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HOUSE BILL 2396

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Fromhold and McDonald

Read first time 03/28/2007. Referred to Committee on Capital Budget.

1            AN ACT Relating to investment of moneys in the permanent common  
2 school fund; amending RCW 28A.515.300 and 43.84.170; adding a new  
3 section to chapter 43.84 RCW; and adding a new section to chapter  
4 28A.515 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 43.84 RCW  
7 to read as follows:

8            Consistent with Article XVI, section 5 and Article IX, sections 3  
9 and 5 of the state Constitution, it is the intent of the legislature to  
10 clarify state law to permit the permanent common school fund to be  
11 invested in equities when such investment is in the best interest of  
12 the state and the permanent common school fund.

13            A 1999 opinion of the attorney general concluded that the  
14 constitutional language does not prohibit investment of the permanent  
15 common school fund, as long as the investment is authorized by law and  
16 is consistent with applicable trust principles. This opinion further  
17 reasoned that the constitutional phrase "permanent and irreducible"  
18 bars the legislature from abolishing the fund or expending its  
19 principal for purposes other than those for which the fund was

1 established, but does not prohibit the legislature from specifying  
2 permissible investments, particularly in light of Article IX, section  
3 5 of the state Constitution, which specifies that only losses resulting  
4 from "defalcation, mismanagement or fraud" constitute state debts to  
5 the permanent common school fund.

6 The legislature finds that permanent fund common school fund income  
7 as a percentage of total school construction budgets has declined while  
8 school construction budgets have grown, and that other state revenues  
9 have filled the gap between income from state lands and the total  
10 school construction budget. For this reason, the fund may tolerate  
11 higher risk and volatility in favor of growth, and therefore a balance  
12 of long-term growth and current income is in the best interest of the  
13 state and the fund's beneficiaries. The legislature recognizes that by  
14 investing in equities, the value of the permanent fund may fluctuate  
15 over time due to market changes even if no disposition of the fund  
16 principal is made.

17 It is the intent of the legislature to clarify state law to permit  
18 equity investment of the permanent common school fund even if there is  
19 a decline in the value of the permanent fund due to market changes.  
20 The legislature recognizes that the irreducible portion of the  
21 principal amount in the permanent fund must be held in perpetuity for  
22 the benefit of the fund and future generations, and that only the  
23 earnings from the permanent fund may be appropriated to the common  
24 school construction fund.

25 **Sec. 2.** RCW 28A.515.300 and 1969 ex.s. c 223 s 28A.40.010 are each  
26 amended to read as follows:

27 (1) The principal of the common school fund as the same existed on  
28 June 30, 1965, shall remain permanent and irreducible. The said fund  
29 shall consist of the principal amount thereof existing on June 30,  
30 1965, and such additions thereto as may be derived after June 30, 1965,  
31 from the following named sources, to wit: Appropriations and donations  
32 by the state to this fund; donations and bequests by individuals to the  
33 state or public for common schools; the proceeds of lands and other  
34 property which revert to the state by escheat and forfeiture; the  
35 proceeds of all property granted to the state, when the purpose of the  
36 grant is not specified, or is uncertain; funds accumulated in the  
37 treasury of the state for the disbursement of which provision has not

1 been made by law; the proceeds of the sale of stone, minerals or  
2 property other than timber and other crops from school and state lands,  
3 other than those granted for specific purposes; all moneys received  
4 from persons appropriating stone, minerals or property other than  
5 timber and other crops from school and state lands other than those  
6 granted for specific purposes, and all moneys other than rental,  
7 recovered from persons trespassing on said lands; five percent of the  
8 proceeds of the sale of public lands lying within the state, which  
9 shall be sold by the United States subsequent to the admission of the  
10 state into the Union as approved by section 13 of the act of congress  
11 enabling the admission of the state into the Union; the principal of  
12 all funds arising from the sale of lands and other property which have  
13 been, and hereafter may be, granted to the state for the support of  
14 common schools and such other funds as may be provided by legislative  
15 enactment.

16 (2) Consistent with Article XVI, section 5 and Article IX, sections  
17 3 and 5 of the state Constitution, the state investment board may  
18 invest the fund as authorized in section 3 of this act.

19 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.515  
20 RCW to read as follows:

21 The state investment board may invest the permanent common school  
22 fund in various types of allowable investments in order to achieve a  
23 balance of long-term growth and current income, when consistent with  
24 the best interest of the state and the permanent common school fund,  
25 and in conformance with RCW 43.84.150. The state treasurer shall  
26 calculate the irreducible principal amount of the fund in accordance  
27 with the state Constitution and state law. The irreducible principal  
28 shall not include investment gains on the principal, and the fund may  
29 retain or distribute income and investment earnings in order to achieve  
30 the appropriate balance between growth and income.

31 **Sec. 4.** RCW 43.84.170 and 1981 c 3 s 21 are each amended to read  
32 as follows:

33 Whenever there are surplus moneys available for investment in the  
34 permanent common school fund, the agricultural college permanent fund,  
35 the normal school permanent fund, the scientific school permanent fund,

1 or the university permanent fund, the state investment board has full  
2 power to invest or reinvest such funds in the manner prescribed by RCW  
3 43.84.150 and section 3 of this act, and not otherwise.

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