



State of Wisconsin
2007 - 2008 LEGISLATURE

Needed
Tues. 9/25 PM

LRB-3122/PZ

ARG:cjs:jf

stays in 9/24 (RMR)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

SAV

Regen Cat

1 AN ACT ~~to repeal~~ 25.17 (3) (b) 7., 25.17 (3) (bh) and (d), 25.17 (3) (dg) (intro.),
2 25.17 (3) (dg) 3., 25.17 (3) (dm), 25.17 (4), 25.17 (12) (c) and (13), 25.17 (15) and
3 25.17 (65); **to renumber and amend** 25.01, 25.17 (3) (dg) 1. and 25.17 (3) (dg)
4 2.; **to amend** 25.14 (1) (a) 1., 25.14 (5), 25.15 (2) (intro.), 25.15 (2) (a), 25.15 (3),
5 25.16 (4), 25.17 (1) (r), 25.17 (2) (a) to (e), 25.17 (3) (a), 25.17 (3) (b) (intro.), 3.,
6 4. and 5., 25.17 (3) (ba), 25.17 (3) (bd), 25.17 (3) (f), 25.17 (3) (g), 25.17 (5), 25.17
7 (6), 25.17 (7) (a) and (b), 25.17 (10), 25.17 (12) (a) and (b), 25.17 (70) (intro.),
8 25.17 (70) (b) (intro.), 25.17 (70) (d), 25.18 (1) (e), 25.18 (1) (o), 25.183 (1) (a) 6e.,
9 25.183 (1) (a) 6m. a. and 560.08 (2) (m); and **to create** 25.01 (2), 25.14 (1) (a) 19.
10 to 23., 25.156 (10) and (11), 25.17 (1) (eq), 25.17 (1) (jt), 25.17 (1) (vb), 25.17 (2)
11 (g), 25.17 (63) and 25.182 of the statutes; **relating to:** investments and
12 operations of the State of Wisconsin Investment Board.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes with respect to the State of Wisconsin Investment Board (SWIB):

1. Under current law, SWIB has authority to manage and invest Wisconsin Retirement System contributions, which comprise the public employee trust fund. A core retirement investment trust (core trust) and a variable retirement investment trust (variable trust) are maintained in the public employee trust fund. SWIB may invest assets of the core trust and the variable trust in specific classes of investments enumerated by statute (authorized list). This bill eliminates provisions limiting SWIB's investment authority for the core trust and the variable trust to the authorized list. In lieu of specifying an authorized list, the bill authorizes SWIB to manage the money and property of the core trust and the variable trust in any manner that does not violate SWIB's standard of responsibility, which is the standard of responsibility described in item 2., below.

lists

Insert ANAL-A

2. ~~The bill slightly modifies SWIB's statutory standard of responsibility for investments.~~ Under the bill, SWIB's standard of responsibility in managing money and property is: (1) to manage the money and property with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity, with the same resources, and familiar with like matters, exercises in the conduct of an enterprise of a like character with like aims; (2) to diversify investments in order to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, considering each trust's or fund's portfolio as a whole at any point in time; and (3) to administer assets of each trust or fund solely for the purpose of ensuring the fulfillment of the purpose of each trust or fund at a reasonable cost and not for any other purpose. ~~The bill clarifies that this standard of responsibility~~ applies to SWIB with two exceptions and that, with one exception, the statutory investment standard for a personal representative, trustee, conservator, or guardian of an estate (estate standard) does not apply to SWIB. Under one exception, the estate standard rather than SWIB's statutory standard of responsibility applies in investing historical society funds. Under another exception, in certain instances where SWIB has management authority over an entity's assets but that entity has authority to direct the terms and conditions of SWIB's investments, SWIB is relieved of its statutory standard of responsibility.

Insert ANAL-B

MOVE TO END of Insert ANAL-A

3. Under current law, the building commission may direct that moneys resulting from certain public debt be deposited in funds or accounts created or designated by a building commission resolution. Moneys deposited or held in these funds or accounts may be invested in any obligations specified by a building commission resolution. This bill specifies that SWIB must invest these funds as provided by the building commission resolution and, in doing so, is relieved of its statutory standard of responsibility.

4. The bill requires SWIB, if requested by the the Health Insurance Risk-Sharing Plan Authority (HIRSP Authority), to invest funds of the HIRSP Authority in the state investment fund (SIF).

5. Under current law, SWIB may invest the funds included in the SIF in loans secured by U.S. government obligations having a maturity of five years or less if the principal amount of each loan does not exceed 98 percent of the market value of the collateral. This bill modifies this investment authority and authorizes SWIB to invest the funds included in the SIF in loans, including repurchase agreements, that

explicitly authorizes SWIB to manage these funds and

are collateralized by certain classes of authorized investments if the market value of the collateral security is at least 102 percent of the principal amount of the loan or an amount established by SWIB by rule.

6. The bill specifies that SWIB may invest in certain instruments of financial institutions that are "doing business" in this state or the United States, rather than "located" in this state or the United States. The bill also makes other minor modifications to SWIB's investment authority.

7. The bill specifies that provisions of current law related to lawsuits against public officers and employees also apply to the members of SWIB (SWIB trustees), including provisions related to payment of judgments against public officers or employees acting in their official capacity or carrying out public duties. ~~The bill also specifically authorizes SWIB trustees to secure directors' liability insurance in amounts reasonably expected to be adequate.~~

8. The bill ~~specifies~~ that certain statutorily created funds are not included in the SIF.

9. Current law requires SWIB's executive director, chief investment officer, and each investment director to file a bond for the faithful performance of that person's duties. ~~Under this bill, a performance bond is required of these individuals only if required by the SWIB trustees.~~

10. The bill modifies the schedule for a certain biennial reporting requirement of SWIB relating to investments in this state.

11. The bill includes additional changes to clarify and modernize certain statutory provisions, as well as nonsubstantive and technical changes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 25.01 of the statutes is renumbered 25.01 (intro.) and amended to
2 read:

3 **25.01 Definition Definitions.** (intro.) In this chapter, unless the context
4 requires otherwise, "board":

5 (1) "Board" means the investment board.

6 SECTION 2. 25.01 (2) of the statutes is created to read:

7 25.01 (2) "Fund," when referring generally to funds included under s. 25.17 (1),
8 includes a trust.

9 SECTION 3. 25.14 (1) (a) 1. of the statutes is amended to read:

10 25.14 (1) (a) 1. The state life insurance fund.

1 **SECTION 4.** 25.14 (1) (a) 19. to 23. of the statutes are created to read:

2 25.14 (1) (a) 19. The local government property insurance fund.

3 20. All funds of the historical society that are available for investment as
4 determined by the society under s. 25.17 (3) (c).

5 21. The environmental improvement fund.

6 22. The transportation infrastructure loan fund.

7 23. The veterans trust fund.

8 **SECTION 5.** 25.14 (5) of the statutes is amended to read:

9 25.14 (5) The assets of the state investment fund shall be invested as
10 prescribed authorized by s. ss. 25.17 (3) (b), (ba), and (bd), 25.18, as applicable, and
11 25.183.

12 **SECTION 6.** 25.15 (2) (intro.) of the statutes is amended to read:

13 25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) Except as provided in s. 25.17
14 (2) (f) and (3) (c), the standard of responsibility applied to the board when it invests
15 manages money ~~or~~ and property shall be all of the following:

16 **SECTION 7.** 25.15 (2) (a) of the statutes is amended to read:

17 25.15 (2) (a) ~~To invest, sell, reinvest and collect income and rents~~ manage the
18 money and property with the care, skill, prudence and diligence under the
19 circumstances then prevailing that a prudent person acting in a similar capacity,
20 with the same resources, and familiar with like matters exercises in the conduct of
21 an enterprise of a like character with like aims.

22 **SECTION 8.** 25.15 (3) of the statutes is amended to read:

23 25.15 (3) EXEMPTION. ~~Section 881.01~~ Except as provided in s. 25.17 (3) (c), ch.
24 881 does not apply to investments by the board.

25 **SECTION 9.** 25.156 (10) ~~and (11)~~ ^{is} of the statutes ~~are~~ ^{is} created to read:

1 25.156 (10) The provisions of s. 895.46 (1) apply to the members of the board.

2 (11) Notwithstanding s. 16.865 (5), the members of the board shall have the
3 authority to secure directors' liability insurance in amounts reasonably expected to
4 be adequate.

