

**Legislative Council Study Committee on the Investment and Use of the School Trust Funds
Overview of Other States' Constitutional Requirements Regarding School Trust Funds**

State (State Constitution Citation)	Description
<p>Alabama Art. XIV, ss. 256 to 260.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The principal of the fund derived from the sale of lands given to the state for educational purposes must be “preserved inviolate and undiminished.” • Income earned on the principal must be used for the purposes outlined in the original grants. • Other sources of revenue in the fund, such as money from the estates of deceased persons who die without a will or heir, are not subject to the requirement that the principal be preserved.
<p>Alaska Fund established by Alaska Statutes ss. 37.14.110-37.14.170, per P.L. 85 to 508, s. (6) (k).</p>	<p>Summary</p> <ul style="list-style-type: none"> • The principal of the fund, and all capital gains and losses must be perpetually retained in the fund. • The remaining net income of the fund must be used for state public schools.
<p>Arizona Art. X, s. 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Must be invested in “safe interest-bearing securities and prudent equity securities.” • No more than 60% may be invested in equities. • No more than 5% may be invested in equity securities issued by the same institution. • Investment decisions governed by the standard of “an institutional investor of ordinary prudence.” • Earnings, interest, dividends, and capital gains and losses are credited to the fund. • The annual distributions through 2015 shall be 2.5% of the average monthly market value for the preceding five calendar years. • The annual distributions through 2025 shall be 6.9% of the average monthly market values for the preceding five years. <p>Background on Amendment and Congressional Action Amendment in 1998:</p> <ul style="list-style-type: none"> • (1) Authorized equity investment; (2) included net unrealized gains and losses in the calculation of income that could be disbursed; and (3) provided that distributions are to be calculated by multiplying the average of the annual total rate of return for the preceding five years, minus the percentage change in the gross domestic product price deflator, by the average of the monthly market values of the fund for the same five years.

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	<p>Congressional approval in 1999:</p> <ul style="list-style-type: none"> • Pub. L. No. 106-133, 113 Stat. 1682 (1999). <p>Amendment in 2012:</p> <ul style="list-style-type: none"> • Set distributions equal to 2.5% of the average monthly market values of the fund for the preceding five years. <p>Amendment in 2016:</p> <ul style="list-style-type: none"> • Set distributions equal to 6.9% of the average monthly market values of the fund for the preceding five years. <p>Congressional approval in 2018:</p> <ul style="list-style-type: none"> • H.R. 1625 – Consolidated Appropriations Act, 2018: Title IV – Consent of Congress to Amendments to the Constitution of the State of Arizona. • Approved the 2012 and 2016 amendments, but the courts are still reviewing the appropriateness of distributions made from 2012 until the 2018 approval by Congress.
<p>Arkansas Art. XIV, s. 2.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Money and property held by the public school fund or by the state for the benefit of schools shall forever be used only for that purpose. • The fund must remain “inviolable and intact.” • Only the interest earned may be disbursed, as specified in Arkansas Code s. 6-20-203.
<p>California State constitutional provision repealed.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The current trust fund was established by statute in 1984. [See California Public Resources Code ss. 6217.5, 6217.7, 8708 and 8711 and Government Code s. 16430.] <p>Background on Amendment and Congressional Action</p> <p>Amendment in 1964:</p> <ul style="list-style-type: none"> • Repealed Art. IX, s. 4, which established the permanent fund and permitted distribution of the interest and “all the rents of the unsold lands” for the “support of common schools.”

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<p>Colorado Art. IX, ss. 3, 5, 9, and 10.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The public school fund shall forever remain inviolate and intact. The state must supply all losses to the fund. • Interest and other income generated by the fund must be distributed in support of schools. • In order to assist public schools in providing necessary buildings, land, and equipment, the Legislature may adopt laws allowing the state treasurer to: (1) invest the fund in school district bonds; (2) use all or any portion of the fund or its interest or income to guaranty school district bonds; or (3) make loans to school districts. • The state board of land commissioners must provide for the prudent management, location, protection, sale, exchange or other disposition of the school lands in order to produce reasonable and consistent income over time. • Any proceeds from the sale or other disposition of school lands, or any interest on such proceeds, must be transferred to the state treasurer for deposit in the school fund. <p>Background on Amendment and Congressional Action</p> <p>Amendment in 1996:</p> <ul style="list-style-type: none"> • Changed the description of what must be distributed from the fund from “interest thereon” to “interest and other income thereon.” • Authorized the Legislature to enact laws establishing the terms and conditions upon which the state treasurer may invest or use the funds so as to assist schools in providing buildings, land, and equipment. • Made the state board of land commissioners trustee of the school lands and required that the board prudently manage and exchange the trust lands in order to produce reasonable and consistent income over time. <p>Judicial action:</p> <ul style="list-style-type: none"> • No change to the Colorado Enabling Act required per the Tenth Circuit in <i>Branson Sch. Dist. RE-82 v. Romer</i>, 161 F.3d 619 (10th Cir. 1998).

