s 77]

**11A.19** Subdivision 1. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 2. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 3. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 4. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 5. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 6. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 7. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 8. [Repealed, 1990 c 426 art 1 s 1; 1990 c 570 art 12 s 64]

Subd. 9. [Repealed, 1990 c 426 art 1 s 2; 1990 c 570 art 12 s 64]

#### **11A.20 INVESTMENT OF STATE TREASURY FUNDS NOT CURRENTLY NEEDED.**

Subdivision 1. **Certification.** When there are funds in the state treasury over and above the amount that the commissioner of management and budget has determined are currently needed, the commissioner shall certify to the state board the amount thereof.

Subd. 2. **Investment.** The certified amount of state treasury funds not currently needed shall be invested by the state board subject to the provisions of section 11A.25.

Subd. 3. **Crediting of investment income.** Notwithstanding provisions of section 11A.12, all investment income and all investment losses attributable to the investment of state treasury funds, other than the game and fish fund, not currently needed shall be credited to the general fund.

**History:** 1980 c 607 art 14 s 18; 1981 c 356 s 254; 1Sp1985 c 13 s 77; 2009 c 101 art 2 s 109

#### **11A.21 INVESTMENT OF HIGHWAY FUNDS.**

Subdivision 1. **Certification.** The commissioner of transportation shall certify to the state board those portions of the highway user tax distribution fund established pursuant to article XIV, section 5 of the Constitution of the state of Minnesota; the trunk highway fund established pursuant to article XIV, section 6 of the Constitution of the state of Minnesota; the county state-aid highway fund established pursuant to article XIV, section 7 of the Constitution of the state of Minnesota; and the municipal state-aid street fund established pursuant to article XIV, section 8 of the Constitution of the state of Minnesota, which in the judgment of the commissioner are not required for immediate use.

Subd. 2. **Investment.** The certified amount of highway funds not currently needed shall be invested by the state board subject to the provisions of section 11A.25.

**History:** 1980 c 607 art 14 s 19; 1993 c 266 s 14

**11A.22** [Repealed, 1989 c 335 art 4 s 109]

#### **11A.23 INVESTMENT OF RETIREMENT FUNDS AND PLANS.**

Subdivision 1. **Certification of assets not needed for immediate use.** Each executive director administering a retirement fund or plan enumerated in subdivision 4 shall, from time to time, certify to the state board for investment those portions of the assets of the retirement fund or plan which in the judgment of the executive director are not required for immediate use.

Subd. 2. **Investment.** Retirement fund assets certified to the state board under subdivision 1 must be invested by the state board subject to the provisions of section 11A.24. Retirement fund assets transferred

to the combined investment fund or the supplemental investment fund must be invested by the state board as part of those funds.

Subd. 3. **Withdrawal of assets.** When an executive director administering a retirement fund or plan enumerated in subdivision 4, certifies to the state board that invested assets of the fund or plan are required for immediate use, the state board shall sell securities to equal the amount of assets certified as required and shall order the transfer of the assets to the appropriate executive director.

Subd. 4. **Covered retirement funds and plans.** The provisions of this section apply to the following retirement funds and plans:

(1) Board of Trustees of the Minnesota State Colleges and Universities supplemental retirement plan established under chapter 354C;

(2) state employees retirement fund established pursuant to chapter 352;

(3) correctional employees retirement plan established pursuant to chapter 352;

(4) State Patrol retirement fund established pursuant to chapter 352B;

(5) unclassified employees retirement plan established pursuant to chapter 352D;

(6) general employees retirement fund established pursuant to chapter 353;

(7) public employees police and fire fund established pursuant to chapter 353;

(8) teachers' retirement fund established pursuant to chapter 354;

(9) judges' retirement fund established pursuant to chapter 490; and

(10) any other funds required by law to be invested by the board.

**History:** 1980 c 607 art 14 s 21; 1981 c 37 s 2; 1981 c 208 s 10; 1981 c 224 s 15; 1992 c 464 art 1 s 2; art 2 s 1; 1993 c 13 art 1 s 8; 1995 c 141 art 4 s 1; 1995 c 212 art 4 s 64; 2009 c 169 art 1 s 7,8; 2010 c 359 art 12 s 2

#### **11A.235 ACCOUNT FOR INVESTMENT OF CERTAIN DULUTH FUNDS OR ASSETS.**

Subdivision 1. **Establishment.** The State Board of Investment, when requested by the city of Duluth, may invest the funds or assets of the city's community investment trust fund in a special account for that purpose in the combined investment funds established in section 11A.14, subject to the policies and procedures established by the State Board of Investment. Use of the funds in the account is restricted to debt service payments for the city's street improvement program or to any other use approved in accordance with Section 54(E) of the home rule charter of the city of Duluth.

Subd. 2. **Account maintenance and investment.** The city may deposit money in the account and may withdraw money from the account for purposes approved by the Duluth City Council in accordance with Section 54(E) of the home rule charter of the city of Duluth. Such transactions must be at a time and in a manner required by the executive director of the State Board of Investment. Investment earnings must be credited to the account of the city. The account may be terminated by the city at any time.

**History:** 2007 c 14 s 1

**11A.24 AUTHORIZED INVESTMENTS.**

Subdivision 1. **Securities generally.** (a) Pursuant to an investment policy adopted by the state board, the state board is authorized to purchase, sell, lend, and exchange the securities specified in this section, for funds or accounts specifically made subject to this section. This authority includes puts and call options, future contracts, and swap contracts marked to market, if these options and contracts are traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned directly or through shares in exchange-traded or mutual funds, or as units in commingled trusts, subject to any limitations as specified in this section.

(b) Any agreement to lend securities must be concurrently collateralized with cash or securities with a market value of not less than 100 percent of the market value of the loaned securities at the time of the agreement. Any agreement for put and call options and futures contracts may only be entered into with a fully offsetting amount of cash or securities. Only securities authorized by this section, excluding those under subdivision 6, paragraph (a), clauses (1) to (3), may be accepted as collateral or offsetting securities.

Subd. 2. **Government obligations.** The state board is authorized to invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness if the issue is backed by the full faith and credit of the issuer or if the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which the board may invest under this subdivision are guaranteed or insured issues of:

(1) the United States, its agencies, its instrumentalities, or organizations created and regulated by an act of Congress;

(2) the Dominion of Canada or any of its provinces, provided the principal and interest are payable in United States dollars;

(3) any of the states or any of their municipalities, political subdivisions, agencies, or instrumentalities; and

(4) any United States government sponsored organization of which the United States is a member, if the principal and interest are payable in United States dollars.

Subd. 3. **Corporate obligations.** (a) The state board is authorized to invest funds in bonds, notes, debentures, transportation equipment obligations, and any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state of the United States, or the Dominion of Canada or any Canadian province if:

(1) the principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any Canadian province are payable in United States dollars; and

(2) the obligations are rated among the top four quality categories by a nationally recognized rating agency.

(b) The state board may invest in unrated corporate obligations or in corporate obligations that are not rated among the top four quality categories as provided in paragraph (a), clause (2), if:

(1) the aggregate value of these obligations does not exceed five percent of the market value of the fund for which the state board is investing;

(2) the state board's participation is limited to 50 percent of a single offering subject to this paragraph; and

(3) the state board's participation is limited to 25 percent of an issuer's obligations subject to this paragraph.

Subd. 4. **Other obligations.** (a) The state board is authorized to invest funds in:

(1) bankers acceptances and deposit notes if issued by a United States bank that is rated in the highest four quality categories by a nationally recognized rating agency;

(2) certificates of deposit if issued by a United States bank or savings institution that is rated in the top four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies, or certificates of deposits issued by a credit union in an amount within the limit of the insurance coverage provided by the National Credit Union Administration;

(3) commercial paper if issued by a United States corporation or its Canadian subsidiary and if rated in the highest two quality categories by a nationally recognized rating agency;

(4) mortgage securities and asset-backed securities if rated in the top four quality categories by a nationally recognized rating agency;

(5) repurchase agreements and reverse repurchase agreements if collateralized with letters of credit or securities authorized in this section;

(6) guaranteed investment contracts if issued by an insurance company or a bank that is rated in the top four quality categories by a nationally recognized rating agency or alternative guaranteed investment contracts if the underlying assets comply with the requirements of this section;

(7) savings accounts if fully insured by a federal agency; and

(8) guaranty fund certificates, surplus notes, or debentures if issued by a domestic mutual insurance company.

(b) Sections 16A.58, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the state board under paragraph (a), clause (2).

(c) In addition to investments authorized by paragraph (a), clause (4), the state board is authorized to purchase from the Minnesota Housing Finance Agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The state board may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The state board may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the state board comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

Subd. 5. **Corporate stocks.** The state board is authorized to invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or any of its states, the Dominion of Canada

or any of its provinces, or any corporation listed on an exchange that is regulated by an agency of the United States or of the Canadian national government.

An investment in any corporation must not exceed five percent of the total outstanding shares of that corporation, except that the state board may hold up to 20 percent of the shares of a real estate investment trust and up to 20 percent of the shares of a closed-end mutual fund.

Subd. 5a. **Asset mix limitations.** The aggregate value of investments under subdivision 5, plus the aggregate value of all investments under subdivision 6, must not exceed 85 percent of the market value of a fund.

Subd. 6. **Other investments.** (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board is authorized to invest funds in:

(1) equity and debt investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships, bank-sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;

(3) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and

(4) international securities.

(b) The investments authorized in paragraph (a) must conform to the following provisions:

(1) the aggregate value of all investments made under paragraph (a), clauses (1) to (3), may not exceed 35 percent of the market value of the fund for which the state board is investing;

(2) there must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), or (3);

(3) state board participation in an investment vehicle is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), or (3); and

(4) state board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board may not engage in any activity as a limited partner which creates general liability.

(c) All financial, business, or proprietary data collected, created, received, or maintained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (3), are nonpublic data under section 13.02, subdivision 9. As used in this paragraph, "financial, business, or proprietary data" means data, as determined by the responsible authority for the state board, that is of a financial, business, or proprietary nature, the release of which could cause competitive harm to the state board, the legal entity in which the state board has invested or has considered an investment, the managing entity of an investment, or a portfolio company in which the legal entity holds an interest. As used in this section, "business data" is data described in section 13.591, subdivision 1. Regardless of whether they could be considered financial,

business, or proprietary data, the following data received, prepared, used, or retained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (3), are public at all times:

- (1) the name and industry group classification of the legal entity in which the state board has invested or in which the state board has considered an investment;
- (2) the state board commitment amount, if any;
- (3) the funded amount of the state board's commitment to date, if any;
- (4) the market value of the investment by the state board;
- (5) the state board's internal rate of return for the investment, including expenditures and receipts used in the calculation of the investment's internal rate of return; and
- (6) the age of the investment in years.

Subd. 7. **Appropriation.** There is annually appropriated to the state board, from the assets of the funds for which the state board invests relating to authorized investments under subdivision 6, paragraph (a), sums sufficient to pay the costs for the management of these assets by private management firms.

