

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 16-0744.01 Esther van Mourik x4215

SENATE BILL 16-035

SENATE SPONSORSHIP

Johnston and Sonnenberg,

HOUSE SPONSORSHIP

Rankin and Young,

Senate Committees

State, Veterans, & Military Affairs
Finance
Appropriations

House Committees

Finance
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE PUBLIC SCHOOL FUND, AND, IN CONNECTION
102 THEREWITH, CREATING A PUBLIC SCHOOL FUND INVESTMENT
103 BOARD TO DIRECT THE STATE TREASURER ON THE INVESTMENT
104 OF THE FUND AND CHANGING THE DISTRIBUTION OF THE
105 INTEREST OR INCOME EARNED ON THE INVESTMENT OF THE
106 MONEYS IN THE FUND.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the public school fund investment board (board)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
May 9, 2016

SENATE
3rd Reading Unamended
April 29, 2016

SENATE
Amended 2nd Reading
April 28, 2016

to direct the state treasurer on the investment of the constitutionally created public school fund (fund). The fund consists of the proceeds of land that was granted to the state by the federal government for educational purposes. The bill specifies that the board is made up of 5 members including the treasurer, a member of the state board of land commissioners, and 3 members appointed by the governor and confirmed by the senate. The board may enter into contracts with private professional fund managers to provide expertise, technical support, and advice on investment market conditions but such contracts must be bid by employing standard public bidding practices.

The bill changes the distribution of the interest or income earned on the investment of the moneys in the fund so that the interest or income earned on the investment of the moneys in the public school fund may first be used to pay for the services of private professional fund managers hired by the board and to pay for any reimbursement for travel and other necessary expenses incurred by the members of the board.

The bill then specifies that for the 2017-18 and 2018-19 state fiscal years the first \$21 million is credited to the statutorily created state public school fund, the next \$10 million is credited to the public school capital construction assistance fund for the "Building Excellent Schools Today" grant program, and any money in excess of \$31 million is credited as the board sets forth in established policy.

The bill also specifies that for the 2019-20 state fiscal year, and each state fiscal year thereafter, the first \$21 million is credited to the statutorily created state public school fund, the next \$20 million is credited to the public school capital construction assistance fund for the "Building Excellent Schools Today" grant program, and any money in excess of \$41 million is credited as the board sets forth in established policy.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that the public purpose for the creation of the
4 public school fund investment board is to ensure reasonable growth in the
5 public school fund through investments in stocks and other financial
6 assets as specified in the public school fund investment board investment
7 policy.

8 **SECTION 2.** In Colorado Revised Statutes, add 22-41-102.5 as

1 follows:

2 **22-41-102.5. Public school fund investment board - creation.**

3 (1)(a) THERE IS HEREBY CREATED THE PUBLIC SCHOOL FUND INVESTMENT
4 BOARD, REFERRED TO IN THIS SECTION AS THE "BOARD". THE BOARD
5 CONSISTS OF FIVE MEMBERS, AS FOLLOWS:

6 (I) THE STATE TREASURER, WHO SERVES AS CHAIR;

7 (II) A MEMBER OF THE STATE BOARD OF LAND COMMISSIONERS,
8 APPOINTED BY MAJORITY VOTE OF THE COMMISSIONERS; AND

9 (III) THREE MEMBERS APPOINTED BY THE STATE TREASURER. SUCH
10 APPOINTEES MUST HAVE DIVERSITY IN PARTY AFFILIATION AND
11 PROFESSIONAL QUALIFICATIONS REGARDING THE PRUDENT INVESTMENT
12 OF TRUST FUND MONEY OR EXPERTISE IN INSTITUTIONAL INVESTMENT
13 MANAGEMENT.

14 (b) INITIAL APPOINTMENTS OF MEMBERS MUST BE MADE NO LATER
15 THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH (b).
16 THE BOARD MUST MEET FOR THE FIRST TIME NO LATER THAN THIRTY DAYS
17 AFTER THE APPOINTMENT OF THE MEMBERS AS REQUIRED IN THIS
18 PARAGRAPH (b), AND THE BOARD MUST MEET NO LESS THAN QUARTERLY
19 THEREAFTER.

20 (c) THE STATE TREASURER AND TWO OTHER VOTING MEMBERS OF
21 THE BOARD CONSTITUTES A QUORUM OF THE BOARD.

