



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON THE INVESTMENT AND USE OF
THE SCHOOL TRUST FUNDS

FROM: Zach Ramirez and Rachel E. Snyder, Staff Attorneys

RE: Overview of Other States' Constitutional Requirements Regarding the Principal and
Income of School Trust Funds

DATE: November 7, 2018

This memorandum provides an overview of the manner in which the constitutions of 30 other states (i.e., excluding Wisconsin) govern the treatment of the principal and income of funds derived from lands granted to the states by the federal government.¹ Each of these states received land through a distinct legal process, obtained lands with differing natural resources, and have managed the lands and the resulting funds to address different financial needs. As a result, an overview of state constitutional provisions cannot convey a comprehensive description of these lands and funds. Additional detail about each state is presented in the attachment, which provides notes and citations to the relevant constitutional provisions of each state.

All 30 states have had, at some point in their history, state constitutional or federal provisions limiting the purposes for which the lands and funds may be used. The extent to which the states' constitutions specifically addressed the treatment of principal and income has differed, in part, because of differences in the extent to which such detail was set forth in the federal legislation granting the land.

For Wisconsin and other states granted land during the same or an earlier era, the federal government specified that the lands and their proceeds were required to be used for the support of schools, but did not prescribe how the funds were to be invested or distributed. However, the

¹ The 30 states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

federal government attached more conditions as time passed, with New Mexico, Arizona, and Alaska being subject to detailed prescriptions. Some states, like Arizona, responded by putting detailed conditions in their constitutions. Others, like Alaska, set forth the conditions in statute instead of the state constitution, in reliance on the binding nature of the federal legislation.

Of the 30 states, 25 continue to have state constitutional or federal provisions that govern how the principal and income of the funds must be managed.² Initially, these provisions generally limited distribution from the funds to only income or interest from investment, thus requiring, in some cases explicitly, that the funds be invested in fixed-income instruments. As discussed in more detail below, some states have amended their provisions, while others have retained the initial design.

Of the 25 states, 15 continue to remain subject to the requirement that distributions be made only from the income or interest of the fund.³ Eight states have modified their initial governance documents to permit distributions to be made based on the overall value of the entire fund.⁴ Two states have implemented provisions that identify a certain value of the fund to be principal that is not subject to distribution, but allow for distribution from certain gains in the overall value of the fund beyond that amount.⁵

Among the eight states that permit distributions to be made based on the overall value of the fund, there is variation in the extent to which distributions are restricted:

- The constitutions of Florida, Kansas, and Ohio provide their Legislatures with broad authority to distribute both principal and income as provided by law.⁶
- Arizona's constitution states that annual distributions shall be equal to 6.9% of the average monthly market value of the fund for the preceding five years.⁷
- New Mexico's constitution states that annual distributions shall be equal to 5% of the average of the year-end market value of the fund for the preceding five years.⁸
- North Dakota's constitution states that biennial distributions shall be equal to 10% of the average of the year-end market value of the fund for the preceding five years.⁹

² California, Illinois, Louisiana, and Michigan have repealed their relevant constitutional provisions and are not subject to federal restrictions governing the investment or distribution of the funds. Hawaii's constitution addresses the purposes for which the funds may be used, but does not explicitly address whether principal may be distributed.

³ The 15 states are Alabama, Alaska, Arkansas, Colorado, Indiana, Iowa, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, Oklahoma, South Dakota, and Wyoming.

⁴ The eight states are Arizona, Florida, Kansas, New Mexico, North Dakota, Ohio, Oregon, and Utah.

⁵ The two states are Idaho and Washington.

⁶ Florida Constitution, Article IX, Section 6. Kansas Constitution, Article VI, Section 7. Ohio Constitution Article VI, Section 1.

⁷ Arizona Constitution, Article X, Section 7.

⁸ New Mexico Constitution, Article XII, Sections 2 and 7.

⁹ North Dakota Constitution, Article IX, Section 2.

- Oregon's constitution states that distribution may be made from income from investment, and the state has applied this provision by providing that the annual distribution shall be equal to 3.5% of the three-year average market value of the fund.¹⁰
- Utah's constitution states that earnings received from investment may be distributed, and annual distributions may not exceed 4% of the fund, calculated as provided by statute.¹¹

Of the two states that allow for distribution from certain gains in the overall value of the fund beyond a specified amount:

- Idaho's constitution allows for distributions to be made from cumulative gain in the value of the fund over the rate of inflation since June 2000.¹²
- Washington's constitution provides that the principal of the fund that "existed on June 30, 1965" shall remain irreducible, but the value of the fund above that amount may be distributed.¹³

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Attachment

¹⁰ Oregon Constitution, Article VIII, Sections 2, 4, and 5. State Land Board Common School Fund 2018 Distribution Study. Available at: https://www.oregon.gov/dsl/Board/Documents/slb_june2018_packet.pdf.

¹¹ Utah Constitution, Article X, Section 5.

¹²Idaho Constitution, Article IX, Sections 3, 4, 7, 8, and 11. https://docs.legis.wisconsin.gov/misc/lc/study/2018/1788/030_october_11_2018_meeting_10_00_a_m_room_4_11_south_state_capitol/oct11anton_idaho.

¹³ Washington Constitution, Article IX, Section 3. RCW 28A.515.330. Washington Attorney General Opinion (AGO) 1999 No. 3.