**History:** 1980 c 607 art 14 s 22; 1981 c 208 s 3-6,9; 1982 c 587 s 2; 1983 c 216 art 1 s 5; 1983 c 324 s 7-9; 1984 c 382 s 1; 1984 c 383 s 2,3; 1985 c 224 s 3-5; 1987 c 72 s 1; 1987 c 372 art 8 s 2-6; 1988 c 453 s 7,8; 1991 c 47 s 1; 1991 c 206 s 1; 1992 c 539 s 9; 1992 c 587 art 2 s 2; 1992 c 592 s 2; 1993 c 300 s 6,7; 1994 c 604 art 1 s 7-11; 1995 c 122 s 1; 1998 c 386 art 2 s 8; 2000 c 392 s 1,2; 2005 c 156 art 2 s 7; 2005 c 163 s 2; 2009 c 86 art 1 s 90; 2012 c 286 art 10 s 3; 2013 c 111 art 1 s 1

#### 11A.241 INVESTMENT IN NORTHERN IRELAND.

Subdivision 1. **List of investments.** (a) By January 1 of each year, the state board shall:

- (1) compile a list of corporations that, directly or through a subsidiary, do business in Northern Ireland and in whose stocks or obligations the board has invested under section 11A.24, subdivision 3 or 5; and
- (2) determine whether each corporation on the list has, during the preceding year, taken affirmative action to eliminate religious or ethnic discrimination in Northern Ireland.

(b) In making the determination required by paragraph (a), clause (2), the state board shall consider whether a corporation has, during the preceding year, taken substantial action designed to lead toward the achievement of the following goals:

- (1) increasing representation of persons from underrepresented religious groups at all levels in its work force;
- (2) providing adequate security for employees who are members of minority religious groups, both at the workplace and while traveling to and from work;
- (3) creating a climate in the workplace free from religious or political provocation;
- (4) publicly advertising all job openings and making special recruiting efforts to attract applicants from underrepresented religious groups;
- (5) providing that layoff, recall, and termination procedures do not favor workers who are members of particular religious groups;

(6) abolishing job reservations, apprenticeship restrictions, and differential employment criteria that discriminate on the basis of religious or ethnic origin;

(7) developing new programs and expanding existing programs to prepare current employees who are members of minority religious groups for skilled jobs;

(8) establishing procedures to assess, identify, and recruit employees who are members of minority religious groups and who have potential for advancement; and

(9) appointing senior management employees to oversee affirmative action efforts and the setting of timetables for carrying out clauses (1) to (8).

Subd. 2. **Affirmative action policy.** Whenever feasible, the board shall sponsor, cosponsor, or support shareholder resolutions designed to encourage corporations in which the board has invested to pursue a policy of affirmative action in Northern Ireland.

Subd. 3. **Divestment not required.** Nothing in this section may be construed to require the state board to dispose of existing investments or to make future investments that violate sound investment policy for public pensions.

**History:** 1988 c 687 s 1

#### 11A.243 INVESTMENT IN SUDAN.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following items have the meanings given them in this subdivision.

(b) "Active business operations" means all business operations that are not inactive business operations.

(c) "Business operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(d) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(e) "Complicit" means taking actions during any preceding 20-month period that have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(f) "Direct holdings" in a company means all securities of that company held directly by the State Board of Investment or in an account or fund in which the State Board of Investment owns all shares or interests.

(g) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the national congress party (formerly known as the national Islamic front) or any successor government formed on or after October 13, 2006, including the coalition national unity government agreed upon in the comprehensive peace agreement for Sudan, and does not include the regional government of southern Sudan.

(h) "Inactive business operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(i) "Indirect holdings" in a company means all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the State Board of Investment, in which the State Board of Investment owns shares or interests together with other investors not subject to the provisions of this section.

(j) "Marginalized populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(k) "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(l) "Mineral extraction activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(m) "Oil-related activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including the provision of supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

(n) "Power production activities" means any business operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including the provision of supplies or services in support of such activities.

(o) "Scrutinized company" means any company that meets the criteria in clause (1), (2), or (3):

(1) the company has business operations that involve contracts with or provision of supplies or services to:

(i) the government of Sudan;

(ii) companies in which the government of Sudan has any direct or indirect equity share;

(iii) government of Sudan-commissioned consortiums or projects; or

(iv) companies involved in government of Sudan-commissioned consortiums or projects; and

(A) more than ten percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or

(B) more than ten percent of the company's revenues or assets linked to Sudan involve power production activities; less than 75 percent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action;

(2) the company is complicit in the Darfur genocide; or

(3) the company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through postsale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding any other provision to the contrary in this section, a social development company that is not complicit in the Darfur genocide shall not be considered a scrutinized company.

(p) "Social development company" means a company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

(q) "Substantial action" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a nonprofit entity that has been evaluated and certified by an independent third party to be in substantial relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

**Subd. 2. Identification of companies.** (a) Within 90 days following May 23, 2007, the State Board of Investment shall make its best efforts to identify all scrutinized companies in which the State Board of Investment has direct or indirect holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) reviewing and relying, as appropriate in the State Board of Investment's judgment, on publicly available information regarding companies with business operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) contacting asset managers contracting with the State Board of Investment who invest in companies with business operations in Sudan; or

(3) contacting other institutional investors that have divested from or engaged with companies that have business operations in Sudan.

(b) At the first meeting of the State Board of Investment after it has completed the requirements of paragraph (a), the State Board of Investment shall assemble a list of scrutinized companies.

(c) The State Board of Investment shall update the scrutinized companies list each quarter based on continuing information, including, but not limited to, information from sources identified in paragraph (a).

**Subd. 3. Engagement of scrutinized companies.** The State Board of Investment shall use the following procedure for companies on the scrutinized companies list:

(a) After completing the list required under subdivision 2, paragraph (a), the State Board of Investment shall immediately identify the companies on the list in which the State Board of Investment owns direct or indirect holdings.

(b) For each company identified in paragraph (a) with only inactive business operations, the State Board of Investment shall send a written notice to the company with information about this section and encourage it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The State Board of Investment shall continue such correspondence on a semiannual basis.

(c) For each company newly identified in paragraph (a) with active business operations, the State Board of Investment shall send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the State Board of Investment. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company, within 90 days, to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid qualifying for divestment by the State Board of Investment.

(d) If, within 90 days following the State Board of Investment's first engagement with a company under paragraph (c), that company ceases scrutinized business operations, the company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes scrutinized business operations. If, within 90 days following the State Board of Investment's first engagement, the company converts its scrutinized active business operations to inactive business operations, the company shall be subject to all provisions of this section relating to inactive business operations.

**Subd. 4. Divestment.** (a) If, after 90 days following the State Board of Investment's first engagement with a company under subdivision 3, paragraph (c), the company continues to have scrutinized active business operations, and only while the company continues to have scrutinized active business operations, the State Board of Investment shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except as provided in subdivisions 5 to 11, according to the following schedule:

(1) at least 50 percent of the assets in the company shall be removed from the State Board of Investment's assets under management by nine months after the company's most recent appearance on the scrutinized companies list; and

(2) 100 percent of the assets in the company shall be removed from the State Board of Investment's assets under management within 15 months after the company's most recent appearance on the scrutinized companies list.

(b) If a company that ceased scrutinized active business operations following engagement under subdivision 3, paragraph (c), resumes such operations, paragraph (a) shall immediately apply to the company and the State Board of Investment shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

Subd. 5. **Prohibition on acquisition of certain securities.** At no time shall the State Board of Investment acquire securities of companies on the scrutinized companies list that have active business operations, except as provided in this section.

Subd. 6. **Exemption.** If the federal government affirmatively excludes a company from its present or any future federal sanctions regime relating to Sudan, the company is exempt from the divestment and investment requirements of subdivisions 4 and 5.

Subd. 7. **Excluded securities.** Notwithstanding any other provision in this section to the contrary, subdivisions 4 and 5 do not apply to indirect holdings in actively managed investment funds. The State Board of Investment shall submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting the managers to consider removing such companies from the fund or to create a similar actively managed fund with indirect holdings that do not include the companies. If a manager creates a similar fund, the State Board of Investment shall promptly replace all applicable investments with investments in the similar fund consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

Subd. 8. **Reporting.** (a) Within 30 days after creating the scrutinized companies list, the State Board of Investment shall submit the list to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment.

(b) By January 15, 2008, and on January 15 of each year thereafter, the State Board of Investment shall submit a report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment and send a copy of that report to the United States Presidential Special Envoy to Sudan or the appropriate designee or successor for the envoy. The report must include:

- (1) a summary of correspondence with companies engaged by the State Board of Investment under subdivision 3, paragraphs (b) and (c);
- (2) a list of all investments sold, redeemed, divested, or withdrawn in compliance with subdivision 4;
- (3) a list of all prohibited investments under subdivision 5; and
- (4) a description of any progress made under subdivision 7.

Subd. 9. **Expiration.** This section shall expire upon the occurrence of any of the following:

- (1) the Congress or president of the United States declares that the Darfur genocide has been halted for at least 12 months;
- (2) the United States revokes all sanctions imposed against the government of Sudan;
- (3) the Congress or president of the United States declares that the government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons; or

(4) the Congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this section interferes with the conduct of United States foreign policy.

Subd. 10. **Other legal obligations.** The State Board of Investment is exempt from any statutory or common law obligations that conflict with actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, including any obligations regarding the choice of asset managers, investment funds, or investments for the State Board of Investment's securities portfolios.

Subd. 11. **Reinvestment in certain companies with scrutinized active business operations.** Notwithstanding any provision of this section to the contrary, the State Board of Investment shall be permitted to cease divesting from certain scrutinized companies under subdivision 4 or to reinvest in certain scrutinized companies from which it divested under subdivision 4 if clear and convincing evidence shows that the value for all assets under management by the State Board of Investment is equal to or less than 99.5 percent (50 basis points) of the hypothetical value of all assets under management by the State Board of Investment without any divestment for any company under subdivision 4. Cessation of divestment, reinvestment, or any subsequent ongoing investment authorized by this subdivision shall be strictly limited to the minimum steps necessary to avoid the contingency. For any cessation of divestment, reinvestment, or subsequent ongoing investment authorized by this subdivision, the State Board of Investment shall provide a written report to the chairs of the legislative committees and divisions with jurisdiction over the State Board of Investment in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, or remain invested in companies with scrutinized active business operations. This subdivision does not apply to reinvestment in companies because they have ceased scrutinized active business operations.

**History:** 2007 c 117 s 1

#### 11A.244 INVESTMENT IN IRAN.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them in this subdivision.

(b) "Active business operations" means all business operations that are not inactive business operations.

(c) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(d) "Direct holdings" means all publicly traded debt and equity securities of a company that are held directly by the State Board of Investment or held in an account or fund in which the State Board of Investment owns all shares or interests.

(e) "Government of Iran" means the government of the Islamic Republic of Iran or its instrumentalities or political subdivisions and companies owned or controlled by the Islamic Republic of Iran.

(f) "Inactive business operations" means the continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such a purpose.

(g) "Indirect holdings" means all investments held in an account or fund, including a mutual fund, a real estate fund, a private equity fund, or a commingled fund, managed by one or more persons who are not employed by the State Board of Investment, in which the public funds own shares or interests together with other investors who are not subject to this section.

(h) "Scrutinized company" means any company engaging in scrutinized business operations.

(i) "Scrutinized business operations" means any and all active business operations that are subject or liable to sanctions under Public Law 104-172, as amended, the Iran Sanctions Act of 1996, and that involve the maintenance of a company's existing assets or investments in Iran, or the deployment of new investments to Iran that meet or exceed the \$20,000,000 threshold referred to in Public Law 104-172, as amended, the Iran Sanctions Act of 1996. "Scrutinized business operations" does not include the retail sale of gasoline and related products.

(j) "Substantial action specific to Iran" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations.