22 (2) EXCEPT FOR THE STATE TREASURER, MEMBERS OF THE BOARD
23 SERVE TWO-YEAR TERMS AND MAY NOT SERVE MORE THAN THREE
24 CONSECUTIVE TERMS, AND NONE OF THE BOARD MEMBERS, EXCEPT FOR
25 THE TREASURER, MAY HOLD ANY STATE ELECTIVE OFFICE. THE STATE
26 BOARD OF LAND COMMISSIONERS OR THE STATE TREASURER MAY REMOVE
27 THEIR APPOINTED MEMBERS FOR ANY CAUSE THAT RENDERS THE MEMBER

1 INCAPABLE OF DISCHARGING OR UNFIT TO DISCHARGE HIS OR HER DUTY TO
2 THE BOARD. THE STATE BOARD OF LAND COMMISSIONERS OR THE STATE
3 TREASURER MAY FILL ANY VACANCY BY APPOINTMENT AND SUCH
4 APPOINTMENT MUST BE MADE NO LATER THAN NINETY DAYS AFTER THE
5 DATE OF THE VACANCY. A MEMBER APPOINTED TO FILL A VACANCY
6 SERVES UNTIL THE EXPIRATION OF THE TERM FOR WHICH THE VACANCY
7 WAS FILLED. MEMBERS OF THE BOARD SERVE WITHOUT COMPENSATION
8 BUT MAY RECEIVE REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY
9 EXPENSES ACTUALLY INCURRED IN THE PERFORMANCE OF THEIR DUTIES.
10 THE REIMBURSEMENTS ARE PAID FROM THE INTEREST AND INCOME
11 EARNED ON THE DEPOSIT AND INVESTMENT OF THE PUBLIC SCHOOL FUND
12 SUBJECT TO THE REQUIREMENTS SET FORTH IN SECTION 22-41-102.

13 (3) THE BOARD SHALL DIRECT THE STATE TREASURER ON HOW TO
14 SECURELY INVEST MONEYS DEPOSITED IN THE PUBLIC SCHOOL FUND FOR
15 THE INTERGENERATIONAL BENEFIT OF PUBLIC SCHOOLS AND IN A MANNER
16 THAT COMPLIES WITH THE "UNIFORM PRUDENT INVESTOR ACT", ARTICLE
17 1.1 OF TITLE 15, C.R.S.

18 (4) (a) NO LATER THAN MARCH 31, 2017, THE BOARD SHALL
19 ESTABLISH POLICIES THAT ARE NECESSARY AND PROPER FOR THE
20 ADMINISTRATION OF THIS SECTION, INCLUDING BUT NOT LIMITED TO:

21 (I) A CONFLICT OF INTEREST POLICY FOR BOARD MEMBERS;

22 (II) A POLICY ESTABLISHING ALLOWABLE INVESTMENTS THAT
23 COMPLY WITH SECTION 22-41-104 AND SECTION 3 OF ARTICLE IX OF THE
24 STATE CONSTITUTION; AND

25 (III) RECOMMENDATIONS TO THE GENERAL ASSEMBLY REGARDING
26 THE DISTRIBUTION OF INCOME AND INTEREST DESCRIBED IN SECTION
27 22-41-102 (3) (f) (IV) AND (3) (g) (IV).

1 (b) THE POLICIES MUST BE POSTED ON THE DEPARTMENT OF THE
2 TREASURY'S WEBSITE NO LATER THAN APRIL 5, 2017.

3 (5) THE BOARD MAY ENTER INTO CONTRACTS WITH PRIVATE
4 PROFESSIONAL FUND MANAGERS TO PROVIDE EXPERTISE, TECHNICAL
5 SUPPORT, AND ADVICE ON INVESTMENT MARKET CONDITIONS. SUCH
6 CONTRACT OR CONTRACTS MUST BE BID BY EMPLOYING STANDARD PUBLIC
7 BIDDING PRACTICES INCLUDING, BUT NOT LIMITED TO, THE USE OF
8 REQUESTS FOR INFORMATION, REQUESTS FOR PROPOSALS, OR ANY OTHER
9 STANDARD VENDOR SELECTION PRACTICES DETERMINED BY THE BOARD TO
10 BE BEST SUITED TO SELECTING AN APPROPRIATE PRIVATE PROFESSIONAL
11 FUND MANAGER. PAYMENTS FOR THESE SERVICES WILL BE PAID FROM THE
12 INTEREST AND INCOME OF THE PUBLIC SCHOOL FUND SUBJECT TO THE
13 REQUIREMENTS SET FORTH IN SECTION 22-41-102.

14 **SECTION 3.** In Colorado Revised Statutes, 22-41-102, **amend**
15 (1) and (3) (e); and **add** (3) (f) and (3) (g) as follows:

16 **22-41-102. Fund inviolate.** (1) The public school fund shall
17 forever remain inviolate and intact; the interest and income earned on the
18 deposit and investment of the fund only shall be expended in the
19 maintenance of the schools of the state and shall be distributed to the
20 several school districts of the state in such manner as may be prescribed
21 by law. No part of said fund, principal or interest and income, shall ever
22 be transferred to any other fund or used or appropriated, except as
23 provided in this article and article 43.7 of this title. The state treasurer
24 shall be custodian of the fund, and the same shall be securely and
25 profitably invested as may be directed by law THE PUBLIC SCHOOL FUND
26 INVESTMENT BOARD CREATED IN SECTION 22-41-102.5. The state, by
27 appropriation, shall supply all losses of principal that may occur as

1 determined pursuant to section 2-3-103 (5), C.R.S., or section 22-41-104
2 (2).