5 SECTION 10. 25.16 (4) of the statutes is amended to read:

6 25.16 (4) The executive director shall take the official oath and the executive
7 director, chief investment officer, and each investment director shall, if required by
8 the members of the board, file a bond for the faithful performance of that person's
9 duties in such amount and with such sureties as the members of the board require.

if and

10 SECTION 11. 25.17 (1) (eq) of the statutes is created to read:

11 25.17 (1) (eq) Environmental improvement fund (s. 25.43), but subject to sub.
12 (2) (d);

met
5-12

13 SECTION 12. 25.17 (1) (jt) of the statutes is created to read:

14 25.17 (1) (jt) Mediation fund (s. 655.68);

15 SECTION 13. 25.17 (1) (r) of the statutes is amended to read:

16 25.17 (1) (r) State housing authority reserve fund (s. 25.41), but subject to sub.
17 (2) (c);

18 SECTION 14. 25.17 (1) (vb) of the statutes is created to read:

19 25.17 (1) (vb) Transportation infrastructure loan fund (s. 25.405), but subject
20 to sub. (2) (e);

21 SECTION 15. 25.17 (2) (a) to (e) of the statutes are amended to read:

22 25.17 (2) (a) ~~Invest~~ Have authority to invest any of the funds specified in sub.
23 (1), except operating funds, the capital improvement fund and, the bond security and
24 redemption fund, the industrial building construction loan fund, and any
25 redemption fund established under s. 18.561 (5) or 18.562 (3), in loans to the

1 Wisconsin University Building Corporation, the Wisconsin State Colleges Building
2 Corporation or the Wisconsin State Public Building Corporation, but only if the loans
3 are secured by mortgages upon property owned by the respective corporations
4 producing sufficient income to retire the mortgage over the term of the loan or are
5 secured by the pledge of rentals sufficient in amount to retire the indebtedness. The
6 board shall make no loans to any building corporation described in this subsection
7 except under the conditions prescribed in this paragraph, or except as otherwise
8 provided in par. (b). These loans shall be made only when in the judgment of the
9 board it is to the interest of the funds to do so, except that loans made under par. (b)
10 shall be made at the direction of the building commission.

11 ~~Invest~~ the state building trust fund in loans to the Wisconsin State Public
12 Building Corporation, to the Wisconsin University Building Corporation, and to the
13 Wisconsin State Colleges Building Corporation. Except for interim loans for
14 construction, or other temporary financing for the purchase of lands, planning,
15 including both engineering and financing, and all other expenses incidental to any
16 of the foregoing, loans under this paragraph shall be secured by a pledge and
17 assignment of net revenues derived from the operation of buildings by the borrowing
18 corporation on lands leased or conveyed to the corporation. Any loan under this
19 paragraph shall be made upon the direction of the building commission, and the
20 board is relieved of any obligations relevant to prudent investment of the fund,
21 including those set forth under s. 25.15 (2).

22 (c) Invest the State Housing Authority reserve fund as directed by the
23 Wisconsin Housing and Economic Development Authority in housing rehabilitation
24 loan program bonds of the authority including subordinated bonds that may also be
25 special obligations of the authority. In making the investment, the board shall accept

1 the terms and conditions as the authority specifies and is relieved of any obligations
2 relative relevant to prudent investment of the fund, including those set forth under
3 ~~ch. 881 s. 25.15 (2)~~.

4 (d) Invest the environmental improvement fund, and collect the principal and
5 interest of all moneys loaned or invested from the environmental improvement fund,
6 as directed by the department of administration under s. 281.59 (2m). In making
7 investments under this paragraph, the board shall accept any reasonable terms and
8 conditions that the department of administration specifies and is relieved of any
9 obligations relevant to prudent investment of the fund, including those set forth
10 under ~~ch. 881 s. 25.15 (2)~~.

11 (e) Invest the transportation infrastructure loan fund, and collect the principal
12 and interest of all moneys loaned or invested from the transportation infrastructure
13 loan fund, as directed by the department of administration under s. 85.52 (4m). In
14 making investments under this paragraph, the board shall accept any reasonable
15 terms and conditions that the department of administration specifies and is relieved
16 of any obligations relevant to prudent investment of the fund, including those set
17 forth under ~~ch. 881 s. 25.15 (2)~~.

18 **SECTION 16.** 25.17 (2) (g) of the statutes is created to read:

19 25.17 (2) (g) Notwithstanding any other provision of this chapter, invest any
20 funds that the building commission directs the board to invest by resolution under
21 s. 18.04 (6) ^(c) ~~(b)~~ as specified by such resolution. In making investments under this ✓
22 paragraph, the board shall accept the terms and conditions specified in the
23 resolution and is relieved of any obligations relevant to prudent investment of the
24 fund, including those set forth under s. 25.15 (2).

25 **SECTION 17.** 25.17 (3) (a) of the statutes is amended to read:

1 25.17 (3) (a) ~~Invest the core retirement investment trust,~~ Have authority to
 2 invest the state life insurance fund, local government property insurance fund,
 3 veterans trust fund, and injured patients and families compensation fund in loans,
 4 securities, and any other investments authorized by s. 620.22, and in bonds or other
 5 evidences of indebtedness or preferred stock of companies engaged in the finance
 6 business whether as direct lenders or as holding companies owning subsidiaries
 7 engaged in the finance business. Investments permitted by sub. (4) are permitted
 8 investments under this subsection.

9 **SECTION 18.** 25.17 (3) (b) (intro.), 3, ~~(4) and 5~~ of the statutes are amended to
 10 read:

11 25.17 (3) (b) (intro.) ~~Invest~~ Have authority to invest any of the funds over which
 12 it has investment authority other than the funds identified in sub. (3) (a), the bond
 13 security and redemption fund, the core retirement investment trust, and the
 14 variable retirement investment trust, including but not limited to the state
 15 investment fund and surplus funds of the state building trust fund not invested
 16 under sub. (2) (b) and not in the state investment fund, in:

17 3. ~~Unsecured notes of financial and industrial issuers~~ Debt instruments
 18 maturing within 5 years or less from the date of settlement and having one of the 2
 19 highest short-term ratings given by a nationally recognized statistical rating service
 20 organization, but if the ~~corporation~~ entity issuing such notes debt instruments has
 21 any long-term senior debt issues outstanding which also have been rated, the rating
 22 must be one of the 3 highest ratings so given.

23 4. ^(intro.) Certificates of deposit ~~that are~~ issued by banks ^{strike} located doing business in the
 24 United States and ~~by~~ savings and loan associations, savings banks, and credit unions
 25 located doing business in this state or that are issued by solvent financial institutions

Sec. #. RA; 25.17(3)(b) 4.; 25.17(3)(b) 4. (intro.)

25.17(3)(b)
B

sent 8-25

and
 Subject to par. (dr)

any of the following:
 P a. Banks

1 doing business in this state. The board shall establish guidelines that a financial
 2 institution must meet to qualify under this subdivision. ← plain period

3 ^{25.17(3)(b)} 5. Bankers acceptances accepted by banks located doing business in the United
 4 States.

5 **SECTION 19.** 25.17 (3) (b) 7. of the statutes is repealed.

6 **SECTION 20.** 25.17 (3) (ba) of the statutes is amended to read:

7 25.17 (3) (ba) ~~Invest~~ Have authority to invest the funds included in the state
 8 investment fund created by s. 25.14 in loans upon collateral security in the form of
 9 direct obligations of the U.S. government having a maturity of 5 years or less where,
 10 including repurchase agreements, that are collateralized by investments authorized
 11 by sub. (3) (b) where the market value of the collateral security is not less than 102
 12 percent of the principal amount of each such loan does not exceed 98% of the market
 13 value of such collateral security or such other amount as the board may establish by
 14 rule.

15 **SECTION 21.** 25.17 (3) (bd) of the statutes is amended to read:

16 25.17 (3) (bd) Have authority to invest any funds ~~includable~~ included in the
 17 state investment fund, ~~other than the industrial building construction loan fund,~~ in
 18 loans, securities, or investments which are in addition to those permitted under any
 19 other statute but within the board standard of responsibility under s. 25.15 (2). The
 20 total amount of loans, securities, and investments made under this paragraph may
 21 not exceed ~~10%~~ 10 percent of the aggregate value of all funds ~~includable~~ included in
 22 the state investment fund ~~under s. 25.14 (1)~~ at the time that the investment is made.

23 **SECTION 22.** 25.17 (3) (bh) and (d) of the statutes are repealed.

24 **SECTION 23.** 25.17 (3) (dg) (intro.) of the statutes is repealed.

1 **SECTION 24.** 25.17 (3) (dg) 1. of the statutes is renumbered 25.17 (3) (b) 1m. and
2 amended to read:

3 25.17 (3) (b) 1m. Direct obligations of ~~the United States and of agencies of and~~
4 ~~corporations wholly owned by the United States, and direct obligations of federal~~
5 ~~land banks, federal home loan banks, the central bank for cooperatives, and banks~~
6 ~~for cooperatives or unincorporated cooperative associations, international bank for~~
7 ~~reconstruction and development, the international finance corporation,~~
8 ~~inter-American development bank, African development bank and Asian~~
9 ~~development bank, in each case maturing within one year or less from the date of~~
10 ~~investment.~~

11 **SECTION 25.** 25.17 (3) (dg) 2. of the statutes is renumbered 25.17 (3) (b) 7m. and
12 amended to read:

13 25.17 (3) (b) 7m. Commercial paper maturing within one year or less from the
14 date of investment and rated prime by ~~the national credit office~~ a nationally
15 recognized statistical rating organization, if the issuing corporation has one or more
16 long-term senior debt issues outstanding, each of which has one of the 3 highest
17 ratings issued by ~~Moody's investors service or Standard & Poor's corporation~~ a
18 nationally recognized statistical rating organization.