**Subd. 2. Identification of scrutinized companies.** (a) Within 90 days following August 1, 2009, the State Board of Investment shall make its best efforts to identify all scrutinized companies in which it has direct holdings. These efforts shall include, as appropriate:

(1) reviewing and relying, as appropriate, on publicly available information regarding companies with business operations in Iran, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) contacting asset managers contracting with the State Board of Investment who invest in companies with business operations in Iran; and

(3) contacting other institutional investors that have divested from or engaged with companies with business operations in Iran.

(b) At the first meeting of the State Board of Investment after it has completed the requirements of paragraph (a), the State Board of Investment shall assemble a list of scrutinized companies in which it has direct holdings.

(c) The State Board of Investment shall update the scrutinized companies list each quarter based on continuing information, including but not limited to information from sources identified in paragraph (a).

**Subd. 3. Engagement of scrutinized companies.** The State Board of Investment shall use the following procedures with respect to companies on the scrutinized companies list:

(1) for each company newly identified in subdivision 2 with scrutinized business operations, the State Board of Investment shall, within 90 days following its assembly of the scrutinized companies list, send a written notice informing the company of its scrutinized company status and that it may become subject to divestment by the State Board of Investment. The notice shall offer the company the opportunity to clarify its scrutinized business operations and shall encourage the company to cease, within 90 days of the date of the notice, its scrutinized business operations, or to convert them to inactive business operations in order to avoid divestment by the State Board of Investment; and

(2) if, within 90 days following the State Board of Investment's first engagement with a company under clause (1), that company publicly announces its commitment to substantial action specific to Iran, that

company shall be removed from the scrutinized companies list and the provisions of this section shall cease to apply to it unless it resumes active business operations in Iran.

Subd. 4. **Divestment.** (a) If, after 90 days following the State Board of Investment's first engagement with a company under subdivision 3, clause (1), the company continues to have scrutinized business operations, and only while the company continues to have scrutinized business operations, the State Board of Investment shall sell, redeem, divest, or withdraw all publicly traded securities of the company, according to the following schedule:

(1) at least 50 percent of the holdings in the company shall be removed from the State Board of Investment's assets under management by nine months after the company's initial appearance on the scrutinized companies list; and

(2) 100 percent of the holdings in the company shall be removed from the State Board of Investment's assets under management within 15 months after the company's initial appearance on the scrutinized companies list.

(b) If a company that ceased scrutinized business operations following engagement under subdivision 3, clause (1), resumes such operations, paragraph (a) immediately applies to the company and the State Board of Investment shall send a written notice to the company. The company shall also be immediately reintroduced onto the scrutinized companies list.

Subd. 5. **Prohibition on new acquisitions.** The State Board of Investment may not acquire securities of companies on the scrutinized companies list that have scrutinized business operations, except as provided in this section.

Subd. 6. **Relation to federal action.** If the federal government excludes a company from its present or any future federal sanctions relating to Iran, that company is exempt from the divestment requirements and the investment prohibitions in this section.

Subd. 7. **Exemptions.** Subdivisions 4 and 5 do not apply to any of the following:

(1) investments in a company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran;

(2) investments in a company that is primarily engaged in promoting health, education, or journalistic, religious, or welfare activities in Iran; and

(3) investments in a United States company that is authorized by the federal government to have active business operations in Iran.

Subd. 8. **Excluded securities.** Subdivisions 4 and 5 do not apply to indirect holdings in actively managed investment funds. The State Board of Investment shall submit letters to the managers of investment funds containing companies with scrutinized active business operations requesting the managers to consider removing such companies from the fund or to create a similar actively managed fund with indirect holdings that do not include the companies. If a manager creates a similar fund, the State Board of Investment shall promptly replace all applicable investments with investments in the similar fund consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

Subd. 9. **Reporting.** By January 15 of each calendar year, the State Board of Investment shall submit a report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over the State Board of Investment. The report must include:

- (1) a copy of the most recent list of scrutinized companies;
- (2) a summary of correspondence with companies engaged by the State Board of Investment under subdivision 3;
- (3) a list of all investments sold, redeemed, divested, or withdrawn in compliance with subdivision 4;
- (4) a list of all prohibited investments under subdivision 5; and
- (5) a description of any progress made under subdivision 8.

Subd. 10. **Expiration.** This section ceases to be operative if either of the following apply:

- (1) Iran is removed from the United States Department of State's list of countries that have been determined to repeatedly provide support for acts of international terrorism; or
- (2) the president of the United States determines and certifies that state legislation similar to this section interferes with the conduct of United States foreign policy.

Subd. 11. **Other legal obligations.** The State Board of Investment is exempt from any statutory or common law obligations that conflict with actions taken in compliance with this section, including all good faith determinations regarding companies as required by this section, including any obligations regarding the choice of asset managers, investment funds, or investments for the State Board of Investment's securities portfolios.

Subd. 12. **Severability.** The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

**History:** 2009 c 90 s 1

#### 11A.25 ADDITIONAL INVESTMENT PROVISIONS.

When investing assets of any funds or accounts specifically made subject to this section or not otherwise referred to in sections 11A.01 to 11A.25, all securities shall be debt obligations and shall conform to the applicable provisions of section 11A.24.

**History:** 1980 c 607 art 14 s 23; 1987 c 372 art 8 s 7

#### 11A.27 REPORT ON INVESTMENT CONSULTANT ACTIVITIES AND DELIVERABLES.

(a) Annually, on or before November 1, the State Board of Investment shall file a report with the Legislative Reference Library on the activities and work product during that year of any investment consultants retained by the board.

(b) The report must include the following items:

- (1) the total contract fee paid to each investment consultant;

(2) a listing of the projects in which the investment consultant was involved; and

(3) examples of the written work product provided by the investment consultant on those projects during the report coverage period.

**History:** *2007 c 148 art 2 s 7*

## CHAPTER 356A

### PUBLIC PENSION FIDUCIARY RESPONSIBILITY

<p>356A.01 DEFINITIONS.</p> <p>356A.02 FIDUCIARY STATUS AND ACTIVITIES.</p> <p>356A.03 PROHIBITION OF CERTAIN PERSONS FROM FIDUCIARY STATUS.</p> <p>356A.04 GENERAL STANDARD OF FIDUCIARY CONDUCT.</p> <p>356A.05 DUTIES APPLICABLE TO ALL ACTIVITIES.</p> <p>356A.06 INVESTMENTS; ADDITIONAL DUTIES.</p> <p>356A.07 BENEFIT SUMMARY; ANNUAL REPORTS; ADDITIONAL DUTIES.</p>	<p>356A.08 PLAN ADMINISTRATION; ADDITIONAL DUTIES.</p> <p>356A.09 FIDUCIARY BREACH; REMEDIES.</p> <p>356A.10 COFIDUCIARY RESPONSIBILITY AND LIABILITY.</p> <p>356A.11 FIDUCIARY INDEMNIFICATION.</p> <p>356A.12 JURISDICTION; SERVICE OF PROCESS; AND STATUTE OF LIMITATIONS.</p> <p>356A.13 CONTINUING FIDUCIARY EDUCATION.</p>
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#### 356A.01 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them in this section.

Subd. 2. **Benefit.** "Benefit" means an amount, other than an administrative expense, paid or payable from a pension plan, including a retirement annuity, service pension, disability benefit, survivor benefit, death benefit, funeral benefit, or refund.

Subd. 3. **Benefit provisions.** "Benefit provisions" means the portion of a pension plan that deals specifically with the benefit coverage provided by the plan, including the kinds of coverage, the eligibility for and entitlement to benefits, and the amount of benefits.

Subd. 4. **Benefit recipient.** "Benefit recipient" means a person who has received a benefit from a pension plan or to whom a benefit is payable under the terms of the plan document of the pension plan.

Subd. 5. **Chief administrative officer.** "Chief administrative officer" means the person who has primary responsibility for the execution of the administrative or management affairs of a pension plan.

Subd. 6. **Cofiduciary.** "Cofiduciary" means a fiduciary of a pension plan, other than a fiduciary directly undertaking a fiduciary activity or directly and primarily responsible for a fiduciary activity.

Subd. 7. **Covered governmental entity.** "Covered governmental entity" means a governmental subdivision or other governmental entity that employs persons who are plan participants in a covered pension plan and who are eligible for that participation because of their employment.

Subd. 8. **Covered pension plan.** "Covered pension plan" means a pension plan or fund listed in section 356.20, subdivision 2, or section 356.30, subdivision 3, or a plan established under chapter 353D, 354B, 354C, or 354D.

Subd. 9. **Covered pension plan other than a statewide plan.** "Covered pension plan other than a statewide plan" means a pension plan not included in the definition of a statewide plan in subdivision 24.

Subd. 10. **Direct or indirect profit.** "Direct or indirect profit" means a payment of money, the provision of a service or an item of other than nominal value, an extension of credit, a loan, or any other special

consideration to a fiduciary or a direct relative of a fiduciary on behalf of the fiduciary in consideration for the performance of a fiduciary activity or a failure to perform a fiduciary activity.

Subd. 11. **Direct relative.** "Direct relative" means any of the persons or spouses of persons related to one another within the third degree of kindred under civil law.

Subd. 12. **Fiduciary.** "Fiduciary" means a person identified in section 356A.02.

Subd. 13. **Fiduciary activity.** "Fiduciary activity" means an activity described in section 356A.02, subdivision 2.

Subd. 14. **Financial institution.** "Financial institution" means a bank, savings institution, or credit union organized under federal or state law.

Subd. 15. **Governing board of a pension plan.** "Governing board of a pension plan" means the body of a pension plan that is assigned or that undertakes the chief policy-making powers and management duties of the plan.

Subd. 16. **Investment Advisory Council.** "Investment Advisory Council" means the Investment Advisory Council established by section 11A.08.

Subd. 17. **Liability.** "Liability" means a secured or unsecured debt or an obligation for a future payment of money, including an actuarial accrued liability or an unfunded actuarial accrued liability, except where the context clearly indicates another meaning.

Subd. 18. **Office of the pension plan.** "Office of the pension plan" means an administrative facility or portion of a facility where the primary business or administrative affairs of a pension plan are conducted and the primary and permanent records and files of the plan are retained.

Subd. 19. **Pension fund.** "Pension fund" means the assets amassed and held in a pension plan, other than the general fund, as reserves for present and future payment of benefits and administrative expenses. For the Bloomington Fire Department Relief Association or a retirement plan governed by chapter 424A, the term means the relief association special fund.

Subd. 20. **Pension plan.** "Pension plan" means all aspects of an arrangement between a public employer and its employees concerning the pension benefit coverage provided to the employees.

Subd. 21. **Plan document.** "Plan document" means a written document or series of documents containing the eligibility requirements and entitlement provisions constituting the benefit coverage of a pension plan, including any articles of incorporation, bylaws, governing body rules and policies, municipal charter provisions, municipal ordinance provisions, or general or special state law.

Subd. 22. **Plan participant.** "Plan participant" means a person who is an active member of a pension plan by virtue of the person's employment or who is making a pension plan member contribution.

Subd. 23. **State Board of Investment.** "State Board of Investment" means the Minnesota State Board of Investment created by the Minnesota Constitution, article XI, section 8.

Subd. 24. **Statewide plan.** "Statewide plan" means any of the following pension plans:

- (1) the Minnesota State Retirement System or a pension plan administered by it;
- (2) the Public Employees Retirement Association or a pension plan administered by it; and

(3) the Teachers Retirement Association or a pension plan administered by it.

