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## WISCONSIN LEGISLATIVE COUNCIL

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### MEETING MINUTES

### STUDY COMMITTEE ON THE INVESTMENT AND USE OF THE SCHOOL TRUST FUNDS

Room 411 South  
State Capitol  
Madison, WI

December 6, 2018  
10:00 a.m. – 5:01 p.m.

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#### Call to Order and Roll Call

Chair Katsma called the meeting to order. The roll was called, and a quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Terry Katsma, Chair; Sen. Lena Taylor, Vice Chair (via phone); Rep. Don Vruwink; Sen. Duey Stroebel; and Public Members Kim Bannigan, Jerry Derr, Stephen Eager, Don Merkes, and Steve O'Malley.

COUNCIL STAFF PRESENT: Zach Ramirez and Rachel E. Snyder, Staff Attorneys.

<p><b>ATTENTION:</b> This was the final meeting of the Study Committee on the Investment and Use of the School Trust Funds. Committee members are requested to send any corrections regarding these minutes to the Legislative Council staff. After the incorporation of any corrections, these minutes will be considered approved by the committee.</p>
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#### Approval of the Minutes of the November 14, 2018 Meeting

*Representative Vruwink moved, seconded by Mr. Derr, to approve the minutes of the November 14, 2018 meeting, as amended. The motion was unanimously approved by voice vote.*

## **Discussion of Committee Assignment and Bill Drafts**

Chair Katsma welcomed committee members and expressed his gratitude for their work to date. He provided the order in which he planned to discuss the bill drafts on the agenda and explained that he intended this to be the last meeting of the committee. He then requested that Legislative Council staff describe the bill drafts and guide the committee through discussion and voting on the drafts in the order prescribed.

### **LRB-0438/1, relating to promissory notes of certain public bodies**

Ms. Snyder provided an explanation of the bill draft and addressed prior questions from committee members relating to the bill draft's impact on existing referendum requirements. Ms. Snyder explained that the bill draft does not modify existing referendum requirements for local government debt issuance. Committee members generally expressed approval for the bill draft. Mr. O'Malley noted that he has received contradictory information from a few different sources regarding the impact of the bill draft on referendum requirements, but that he supports the bill draft and encourages Legislative Council staff to continue to research the issue and to find a simpler way to accomplish the intent of the draft. Chair Katsma explained that there will be time for additional research and for potential amendments to the bill draft as it moves through the legislative process.

*Chair Katsma moved, seconded by Mr. Derr, that the committee recommend introduction of LRB-0438/1. The motion passed by a vote of Ayes, 9 (Reps. Katsma and Vruwink; Sens. Stroebel and Taylor; and Public Members Bannigan, Derr, Eager, Merkes, and O'Malley); and Noes, 0.*

### **LRB-0848/2, relating to the authority of the Board of Commissioners of Public Lands (BCPL) to delegate authority to invest trust fund moneys**

Ms. Snyder explained the bill draft, reiterating, in response to questions from committee members, that the bill draft permits, but does not require, the BCPL to contract with the State of Wisconsin Investment Board for the investment of the school trust funds and that the bill does not modify the BCPL's authority to invest the school trust funds on its own. Committee members generally expressed support for the bill draft because it is permissive rather than mandatory.

*Chair Katsma moved, seconded by Mr. Eager, that the committee recommend introduction of LRB-0848/2. The motion passed by a vote of Ayes, 9 (Reps. Katsma and Vruwink; Sens. Stroebel and Taylor; and Public Members Bannigan, Derr, Eager, Merkes, and O'Malley); and Noes, 0.*

### **LRB-0972/1, relating to management of school trust funds**

Mr. Ramirez described the bill draft, noting that it was drafted to align with the intent expressed by the committee at its last meeting to authorize the BCPL's current investment practices but also to provide the BCPL with maximum flexibility.

Mr. Merkes, Ms. Bannigan, and Representative Vruwink expressed concerns about the bill draft, including that it does not explicitly require a minimum distribution from the school trust funds and that it appears to permit accumulation of the funds without limit. They feared that the bill, as drafted, could authorize activity that would be detrimental to current beneficiaries of the school trust funds.

Mr. Ramirez provided information about the BCPL's fiduciary responsibility as the trustee of the school trust funds, which would remain controlling even if the bill draft is enacted, and current practices regarding decisions about distribution amounts. He also explained how the committee could proceed, including requesting amendments to the current bill draft and voting on the bill draft as amended, or voting on the bill draft in its current form.

Chair Katsma and Senator Stroebel generally expressed that the bill draft is intended to resolve questions that exist under current law regarding the BCPL's authority to implement its current investment policy and practices.

Mr. O'Malley asked whether a failure on the Legislature's part to pass the bill draft before the committee would bring into question the validity of the BCPL's current practices. Mr. Ramirez explained that neither the committee's decision regarding whether to act on this issue nor the Legislature's decision regarding whether to pass the bill draft would factor into a court's interpretation of the law. Rather, if someone with standing were to challenge the BCPL's investment practices, a court would analyze the BCPL's authority and practices under the statutes in effect at the time.