19 **SECTION 26.** 25.17 (3) (dg) 3. of the statutes is repealed.

20 **SECTION 27.** 25.17 (3) (dm) of the statutes is repealed.

21 **SECTION 28.** 25.17 (3) (f) of the statutes is amended to read:

22 25.17 (3) (f) ~~Every~~ Hold every investment shall be held as an asset of the fund
23 by which it is purchased and, except as otherwise provided by law, the loss or gain
24 shall inure thereto.

25 **SECTION 29.** 25.17 (3) (g) of the statutes is amended to read:

1 25.17 (3) (g) All Have under its management and control all loans, securities,
2 and other investments in which moneys of any such fund, including the general fund,
3 are invested ~~shall be under the management and control of the board.~~

4 **SECTION 30.** 25.17 (4) of the statutes is repealed.

5 **SECTION 31.** 25.17 (5) of the statutes is amended to read:

6 25.17 (5) ~~The limitations upon the percentage of the assets of any fund that are~~
7 ~~imposed by sub. (4) or any other statute shall not be applicable to investments made~~
8 ~~by the board of funds in the variable retirement investment trust created under s.~~
9 ~~40.04 (3) and those investments shall be excluded in computing the assets to which~~
10 ~~the limitations imposed by sub. (4) apply. Assets~~ Invest the assets of the variable
11 retirement investment trust ~~shall be invested~~ created under s. 40.04 (3) primarily in
12 equity securities that shall may include common stocks, real estate or other
13 recognized forms of equities whether or not subject to indebtedness, including
14 securities convertible into common stocks and securities of corporations in the
15 venture capital stage. The board may, however, temporarily invest assets of the
16 variable retirement investment trust in investments that are authorized under sub.
17 (3), but the assets so temporarily invested shall be replaced by equity securities at
18 the earliest time considered by the board to be practicable considering the then
19 existing condition of the securities market and other influential factors. ~~Investments~~
20 ~~in securities of corporations that are in the venture capital stage shall not exceed 2%~~
21 ~~of the admitted assets of the variable retirement investment trust.~~

22 **SECTION 32.** 25.17 (6) of the statutes is amended to read:

23 25.17 (6) Notwithstanding any other statute, have authority to make transfers
24 from the variable retirement investment trust to the core retirement investment
25 trust under s. 40.04 (7) ~~may be made~~ in cash or securities or both, as determined by

1 the board. The board shall determine market values for securities in the variable
2 retirement investment trust as of the close of business on the last working day
3 preceding a transfer. If securities are transferred, to the extent determined feasible
4 by the board, a proportionate amount of all securities in even hundreds of shares of
5 stock or even thousands of par value of bonds in the variable retirement investment
6 trust shall be transferred. The board may hold or sell the transferred securities as
7 it determines appropriate considering market and economic conditions. ~~Any~~
8 ~~limitation on the percentage of assets in common stocks or in the stock of one~~
9 ~~company does not apply to the transferred securities, except the board shall, at such~~
10 ~~time as it determines that market, economic and other conditions are appropriate to~~
11 ~~the sale of the securities, sell sufficient transferred securities so as to comply with~~
12 ~~percentage of asset limitations.~~

13 **SECTION 33.** 25.17 (7) (a) and (b) of the statutes are amended to read:

14 25.17 (7) (a) Mortgages on real estate outside of this state may be made to, and
15 the title to real estate outside of this state may be acquired in the name of, a trustee
16 under a trust agreement between the board and a bank, credit union, savings and
17 loan association, savings bank, or trust company organized under the laws of the
18 United States or any state having a combined capital and surplus of at least
19 \$25,000,000; ~~and any such mortgages or real estate acquired prior to June 24, 1966,~~
20 may be assigned or conveyed to the trustee under an appropriate trust agreement
21 between it and the board.

22 (b) Loans, securities, and investments may be purchased or held in the name
23 of, or transferred to nominees of, one or more banks or trust companies meeting the
24 requirements of this section paragraph under a custodial agreement between the
25 board and each such bank or trust company. Any such bank or trust company shall

1 be organized under the laws of the United States or any state thereof and any such
2 bank or trust company not located doing business in Wisconsin shall have a combined
3 capital surplus and undivided profits of at least \$100,000,000. Foreign loans,
4 securities, and investments may be purchased or held in the name of, or transferred
5 to nominees of, foreign sub-custodians of any such bank or trust company.

6 **SECTION 34.** 25.17 (10) of the statutes is amended to read:

7 25.17 (10) If a building constitutes any part of the security for a loan made by
8 the board under s. ss. 25.17 (3) (b) or (a) and 620.22 (2), or under s. 25.182, keep the
9 building ~~shall be kept~~ insured for at least the unpaid amount of the loan or any larger
10 amount that may be necessary to comply with any coinsurance clause inserted in or
11 attached to the policy. When the full insurable value of the building is less than the
12 unpaid amount of the loan, the building shall be kept insured for the full insurable
13 value of the building.

14 **SECTION 35.** 25.17 (12) (a) and (b) of the statutes are amended to read:

15 25.17 (12) (a) The commissioner of insurance in the investment of the state
16 local government property insurance fund;

17 (b) The commissioner of insurance, the state treasurer, the secretary of state
18 and the attorney general in the investment of the state life insurance fund;

19 **SECTION 36.** 25.17 (12) (c) and (13) of the statutes are repealed.

20 **SECTION 37.** 25.17 (15) of the statutes is repealed.

21 **SECTION 38.** 25.17 (63) of the statutes is created to read:

22 25.17 (63) If requested by the Health Insurance Risk-Sharing Plan Authority,
23 invest funds of the Health Insurance Risk-Sharing Plan Authority in the state
24 investment fund.

25 **SECTION 39.** 25.17 (65) of the statutes is repealed.

1 **SECTION 40.** 25.17 (70) (intro.) of the statutes is amended to read:

2 25.17 (70) (intro.) No later than ~~June 30~~ December 31 of every ~~odd-numbered~~
3 even-numbered year, after receiving a report from the department of commerce
4 under s. 560.08 (2) (m) and in consultation with the department of commerce, submit
5 to the governor and to the presiding officer of each house of the legislature a plan for
6 making investments in this state. The purpose of the plan is to encourage the board
7 to make the maximum amount of investments in this state, subject to s. 25.15 and
8 consistent with the statutory purpose of each trust or fund managed by the board.
9 The plan shall discuss potential investments to be made during the ~~first to 5th fiscal~~
10 years following 5 calendar years beginning with the year after submittal, and shall
11 include, but not be limited to, the following:

12 **SECTION 41.** 25.17 (70) (b) (intro.) of the statutes is amended to read:

13 25.17 (70) (b) (intro.) Nonbinding management objectives for each fiscal
14 calendar year stated, as appropriate, as a dollar amount or as a percentage of the
15 total amount of all investments made by the board, for the following:

16 **SECTION 42.** 25.17 (70) (d) of the statutes is amended to read:

17 25.17 (70) (d) Comments solicited from the secretary of commerce and received
18 by the board on or before ~~May 31~~ November 30 of the year of submittal.

19 **SECTION 43.** 25.18 (1) (e) of the statutes is amended to read:

20 25.18 (1) (e) Take such action as may be necessary to make investments in
21 mortgage loans or in the purchase of interests in real estate in any other state or ~~in~~
22 Canada any other developed country in which investment is authorized, including
23 but not excluding because of enumeration, qualifying to do business, filing reports,
24 paying franchise, license or other fees and taxes, designating agents, designating an
25 office and subjecting itself to suit.

1 **SECTION 44.** 25.18 (1) (o) of the statutes is amended to read:

2 25.18 (1) (o) Invest any of the assets of the permanent endowment fund in any
3 investment that is an authorized investment for assets in the core retirement
4 investment trust under ~~s. 25.17 (4)~~ or assets in the variable retirement investment
5 trust under s. ~~25.17 (5)~~ 25.182.