**History:** 1989 c 319 art 7 s 1; 2000 c 461 art 12 s 16; 2012 c 286 art 10 s 9; 2013 c 111 art 5 s 67; 2014 c 275 art 2 s 16

### **356A.02 FIDUCIARY STATUS AND ACTIVITIES.**

Subdivision 1. **Fiduciary status.** For purposes of this chapter, the following persons are fiduciaries:

- (1) any member of the governing board of a covered pension plan;
- (2) the chief administrative officer of a covered pension plan or of the State Board of Investment;
- (3) any member of the State Board of Investment; and
- (4) any member of the Investment Advisory Council.

Subd. 2. **Fiduciary activity.** The activities of a fiduciary identified in subdivision 1 that must be carried out in accordance with the requirements of section 356A.04 include, but are not limited to:

- (1) the investment and reinvestment of plan assets;
- (2) the determination of benefits;
- (3) the determination of eligibility for membership or benefits;
- (4) the determination of the amount or duration of benefits;
- (5) the determination of funding requirements or the amounts of contributions;
- (6) the maintenance of membership or financial records;
- (7) the expenditure of plan assets; and
- (8) the selection of financial institutions and investment products.

**History:** 1989 c 319 art 7 s 2; 2000 c 461 art 12 s 17; 2007 c 133 art 3 s 3

### **356A.03 PROHIBITION OF CERTAIN PERSONS FROM FIDUCIARY STATUS.**

Subdivision 1. **Individual prohibition.** For the prohibition period established by subdivision 2, a person, other than a constitutional officer of the state, who has been convicted of a violation listed in subdivision 3, may not serve in a fiduciary capacity identified in section 356A.02.

Subd. 2. **Prohibition period.** A prohibition under subdivision 1 is for a period of five years, beginning on the day following conviction for a violation listed in subdivision 3 or, if the person convicted is incarcerated, the day following unconditional release from incarceration.

Subd. 3. **Applicable violations.** A prohibition under subdivision 1 is imposed as a result of any of the following violations of law:

- (1) a violation of federal law specified in United States Code, title 29, section 1111, as amended;
- (2) a violation of Minnesota law that is a felony under Minnesota law; or

(3) a violation of the law of another state, United States territory or possession, or federally recognized Indian tribal government, or of the Uniform Code of Military Justice, that would be a felony under the offense definitions and sentences in Minnesota law.

Subd. 4. **Documentation.** In determining the applicability of this section, the appropriate appointing authority, the State Board of Investment, or the covered pension plan, as the case may be, may rely on a disclosure form meeting the requirements of the federal Investment Advisers Act of 1940, as amended through June 2, 1989, and filed with the State Board of Investment or the pension plan.

**History:** 1989 c 319 art 7 s 3

### **356A.04 GENERAL STANDARD OF FIDUCIARY CONDUCT.**

Subdivision 1. **Duty.** A fiduciary of a covered pension plan owes a fiduciary duty to:

- (1) the active, deferred, and retired members of the plan, who are its beneficiaries;
- (2) the taxpayers of the state or political subdivision, who help to finance the plan; and
- (3) the state of Minnesota, which established the plan.

Subd. 2. **Prudent person standard.** A fiduciary identified in section 356A.02 shall act in good faith and shall exercise that degree of judgment and care, under the circumstances then prevailing, that persons of prudence, discretion, and intelligence would exercise in the management of their own affairs, not for speculation, considering the probable safety of the plan capital as well as the probable investment return to be derived from the assets.

**History:** 1989 c 319 art 7 s 4

### **356A.05 DUTIES APPLICABLE TO ALL ACTIVITIES.**

(a) The activities of a fiduciary of a covered pension plan must be carried out solely for the following purposes:

- (1) to provide authorized benefits to plan participants and beneficiaries;
- (2) to incur and pay reasonable and necessary administrative expenses; or
- (3) to manage a covered pension plan in accordance with the purposes and intent of the plan document.

(b) The activities of fiduciaries identified in section 356A.02 must be carried out faithfully, without prejudice, and in a manner consistent with law and the plan document.

**History:** 1989 c 319 art 7 s 5

### **356A.06 INVESTMENTS; ADDITIONAL DUTIES.**

Subdivision 1. **Authorized holder of assets; title to assets.** (a) Assets of a covered pension plan may be held only by:

- (1) the plan treasurer;
- (2) the State Board of Investment;

(3) the depository agent of the plan;

(4) a security broker or the broker's agent with, in either case, insurance equal to or greater than the plan assets held from the Securities Investor Protection Corporation or from excess insurance coverage; or

(5) the depository agent of the State Board of Investment.

(b) Legal title to plan assets must be vested in the plan, the State Board of Investment, the governmental entity that sponsors the plan, the nominee of the plan, or the depository agent. The holder of legal title shall function as a trustee for a person or entity with a beneficial interest in the assets of the plan.

Subd. 2. **Diversification.** The investment of plan assets must be diversified to minimize the risk of substantial investment losses unless the circumstances at the time an investment is made clearly indicate that diversification would not be prudent.

Subd. 3. **Absence of personal profit.** No fiduciary may personally profit, directly or indirectly, as a result of the investment or management of plan assets. This subdivision, however, does not preclude the receipt by a fiduciary of reasonable compensation, including membership in or the receipt of benefits from a pension plan, for the fiduciary's position with respect to the plan.

Subd. 4. **Economic interest statement.** (a) Each member of the governing board of a covered pension plan and the chief administrative officer of the plan shall file with the plan a statement of economic interest.

(b) For a covered pension plan other than a plan specified in paragraph (c), the statement must contain the information required by section 10A.09, subdivision 5, and any other information that the fiduciary or the governing board of the plan determines is necessary to disclose a reasonably foreseeable potential or actual conflict of interest.

(c) For a covered pension plan governed by sections 424A.091 to 424A.096 or the Bloomington Fire Department Relief Association if its special fund assets are under \$8,000,000, the statement must contain the following:

(1) the person's principal occupation and principal place of business;

(2) whether or not the person has an ownership of or interest of ten percent or greater in an investment security brokerage business, a real estate sales business, an insurance agency, a bank, a savings and loan, or another financial institution; and

(3) any relationship or financial arrangement that can reasonably be expected to give rise to a conflict of interest.

(d) The statement must be filed annually with the chief administrative officer of the plan and be available for public inspection during regular office hours at the office of the pension plan.

(e) A disclosure form meeting the requirements of the federal Investment Advisers Act of 1940, United States Code, title 15, sections 80b-1 to 80b-21 as amended, and filed with the State Board of Investment or the pension plan meets the requirements of this subdivision.

(f) The chief administrative officer of each covered pension plan, by January 15, annually, shall transmit a certified listing of all individuals who have filed statements of economic interest with the plan under this subdivision during the preceding 12 months and the address of the office referenced in paragraph (d) to the Campaign Finance and Public Disclosure Board.

Subd. 5. **Investment business recipient disclosure.** The chief administrative officer of a covered pension plan, with respect to investments made by the plan, and the executive director of the State Board of Investment, with respect to investments of plan assets made by the board, shall annually disclose in writing the recipients of investment business placed with or investment commissions allocated among commercial banks, investment bankers, brokerage organizations, or other investment managers. The disclosure document must be prepared within 60 days after the close of the fiscal year of the plan and must be available for public inspection during regular office hours at the office of the plan. The disclosure document must also be filed with the executive director of the Legislative Commission on Pensions and Retirement within 90 days after the close of the fiscal year of the plan. For the State Board of Investment and a first class city teacher retirement fund association, a disclosure document included as part of a regular annual report of the board or of the first class city teacher retirement fund association when filed with the executive director of the Legislative Commission on Pensions and Retirement is considered to have been filed on a timely basis.

Subd. 6. **Limited list of authorized investment securities.** (a) **Authority.** This subdivision specifies the investment authority for a limited list plan. A limited list plan is a covered pension plan that does not:

(1) have pension fund assets with a market value in excess of \$1,000,000;

(2) use the services of an investment advisor registered with the Securities and Exchange Commission in accordance with the Investment Advisers Act of 1940, or registered as an investment advisor in accordance with sections 80A.58, and 80A.60, for the investment of at least 60 percent of its pension fund assets, calculated on market value;

(3) use the services of the State Board of Investment for the investment of at least 60 percent of its pension fund assets, calculated on market value; or

(4) use a combination of the services of an investment advisor meeting the requirements of clause (2) and the services of the State Board of Investment for the investment of at least 75 percent of its pension fund assets, calculated on market value.

(b) **Investment agency appointment authority.** The governing board of a covered pension plan may select and appoint investment agencies to act for or on its behalf.

(c) **Savings accounts; similar vehicles.** A limited list plan is authorized to invest in:

(1) certificates of deposit issued, to the extent of available insurance or collateralization, by a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, that is insured by the National Credit Union Administration, or that is authorized to do business in this state and has deposited with the chief administrative officer of the plan a sufficient amount of marketable securities as collateral in accordance with section 118A.03;

(2) guaranteed investment contracts, limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this paragraph; and

(3) savings accounts, limited to those fully insured by federal agencies.

(d) **Government-backed obligations.** A limited list plan is authorized to invest in governmental obligations as further specified in this paragraph, including bonds, notes, bills, mortgages, and other

evidences of indebtedness, if the issue is backed by the full faith and credit of the issuer or if the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which plans are authorized to invest under this paragraph are guaranteed or insured issues of:

(1) the United States, one of its agencies, one of its instrumentalities, or an organization created and regulated by an act of Congress;

(2) the Dominion of Canada or one of its provinces if the principal and interest are payable in United States dollars;

(3) a state or one of its municipalities, political subdivisions, agencies, or instrumentalities; or

(4) any United States government-sponsored organization of which the United States is a member if the principal and interest are payable in United States dollars.

(e) **Corporate obligations.** A limited list plan is authorized to invest in corporate obligations, including bonds, notes, debentures, transportation equipment obligations, or any other longer-term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any of its states, or the Dominion of Canada or any of its provinces if:

(1) the principal and interest are payable in United States dollars; and

(2) the obligations are rated among the top four quality categories by a nationally recognized rating agency.

(f) **Mutual fund authority, limited list authorized assets.** Securities authorized under paragraphs (c) to (e) may be owned directly or through shares in exchange-traded funds, or through open-end mutual funds, or as units of commingled trusts.

(g) **Extended mutual fund authority.** Notwithstanding restrictions in other paragraphs of this subdivision, a limited list plan is authorized to invest the assets of the special fund in exchange-traded funds and open-end mutual funds, if their portfolio investments comply with the type of securities authorized for investment under section 356A.06, subdivision 7, paragraphs (c) to (g). Investments under this paragraph must not exceed 75 percent of the assets of the special fund, not including any money market investments through mutual or exchange-traded funds.

(h) **Supplemental fund authority.** The governing body of a limited list plan may certify special fund assets to the State Board of Investment for investment under section 11A.17.

(i) **Assets mix restrictions.** A limited list plan must conform to the asset mix limitations specified in section 356A.06, subdivision 7.

Subd. 7. **Expanded list of authorized investment securities.** (a) **Authority.** A covered pension plan not described by subdivision 6, paragraph (a), is an expanded list plan and shall invest its assets as specified in this subdivision. The governing board of an expanded list plan may select and appoint investment agencies to act for or on its behalf.

(b) **Securities generally; investment forms.** An expanded list plan is authorized to purchase, sell, lend, and exchange the investment securities authorized under this subdivision, including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned directly or through shares

in exchange-traded or mutual funds, or as units in commingled trusts, subject to any limitations specified in this subdivision.