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<p>Florida Art. IX, s. 6.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Income derived from the fund must be appropriated for the support of public schools. • Principal may be appropriated for the support of public schools. <p>Background on Amendment and Congressional Action Amendment in 1968:</p> <ul style="list-style-type: none"> • Repealed former ss. 4 and 5, which had required that only interest from the fund be distributed and that the principal of the fund remain “sacred and inviolate.” Created the current language under s. 6.
<p>Hawaii Art. XII, ss. 1 to 7; Article XVI, s. 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • “The lands granted to the State of Hawaii...shall be held by the State as a public trust for native Hawaiians and the general public.” • “Any trust provisions which the Congress shall impose, upon the admission of this State, in respect of the lands...or the proceeds and income therefrom shall be complied with by appropriate legislation.” • “The lands...together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by [Hawaii]...as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians...for the development of farm and home ownership...for the making of public improvements...and for the provision of lands for public use.” • “[L]ands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of [Hawaii]... may provide, and their use for any other object shall constitute a breach of trust.” [Pub. L. No. 86-3.] <p>Background on Amendment and Congressional Action</p> <ul style="list-style-type: none"> • Before 1978, Article X, s. 5, of the Constitution of Hawaii said, “The public lands shall be used for the development of farm and home ownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.” • A 1978 constitutional convention repealed this provision and added the provision that the lands constitute a public trust for native Hawaiians and the general public.

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<p>Idaho Art. IX, ss. 3, 4, 7, 8, and 11.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The lands, the proceeds from the sale of the lands, and other specified moneys such as unclaimed property, are considered the principal of the fund, which cannot be distributed. • All “earnings” on the fund must be deposited in an earnings reserve fund. • “Earnings” include all increases in the overall value of the fund beyond the increases due to inflation. <p>Background on Amendment and Congressional Action Amendment in 1998:</p> <ul style="list-style-type: none"> • Authorized investments other than loans. • Authorized the distribution of all “earnings” rather than only “interest.” <p>Congressional approval in 1998:</p> <ul style="list-style-type: none"> • Pub. L. No. 105-296, 112 Stat. 2822 (1998).
<p>Illinois State constitutional provision repealed.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The current trust fund and method for school land management is established by Illinois Statute 105 ILCS 5/15-1 to 15-31 and 105 ILCS 5/18-1. <p>Background on Amendment and Congressional Action Amendment in 1970:</p> <ul style="list-style-type: none"> • New constitution was ratified, which did not include the following section from the 1870 constitution: “All lands, moneys or other property, donated, granted or received for school, college, seminary or university purposes, and the proceeds thereof, shall be faithfully applied to the objects for which such gifts or grants were made.”
<p>Indiana Art. VIII, ss. 2 to 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The principal of the fund shall remain a perpetual fund, which is inviolate and may be increased but never diminished. • Income shall be appropriated to the support of common schools. • The Legislature is required to invest the portions of the fund that are not entrusted to the counties “in some safe and profitable manner” and must provide by law for the distribution of the interest.

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<p>Iowa Art. VII, s. 3 and Art. IX, s. 3.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Certain lands and moneys comprise the perpetual fund. • Interest earned on the fund, rents from the unsold lands, and other means as provided by the Legislature must be appropriated for the support of common schools. • Losses to the fund caused by misappropriation, mismanagement, or fraud shall be deemed a permanent state debt to be paid with six percent annual interest.
<p>Kansas Art. VI, s. 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The fund may be invested as provided by law. • Both the principal and the income may be distributed. <p>Background on Amendment and Congressional Action Amendment in 1966:</p> <ul style="list-style-type: none"> • Repealed requirement that only the income be distributed and the principal not be diminished.
<p>Louisiana State constitutional provision repealed.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Current fund remains perpetual, but is controlled by Louisiana Statute ss. 41.631 to 41.981. <p>Background on Amendment and Congressional Action Amendment in 1974:</p> <ul style="list-style-type: none"> • Repealed all references to the school fund, including the requirement that the fund remain as an inviolable, perpetual loan to the state upon which the state would pay four percent annual interest for distribution. <p>Judicial action:</p> <ul style="list-style-type: none"> • The Fifth Circuit implied that Louisiana took title to the 16th section of each township in fee simple absolute, and, therefore, is free to dispose of the property as it sees fit. Further, the court characterized the state's obligation to use the lands in support of public schools as "honorary" rather than binding. [<i>State of Louisiana v. Joyce</i>, 261 F. 128 (5th Cir. 1919); see also, <i>Madison County Bd. of Educ. v. Illinois C. R. Co.</i>, 939 F.2d 292 (5th Cir. 2001).]