6 **SECTION 45.** 25.182 of the statutes is created to read:

7 **25.182 Management authority for certain funds.** In addition to the
8 management authority provided under any other provision of law, and
9 notwithstanding any limitation on the board's management authority provided
10 under any other provision of law, the board shall have authority to manage the
11 money and property of the core retirement investment trust and the variable
12 retirement investment trust in any manner that does not violate the standard of
13 responsibility specified in s. 25.15 (2). *subject to s. 25.17(s) ✓*

14 **SECTION 46.** 25.183 (1) (a) 6e. of the statutes is amended to read:

15 25.183 (1) (a) 6e. Any collateralized mortgage obligation or other asset-backed
16 security which either has one of the 2 highest ratings given by a nationally
17 recognized statistical rating ~~service~~ organization or is backed or collateralized by
18 insured instruments, guarantees or pledges of the federal government, this state or
19 an agency of the federal government or this state.

20 **SECTION 47.** 25.183 (1) (a) 6m. a. of the statutes is amended to read:

21 25.183 (1) (a) 6m. a. The counterparty to the transaction is rated in, or has
22 outstanding long-term debt which is rated in, one of the 2 highest ratings given by
23 a nationally recognized statistical rating ~~service~~ organization.

24 **SECTION 48.** 560.08 (2) (m) of the statutes is amended to read:

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3122/P2ins
ARG:.....

INSERT ANAL-A:

PP Under this bill, instead of its investment authority being limited to the authorized lists, SWIB may manage the money and property of the core trust and the variable trust in any manner that does not violate SWIB's standard of responsibility. However, SWIB must continue to invest the variable trust primarily in equity securities.

assets of

INSERT ANAL-B:

(no PP) The bill makes minor modifications to SWIB's statutory standard of responsibility with respect to terminology and interaction with other statutory provisions. In so doing, the bill clarifies that the standard of responsibility described above

INSERT ANAL-C:

(no PP) in an amount required by the SWIB trustees. This bill clarifies that SWIB's trustees may decide not to require a bond in any amount.

INSERT 5-12:

SECTION 1. 25.17 (1) (gf) of the statutes is created to read:

25.17 (1) (gf) Notwithstanding sub. (1) (intro.) that Health Insurance Risk-Sharing Plan Authority moneys are not derived from a specific fund, Health Insurance Risk-Sharing Plan Authority moneys, but subject to sub. (63);

the fact

INSERT 8-25:

SECTION 2. 25.17 (3) (b) 4. b. of the statutes is created to read:

25.17 (3) (b) 4. b. Solvent financial institutions doing business in this state. The board shall establish guidelines that a financial institution must meet to qualify as solvent under this subd. 4.b.

SECTION 3. 25.17 (3) (b) 5. of the statutes is amended to read:

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3122/P2dn

ARG:|:....

gjs

Please review the attached draft carefully to ensure that it is consistent with your intent.

→ I had to modify the suggested language of created s. 25.17 (1) (gf) because the suggested language would not fit with the (intro.) The new language is awkward but fits with the (intro.) Please advise if you would like any change to my modified language or would prefer that I remove the provision. ✓

→ I removed the underscored language in amended s. 25.17 (3) (b) (intro.) related to sub. (3) (a). Please let me know if you want me to reinsert this underscored text. ✓

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "1" draft. ✓

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3122/P2dn
ARG:cjs:rs

September 25, 2007

Please review the attached draft carefully to ensure that it is consistent with your intent.

I had to modify the suggested language of created s. 25.17 (1) (gf) because the suggested language would not fit with the (intro.). The new language is awkward but fits with the (intro.). Please advise if you would like any change to my modified language or would prefer that I remove the provision.

I removed the underscored language in amended s. 25.17 (3) (b) (intro.) related to sub. (3) (a). Please let me know if you want me to reinsert this underscored text.

Please let me know if you would like any changes made to the attached draft or if you have any questions. If the attached draft meets with your approval, let me know and I will convert it to an introducible "/1" draft.

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.wisconsin.gov

Gary, Aaron

From: Jane.Hamblen [Jane.Hamblen@swib.state.wi.us]
Sent: Wednesday, September 26, 2007 10:00 AM
To: Gary, Aaron
Cc: Sandy.Drew
Subject: RE: Final, FINAL comment on 3122

Aaron,
In s. 25.17(3)(bd), please delete the words ", other than the industrial building construction loan fund,".

That should be everything from us. Rep. Newcomer is coming over here at 1:00 today. If we could have the /1 before then, we'd be very grateful!

Thanks,
Jane

L. Jane Hamblen
Chief Legal Counsel
State of Wisconsin Investment Board
121 East Wilson Street
Madison, WI 53702
(608) 266-8824
jane.hamblen@swib.state.wi.us

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Wednesday, September 26, 2007 8:23 AM
To: Jane.Hamblen
Cc: Sandy.Drew
Subject: RE: Final comment on 3122

Thanks Jane.

When we met, I believe you wanted a /1 sometime today for a meeting. If so, I'll need a couple hours lead time to get the /1 back to you, so please let me know about item 3. when you can. Thanks. Aaron

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Jane.Hamblen [mailto:Jane.Hamblen@swib.state.wi.us]
Sent: Tuesday, September 25, 2007 6:21 PM
To: Gary, Aaron
Cc: Sandy.Drew
Subject: RE: Final comment on 3122

09/26/2007

Aaron,

Thanks again for getting the new draft to us so quickly. Unfortunately, I was in meetings almost all day, and have just finished reviewing the draft. I have only the following comments:

1. Section 12: I think we decided to leave the HIRSP authority in as new s.25.17 (63), instead of making it s. 25.17(1)(gf), because, as you pointed out, the HIRSP is not a fund and it is clumsy to try to fit it into 25.17(1). I'm sorry if I wasn't clear that I agreed with your point. (s. 25.17(63) was not deleted from this draft, so you don't have to reinsert it. You only need to remove Section 12 and renumber
2. Gail responded that she agrees with deleting the underscored language in amended 25.17(3)(b), as you and I discussed (as reflected in this draft).
3. Sandy was going to get back to us on the question of the Industrial building construction loan fund, which is excepted from 25.17(3)(bd), after she talked to the appropriate person at the Department of Commerce. That is the only paragraph that is an issue, since we combined (dg) into (b).

Thanks,
Jane

----- Confidentiality Notice: This E-mail transmission may contain confidential or legally privileged information. If you are not the intended recipient or have received this communication in error, please notify the sender immediately by reply E-mail and delete all copies of this communication, including attachments, without reading, printing, forwarding, copying, or saving them. If you are the intended recipient, you must treat the contents of this E-mail in accordance with all legal requirements relating to privacy and confidentiality of the information contained in it.

----- Confidentiality Notice: This E-mail transmission may contain confidential or legally privileged information. If you are not the intended recipient or have received this communication in error, please notify the sender immediately by reply E-mail and delete all copies of this communication, including attachments, without reading, printing, forwarding, copying, or saving them. If you are the intended recipient, you must treat the contents of this E-mail in accordance with all legal requirements relating to privacy and confidentiality of the information contained in it.



State of Wisconsin
2007 - 2008 LEGISLATURE

Wanted
9/26 by
12:30 PM
in 9/26

(Now)

LRB-3122/02/1

ARG:cjs:rs

(RMR)

stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Only changes -
p. 5 & p. 10

Reger Cat

1 AN ACT *to repeal* 25.17 (3) (b) 7., 25.17 (3) (bh) and (d), 25.17 (3) (dg) (intro.),
2 25.17 (3) (dg) 3., 25.17 (3) (dm), 25.17 (4), 25.17 (12) (c) and (13), 25.17 (15) and
3 25.17 (65); *to renumber and amend* 25.01, 25.17 (3) (b) 4., 25.17 (3) (dg) 1. and
4 25.17 (3) (dg) 2.; *to amend* 25.14 (1) (a) 1., 25.14 (5), 25.15 (2) (intro.), 25.15 (2)
5 (a), 25.15 (3), 25.16 (4), 25.17 (1) (r), 25.17 (2) (a) to (e), 25.17 (3) (a), 25.17 (3)
6 (b) (intro.) and 3., 25.17 (3) (b) 5., 25.17 (3) (ba), 25.17 (3) (bd), 25.17 (3) (f), 25.17
7 (3) (g), 25.17 (5), 25.17 (6), 25.17 (7) (a) and (b), 25.17 (10), 25.17 (12) (a) and (b),
8 25.17 (70) (intro.), 25.17 (70) (b) (intro.), 25.17 (70) (d), 25.18 (1) (e), 25.18 (1)
9 (o), 25.183 (1) (a) 6e., 25.183 (1) (a) 6m. a. and 560.08 (2) (m); and *to create* 25.01
10 (2), 25.14 (1) (a) 19. to 23., 25.156 (10), 25.17 (1) (eq), 25.17 (1) (gf), 25.17 (1) (jt),
11 25.17 (1) (vb), 25.17 (2) (g), 25.17 (3) (b) 4. b., 25.17 (63) and 25.182 of the

1 statutes; **relating to:** investments and operations of the State of Wisconsin
2 Investment Board.