(c) **Government obligations.** An expanded list plan is authorized to invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness if the issue is backed by the full faith and credit of the issuer or the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which funds may be invested under this paragraph are guaranteed or insured issues of:

(1) the United States, one of its agencies, one of its instrumentalities, or an organization created and regulated by an act of Congress;

(2) the Dominion of Canada or one of its provinces if the principal and interest are payable in United States dollars;

(3) a state or one of its municipalities, political subdivisions, agencies, or instrumentalities; and

(4) a United States government-sponsored organization of which the United States is a member if the principal and interest are payable in United States dollars.

(d) **Investment-grade corporate obligations.** An expanded list plan is authorized to invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any of its states, or the Dominion of Canada or any of its provinces if:

(1) the principal and interest are payable in United States dollars; and

(2) the obligations are rated among the top four quality categories by a nationally recognized rating agency.

(e) **Below-investment-grade corporate obligations.** An expanded list plan is authorized to invest in unrated corporate obligations or in corporate obligations that are not rated among the top four quality categories by a nationally recognized rating agency if:

(1) the aggregate value of these obligations does not exceed five percent of the covered pension plan's market value;

(2) the covered pension plan's participation is limited to 50 percent of a single offering subject to this paragraph; and

(3) the covered pension plan's participation is limited to 25 percent of an issuer's obligations subject to this paragraph.

(f) **Other obligations.** (1) An expanded list plan is authorized to invest funds in:

(i) bankers acceptances and deposit notes if issued by a United States bank that is rated in the highest four quality categories by a nationally recognized rating agency;

(ii) certificates of deposit if issued by a United States bank or savings institution rated in the highest four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies, or if issued by a credit union in an amount within the limit of the insurance coverage provided by the National Credit Union Administration;

(iii) commercial paper if issued by a United States corporation or its Canadian subsidiary and if rated in the highest two quality categories by a nationally recognized rating agency;

(iv) mortgage securities and asset-backed securities if rated in the top four quality categories by a nationally recognized rating agency;

(v) repurchase agreements and reverse repurchase agreements if collateralized with letters of credit or securities authorized in this section;

(vi) guaranteed investment contracts if issued by an insurance company or a bank that is rated in the top four quality categories by a nationally recognized rating agency or alternative guaranteed investment contracts if the underlying assets comply with the requirements of this subdivision;

(vii) savings accounts if fully insured by a federal agency; and

(viii) guaranty fund certificates, surplus notes, or debentures if issued by a domestic mutual insurance company.

(2) Sections 16A.58, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the covered pension plan under clause (1), item (ii).

(3) In addition to investments authorized by clause (1), item (iv), an expanded list plan is authorized to purchase from the Minnesota Housing Finance Agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The covered pension plan may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The covered pension plan may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the covered pension plan comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The covered pension plan may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.

(g) **Corporate stocks.** An expanded list plan is authorized to invest in stocks or convertible issues of any corporation organized under the laws of the United States or any of its states, any corporation organized under the laws of the Dominion of Canada or any of its provinces, or any corporation listed on an exchange that is regulated by an agency of the United States or of the Canadian national government.

An investment in any corporation must not exceed five percent of the total outstanding shares of that corporation, except that an expanded list plan may hold up to 20 percent of the shares of a real estate investment trust and up to 20 percent of the shares of a closed mutual fund.

(h) **Other investments.** (1) In addition to the investments authorized in paragraphs (b) to (g), and subject to the provisions in clause (2), an expanded list plan is authorized to invest funds in:

(i) equity and debt investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(ii) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts, through investment in limited partnerships, bank-sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;

(iii) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and

(iv) international securities.

(2) The investments authorized in clause (1) must conform to the following provisions:

(i) the aggregate value of all investments made under clause (1), items (i), (ii), and (iii), may not exceed 35 percent of the market value of the fund for which the expanded list plan is investing;

(ii) there must be at least four unrelated owners of the investment other than the expanded list plan for investments made under clause (1), item (i), (ii), or (iii);

(iii) the expanded list plan's participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), or (iii);

(iv) the expanded list plan's participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The expanded list plan may not engage in any activity as a limited partner which creates general liability;

(v) the aggregate value of all unrated obligations and obligations that are not rated among the top four quality categories by a nationally recognized rating agency authorized by paragraph (e) and clause (1), item (iv), must not exceed five percent of the covered plan's market value; and

(vi) for volunteer firefighter relief associations, emerging market equity and international debt investments authorized under clause (1), item (iv), must not exceed 15 percent of the association's special fund market value.

(i) **Supplemental plan investments.** The governing body of an expanded list plan may certify assets to the State Board of Investment for investment under section 11A.17.

(j) **Asset mix limitations.** The aggregate value of an expanded list plan's investments under paragraphs (g) and (h) and equity investments under paragraph (i), regardless of the form in which these investments are held, must not exceed 85 percent of the covered plan's market value.

Subd. 7a. **Restrictions.** Any agreement to lend securities must be concurrently collateralized with cash or securities with a market value of not less than 100 percent of the market value of the loaned securities at the time of the agreement. For a covered pension authorized to purchase put and call options and futures contracts under subdivision 7, any agreement for put and call options and futures contracts may only be entered into with a fully offsetting amount of cash or securities. Only securities authorized by this section, excluding those under subdivision 7, paragraph (h), clause (1), items (i) to (iv), may be accepted as collateral or offsetting securities.

Subd. 8. **Minimum liquidity requirements.** A covered pension plan described by subdivision 6 or 7, in order to pay benefits as they come due, shall invest a portion of its assets in authorized short-term debt obligations that can be immediately liquidated without accrual of a substantial determinable penalty or loss

and that have an average maturity of no more than 90 days. The chief administrative officer of the plan shall determine the minimum liquidity requirement of the plan and shall retain appropriate documentation of that determination for three years from the date of determination.

Subd. 8a. **Collateralization requirement.** (a) The governing board of a covered pension plan shall designate a national bank, an insured state bank, an insured credit union, or an insured thrift institution as the depository for the pension plan for assets not held by the pension plan's custodian bank.

(b) Unless collateralized as provided under paragraph (c), a covered pension plan may not deposit in a designated depository an amount in excess of the insurance held by the depository in the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, whichever applies.

(c) For an amount greater than the insurance under paragraph (b), the depository must provide collateral in compliance with section 118A.03 or with any comparable successor enactment relating to the collateralization of municipal deposits.

Subd. 8b. **Disclosure of investment authority; receipt of statement.** (a) For this subdivision, the term "broker" means a broker, broker-dealer, investment advisor, investment manager, or third-party agent who transfers, purchases, sells, or obtains investment securities for, or on behalf of, a covered pension plan.

(b) Before a covered pension plan may complete an investment transaction with or in accord with the advice of a broker, the covered pension plan shall provide annually to the broker a written statement of investment restrictions applicable under state law to the covered pension plan or applicable under the pension plan governing board investment policy.

(c) A broker must acknowledge in writing annually the receipt of the statement of investment restrictions and must agree to handle the covered pension plan's investments and assets in accord with the provided investment restrictions. A covered pension plan may not enter into or continue a business arrangement with a broker until the broker has provided this written acknowledgment to the chief administrative officer of the covered pension plan.

(d) If any portion of the plan's assets are held by a security broker or its agent, the security broker or its agent must acknowledge in writing annually that sufficient insurance has been obtained from the Securities Investor Protection Corporation, supplemented by additional insurance, if necessary, to cover the full amount of covered pension plan assets held by the security broker or its agent. Uniform acknowledgment forms prepared by the state auditor shall be used by covered pension plans and brokers to meet the requirements of this subdivision.

Subd. 9. **Prohibited transactions.** (a) No fiduciary of a covered pension plan may engage in a prohibited transaction or allow the plan to engage in a transaction that the fiduciary knows or should know is a prohibited transaction.

(b) A prohibited transaction is any of the following transactions, whether direct or indirect:

(1) the sale, exchange, or lease of real estate between the pension plan and a fiduciary of the plan;

(2) the lending of money or other extension of credit between the plan and a fiduciary of the plan;

(3) the furnishing to a plan by a fiduciary for compensation or remuneration, of goods, services other than those performed in the capacity of fiduciary, or facilities;

(4) the furnishing to a fiduciary by a plan of goods, services, or facilities other than office and related space, equipment and office supplies, and administrative services appropriate to the recipient's fiduciary position;

(5) the transfer of plan assets to a plan fiduciary for use by or for the benefit of the fiduciary, other than the payment of retirement plan benefits to which a fiduciary is entitled or the payment to a fiduciary of a reasonable salary and of necessary and reasonable expenses incurred by the fiduciary in the performance of the fiduciary's duties; and

(6) the sale, exchange, loan, or lease of any item of value between a plan and a fiduciary of the plan other than for a fair market value and as a result of an arm's-length transaction.

**Subd. 10. Defined contribution plans; application.** (a) To the extent that a plan governed by chapter 352D, 353D, 354B, 354C, or 354D permits a participant or beneficiary to select among investment products for the person's account and the participant or beneficiary exercises that investment self-direction, no fiduciary is liable for any loss which may result from the participant's or beneficiary's exercise of that investment self-direction.

(b) Subdivisions 1, 2, 6, 8, and 8a do not apply to plans governed by chapter 354B or 354C.

**History:** 1989 c 319 art 7 s 6; 1990 c 570 art 5 s 1; 1994 c 604 art 2 s 3; 1995 c 122 s 2; 1995 c 262 art 6 s 1,2; 1996 c 399 art 2 s 12; 1996 c 438 art 4 s 7; art 10 s 2; 1997 c 202 art 2 s 63; 1998 c 386 art 2 s 90; 2000 c 461 art 12 s 18; 1Sp2001 c 10 art 3 s 26; 2002 c 363 s 41; 1Sp2005 c 8 art 9 s 9; art 10 s 66; 2006 c 196 art 1 s 52; art 2 s 12; 2006 c 271 art 8 s 6; 2007 c 134 art 1 s 11; 2008 c 349 art 14 s 3-5; 2010 c 359 art 13 s 3; 2012 c 286 art 10 s 10,11; 2013 c 111 art 5 s 68,80; 2014 c 296 art 12 s 3,4

### **356A.07 BENEFIT SUMMARY; ANNUAL REPORTS; ADDITIONAL DUTIES.**

**Subdivision 1. Benefit provisions summary.** The chief administrative officer of a covered pension plan shall prepare and provide each active plan participant with a summary of the benefit provisions of the plan document. The summary must be provided within 30 days of the start or resumption of a participant's membership in the plan, or within 30 days of the date on which the start or resumption of membership was reported to a covered pension plan by a covered governmental entity, whichever is later. The summary must contain a notice that it is a summary of the plan document but is not itself the plan document, and that in the event of a discrepancy between the summary and the plan document as amended, the plan document governs. A copy of the plan document as amended must be furnished to a plan participant or benefit recipient upon request. The chief administrative officer may utilize the services of the covered governmental entity in providing the summary. The summary must be in a form reasonably calculated to be understood by an average plan participant.

**Subd. 2. Annual financial report.** A covered pension plan shall provide each active plan participant and benefit recipient with a copy of the most recent annual financial report required by section 356.20 and a copy of the most recent actuarial evaluation, if any, required by section 356.215, 356.216, or 424A.093, or by Laws 2013, chapter 111, article 5, section 39, or a summary of those reports.

**Subd. 3. Distribution.** A covered pension plan may distribute the summaries required by this section through covered governmental entities so long as the plan has made arrangements with the entities to assure, with reasonable certainty, that the summaries will be distributed, or made easily available, to active plan participants.

