

CHAPTER 250

GOVERNMENT - STATE

SENATE BILL 16-035

BY SENATOR(S) Johnston and Sonnenberg, Donovan, Garcia, Guzman, Heath, Hodge, Holbert, Kefalas, Kerr, Merrifield, Newell, Steadman, Todd;
also REPRESENTATIVE(S) Rankin and Young, Arndt, Buckner, Court, Fields, Ginal, Hamner, Lontine, Mitsch Bush, Pabon, Priola, Rosenthal.

AN ACT

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

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

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

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

22-41-102.5. Public school fund investment board - creation. (1) (a) THERE IS HEREBY CREATED THE PUBLIC SCHOOL FUND INVESTMENT BOARD, REFERRED TO IN THIS SECTION AS THE "BOARD". THE BOARD CONSISTS OF FIVE MEMBERS, AS FOLLOWS:

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

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

(III) THREE MEMBERS APPOINTED BY THE STATE TREASURER. SUCH APPOINTEES MUST HAVE DIVERSITY IN PARTY AFFILIATION AND PROFESSIONAL QUALIFICATIONS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

REGARDING THE PRUDENT INVESTMENT OF TRUST FUND MONEY OR EXPERTISE IN INSTITUTIONAL INVESTMENT MANAGEMENT.

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

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

(2) EXCEPT FOR THE STATE TREASURER, MEMBERS OF THE BOARD SERVE TWO-YEAR TERMS AND MAY NOT SERVE MORE THAN THREE CONSECUTIVE TERMS, AND NONE OF THE BOARD MEMBERS, EXCEPT FOR THE TREASURER, MAY HOLD ANY STATE ELECTIVE OFFICE. THE STATE BOARD OF LAND COMMISSIONERS OR THE STATE TREASURER MAY REMOVE THEIR APPOINTED MEMBERS FOR ANY CAUSE THAT RENDERS THE MEMBER INCAPABLE OF DISCHARGING OR UNFIT TO DISCHARGE HIS OR HER DUTY TO THE BOARD. THE STATE BOARD OF LAND COMMISSIONERS OR THE STATE TREASURER MAY FILL ANY VACANCY BY APPOINTMENT AND SUCH APPOINTMENT MUST BE MADE NO LATER THAN NINETY DAYS AFTER THE DATE OF THE VACANCY. A MEMBER APPOINTED TO FILL A VACANCY SERVES UNTIL THE EXPIRATION OF THE TERM FOR WHICH THE VACANCY WAS FILLED. MEMBERS OF THE BOARD SERVE WITHOUT COMPENSATION BUT MAY RECEIVE REIMBURSEMENT FOR TRAVEL AND OTHER NECESSARY EXPENSES ACTUALLY INCURRED IN THE PERFORMANCE OF THEIR DUTIES. THE REIMBURSEMENTS ARE PAID FROM THE INTEREST AND INCOME EARNED ON THE DEPOSIT AND INVESTMENT OF THE PUBLIC SCHOOL FUND SUBJECT TO THE REQUIREMENTS SET FORTH IN SECTION 22-41-102.

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

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

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

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

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

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

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

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

22-41-102. Fund inviolate. (1) The public school fund shall forever remain inviolate and intact; the interest and income earned on the deposit and investment of the fund only shall be expended in the maintenance of the schools of the state and shall be distributed to the several school districts of the state in such manner as may be prescribed by law. No part of said fund, principal or interest and income, shall ever be transferred to any other fund or used or appropriated, except as provided in this article and article 43.7 of this title. The state treasurer shall be custodian of the fund, and the same shall be securely and profitably invested as may be directed by law THE PUBLIC SCHOOL FUND INVESTMENT BOARD CREATED IN SECTION 22-41-102.5. The state, by appropriation, shall supply all losses of principal that may occur as determined pursuant to section 2-3-103 (5), C.R.S., or section 22-41-104 (2).

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

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

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

(II) AN AMOUNT ANNUALLY APPROPRIATED TO THE STATE TREASURER TO PAY FOR THE SERVICES OF PRIVATE PROFESSIONAL FUND MANAGERS HIRED BY THE

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

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

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

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

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

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

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

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

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

22-41-104. Lawful investments. (1) The state treasurer, ~~in the state treasurer's discretion~~ AS DIRECTED BY THE PUBLIC SCHOOL FUND INVESTMENT BOARD, may invest and reinvest moneys accrued or accruing to the public school fund in the types of deposits and investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S., and bonds issued by school districts. THE MONEYS MAY ALSO BE INVESTED IN STOCKS AND OTHER FINANCIAL ASSETS AS SPECIFIED IN THE PUBLIC SCHOOL FUND INVESTMENT BOARD INVESTMENT POLICY ESTABLISHED AS REQUIRED IN SECTION 22-41-102.5 (4)(b); EXCEPT THAT INVESTMENT INCLUDES ONLY MUTUAL FUNDS, INDEX FUNDS, AND ANY OTHER INSTRUMENT THAT IS NOT A DIRECT INVESTMENT IN A CORPORATION.

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

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

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

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

22-41-107. Reports. ~~(1) The state treasurer shall furnish a quarterly report to the state board of land commissioners showing the investment transactions effected and the amount of investment income collected during the preceding three-month period.~~

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

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

Approved: June 8, 2016