Analysis by the Legislative Reference Bureau

This bill makes all of the following changes with respect to the State of Wisconsin Investment Board (SWIB):

1. Under current law, SWIB has authority to manage and invest Wisconsin Retirement System contributions, which comprise the public employee trust fund. A core retirement investment trust (core trust) and a variable retirement investment trust (variable trust) are maintained in the public employee trust fund. SWIB may invest assets of the core trust and the variable trust in specific classes of investments enumerated by statute (authorized lists).

Under this bill, instead of its investment authority being limited to the authorized lists, SWIB may manage the money and property of the core trust and the variable trust in any manner that does not violate SWIB's standard of responsibility. However, SWIB must continue to invest assets of the variable trust primarily in equity securities. SWIB's standard of responsibility is: (1) to manage the money and property with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity, with the same resources, and familiar with like matters, exercises in the conduct of an enterprise of a like character with like aims; (2) to diversify investments in order to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, considering each trust's or fund's portfolio as a whole at any point in time; and (3) to administer assets of each trust or fund solely for the purpose of ensuring the fulfillment of the purpose of each trust or fund at a reasonable cost and not for any other purpose.

2. The bill makes minor modifications to SWIB's statutory standard of responsibility with respect to terminology and interaction with other statutory provisions. In so doing, the bill clarifies that the standard of responsibility described above applies to SWIB with two exceptions and that, with one exception, the statutory investment standard for a personal representative, trustee, conservator, or guardian of an estate (estate standard) does not apply to SWIB. Under one exception, the estate standard rather than SWIB's statutory standard of responsibility applies in investing historical society funds. Under another exception, in certain instances where SWIB has management authority over an entity's assets but that entity has authority to direct the terms and conditions of SWIB's investments, SWIB is relieved of its statutory standard of responsibility.

3. Under current law, the building commission may direct that moneys resulting from certain public debt be deposited in funds or accounts created or designated by a building commission resolution. Moneys deposited or held in these funds or accounts may be invested in any obligations specified by a building commission resolution. This bill explicitly authorizes SWIB to manage these funds and specifies that SWIB must invest these funds as provided by the building

commission resolution and, in doing so, is relieved of its statutory standard of responsibility.

4. The bill requires SWIB, if requested by the the Health Insurance Risk-Sharing Plan Authority (HIRSP Authority), to invest funds of the HIRSP Authority in the state investment fund (SIF).

5. Under current law, SWIB may invest the funds included in the SIF in loans secured by U.S. government obligations having a maturity of five years or less if the principal amount of each loan does not exceed 98 percent of the market value of the collateral. This bill modifies this investment authority and authorizes SWIB to invest the funds included in the SIF in loans, including repurchase agreements, that are collateralized by certain classes of authorized investments if the market value of the collateral security is at least 102 percent of the principal amount of the loan or an amount established by SWIB by rule.

6. The bill specifies that SWIB may invest in certain instruments of financial institutions that are "doing business" in this state or the United States, rather than "located" in this state or the United States. The bill also makes other minor modifications to SWIB's investment authority.

7. The bill specifies that provisions of current law related to lawsuits against public officers and employees also apply to the members of SWIB (SWIB trustees), including provisions related to payment of judgments against public officers or employees acting in their official capacity or carrying out public duties.

8. The bill clarifies that certain statutorily created funds are not included in the SIF.

9. Current law requires SWIB's executive director, chief investment officer, and each investment director to file a bond for the faithful performance of that person's duties in an amount required by the SWIB trustees. This bill clarifies that SWIB's trustees may decide not to require a bond in any amount.

10. The bill modifies the schedule for a certain biennial reporting requirement of SWIB relating to investments in this state.

11. The bill includes additional changes to clarify and modernize certain statutory provisions, as well as nonsubstantive and technical changes.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 25.01 of the statutes is renumbered 25.01 (intro.) and amended to
2 read:

3 **25.01 Definition Definitions.** (intro.) In this chapter, unless the context
4 requires otherwise, "~~board~~";

5 **(1) "Board"** means the investment board.

1 **SECTION 2.** 25.01 (2) of the statutes is created to read:

2 25.01 (2) "Fund," when referring generally to funds included under s. 25.17 (1),
3 includes a trust.

4 **SECTION 3.** 25.14 (1) (a) 1. of the statutes is amended to read:

5 25.14 (1) (a) 1. The state life insurance fund.

6 **SECTION 4.** 25.14 (1) (a) 19. to 23. of the statutes are created to read:

7 25.14 (1) (a) 19. The local government property insurance fund.

8 20. All funds of the historical society that are available for investment as
9 determined by the society under s. 25.17 (3) (c).

10 21. The environmental improvement fund.

11 22. The transportation infrastructure loan fund.

12 23. The veterans trust fund.

13 **SECTION 5.** 25.14 (5) of the statutes is amended to read:

14 25.14 (5) The assets of the state investment fund shall be invested as
15 ~~prescribed~~ authorized by s. ~~ss.~~ 25.17 (3) (b), (ba), and (bd), 25.18, as applicable, and
16 25.183.

17 **SECTION 6.** 25.15 (2) (intro.) of the statutes is amended to read:

18 25.15 (2) STANDARD OF RESPONSIBILITY. (intro.) Except as provided in s. 25.17
19 (2) (f) and (3) (c), the standard of responsibility applied to the board when it invests
20 manages money ~~or~~ and property shall be all of the following:

21 **SECTION 7.** 25.15 (2) (a) of the statutes is amended to read:

22 25.15 (2) (a) To ~~invest, sell, reinvest and collect income and rents~~ manage the
23 money and property with the care, skill, prudence and diligence under the
24 circumstances then prevailing that a prudent person acting in a similar capacity,

1 with the same resources, and familiar with like matters exercises in the conduct of
2 an enterprise of a like character with like aims.

3 **SECTION 8.** 25.15 (3) of the statutes is amended to read:

4 25.15 (3) EXEMPTION. ~~Section 881.01~~ Except as provided in s. 25.17 (3) (c), ch.
5 881 does not apply to investments by the board.

6 **SECTION 9.** 25.156 (10) of the statutes is created to read:

7 25.156 (10) The provisions of s. 895.46 (1) apply to the members of the board.

8 **SECTION 10.** 25.16 (4) of the statutes is amended to read:

9 25.16 (4) The executive director shall take the official oath and the executive
10 director, chief investment officer, and each investment director shall file a bond for
11 the faithful performance of that person's duties if, and in such amount and with such
12 sureties as, the members of the board require.

13 **SECTION 11.** 25.17 (1) (eq) of the statutes is created to read:

14 25.17 (1) (eq) Environmental improvement fund (s. 25.43), but subject to sub.
15 (2) (d);

16 **SECTION 12.** 25.17 (1) (gf) of the statutes is created to read:

17 25.17 (1) (gf) Notwithstanding the fact that Health Insurance Risk-Sharing
18 Plan Authority moneys are not derived from a specific fund, Health Insurance
19 Risk-Sharing Plan Authority moneys, but subject to sub. (63);

20 **SECTION 13.** 25.17 (1) (jt) of the statutes is created to read:

21 25.17 (1) (jt) Mediation fund (s. 655.68);

22 **SECTION 14.** 25.17 (1) (r) of the statutes is amended to read:

23 25.17 (1) (r) State housing authority reserve fund (s. 25.41), but subject to sub.
24 (2) (c);

25 **SECTION 15.** 25.17 (1) (vb) of the statutes is created to read:

1 25.17 (1) (vb) Transportation infrastructure loan fund (s. 25.405), but subject
2 to sub. (2) (e);

3 **SECTION 16.** 25.17 (2) (a) to (e) of the statutes are amended to read:

4 25.17 (2) (a) ~~Invest~~ Have authority to invest any of the funds specified in sub.
5 (1), except operating funds, the capital improvement fund ~~and~~, the bond security and
6 redemption fund, the industrial building construction loan fund, and any
7 redemption fund established under s. 18.561 (5) or 18.562 (3), in loans to the
8 Wisconsin University Building Corporation, the Wisconsin State Colleges Building
9 Corporation or the Wisconsin State Public Building Corporation, but only if the loans
10 are secured by mortgages upon property owned by the respective corporations
11 producing sufficient income to retire the mortgage over the term of the loan or are
12 secured by the pledge of rentals sufficient in amount to retire the indebtedness. The
13 board shall make no loans to any building corporation described in this subsection
14 except under the conditions prescribed in this paragraph, or except as otherwise
15 provided in par. (b). These loans shall be made only when in the judgment of the
16 board it is to the interest of the funds to do so, except that loans made under par. (b)
17 shall be made at the direction of the building commission.