Subd. 4. **Review procedure.** If a review procedure is not specified by law for a covered pension plan, the chief administrative officer of the plan shall propose, and the governing board of the plan shall adopt and implement, a procedure for reviewing a determination of eligibility, benefits, or other rights under the plan that is adverse to a plan participant or benefit recipient. The review procedure must include provisions for timely notice to the plan participant or benefit recipient and reasonable opportunity to be heard in any review proceeding conducted and may, but need not be, a contested case under chapter 14.

**History:** 1989 c 319 art 7 s 7; 2013 c 111 art 5 s 69,80

### **356A.08 PLAN ADMINISTRATION; ADDITIONAL DUTIES.**

Subdivision 1. **Public meetings.** A meeting of the governing board of a covered pension plan or of a committee of the governing board of the covered pension plan is governed by chapter 13D.

Subd. 2. **Limit on compensation.** No fiduciary of a covered pension plan or a direct relative of a fiduciary may receive any direct or indirect compensation, fee, or other item of more than nominal value from a third party in consideration for a pension plan disbursement.

**History:** 1989 c 319 art 7 s 8; 1Sp2001 c 10 art 4 s 2

### **356A.09 FIDUCIARY BREACH; REMEDIES.**

Subdivision 1. **Occurrence of breach.** A fiduciary breach occurs if a fiduciary violates the general standard of fiduciary conduct as specified in section 356A.04 in carrying out the activities of a fiduciary. A fiduciary breach also occurs if a fiduciary of a covered pension plan violates the provisions of section 356A.06, subdivision 9.

Subd. 2. **Remedies.** Remedies available for a fiduciary breach by a fiduciary are those specified by statute or available at common law.

**History:** 1989 c 319 art 7 s 9

### **356A.10 COFIDUCIARY RESPONSIBILITY AND LIABILITY.**

Subdivision 1. **Cofiduciary responsibility in general.** A cofiduciary has a general responsibility to oversee the fiduciary activities of all other fiduciaries unless the activity has been allocated or delegated in accordance with subdivision 3. A cofiduciary also has a general responsibility to correct or alleviate a fiduciary breach of which the cofiduciary had or ought to have had knowledge.

Subd. 2. **Cofiduciary liability.** A cofiduciary is liable for a fiduciary breach committed by another fiduciary when the cofiduciary has a responsibility to oversee the fiduciary activities of the other fiduciary or to correct or alleviate a breach by that fiduciary.

Subd. 3. **Limitation on cofiduciary responsibility.** A cofiduciary may limit cofiduciary responsibility and liability through the allocation or delegation of fiduciary activities if the allocation or delegation:

- (1) follows appropriate procedures;
- (2) is made to an appropriate person or persons; and
- (3) is subject to continued monitoring of performance.

Subd. 4. **Bar to liability in certain instances.** A properly made delegation or allocation of a fiduciary activity is a bar to liability on the part of a fiduciary making the delegation or allocation unless the fiduciary has or ought to have knowledge of the breach and takes part in the breach, conceals it, or fails to take reasonable steps to remedy it.

Subd. 5. **Extent of cofiduciary liability.** Unless liability is barred under subdivision 4, cofiduciary liability is joint and several, but a cofiduciary has the right to recover from the responsible fiduciary for any damages paid by the cofiduciary.

**History:** 1989 c 319 art 7 s 10

### **356A.11 FIDUCIARY INDEMNIFICATION.**

Subdivision 1. **Indemnified fiduciaries.** A fiduciary who is a member of the governing board of a pension plan, the State Board of Investment or the Investment Advisory Council, or who is an employee of a covered pension plan or of the State Board of Investment may be indemnified from liability for fiduciary breach. Indemnification is at the discretion of the governing board of the plan or of the State Board of Investment in the case of members of the state board or of the Investment Advisory Council. A decision to indemnify a fiduciary must apply to all eligible fiduciaries of similar rank.

Subd. 2. **Allowable indemnification.** An indemnified fiduciary must be held harmless from reasonable costs or expenses incurred as a result of any actual or threatened litigation or other proceedings.

**History:** 1989 c 319 art 7 s 11

### **356A.12 JURISDICTION; SERVICE OF PROCESS; AND STATUTE OF LIMITATIONS.**

Subdivision 1. **Jurisdiction.** The district court has jurisdiction over a challenge of a fiduciary action or inaction.

Subd. 2. **Service of process.** For a fiduciary or cofiduciary alleged in the complaint to be responsible for an alleged breach, personal service of process must be obtained.

Subd. 3. **Limitations on legal actions.** A legal action challenging a fiduciary action or inaction must be timely. Notwithstanding any limitation in chapter 541, an action is timely if it is brought within the earlier of the following periods:

(1) the period ending three years after the date of the last demonstrable act representing the alleged fiduciary breach or after the final date for performance of the act the failure to perform which constitutes the alleged breach; or

(2) the period ending one year after the date of the discovery of the alleged fiduciary breach.

**History:** 1989 c 319 art 7 s 12

### **356A.13 CONTINUING FIDUCIARY EDUCATION.**

Subdivision 1. **Obligation of fiduciaries.** A fiduciary of a covered pension plan shall make reasonable effort to obtain knowledge and skills sufficient to enable the fiduciary to perform fiduciary activities adequately. At a minimum, a fiduciary of a covered pension plan shall comply with the program established in accordance with subdivision 2.

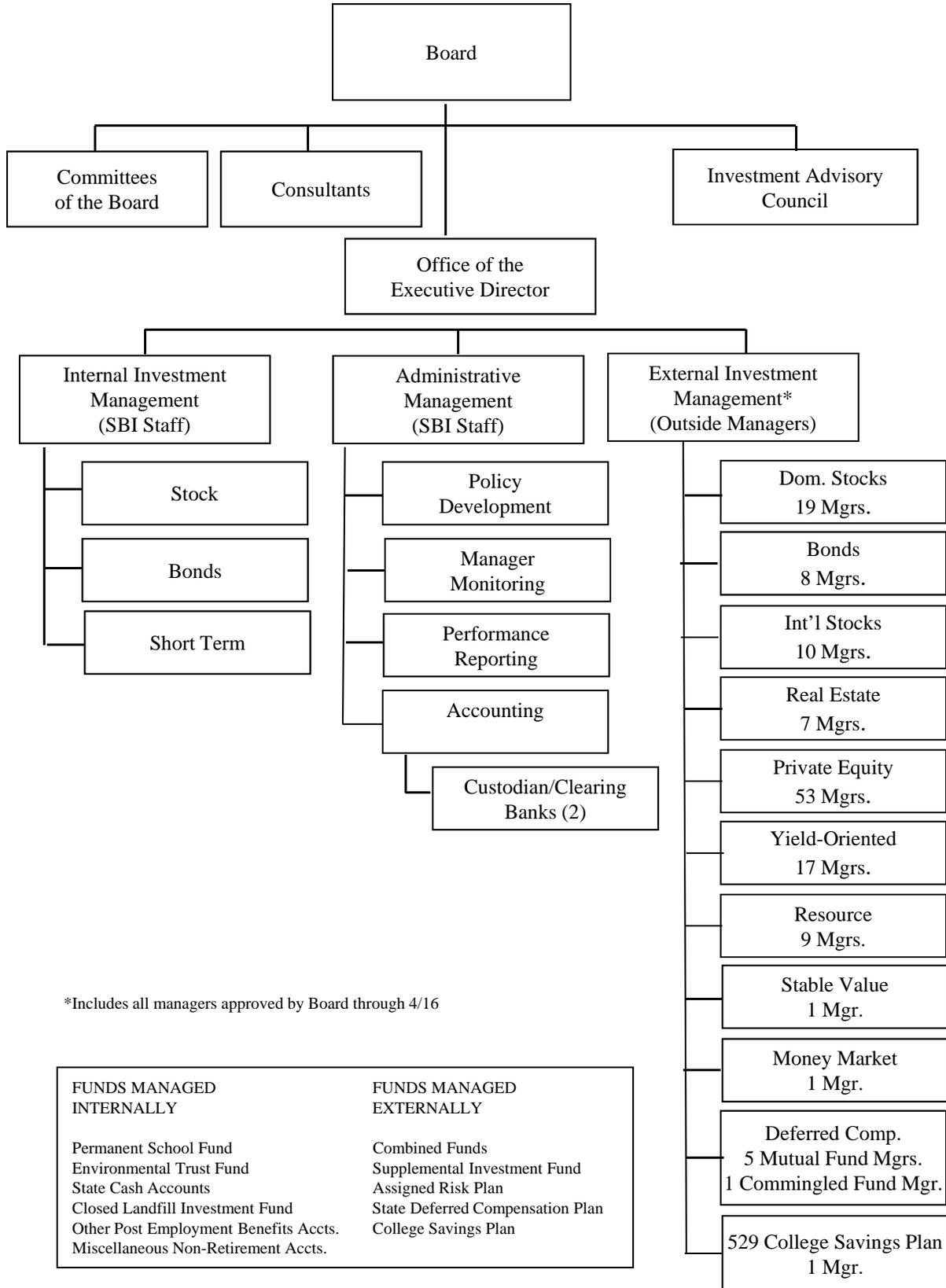
Subd. 2. **Continuing fiduciary education program.** The governing boards of covered pension plans shall each develop and periodically revise a program for the continuing education of any of their board members and any of their chief administrative officers who are not reasonably considered to be experts with respect to their activities as fiduciaries. The program must be designed to provide those persons with knowledge and skills sufficient to enable them to perform their fiduciary activities adequately.

**History:** 1989 c 319 art 7 s 13

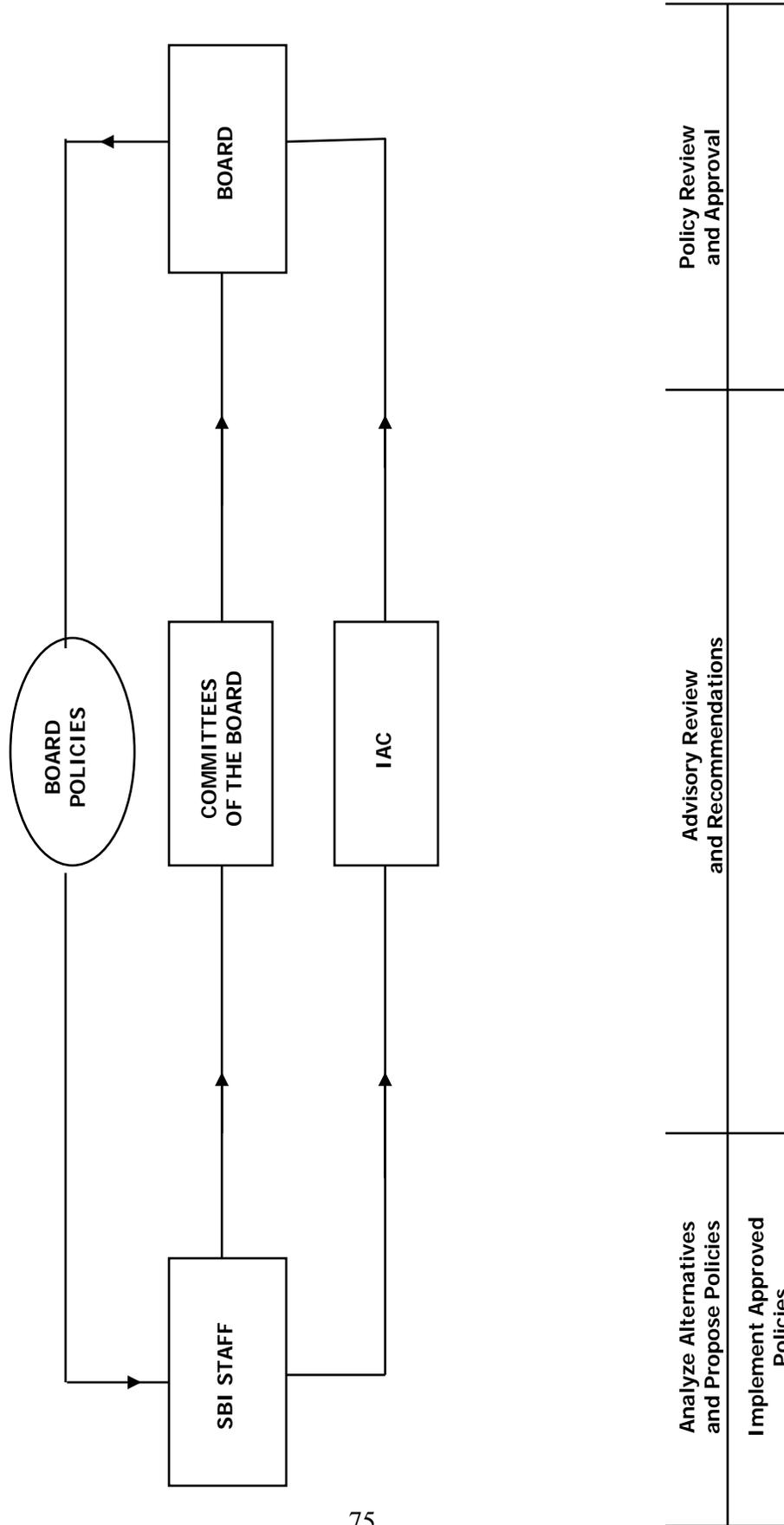
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# STATE BOARD OF INVESTMENT