3 (3) (e) For the 2015-16 AND THE 2016-17 state fiscal year, and
4 each state fiscal year thereafter, the first twenty-one million dollars of any
5 interest or income earned on the investment of the moneys in the public
6 school fund shall be IS credited to the state public school fund created in
7 section 22-54-114 for distribution as provided by law. Any amount of
8 such interest and income earned on the investment of the moneys in the
9 state public school fund in excess of twenty-one million dollars, other
10 than interest and income credited to the public school capital construction
11 assistance fund, created in section 22-43.7-104 (1), pursuant to section
12 22-43.7-104 (2) (b) (I), shall remain in the fund and shall become part of
13 the principal of the fund.

14 (f) FOR THE 2017-18 AND 2018-19 STATE FISCAL YEARS, INTEREST
15 OR INCOME EARNED ON THE INVESTMENT OF THE MONEYS IN THE PUBLIC
16 SCHOOL FUND MUST BE USED OR CREDITED IN THE FOLLOWING ORDER:

17 (I) THE FIRST TWENTY-ONE MILLION DOLLARS IS CREDITED TO THE
18 STATE PUBLIC SCHOOL FUND CREATED IN SECTION 22-54-114 FOR
19 DISTRIBUTION AS PROVIDED IN THAT SECTION; EXCEPT THAT, IF THE
20 INTEREST OR INCOME EARNED ON THE INVESTMENT OF THE MONEYS IN THE
21 PUBLIC SCHOOL FUND IS LESS THAN TWENTY-ONE MILLION DOLLARS THEN
22 THE AVAILABLE AMOUNT MUST ALSO BE USED TO ENTIRELY COVER THE
23 COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN SUBPARAGRAPH
24 (II) OF THIS PARAGRAPH (f):

25 (II) AN AMOUNT ANNUALLY APPROPRIATED TO THE STATE
26 TREASURER TO PAY FOR THE SERVICES OF PRIVATE PROFESSIONAL FUND
27 MANAGERS HIRED BY THE PUBLIC SCHOOL FUND INVESTMENT BOARD

1 PURSUANT TO SECTION 22-41-102.5 (5), AND TO PAY FOR ANY
2 REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY EXPENSES
3 INCURRED BY THE MEMBERS OF THE PUBLIC SCHOOL FUND INVESTMENT
4 BOARD PURSUANT TO SECTION 22-41-102.5 (2):

5 (III) ANY AMOUNT IN EXCESS OF TWENTY-ONE MILLION DOLLARS
6 PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN
7 SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), UP TO THIRTY-ONE MILLION
8 DOLLARS PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED
9 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (f), IS CREDITED TO THE
10 RESTRICTED ACCOUNT OF THE PUBLIC SCHOOL CAPITAL CONSTRUCTION
11 ASSISTANCE FUND CREATED IN SECTION 22-43.7-104 (5) FOR USE AS
12 PROVIDED IN THAT SECTION; AND

13 (IV) ANY AMOUNT IN EXCESS OF THIRTY-ONE MILLION DOLLARS
14 PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN
15 SUBPARAGRAPH (II) OF THIS PARAGRAPH (f) IS CREDITED AS SPECIFIED
16 BY THE GENERAL ASSEMBLY, TAKING INTO CONSIDERATION THE
17 RECOMMENDATIONS OF THE PUBLIC SCHOOL FUND INVESTMENT BOARD
18 DESCRIBED IN SECTION 22-41-102.5 (4) (a) (III).

19 (g) FOR THE 2019-20 STATE FISCAL YEAR, AND EACH STATE FISCAL
20 YEAR THEREAFTER, INTEREST OR INCOME EARNED ON THE INVESTMENT OF
21 THE MONEYS IN THE PUBLIC SCHOOL FUND MUST BE USED OR CREDITED IN
22 THE FOLLOWING ORDER:

23 (I) THE FIRST TWENTY-ONE MILLION DOLLARS IS CREDITED TO THE
24 STATE PUBLIC SCHOOL FUND CREATED IN SECTION 22-54-114 FOR
25 DISTRIBUTION AS PROVIDED IN THAT SECTION; EXCEPT THAT, IF THE
26 INTEREST OR INCOME EARNED ON THE INVESTMENT OF THE MONEYS IN THE
27 PUBLIC SCHOOL FUND IS LESS THAN TWENTY-ONE MILLION DOLLARS THEN