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<p>Michigan State constitutional provision repealed.</p>	<p>Summary</p> <ul style="list-style-type: none"> Removed from the constitution in 1963. <p>Background on Amendment and Congressional Action Amendment in 1963:</p> <ul style="list-style-type: none"> Repealed requirement that the principal be kept as a perpetual fund with only the interest and income distributed annually. <p>Judicial action:</p> <ul style="list-style-type: none"> The U.S. Supreme Court ruled that Michigan's enabling act generally does not require congressional consent to changes regarding the lands or their proceeds. [<i>Cooper v. Roberts</i>, 18 How. 173 (1856).]
<p>Minnesota Art. XI, s. 8.</p>	<p>Summary</p> <ul style="list-style-type: none"> The fund shall be invested to secure the maximum return consistent with the maintenance of the perpetuity of the fund. The principal shall be perpetual and inviolate. This does not prevent the sale of investments at less than the cost to the fund; however, all losses not offset by gains shall be repaid to the fund from interest and dividends. Net interest and dividends shall be distributed. <p>Background on Amendment and Congressional Action Amendment in 1984:</p> <ul style="list-style-type: none"> Repealed list of authorized investments and asset allocation caps.
<p>Mississippi Art. VIII, s. 206A.</p>	<p>Summary</p> <ul style="list-style-type: none"> The principal of the fund shall remain inviolate. Interest and income derived from investment of the principal may be expended for educational purposes following a majority vote of each house of the Legislature. The principal is to be invested as provided by statute.

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	<p>Judicial action:</p> <ul style="list-style-type: none"> The Fifth Circuit held that Mississippi took title to the 16th section of each township in fee simple absolute and that the state's obligation to use the lands in support of public schools is honorary. [<i>Madison County Bd. of Educ. v. Illinois C. R. Co.</i>, 939 F.2d 292 (5th Cir. 2001).] In an earlier case, the U.S. Supreme Court noted that whether the grant of land to Mississippi by the federal government for the purpose of supporting schools created a binding trust is unclear. [<i>Papasan v. Allain</i>, 478 U.S. 265 (1986).]
<p>Missouri Art. IX, s. 5.</p>	<p>Summary</p> <ul style="list-style-type: none"> The "annual income" of the fund is distributed. The fund shall be "securely invested."
<p>Montana Art. X, ss. 2 to 11.</p>	<p>Summary</p> <ul style="list-style-type: none"> The fund shall remain inviolate, guaranteed by the state against loss or diversion. 95% of all interest and other income shall be annually distributed. 5% shall be annually added to the fund and become a part of the principal.
<p>Nebraska Art. VII, ss. 6, 7, 8, and 9.</p>	<p>Summary</p> <ul style="list-style-type: none"> The principal must be preserved. Only the interest or income on the fund may be distributed. The funds may be invested as the Legislature prescribes. The state shall supply any net aggregate losses. <p>Background on Amendment and Congressional Action Amendment in 2006:</p> <ul style="list-style-type: none"> Added provisions relating to using the funds for early childhood educational purposes.
<p>Nevada Art. XI, s. 3.</p>	<p>Summary</p> <ul style="list-style-type: none"> Only the interest earned on the fund may be distributed. Any interest which is "unexpended at the end of any year must be added to the principal." <p>Background on Amendment and Congressional Action Amendment in 1977:</p> <ul style="list-style-type: none"> Repealed the list of authorized investments.

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<p>New Mexico Art. XII, ss. 2, 4, and 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Investment shall be in accordance with Uniform Prudent Investor Act, subject to specific constitutional restrictions on the percentage of assets allocated to particular asset categories. • All earnings are credited to the fund. • Annual distributions shall be equal to 5% of the average of the year-end market values of the fund for the preceding five years. • Additional distributions may be made if certain conditions are satisfied. <p>Background on Amendment and Congressional Action</p> <p>Amendment in 1996:</p> <ul style="list-style-type: none"> • Changed distributions from “income” to 4.7% of the five-year average of the year-end market value of the funds. • Provided that all earnings are added to the fund, rather than having income distributed. <p>Congressional approval in 1997:</p> <ul style="list-style-type: none"> • Pub. L. No. 105-37, 111 Stat. 1113 (1997). <p>Amendment in 2003:</p> <ul style="list-style-type: none"> • Increased annual distributions from 4.7% to 5% of the average of the year-end market values for the preceding five years. • Created temporary additional distributions to be made if certain conditions are satisfied. <p>Amendment in 2014:</p> <ul style="list-style-type: none"> • Changed the investment standard from “prudent man” to the Uniform Prudent Investor Act standard. • Authorized more than 15% of the fund to be invested in international securities. • Raised the reserve requirement of the fund from \$5.8 billion to \$10 billion.