## Functional Organizational Structure



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The Board's consultants provide input throughout the decision-making process.

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## **General Requirements**

### **Affidavit of Noncollusion**

Each responder must complete the attached Affidavit of Noncollusion and include it with the response.

### **Conflicts of Interest**

Responder must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

### **Proposal Contents**

By submission of a proposal, Responder warrants that the information provided is true, correct and reliable for purposes of evaluation for potential contract award. The submission of inaccurate or misleading information may be grounds for disqualification from the award as well as subject the responder to suspension or debarment proceedings as well as other remedies available by law.

### **Disposition of Responses**

All materials submitted in response to this RFP will become property of the State and will become public record in accordance with Minnesota Statutes, section 13.591, after the evaluation process is completed. Pursuant to the statute, completion of the evaluation process occurs when the government entity has completed negotiating the contract with the selected vendor. If the Responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minnesota Statute § 13.37, the Responder must:

- clearly mark all trade secret materials in its response at the time the response is submitted,
- include a statement with its response justifying the trade secret designation for each item, and
- defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments or damages awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to this RFP, the Responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State.

The State will not consider the prices submitted by the Responder to be proprietary or trade secret materials.

Notwithstanding the above, if the State contracting party is part of the judicial branch, the release of data shall be in accordance with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time.

### **Contingency Fees Prohibited**

Pursuant to Minnesota Statutes Section 10A.06, no person may act as or employ a lobbyist for compensation that is dependent upon the result or outcome of any legislation or administrative action.

### **Sample Contract**

You should be aware of the State's standard contract terms and conditions in preparing your response. A sample State of Minnesota Professional/Technical Services Contract is attached for your reference. Much of the language reflected in the contract is required by statute. If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.

### **Organizational Conflicts of Interest**

The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division ("MMD") which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the responder was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to MMD, the State may terminate the contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.

### **Preference to Targeted Group and Economically Disadvantaged Business and Individuals**

In accordance with Minnesota Rules, part 1230.1810, subpart B and Minnesota Rules, part 1230.1830, certified Targeted Group Businesses and individuals submitting proposals as prime contractors will receive a six percent preference in the evaluation of their proposal, and certified Economically Disadvantaged Businesses and individuals submitting proposals as prime

contractors will receive a six percent preference in the evaluation of their proposal. Eligible TG businesses must be currently certified by the Materials Management Division prior to the solicitation opening date and time. For information regarding certification, contact the Materials Management Helpline at 651.296.2600, or you may reach the Helpline by email at [mmdhelp.line@state.mn.us](mailto:mmdhelp.line@state.mn.us). For TTY/TDD communications, contact the Helpline through the Minnesota Relay Services at 1.800.627.3529.

### **Veteran-Owned Small Business Preference**

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. § 16C.16, subd. 6a, the Commissioner of Administration will award a 6% preference in the amount bid on state procurement to certified small businesses that are majority owned and operated by veterans.

A small business qualifies for the veteran-owned preference when it meets one of the following requirements. 1) The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business. 2)

The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation). *See* Minn. Stat. § 16C.19(d).

Submit the appropriate documentation with the solicitation response to claim the veteran-owned preference. Statutory requirements and documentation must be met by the solicitation response due date and time to be awarded the preference.

### **Foreign Outsourcing of Work Prohibited**

Unless prohibited by the World Trade Organization's Government Procurement Agreement, all services under this contract shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision also applies to work performed by subcontractors at all tiers.

### **Work Force Certification**

For all contracts estimated to be in excess of \$100,000, responders are required to complete the attached Affirmative Action Data page and return it with the response. As required by Minnesota Rule 5000.3600, "It is hereby agreed between the parties that Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minnesota Statute § 363A.36 and Minnesota Rule 5000.3400 - 5000.3600 are available upon request from the contracting agency."

## **Equal Pay Certification**

If the Response to this solicitation could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed more than 40 full-time employees on any single working day in one state during the previous 12 months. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

## **Certification Regarding Lobbying**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must complete the attached **Certification Regarding Lobbying** and submit it as part of its proposal.

## **Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.**

Federal money will be used or may potentially be used to pay for all or part of the work under the contract, therefore the Proposer must certify the following, as required by the regulations implementing Executive Order 12549.

## **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible*, *lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## Insurance Requirements

- A. Contractor shall not commence work under the contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.
- B. Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

- 1. **Workers' Compensation Insurance:** Except as provided below, Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Insurance **minimum** limits are as follows:

\$100,000 – Bodily Injury by Disease per employee  
\$500,000 – Bodily Injury by Disease aggregate  
\$100,000 – Bodily Injury by Accident

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements.

If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the State of Minnesota with a certificate of insurance.

- 2. **Commercial General Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contractor or by a subcontractor or by anyone directly or indirectly employed by the Contractor under the contract. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence  
\$2,000,000 – annual aggregate  
\$2,000,000 – annual aggregate – Products/Completed Operations

The following coverages shall be included:

Premises and Operations Bodily Injury and Property Damage

Personal and Advertising Injury

Blanket Contractual Liability

Products and Completed Operations Liability

Other; if applicable, please list \_\_\_\_\_

State of Minnesota named as an Additional Insured, to the extent permitted by law

3. **Commercial Automobile Liability Insurance:** Contractor is required to maintain insurance protecting it from claims for damages for bodily injury as well as from claims for property damage resulting from the ownership, operation, maintenance or use of all owned, hired, and non-owned autos which may arise from operations under this contract, and in case any work is subcontracted the contractor will require the subcontractor to maintain Commercial Automobile Liability insurance. Insurance **minimum** limits are as follows:

\$2,000,000 – per occurrence Combined Single limit for Bodily Injury and Property Damage

In addition, the following coverages should be included:

Owned, Hired, and Non-owned Automobile

4. **Professional/Technical, Errors and Omissions, and/or Miscellaneous Liability Insurance** [NOTE TO AGENCIES: *Your agency will need to determine whether to include or exclude provision B. 4. based on the nature of the contract. A professional is someone who possesses expertise on a certain subject and performs work for the state related to that expertise, such as design work. Service and maintenance work are typically not considered professional work even though they may entail some level of expertise. If professional work will not be performed, remove provision B.4. and also amend the fifth bullet in the Additional Insurance Conditions to read: “Include legal defense fees in addition to its liability policy limits.” For assistance with determining if provision B. 4. should be included or excluded, please contact the Department of Administration’s Risk Management Office at (651) 201-2591.*]

This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor’s professional services required under the contract.

Contractor is required to carry the following **minimum** limits:

\$2,000,000 – per claim or event

\$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

C. Additional Insurance Conditions:

- Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contractor's performance under this contract;
- If Contractor receives a cancellation notice from an insurance carrier affording coverage herein, Contractor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contractor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota;
- Contractor is responsible for payment of Contract related insurance premiums and deductibles;
- If Contractor is self-insured, a Certificate of Self-Insurance must be attached;
- Contractor's policy(ies) shall include legal defense fees in addition to its liability policy limits, with the exception of B.4 above;
- Contractor shall obtain insurance policy(ies) from insurance company(ies) having an "AM BEST" rating of A- (minus); Financial Size Category (FSC) VII or better, and authorized to do business in the State of Minnesota; and
- An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

- D. The State reserves the right to immediately terminate the contract if the contractor is not in compliance with the insurance requirements and retains all rights to pursue any legal remedies against the contractor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.
- E. The successful responder is required to submit Certificates of Insurance acceptable to the State of MN as evidence of insurance coverage requirements prior to commencing work under the contract.

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**STATE OF MINNESOTA  
AFFIDAVIT OF NONCOLLUSION**

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the \_\_\_\_\_ Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name \_\_\_\_\_

Authorized Representative (Please Print) \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires: \_\_\_\_\_

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**CERTIFICATION REGARDING LOBBYING**  
For State of Minnesota Contracts and Grants over \$100,000

The undersigned certifies, to the best of his or her knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, A Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Organization Name

\_\_\_\_\_  
Name and Title of Official Signing for Organization

By: \_\_\_\_\_  
Signature of Official

\_\_\_\_\_  
Date

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## State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.**

**BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:        has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

–or–

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). **Proceed to BOX C.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B – For those companies not described in**

**BOX A** Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance & Community Relations

Mail: The Freeman Building 625 Robert Street North, Saint

TC Metro: (651) 296-5663 Toll Free: 800-657-3704 Paul, MN 55155

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us) Fax: (651) 296-9042 TTY: (651) 296-1283

Email: [compliance.mdhr@state.mn.us](mailto:compliance.mdhr@state.mn.us)

Affirmative Action Certification Page, Revised 6/11 - MDHR

## State of Minnesota – Equal Pay Certificate

If your response could be in excess of \$500,000, please complete and submit this form with your submission. **It is your sole responsibility to provide the information requested and when necessary to obtain an Equal Pay Certificate (Equal Pay Certificate) from the Minnesota Department of Human Rights (MDHR) prior to contract execution. You must supply this document with your submission.** Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

**Option A** – If you have employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the applicable box below:

- Attached is our current MDHR Equal Pay Certificate.
- Attached is MDHR’s confirmation of our Equal Pay Certificate application.

**Option B** – If you have not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where you have your primary place of business, please check the box below.

- We are exempt. We agree that if we are selected we will submit to MDHR within five (5) business days of final contract execution, the names of our employees during the previous 12 months, date of separation if applicable, and the state in which the persons were employed. Documentation should be sent to [compliance.MDHR@state.mn.us](mailto:compliance.MDHR@state.mn.us).

