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STATE OF VERMONT
OFFICE OF THE STATE TREASURER

Legislative Testimony Regarding S. 28
House Committee on Government Operations and Senate Committee on Government Operations
February 19, 2016

First of all, I want to praise the advocacy work of Sierra Club, 350VT, and many others that have done the good work to raise awareness and organize Vermonters in fighting climate change.

As Treasurer and a member of the Vermont Pension Investment Committee, I have a fiduciary obligation—this obligation is paramount in my capacity as Treasurer. A fiduciary is an individual, corporation or association holding assets for another party, often with the legal authority and duty to make decisions on their behalf. These responsibilities require making decisions based on a standard of trust, good faith, honesty, and a thoughtful and thorough assessment of the facts.

Vermont Pension Investment Committee members act in a fiduciary role and owe a duty to the 50,000 members and beneficiaries of the participating retirement plans, as well as to the taxpayers that help fund the plan. Both IRS rules governing governmental pension plans and state statute make it clear that my job as a fiduciary is to manage pension funds for the exclusive benefit of the beneficiaries with a duty of loyalty.

I take that responsibility seriously. It is also about keeping a promise. We make a commitment to Vermont's law enforcement officers, firefighters, teachers, social workers, and all public employees when they sign up to protect our streets, race to put out a fire, teach our kids, protect the welfare our children, plow our roads, and fix our bridges. Frankly, I would hope that every elected official in this room would share in that promise to make sure those who work hard for Vermont are made whole and that the promise of retirement security is delivered.

Vermont Pension Investment Committee members, elected officials, and other parties have a duty to the taxpayers and the members of the system to conduct their analyses and present their position in a thoughtful and factual manner. I am concerned that the recent debates on these issues, as they relate to fossil fuels as a whole and specifically coal, have taken on a different tone—sound bites that are more about persuasion than an assessment of objective facts. We have seen inaccurate numbers on coal losses that have been subsequently proven wrong. These inaccurate numbers were then repeated in public opinion and news articles used to support the position to rid the portfolio of coal. We have seen numbers, such as the Decarbonizer product, which stated

losses of \$77 million (as mentioned in other testimony), bandied about as fact that were also proven wrong. These numbers are based on incomplete data and erroneous assumptions.

Employees and taxpayers demand better and should expect better. Decisions about investments should be made in a thoughtful manner. Moreover, they should not be legislated but should be done through the vehicle the legislature created and charged with the fiduciary responsibility to make these decisions—the Vermont Pension Investment Committee.

This is what the legislature created (quoting V.S.A. Title 3, Ch.17): “The Vermont Pension Investment Committee shall be responsible for the investment of the assets of the state teachers’ retirement system of Vermont, the Vermont state employees’ retirement system, and the Vermont municipal employees’ retirement system pursuant to section 472 of this title, 16 V.S.A. § 1943, and 24 V.S.A. § 5063. *The committee shall strive to maximize total return on investment, within acceptable levels of risk for public retirement systems, in accordance with the standards of care established by the prudent investor rule*”(under 14A V.S.A. § 902).

Fiduciary responsibility does not necessarily preclude socially responsible investment, but it does prohibit the sacrifice of financial returns for social reasons.

We have received resolutions from employee retiree groups and the VLCT, who are the primary stakeholders, urging you not to legislate investment decisions. Other stakeholders are currently contemplating similar resolutions. These people represent taxpayers and employee groups that have skin in the game. I submit the following resolutions to you, all of which clearly indicate that investment decisions should reside with the VPIC:

- the VSEA Retirees’ Chapter Board of Trustees
- the VSEA Board of Trustees
- the VSEA Council
- the Vermont Retired State Employees’ Association
- the Vermont League of Cities and Towns
- the Vermont Troopers’ Association
- the Vermont Retired Teachers’ Association
- the Vermont NEA
- the Professional Firefighters of Vermont
- the AFL-CIO
- the VSTRS Board of Trustees
- the VMERS Board Trustees

It has been argued that the Legislature has precedent for legislating investments. I would agree that thirty years ago the Legislature did, in fact, legislate divestment from South Africa. However, since that time we have created a new statutory framework for managing our trustee and fiduciary relationships around pensions. The pension trustee boards and the VPIC have subsequently developed well-articulated policies on voting our proxies, engaging with companies, and have developed environmental, social and governance, or ESG, policies.

The 1997 decision to divest from tobacco was done by the trustee boards, not the legislature, and after careful consideration and dialogue. The process involved a two-stage process that is part of our prudence requirements

for investments. As fiduciaries, they made an investigation into the risk and return characteristics and a thoughtful study. This is called procedural prudence. Having made that investigation, they then took the step to make a decision. That is called substantive prudence. I am sure if you contacted Governor Douglas, who was Treasurer at the time, he would confirm that. In 2007, with the formation of VPIC having taken place, a similar process and discussion took place to make the decision on the Sudan divestment.

Investment decisions, including ones to divest, should be made by fiduciaries charged by state statute with that responsibility and only after prudence has been exercised. The current dialogue around coal divestment through legislation lacks all of these critical elements. I am committed to a full vetting and a transparent process on these issues.

I have previously provided you a copy of a letter from Tom Golonka, chair of the Vermont Pension Investment Committee, and myself to Governor Shumlin, inviting the Governor to the Vermont Pension Investment Committee to present on these issues. While I am only one member of that Committee and cannot speak for the whole, I am committed to engaging in a collaborative and positive effort to review all of the various information presented by advocates of divestment, independent investment advisors and professionals, non-profits and others in a full vetting of the coal investments and issues of climate change. As your Treasurer, I will commit to moving forward to take on such a task in a collaborative manner. I will continue to be guided by the facts, my statutory requirements as a fiduciary, and my responsibilities to hard working state, teacher and municipal employees and other taxpayers rather than by politics.

One of the sad outcomes from the divestment debate is that multiple constituencies, all of whom care deeply about the environment, have become polarized. It very much reminds me of the type of stalemate we see in Washington. While this is happening, we have missed the opportunity to take these issues to the climate change deniers and those companies that are doing real harm to our environment. This is not the way Vermont gets things done.

As Treasurer, I am committed to addressing the issues of climate change. I have made this a clear priority since I took the oath as Treasurer and I invite all of you to take a look at the Treasurer's Office Sustainability Report, which is on our web site.

My experience has been one of collaborative effort to reach mutual goals. I very much hope there are areas of mutual interest where we can effectively work together with various partners to address and mitigate the risks of climate change, but not in a manner that undermines my fiduciary responsibilities, or pre-determines the result, or puts current and future retirees at risk. I think we can manage to be good stewards of our environment, the taxpayer and all our public employees if we can work together to find meaningful solutions.

To accomplish this, investment decisions should stay with the VPIC Committee. We look forward to working with the various groups to address these issues and urge the Legislature to refrain from undermining the fiduciary framework it was a part of creating in the first place.

Thank you for your consideration of this issue. Let's do the right thing for taxpayers, for state employees, and for Vermont's financial future—I look forward to engaging with all interested parties in the thoughtful discussion of the issues and facts to come.