18 (b) ~~Invest~~ Have authority to invest the state building trust fund in loans to the
19 Wisconsin State Public Building Corporation, to the Wisconsin University Building
20 Corporation, and to the Wisconsin State Colleges Building Corporation. Except for
21 interim loans for construction, or other temporary financing for the purchase of
22 lands, planning, including both engineering and financing, and all other expenses
23 incidental to any of the foregoing, loans under this paragraph shall be secured by a
24 pledge and assignment of net revenues derived from the operation of buildings by the
25 borrowing corporation on lands leased or conveyed to the corporation. Any loan

1 under this paragraph shall be made upon the direction of the building commission,
2 and the board is relieved of any obligations relevant to prudent investment of the
3 fund, including those set forth under s. 25.15 (2).

4 (c) Invest the State Housing Authority reserve fund as directed by the
5 Wisconsin Housing and Economic Development Authority in housing rehabilitation
6 loan program bonds of the authority including subordinated bonds that may also be
7 special obligations of the authority. In making the investment, the board shall accept
8 the terms and conditions as the authority specifies and is relieved of any obligations
9 relative relevant to prudent investment of the fund, including those set forth under
10 ch. 881 s. 25.15 (2).

11 (d) Invest the environmental improvement fund, and collect the principal and
12 interest of all moneys loaned or invested from the environmental improvement fund,
13 as directed by the department of administration under s. 281.59 (2m). In making
14 investments under this paragraph, the board shall accept any reasonable terms and
15 conditions that the department of administration specifies and is relieved of any
16 obligations relevant to prudent investment of the fund, including those set forth
17 under ch. 881 s. 25.15 (2).

18 (e) Invest the transportation infrastructure loan fund, and collect the principal
19 and interest of all moneys loaned or invested from the transportation infrastructure
20 loan fund, as directed by the department of administration under s. 85.52 (4m). In
21 making investments under this paragraph, the board shall accept any reasonable
22 terms and conditions that the department of administration specifies and is relieved
23 of any obligations relevant to prudent investment of the fund, including those set
24 forth under ch. 881 s. 25.15 (2).

25 **SECTION 17.** 25.17 (2) (g) of the statutes is created to read:

1 25.17 (2) (g) Notwithstanding any other provision of this chapter, invest any
2 funds that the building commission directs the board to invest by resolution under
3 s. 18.04 (6) (c) as specified by such resolution. In making investments under this
4 paragraph, the board shall accept the terms and conditions specified in the
5 resolution and is relieved of any obligations relevant to prudent investment of the
6 fund, including those set forth under s. 25.15 (2).

7 **SECTION 18.** 25.17 (3) (a) of the statutes is amended to read:

8 25.17 (3) (a) ~~Invest the core retirement investment trust,~~ Have authority to
9 invest the state life insurance fund, local government property insurance fund,
10 veterans trust fund, and injured patients and families compensation fund in loans,
11 securities, and any other investments authorized by s. 620.22, and in bonds or other
12 evidences of indebtedness or preferred stock of companies engaged in the finance
13 business whether as direct lenders or as holding companies owning subsidiaries
14 engaged in the finance business. Investments permitted by sub. (4) are permitted
15 investments under this subsection.

16 **SECTION 19.** 25.17 (3) (b) (intro.) and 3. of the statutes are amended to read:

17 25.17 (3) (b) (intro.) ~~Invest~~ Subject to par. (dr), have authority to invest any of
18 the funds over which it has investment authority, including but not limited to the
19 state investment fund and surplus funds of the state building trust fund not invested
20 under sub. (2) (b) and not in the state investment fund, in:

21 3. ~~Unsecured notes of financial and industrial issuers~~ Debt instruments
22 maturing within 5 years or less from the date of settlement and having one of the 2
23 highest short-term ratings given by a nationally recognized statistical rating service
24 organization, but if the corporation entity issuing such notes debt instruments has

1 any long-term senior debt issues outstanding which also have been rated, the rating
2 must be one of the 3 highest ratings so given.

3 **SECTION 20.** 25.17 (3) (b) 4. of the statutes is renumbered 25.17 (3) (b) 4. (intro.)
4 and amended to read:

5 25.17 (3) (b) 4. (intro.) Certificates of deposit issued by banks located any of the
6 following:

7 a. Banks doing business in the United States and by savings and loan
8 associations, savings banks, and credit unions located doing business in this state.

9 **SECTION 21.** 25.17 (3) (b) 4. b. of the statutes is created to read:

10 25.17 (3) (b) 4. b. Solvent financial institutions doing business in this state.
11 The board shall establish guidelines that a financial institution must meet to qualify
12 as solvent under this subd. 4. b.

13 **SECTION 22.** 25.17 (3) (b) 5. of the statutes is amended to read:

14 25.17 (3) (b) 5. Bankers acceptances accepted by banks located doing business
15 in the United States.

16 **SECTION 23.** 25.17 (3) (b) 7. of the statutes is repealed.

17 **SECTION 24.** 25.17 (3) (ba) of the statutes is amended to read:

18 25.17 (3) (ba) ~~Invest~~ Have authority to invest the funds included in the state
19 investment fund created by s. 25.14 in loans upon collateral security in the form of
20 direct obligations of the U.S. government having a maturity of 5 years or less where,
21 including repurchase agreements, that are collateralized by investments authorized
22 by sub. (3) (b) where the market value of the collateral security is not less than 102
23 percent of the principal amount of each such loan does not exceed 98% of the market
24 value of such collateral security or such other amount as the board may establish by
25 rule.

1 **SECTION 25.** 25.17 (3) (bd) of the statutes is amended to read:

2 25.17 (3) (bd) Have authority to invest any funds ~~includable~~ included in the
3 state investment fund, other than the industrial building construction loan fund, in
4 loans, securities, or investments which are in addition to those permitted under any
5 other statute but within the board standard of responsibility under s. 25.15 (2). The
6 total amount of loans, securities, and investments made under this paragraph may
7 not exceed ~~10%~~ 10 percent of the aggregate value of all funds ~~includable~~ included in
8 the state investment fund ~~under s. 25.14 (1)~~ at the time that the investment is made.

9 **SECTION 26.** 25.17 (3) (bh) and (d) of the statutes are repealed.

10 **SECTION 27.** 25.17 (3) (dg) (intro.) of the statutes is repealed.

11 **SECTION 28.** 25.17 (3) (dg) 1. of the statutes is renumbered 25.17 (3) (b) 1m. and
12 amended to read:

13 25.17 (3) (b) 1m. Direct obligations of ~~the United States and of agencies of and~~
14 ~~corporations wholly owned by the United States, and direct obligations of federal~~
15 land banks, federal home loan banks, the central bank for cooperatives, and banks
16 for cooperatives or unincorporated cooperative associations, ~~international bank for~~
17 ~~reconstruction and development, the international finance corporation,~~
18 ~~inter-American development bank, African development bank and Asian~~
19 ~~development bank, in each case maturing within one year or less from the date of~~
20 investment.

21 **SECTION 29.** 25.17 (3) (dg) 2. of the statutes is renumbered 25.17 (3) (b) 7m. and
22 amended to read:

23 25.17 (3) (b) 7m. Commercial paper maturing within one year or less from the
24 date of investment and rated prime by ~~the national credit office~~ a nationally
25 recognized statistical rating organization, if the issuing corporation has one or more

1 long-term senior debt issues outstanding, each of which has one of the 3 highest
2 ratings issued by ~~Moody's investors service or Standard & Poor's corporation a~~
3 nationally recognized statistical rating organization.

4 **SECTION 30.** 25.17 (3) (dg) 3. of the statutes is repealed.

5 **SECTION 31.** 25.17 (3) (dm) of the statutes is repealed.

6 **SECTION 32.** 25.17 (3) (f) of the statutes is amended to read:

7 25.17 (3) (f) ~~Every~~ Hold every investment shall be held as an asset of the fund
8 by which it is purchased and, except as otherwise provided by law, the loss or gain
9 shall inure thereto.

10 **SECTION 33.** 25.17 (3) (g) of the statutes is amended to read:

11 25.17 (3) (g) All Have under its management and control all loans, securities,
12 and other investments in which moneys of any such fund, including the general fund,
13 are invested ~~shall be under the management and control of the board.~~

14 **SECTION 34.** 25.17 (4) of the statutes is repealed.