The State of Minnesota reserves the right to request additional information from you. **If you are unable to check any of the preceding boxes, please contact MDHR to avoid a determination that a contract with your organization cannot be executed.**

Your signature certifies that you are authorized to make the representations, the information provided is accurate, the State of Minnesota can rely upon the information provided, and the State of Minnesota may take action to suspend or revoke any agreement with you for any false information provided.

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Authorized Signature	Printed Name	Title
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Organization	MN/FED Tax ID#	Date
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Issuing Entity	Project # or Lease Address
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**STATE OF MINNESOTA  
VETERAN-OWNED PREFERENCE FORM**

Unless a greater preference is applicable and allowed by law, in accordance with Minn. Stat. §16C.16, subd. 6a, the state will award a 6% preference on state procurement to certified small businesses that are majority owned and operated by veterans.

Veteran-Owned Preference Requirements - See Minn. Stat. § 16C.19(d):

1) The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

**or**

2) The principal place of business is in Minnesota AND the United States Department of Veterans Affairs verifies the business as being a veteran-owned or service-disabled veteran-owned small business under Public Law 109-461 and Code of Federal Regulations, title 38, part 74 (Supported By Documentation).

Statutory requirements and appropriate documentation must be met **by the solicitation response due date and time** to be awarded the veteran-owned preference.

**Claim the Preference**

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**By signing below I confirm that:**

My company is claiming the veteran-owned preference afforded by Minn. Stat. § 16C.16, subd. 6a. by making this claim, I verify that:

- The business has been certified by the Department of Administration/Materials Management Division as being a veteran-owned or service-disabled veteran-owned small business.

**or**

- My company's principal place of business is in Minnesota **and** the United States Department of Veteran's Affairs verifies my company as being a veteran-owned or service-disabled veteran-owned small business.

(Supported By Attached Documentation)

Name of Company: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Telephone: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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**Attach documentation, sign, and return this form with your solicitation response to claim the veteran-owned preference.**

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**STATE OF MINNESOTA  
RESIDENT VENDOR FORM**

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In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a “Resident Vendor” means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
  - (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
  - (3) has a business address in the state; and
  - (4) has affirmatively claimed that status in the bid or proposal submission.
- 

To receive recognition as a Minnesota Resident Vendor (“Resident Vendor”), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

**I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:**

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*  
 **Yes**  **No (must check yes or no)**
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.  
 **Yes**  **No (must check yes or no)**
3. Has a business address in the State of Minnesota.  
 **Yes**  **No (must check yes or no)**

4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.  
\_\_\_Yes \_\_\_No (must check yes or no)

**BY SIGNING BELOW**, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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**IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.**

*If you take exception to any of the terms, conditions or language in the contract, you must indicate those exceptions in your response to the RFP; certain exceptions may result in your proposal being disqualified from further review and evaluation. Only those exceptions indicated in your response to the RFP will be available for discussion or negotiation.*

# Professional and Technical Services Contract

State of Minnesota

SWIFT Contract No.:

This Contract is between the State of Minnesota, acting through its \_\_\_\_\_  
("State") and \_\_\_\_\_ ("Contractor").

## Recitals

1. Under Minn. Stat. § 15.061 the State is empowered to engage such assistance as deemed necessary.
2. The State is in need of \_\_\_\_\_.
3. The Contractor represents that it is duly qualified and agrees to perform all services described in this Contract to the satisfaction of the State.

## Contract

### 1. Term of Contract

**1.1 Effective date:** \_\_\_\_\_, or the date the State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by the State's Authorized Representative to begin the work.

**1.2 Expiration date:** \_\_\_\_\_, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

**1.3 Survival of terms:** The following clauses survive the expiration or cancellation of this Contract:  
8.

Indemnification;

9. State audits; 10. Government data practices and intellectual property; 14. Publicity and endorsement; 15. Governing law, jurisdiction, and venue; and 16. Data disclosure.

### 2. Contractor's duties

The Contractor, who is not a State employee, will:

\_\_\_\_\_  
\_\_\_\_\_

### 3. Time

The Contractor must comply with all the time requirements described in this Contract. In the performance of this Contract, time is of the essence.

**4. Consideration and payment**

**4.1 Consideration.** The State will pay for all services performed by the Contractor under this Contract as follows: (a) *Compensation.* The Contractor will be paid \$\_\_\_\_\_.

(b) *Travel expenses.* Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Contractor as a result of this Contract will not exceed \$\_\_\_\_\_; provided that the Contractor will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" established by the Commissioner of Minnesota Management and Budget which is incorporated in to this Contract by reference. The Contractor will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out-of-state travel. Minnesota will be considered the home state for determining whether travel is out of state.

(c) *Total obligation.* The total obligation of the State for all compensation and reimbursements to the Contractor under this Contract will not exceed \$\_\_\_\_\_.

ADM2-07a • 7/6/12

**4.2 Payment.**

(a) *Invoices.* The State will promptly pay the Contractor after the Contractor presents an itemized invoice for the services actually performed and the State's Authorized Representative accepts the invoiced services.

Invoices must be submitted timely and according to the following schedule:

\_\_\_\_\_

(b) *Retainage.* Under Minn. Stat. § 16C.08, subd. 2(10), no more than 90 percent of the amount due under this Contract may be paid until the final product of this Contract has been reviewed by the State's agency head. The balance due will be paid when the State's agency head determines that the Contractor has satisfactorily fulfilled all the terms of this Contract.

(c) *Federal funds.* (Where applicable, if blank this section does not apply.) Payments under this Contract will be made from federal funds obtained by the State through \_\_\_\_\_. The Contractor is responsible for compliance with all federal requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by the Contractor's failure to comply with federal requirements.

**5. Conditions of payment**

All services provided by the Contractor under this Contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Secretary of State. The Contractor will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

**6. Authorized Representative**

The State's Authorized Representative is \_\_\_\_\_, or his/her successor, and has the responsibility to monitor the Contractor's performance and the authority to accept the services provided under this Contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Contractor's Authorized Representative is \_\_\_\_\_, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the State.

## 7. Assignment, amendments, waiver, and contract complete

- 7.1 Assignment.** The Contractor may neither assign nor transfer any rights or obligations under this Contract without the prior consent of the State and a fully executed assignment agreement, executed and approved by the same parties who executed and approved this Contract, or their successors in office.
- 7.2 Amendments.** Any amendment to this Contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Contract, or their successors in office.
- 7.3 Waiver.** If the State fails to enforce any provision of this Contract, that failure does not waive the provision or its right to enforce it.
- 7.4 Contract complete.** This Contract contains all negotiations and agreements between the State and the Contractor. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.

## 8. Indemnification

In the performance of this Contract by Contractor, or Contractor's agents or employees, the Contractor must indemnify, save, and hold harmless the State, its agents, and employees, from any claims or causes of action, including attorney's fees incurred by the State, to the extent caused by Contractor's:

- a) Intentional, willful, or negligent acts or omissions; or
- b) Actions that give rise to strict liability; or
- c) Breach of contract or warranty.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the State's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the State's failure to fulfill its obligation under this Contract.

## 9. State audits

Under Minn. Stat. § 16C.05, subd. 5, the Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

## 10. Government data practices and intellectual property

**10.1 Government data practices.** The Contractor and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, (or, if the State contracting party is part of the Judicial Branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State under this Contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor under this Contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data governed by the Minnesota Government Practices Act, Minn. Stat. ch. 13, by either the Contractor or the State.

If the Contractor receives a request to release the data referred to in this clause, the Contractor must immediately notify and consult with the State's Authorized Representative as to how the Contractor should respond to the request. The Contractor's response to the request shall comply with applicable law.

## 10.2 Intellectual property rights.

(a) *Intellectual property rights.* The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the works and documents created and paid for under this Contract. The “works” means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Contractor, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this Contract. “Works” includes documents. The “documents” are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Contractor, its employees, agents, or subcontractors, in the performance of this Contract. The documents will be the exclusive property of the State and all such documents must be immediately returned to the State by the Contractor upon completion or cancellation of this Contract. To the extent possible, those works eligible for copyright protection under the United States Copyright Act will be deemed to be “works made for hire.” The Contractor assigns all right, title, and interest it may have in the works and the documents to the State. The Contractor must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State’s ownership interest in the works and documents.

(b) *Obligations*

- (1) Notification. Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Contractor, including its employees and subcontractors, in the performance of this Contract, the Contractor will immediately give the State’s Authorized Representative written notice thereof, and must promptly furnish the State’s Authorized Representative with complete information and/or disclosure thereon.
- (2) Representation. The Contractor must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the works and documents are the sole property of the State, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the works and documents. The Contractor represents and warrants that the works and documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Contractor will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Contractor’s expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the works or documents infringe upon the intellectual property rights of others. The Contractor will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Contractor’s or the State’s opinion is likely to arise, the Contractor must, at the State’s discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing works or documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## 11. Workers’ compensation and other insurance

Contractor certifies that it is in compliance with all insurance requirements specified in the solicitation document relevant to this Contract. Contractor shall not commence work under the Contract until they have obtained all the insurance specified in the solicitation document. Contractor shall maintain such insurance in force and effect throughout the term of the Contract.

Further, the Contractor certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Contractor's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the State's obligation or responsibility.

**12. Debarment by State, its departments, commissions, agencies, or political subdivisions**

Contractor certifies that neither it nor its principals is presently debarred or suspended by the State, or any of its departments, commissions, agencies, or political subdivisions. Contractor's certification is a material representation upon which the Contract award was based. Contractor shall provide immediate written notice to the State's Authorized Representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

**13. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion**

Federal money will be used or may potentially be used to pay for all or part of the work under the Contract, therefore Contractor certifies that it is in compliance with federal requirements on debarment, suspension, ineligibility and voluntary exclusion specified in the solicitation document implementing Executive Order 12549. Contractor's certification is a material representation upon which the Contract award was based.

**14. Publicity and endorsement**

**14.1 Publicity.** Any publicity regarding the subject matter of this Contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

**14.2 Endorsement.** The Contractor must not claim that the State endorses its products or services.

**15. Governing law, jurisdiction, and venue**

Minnesota law, without regard to its choice-of-law provisions, governs this Contract. Venue for all legal proceedings out of this Contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**16. Data disclosure**

Under Minn. Stat. § 270C.65, subd. 3 and other applicable law, the Contractor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state agencies, and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state laws which could result in action requiring the Contractor to file state tax returns, pay delinquent state tax liabilities, if any, or pay other state liabilities.

**17. Payment to subcontractors**

(If applicable) As required by Minn. Stat. § 16A.1245, the prime Contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime Contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**18. Termination**

**18.1 Termination by the State.** The State or Commissioner of Administration may cancel this Contract at any time, with or without cause, upon 30 days' written notice to the Contractor. Upon termination, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

**18.2 Termination for insufficient funding.** The State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Contractor. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Contractor will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the Contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Contractor notice of the lack of funding within a reasonable time of the State's receiving that notice.

**19. Non-discrimination (In accordance with Minn. Stat. § 181.59)**

The Contractor will comply with the provisions of Minn. Stat. § 181.59 which require:

*“Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:*

- (1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;*
- (2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;*
- (3) that a violation of this section is a misdemeanor; and*
- (4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract.”*

*[Delete this section if your total Contract value is under \$100,000]*

**20. Affirmative action requirements for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business**

The State intends to carry out its responsibility for requiring affirmative action by its contractors.

**20.1 Covered contracts and contractors.** If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**20.2 Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of

compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**20.3 Minn. R. 5000.3400-5000.3600.**

- (a) *General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.
- (b) *Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.
- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
  - (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
  - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
  - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.
- (d) *Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**[Signatures as required by the State.]**