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<p>North Dakota Art. IX, ss. 1 and 2.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Biennial distributions from the fund must be equal to 10% of the five-year average value of trust assets, excluding the value of lands and minerals. • The average value of trust assets is determined by using their ending value for the fiscal year that ends one year before the beginning of the biennium and the assets' ending value for the four preceding fiscal years. • Equal amounts must be distributed during each year of the biennium. <p>Background on Amendment and Congressional Action</p> <p>Amendment in 2006:</p> <ul style="list-style-type: none"> • Repealed the requirement that the fund principal be retained, and replaced it with the requirement that the funds must be managed to preserve their purchasing power and to provide stable distributions to fund beneficiaries. • Repealed the requirement that only interest and income of the fund may be expended and instead required that fund distributions be based on the average value of the fund. <p>Congressional approval in 2007:</p> <ul style="list-style-type: none"> • North Dakota Enabling Act and First Morrill Act Amendments Act of 2007.
<p>Ohio Art. VI, ss. 1 and 2.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The principal of the fund shall be used in such manner as the Legislature shall provide. <p>Background on Amendment and Congressional Action</p> <p>Amendment in 1968:</p> <ul style="list-style-type: none"> • Removed limitations requiring the principal to be “inviolable and undiminished” and the “income” to be distributed. • Removed limitations on the purpose for which the funds could be distributed.
<p>Oklahoma Art. XI, ss. 1 to 7.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The income from the fund is distributed. • The principal “may be increased, but shall never be diminished.” • The state shall reimburse the fund for all losses which may “in any manner occur.” • Investment is subject to legislative direction and “prudent person” standard.

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<p>Oregon Art. VIII, ss. 2, 4, and 5.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The fund is invested as the Legislature directs. • Income derived from the investment may be distributed or reinvested. • “Income” is interpreted broadly. Distributions are made based on the market value of the fund. • Oregon policy issued pursuant to the constitution provide that 3.5% of the three-year average market value is distributed. <p>Background on Amendment and Congressional Action Amendment in 1988:</p> <ul style="list-style-type: none"> • Repealed a provision that required all “interest” to be distributed, with a provision stating that “income” may be used to pay operating expenses, distributed or reinvested. • Repealed a prohibition against the fund being invested in corporate stocks.
<p>South Dakota Art. VIII, ss. 2 to 13.</p>	<p>Summary</p> <ul style="list-style-type: none"> • “The principal shall never be diverted by legislative enactment for any other purpose, and may be increased.” • The “interest and income” shall be distributed each year. • “Before the interest and income is apportioned to the public schools, the principal shall be increased each year by an amount equal to the rate of inflation from the interest and income earned from this fund.” • The principal may be prudently invested as provided by law. <p>Background on Amendment and Congressional Action Amendment in 2000:</p> <ul style="list-style-type: none"> • Authorized investment in instruments other than government bonds. • Provided that a portion of interest and income would be added to the principal to match the rate of inflation, rather than having all interest and income distributed annually.
<p>Utah Art. X, s. 5.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Only earnings received from investment of the fund may be distributed from the fund, and any distribution shall be for the support of the public education system. • Annual distributions may not exceed 4% of the fund, calculated as provided by statute.

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	<ul style="list-style-type: none"> • The fund shall be guaranteed by the state against loss or diversion. • The fund shall be prudently invested and held in perpetuity. <p>Background on Amendment and Congressional Action Amendment in 2016:</p> <ul style="list-style-type: none"> • Changed the description of what can be distributed from “interest and dividends” to “earnings.” • Limited the amount that may be distributed annually to 4% of the fund. • Changed the standard for how the state is required to invest the fund from “safely” to “prudently.”
<p>Washington Art. IX, s. 3, and Art. XVI.</p>	<p>Summary</p> <ul style="list-style-type: none"> • The principal of the fund as the same existed on June 30, 1965, shall remain permanent and irreducible. • The principal shall include certain other additions, such as forfeitures and abandoned property. • The interest and all other revenues derived from the fund shall be devoted to the common school construction fund. • All losses to the fund caused by mismanagement, fraud, or misappropriation shall be a debt of the state. • The fund may be invested as authorized by law. <p>Background on Amendment and Congressional Action Amendment in 1965:</p> <ul style="list-style-type: none"> • Repealed provisions limiting investment strictly to government bonds. • Authorized the funds to be invested as provided in statute.
<p>Wyoming Art. 7, ss. 2 to 8.</p>	<p>Summary</p> <ul style="list-style-type: none"> • Only the “annual income” may be appropriated. • Only the “interest and income are to be used.” • Funds shall be invested as the Legislature shall provide.