15 **SECTION 35.** 25.17 (5) of the statutes is amended to read:

16 25.17 (5) ~~The limitations upon the percentage of the assets of any fund that are~~
17 ~~imposed by sub. (4) or any other statute shall not be applicable to investments made~~
18 ~~by the board of funds in the variable retirement investment trust created under s.~~
19 ~~40.04 (3) and those investments shall be excluded in computing the assets to which~~
20 ~~the limitations imposed by sub. (4) apply. Assets~~ Invest the assets of the variable
21 retirement investment trust ~~shall be invested~~ created under s. 40.04 (3) primarily in
22 equity securities that shall may include common stocks, real estate or other
23 recognized forms of equities whether or not subject to indebtedness, including
24 securities convertible into common stocks and securities of corporations in the
25 venture capital stage. The board may, however, temporarily invest assets of the

1 variable retirement investment trust in investments that are authorized under sub.
2 (3), but the assets so temporarily invested shall be replaced by equity securities at
3 the earliest time considered by the board to be practicable considering the then
4 existing condition of the securities market and other influential factors. ~~Investments~~
5 ~~in securities of corporations that are in the venture capital stage shall not exceed 2%~~
6 ~~of the admitted assets of the variable retirement investment trust.~~

7 **SECTION 36.** 25.17 (6) of the statutes is amended to read:

8 25.17 (6) Notwithstanding any other statute, have authority to make transfers
9 from the variable retirement investment trust to the core retirement investment
10 trust under s. 40.04 (7) ~~may be made~~ in cash or securities or both, as determined by
11 the board. The board shall determine market values for securities in the variable
12 retirement investment trust as of the close of business on the last working day
13 preceding a transfer. If securities are transferred, to the extent determined feasible
14 by the board, a proportionate amount of all securities in even hundreds of shares of
15 stock or even thousands of par value of bonds in the variable retirement investment
16 trust shall be transferred. The board may hold or sell the transferred securities as
17 it determines appropriate considering market and economic conditions. ~~Any~~
18 ~~limitation on the percentage of assets in common stocks or in the stock of one~~
19 ~~company does not apply to the transferred securities, except the board shall, at such~~
20 ~~time as it determines that market, economic and other conditions are appropriate to~~
21 ~~the sale of the securities, sell sufficient transferred securities so as to comply with~~
22 ~~percentage of asset limitations.~~

23 **SECTION 37.** 25.17 (7) (a) and (b) of the statutes are amended to read:

24 25.17 (7) (a) Mortgages on real estate outside of this state may be made to, and
25 the title to real estate outside of this state may be acquired in the name of, a trustee

1 under a trust agreement between the board and a bank, credit union, savings and
2 loan association, savings bank, or trust company organized under the laws of the
3 United States or any state having a combined capital and surplus of at least
4 \$25,000,000, and any such mortgages or real estate acquired prior to June 24, 1966,
5 may be assigned or conveyed to the trustee under an appropriate trust agreement
6 between it and the board.

7 (b) Loans, securities, and investments may be purchased or held in the name
8 of, or transferred to nominees of, one or more banks or trust companies meeting the
9 requirements of this section paragraph under a custodial agreement between the
10 board and each such bank or trust company. Any such bank or trust company shall
11 be organized under the laws of the United States or any state thereof and any such
12 bank or trust company not located doing business in Wisconsin shall have a combined
13 capital surplus and undivided profits of at least \$100,000,000. Foreign loans,
14 securities, and investments may be purchased or held in the name of, or transferred
15 to nominees of, foreign sub-custodians of any such bank or trust company.

16 **SECTION 38.** 25.17 (10) of the statutes is amended to read:

17 25.17 (10) If a building constitutes any part of the security for a loan made by
18 the board under s. ss. 25.17 (3) (b) or (a) and 620.22 (2), or under s. 25.182, keep the
19 building ~~shall be kept~~ insured for at least the unpaid amount of the loan or any larger
20 amount that may be necessary to comply with any coinsurance clause inserted in or
21 attached to the policy. When the full insurable value of the building is less than the
22 unpaid amount of the loan, the building shall be kept insured for the full insurable
23 value of the building.

24 **SECTION 39.** 25.17 (12) (a) and (b) of the statutes are amended to read:

1 25.17 (12) (a) The commissioner of insurance in the investment of the state
2 local government property insurance fund;

3 (b) The commissioner of insurance, the state treasurer, the secretary of state
4 and the attorney general in the investment of the state life insurance fund;

5 **SECTION 40.** 25.17 (12) (c) and (13) of the statutes are repealed.

6 **SECTION 41.** 25.17 (15) of the statutes is repealed.

7 **SECTION 42.** 25.17 (63) of the statutes is created to read:

8 25.17 (63) If requested by the Health Insurance Risk-Sharing Plan Authority,
9 invest funds of the Health Insurance Risk-Sharing Plan Authority in the state
10 investment fund.

11 **SECTION 43.** 25.17 (65) of the statutes is repealed.

12 **SECTION 44.** 25.17 (70) (intro.) of the statutes is amended to read:

13 25.17 (70) (intro.) No later than ~~June 30~~ December 31 of every ~~odd-numbered~~
14 even-numbered year, after receiving a report from the department of commerce
15 under s. 560.08 (2) (m) and in consultation with the department of commerce, submit
16 to the governor and to the presiding officer of each house of the legislature a plan for
17 making investments in this state. The purpose of the plan is to encourage the board
18 to make the maximum amount of investments in this state, subject to s. 25.15 and
19 consistent with the statutory purpose of each trust or fund managed by the board.
20 The plan shall discuss potential investments to be made during the ~~first to 5th fiscal~~
21 years following 5 calendar years beginning with the year after submittal, and shall
22 include, but not be limited to, the following:

23 **SECTION 45.** 25.17 (70) (b) (intro.) of the statutes is amended to read:

1 25.17 (70) (b) (intro.) Nonbinding management objectives for each fiscal
2 calendar year stated, as appropriate, as a dollar amount or as a percentage of the
3 total amount of all investments made by the board, for the following:

4 **SECTION 46.** 25.17 (70) (d) of the statutes is amended to read:

5 25.17 (70) (d) Comments solicited from the secretary of commerce and received
6 by the board on or before ~~May 31~~ November 30 of the year of submittal.

7 **SECTION 47.** 25.18 (1) (e) of the statutes is amended to read:

8 25.18 (1) (e) Take such action as may be necessary to make investments in
9 mortgage loans or in the purchase of interests in real estate in any other state or in
10 ~~Canada~~ any other developed country in which investment is authorized, including
11 but not excluding because of enumeration, qualifying to do business, filing reports,
12 paying franchise, license or other fees and taxes, designating agents, designating an
13 office and subjecting itself to suit.

14 **SECTION 48.** 25.18 (1) (o) of the statutes is amended to read:

15 25.18 (1) (o) Invest any of the assets of the permanent endowment fund in any
16 investment that is an authorized investment for assets in the core retirement
17 investment trust under ~~s. 25.17 (4)~~ or assets in the variable retirement investment
18 trust under s. ~~25.17 (5)~~ 25.182.

19 **SECTION 49.** 25.182 of the statutes is created to read:

20 **25.182 Management authority for certain funds.** In addition to the
21 management authority provided under any other provision of law, and
22 notwithstanding any limitation on the board's management authority provided
23 under any other provision of law, the board shall have authority to manage the
24 money and property of the core retirement investment trust and, subject to s. 25.17

1 (5), the variable retirement investment trust in any manner that does not violate the
2 standard of responsibility specified in s. 25.15 (2).

3 **SECTION 50.** 25.183 (1) (a) 6e. of the statutes is amended to read:

4 25.183 (1) (a) 6e. Any collateralized mortgage obligation or other asset-backed
5 security which either has one of the 2 highest ratings given by a nationally
6 recognized statistical rating service organization or is backed or collateralized by
7 insured instruments, guarantees or pledges of the federal government, this state or
8 an agency of the federal government or this state.

9 **SECTION 51.** 25.183 (1) (a) 6m. a. of the statutes is amended to read:

10 25.183 (1) (a) 6m. a. The counterparty to the transaction is rated in, or has
11 outstanding long-term debt which is rated in, one of the 2 highest ratings given by
12 a nationally recognized statistical rating service organization.

13 **SECTION 52.** 560.08 (2) (m) of the statutes is amended to read:

14 560.08 (2) (m) No later than ~~January 1~~ November 30 of each ~~odd-numbered~~
15 even-numbered year, submit to the investment board a report describing the types
16 of investments in businesses in this state which will have the greatest likelihood of
17 enhancing economic development in this state.

18 (END)

10/9

Mc from Sandy Drew

- shorten bill
- only include:

~~same~~ indemnity

25.156(10) ↪

25.17(2)(g) bldg. comm'n

25.14(1)(a)19., 25.17(3)(a) - GPIF

25.182 - prudent invest standard

Qs ⇒ Jane or voice mail for Sandy
10/8/2 phone #

Gary, Aaron

From: Jane.Hamblen [Jane.Hamblen@swib.state.wi.us]
Sent: Tuesday, October 09, 2007 5:43 PM
To: Gary, Aaron
Cc: Sandy.Drew; Gail.Hanson
Subject: One more time...

Aaron,

We just finished the internal meeting and, with the Executive Director's agreement, here are the sections of LRB 3122/1 that should be in the next version of the bill. However, don't delete those other provisions...our intent is to submit them in a bill to the next session.