1 THE AVAILABLE AMOUNT MUST ALSO BE USED TO ENTIRELY COVER THE
2 COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN SUBPARAGRAPH
3 (II) OF THIS PARAGRAPH (g):

4 (II) AN AMOUNT ANNUALLY APPROPRIATED TO THE STATE
5 TREASURER TO PAY FOR THE SERVICES OF PRIVATE PROFESSIONAL FUND
6 MANAGERS HIRED BY THE PUBLIC SCHOOL FUND INVESTMENT BOARD
7 PURSUANT TO SECTION 22-41-102.5 (5), AND TO PAY FOR ANY
8 REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY EXPENSES
9 INCURRED BY THE MEMBERS OF THE PUBLIC SCHOOL FUND INVESTMENT
10 BOARD PURSUANT TO SECTION 22-41-102.5 (2):

11 (III) ANY AMOUNT IN EXCESS OF TWENTY-ONE MILLION DOLLARS
12 PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN
13 SUBPARAGRAPH (II) OF THIS PARAGRAPH (g), UP TO FORTY-ONE MILLION
14 DOLLARS PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED
15 IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (g), IS CREDITED TO THE
16 RESTRICTED ACCOUNT OF THE PUBLIC SCHOOL CAPITAL CONSTRUCTION
17 ASSISTANCE FUND CREATED IN SECTION 22-43.7-104 (5) FOR USE AS
18 PROVIDED IN THAT SECTION; AND

19 (IV) ANY AMOUNT IN EXCESS OF FORTY-ONE MILLION DOLLARS
20 PLUS THE COST OF SERVICES AND REIMBURSEMENT DESCRIBED IN
21 SUBPARAGRAPH (II) OF THIS PARAGRAPH (g) IS CREDITED AS SPECIFIED
22 BY THE GENERAL ASSEMBLY, TAKING INTO CONSIDERATION THE
23 RECOMMENDATIONS OF THE PUBLIC SCHOOL FUND INVESTMENT BOARD
24 DESCRIBED IN SECTION 22-41-102.5 (4) (a) (III).

25 **SECTION 4. In Colorado Revised Statutes, 22-41-104, amend**
26 **(1) as follows:**

27 **22-41-104. Lawful investments. (1) The state treasurer, in the**

1 state treasurer's discretion AS DIRECTED BY THE PUBLIC SCHOOL FUND
2 INVESTMENT BOARD, may invest and reinvest moneys accrued or accruing
3 to the public school fund in the types of deposits and investments
4 authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S., and
5 bonds issued by school districts. THE MONEYS MAY ALSO BE INVESTED IN
6 STOCKS AND OTHER FINANCIAL ASSETS AS SPECIFIED IN THE PUBLIC
7 SCHOOL FUND INVESTMENT BOARD INVESTMENT POLICY ESTABLISHED AS
8 REQUIRED IN SECTION 22-41-102.5 (4) (b); EXCEPT THAT INVESTMENT
9 INCLUDES ONLY MUTUAL FUNDS, INDEX FUNDS, AND ANY OTHER
10 INSTRUMENT THAT IS NOT A DIRECT INVESTMENT IN A CORPORATION.

11

12 **SECTION 5.** In Colorado Revised Statutes, **amend 22-41-105** as
13 follows:

14 **22-41-105. Income distinguished from principal.** (1) Any
15 amount paid as a premium for an interest-bearing obligation in excess of
16 the amount realized upon disposition of said obligation shall MUST be
17 recovered as a return of principal out of interest thereafter derived from
18 the public school fund. Such recovery shall MUST be made and recorded
19 on a systematic basis applied consistently from year to year.

20 (2) INTEREST AND INCOME THAT IS NOT DISTRIBUTED AS SPECIFIED
21 IN SECTION 22-41-102 (3) ON JUNE 30 OF ANY FISCAL YEAR BECOMES PART
22 OF THE PRINCIPAL OF THE PUBLIC SCHOOL FUND.

23 **SECTION 6.** In Colorado Revised Statutes, **amend 22-41-107** as
24 follows:

25 **22-41-107. Reports.** (1) The state treasurer shall furnish a
26 quarterly report to the state board of land commissioners showing the
27 investment transactions effected and the amount of investment income

1 collected during the preceding three-month period.

2 ~~(2) Repealed~~ THE PUBLIC SCHOOL FUND INVESTMENT BOARD
3 SHALL SUBMIT FINANCIAL STATEMENTS ON NOVEMBER 1 OF EACH FISCAL
4 YEAR TO THE STATE TREASURER, THE STATE BOARD OF LAND
5 COMMISSIONERS, THE OFFICE OF STATE PLANNING AND BUDGETING, THE
6 JOINT BUDGET COMMITTEE, AND THE EDUCATION AND FINANCE
7 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR SUCH
8 SUCCESSOR COMMITTEES.

9 **SECTION 7. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2016 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.