



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

### Bill information:

SB0459 – Revise laws related to investments made by the board of investments

Status: As Introduced

*Sen. Bogner*

☐ Significant Local Gov Impact

☐ Needs to be included in HB 2

☒ Technical Concerns

☐ Included in the Executive Budget

☐ Significant Long-Term Impacts

☐ Dedicated Revenue Form Attached

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Other - Proprietary	Unable to Determine	Unable to Determine	Unable to Determine	Unable to Determine
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$0	\$0	\$0	\$0
Other - Proprietary	Unable to Determine	Unable to Determine	Unable to Determine	Unable to Determine
<b>Net Impact-General Fund Balance:</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

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

## FISCAL ANALYSIS

### Assumptions:

#### **Board of Investments**

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

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

**Technical Concerns:**

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

**NO SPONSOR SIGNATURE***2/28*

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*