- Sections 6, 7 and 9 should be included "as is."
- Section 16 should be included for now. We are checking with DOA to see how strongly they feel about including the investment authority for the Building Commission in this go-round. I hope to be able to let you know tomorrow.
- Section 17 should be included, but the only amendment should be the addition of the local government property insurance fund—the other amendments should be removed.
- Section 48 should be included; however, we may need to amend it to adjust for the fact that we are not amending § 25.17(5). I'll talk to our investment folks and let you know if any change is needed.

I'm sorry about this, but, as Sandy probably told you, we got some feedback that made us realize that a streamlined bill, with just the most critical items, might be easier to get through the legislature.

Thanks for all your help,
Jane

L. Jane Hamblen
Chief Legal Counsel
State of Wisconsin Investment Board
121 East Wilson Street
Madison, WI 53702
(608) 266-8824
jane.hamblen@swib.state.wi.us

----- Confidentiality Notice: This E-mail transmission may contain confidential or legally privileged information. If you are not the intended recipient or have received this communication in error, please notify the sender immediately by reply E-mail and delete all copies of this communication, including attachments, without reading, printing, forwarding, copying, or saving them. If you are the intended recipient, you must treat the contents of this E-mail in accordance with all legal requirements relating to privacy and confidentiality of the information contained in it.

10/09/2007

Gary, Aaron

From: Jane.Hamblen [Jane.Hamblen@swib.state.wi.us]
Sent: Tuesday, October 16, 2007 12:33 PM
To: Gary, Aaron
Cc: Sandy.Drew; Gail.Hanson
Subject: RE: Final Comments on SWIB Bill

Aaron,

Thanks for your comments. We know that, by deleting so many of the amendments we were considering, we are leaving, and maybe even creating, some ambiguities. However, at this point, the goal is to have as short a bill as possible, while making the amendments that are necessary right now. Our responses to your comments are below in red. (R)

-----Original Message-----

From: Gary, Aaron [mailto:Aaron.Gary@legis.wisconsin.gov]
Sent: Monday, October 15, 2007 6:55 PM
To: Jane.Hamblen
Cc: Sandy.Drew; Gail.Hanson
Subject: RE: One more time...

I've just about finished this redraft but wanted to follow up on a few items.

1. Sandy's voice mail mentioned [created] s. 25.14 (1) (a) 19. in the bill. I assume you've decided to remove this treatment from the bill (which specified that LGPIF is not part of SIF).

(R) → Yes, please remove. We will put in clean this up in a "clean-up" bill in the next session.

2. Bill sections 6 and 8 are, in part, complementary (with regard to the cross-reference to s. 25.17 (3) (c)). Would you be willing to retain bill section 8 but change it to read: "Except as provided in s. 25.17 (3) (c), s. 881.01 does not apply to investments by the board." This would be consistent with the treatment in bill section 6.

(R) → We'd like to remove section 8. The only reason we are leaving s. 6 in the bill is to replace "invests" to "manages" in § 25.15(2). As long as § 25.15(2) provision in the bill, we might as well make the other amendments to it. It isn't a real world problem, since the investment standard in ch. 881 was amended several years ago to be basically the same as SWIB's investment standard in chapter 25.

3. Given that s. 25.17 (5) is not being amended in the bill, I think that the language of s. 25.182 leaves the meaning of s. 25.182 vis-a-vis the variable fund somewhat gray but nonetheless probably satisfies your intent. At our meeting, we discussed the importance of the change in s. 25.17 (5) of the word "shall" to "may" (p. 11, line 13 of the /1 draft). With this redraft, that change will not occur (at least under the instructions below). However, the existing language of s. 25.17 (5) states in part "Assets of the variable retirement investment trust shall be invested primarily in equity securities that shall *include* common stocks" (emphasis added). Under our drafting conventions, the term "include" is not considered to be a term of limitation; where a list follows the term "include," that list is generally not considered to be exhaustive. (I have copied a portion of the LRB Drafting Manual below; I actually wrote the Note there.) Accordingly, one can reasonably construe s. 25.17 (5) and 25.182 in a way that generally does not limit investment authority under s. 25.182, with one caveat - I believe that the 2% limitation on venture capital stage investments of the variable fund will continue to apply after the enactment of the bill creating s. 25.182 (if the language at p. 15, lines 13 -14 is retained in the bill).

(R) → Thank you for providing the applicable language from the LRB Drafting Manual—that is very helpful. We will try to make it crystal clear in the clean-up bill next time; in the meantime we will rely on the

interpretation that "includes" indicates a partial list. The venture capital limitation is ok for the Variable Fund for now. So we don't have to amend § 25.17(5) in this bill.

Please let me know if you have any comments or further instruction. Otherwise, I'll put this into editing late tomorrow based strictly on the instructions below.

Thanks again for your careful attention to the drafting!

Thanks. Aaron

****FROM LRB DRAFTING MANUAL

2.01(1)(i)

(i) In a definition do not use "means and includes." "Means" is complete and "includes" is partial. Using "includes" allows a court or administering agency to adopt additional meanings; using "means" restricts them to reasonable constructions of your wording. Do not use "includes but is not limited to." That phrase is redundant. See sec. 7.08, Drafting Manual. Unless the intent is otherwise, use "means" rather than "includes."

NOTE: Under the rule of *expressio unius est exclusio alterius* (the expression of one is the exclusion of another), "includes" may be construed to limit the application of a statute to those items enumerated if there is some factual evidence that the legislature so intended. See *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527 (1974) and *State v. Engler*, 80 Wis. 2d 402, 407-8 (1977). See also *State v. James P.*, 281 Wis. 2d 685, 697-99 (2005); *State v. Delaney*, 259 Wis. 2d 77, 88 (2003); *State v. Powers*, 276 Wis. 2d 107, 120-21 (Ct.App. 2004). In *Citizens Concerned for Cranes and Doves v. DNR*, 270 Wis. 2d 318, 336-37 n. 11 (2004), the court stated that **"includes" should generally be given an expansive meaning** but may be read as a term of limitation or enumeration if there is evidence the legislature intended the statute to encompass only those provisions or exceptions specifically listed. The court indicated that subsequent legislative treatment striking a term in the list following "includes" would show such a legislative intent to make the list exhaustive such that the rule of *expressio unius est exclusio alterius* would apply. To avoid such a construction, if you strike a term in a list following "includes" but do not wish the list to be thereafter construed as exhaustive, it may help to add the phrase "but does not include [stricken term]" after the portion of the provision where the term is stricken.

Aaron R. Gary
Legislative Attorney
Legislative Reference Bureau
 608.261.6926 (voice)
 608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Jane.Hamblen [mailto:Jane.Hamblen@swib.state.wi.us]
Sent: Tuesday, October 09, 2007 5:43 PM
To: Gary, Aaron
Cc: Sandy.Drew; Gail.Hanson
Subject: One more time...

Aaron,
 We just finished the internal meeting and, with the Executive Director's agreement, here are the sections of LRB 3122/1 that should be in the next version of the bill. However, don't delete those other provisions...our intent is to submit them in a bill to the next session.

10/16/2007

- Sections 6, 7 and 9 should be included "as is."
- Section 16 should be included for now. We are checking with DOA to see how strongly they feel about including the investment authority for the Building Commission in this go-round. I hope to be able to let you know tomorrow.
- Section 17 should be included, but the only amendment should be the addition of the local government property insurance fund—the other amendments should be removed.
- Section 48 should be included; however, we may need to amend it to adjust for the fact that we are not amending § 25.17(5). I'll talk to our investment folks and let you know if any change is needed.

I'm sorry about this, but, as Sandy probably told you, we got some feedback that made us realize that a streamlined bill, with just the most critical items, might be easier to get through the legislature.

Thanks for all your help,
Jane

L. Jane Hamblen
Chief Legal Counsel
State of Wisconsin Investment Board
121 East Wilson Street
Madison, WI 53702
(608) 266-8824
jane.hamblen@swib.state.wi.us

----- Confidentiality Notice: This E-mail transmission may contain confidential or legally privileged information. If you are not the intended recipient or have received this communication in error, please notify the sender immediately by reply E-mail and delete all copies of this communication, including attachments, without reading, printing, forwarding, copying, or saving them. If you are the intended recipient, you must treat the contents of this E-mail in accordance with all legal requirements relating to privacy and confidentiality of the information contained in it.

----- Confidentiality Notice: This E-mail transmission may contain confidential or legally privileged information. If you are not the intended recipient or have received this communication in error, please notify the sender immediately by reply E-mail and delete all copies of this communication, including attachments, without reading, printing, forwarding, copying, or saving them. If you are the intended recipient, you must treat the contents of this E-mail in accordance with all legal requirements relating to privacy and confidentiality of the information contained in it.