Ms. Bannigan expressed doubt regarding the need for the bill draft in light of the letter from Attorney General Schimel, provided to the committee at its last meeting.

*Chair Katsma moved, seconded by Senator Stroebel, that the committee recommend introduction of LRB-0972/1. The motion failed by a vote of Ayes, 3 (Rep. Katsma, Sen. Stroebel, and Public Member Eager); and Noes, 6 (Rep. Vruwink, Sen. Taylor, and Public Members Bannigan, Derr, Merkes, and O'Malley).*

#### **LRB-0878/1, relating to prohibited trust fund loans**

Mr. Ramirez explained the bill draft and relevant background information regarding changes made over time to the BCPL's investment and loaning authority.

*Chair Katsma moved, seconded by Senator Stroebel, that the committee recommend introduction of LRB-0878/1. A vote on the motion was not called.*

Mr. Merkes questioned the purpose of the bill draft, suggesting that it seems like a solution in search of a problem. He expressed concern that the bill draft could prevent the BCPL from purchasing bonds and engaging in other types of investment practices. He stated that he would prefer to leave the BCPL with the flexibility offered under the current state of the law. Mr. Ramirez generally explained that the effect of the bill draft would largely depend upon a court's interpretation of the BCPL's investment and loaning authority under current law.

LRB-0847/1, relating to applications for school trust fund loans

Senator Stroebel requested that the bill draft be withdrawn from consideration. He explained that he thinks more research is necessary before decisions are made regarding the substance of the bill draft. Chair Katsma agreed to withdraw the bill draft from consideration.

LRB-0818/1, relating to the assets of and distributions from the School Fund and the assets of and distributions from the University Fund

Mr. Ramirez described the draft resolution, noting that it was drafted to address the following objectives expressed by the committee: (1) to allow for distributions to be made from the principal of the school trust funds; (2) to ensure stable distributions from the school trust funds to beneficiaries; and (3) to allow for investment that maintains the purchasing power of the school trust funds.

Chair Katsma explained that the draft resolution is intended to grant the BCPL the flexibility it needs under the Wisconsin Constitution to grow the principal of the school trust funds so as to better provide for fund beneficiaries. He expressed concerns about the long-term viability of the fund if changes are not made to ensure that the principal amounts of the fund grows.

Mr. Merkes questioned whether the draft resolution combines the Common School Fund (CSF) and the Normal School Fund (NSF), and, if so, what the purpose of that combination would be. Mr. Ramirez explained that the committee did not express an intent to combine the funds and it was not the intent of staff in drafting the resolution to merge the funds. He also explained that the Wisconsin Constitution does not explicitly create the CSF and the NSF as distinct funds; rather, the constitution identifies one "school fund" and provides that certain moneys must be used for the support of common schools and the residue will be used to support normal schools. The Wisconsin Supreme Court has weighed in on what moneys constitute the residue and, therefore, identified distinctions that were the genesis for the creation of two distinct funds.

Mr. Ramirez provided that, for the purposes of preserving existing legal interpretation, amendments to the constitution are generally drafted to make as few changes to the underlying language as possible, while still preserving clarity. He noted that removal of the word "residue" was not intended to be part of the substantive change. Mr. Ramirez explained that if the committee is concerned about the current language of the draft resolution, then the committee may direct staff to amend the draft. He then suggested one way that the draft resolution could be amended to address the committee's concerns.

Chair Katsma reiterated that it is not the intent of the committee to merge the funds. He expressed a desire to amend the draft resolution if necessary to serve the committee's intent. Chair Katsma asked whether committee members had any additional concerns before requesting that Legislative Council staff produce an amended version of the draft resolution.

Representative Vruwink and Ms. Bannigan generally expressed concern that the 3.5% cap on distributions included in the draft resolution may be too low and, therefore, too restrictive upon the BCPL.

Mr. Derr stated that he would like to give the BCPL's investment policy time to work. Instead, he would prefer to review the revenue sources that are deposited in the school trust funds.

Ms. Bannigan explained that even if a revised draft were to be placed before the committee, she would not likely support a constitutional amendment at this time. She would like to give the BCPL more time to implement its investment policy and is concerned about making changes that beneficiaries of the funds have not requested.

Mr. Eager generally agreed with Ms. Bannigan's assessment that a revised draft resolution is not necessary at this time, noting that if the committee is not willing to support LRB-0972/1, then it is not likely to support a constitutional amendment.

Senator Taylor also agreed, explaining that she is willing to review revised language, but is not necessarily on board with a constitutional amendment.

Senator Stroebel stated that intergenerational equity is not being maintained under the current framework. He also asked if committee members had thoughts on whether the distribution cap proposed in the draft resolution is too low or too high. Representative Vruwink responded that setting a cap at this time may not be a good idea, especially because the market has not been in recession for an extended time period. He generally expressed support for the idea that the BCPL should be permitted to distribute more than 3.5% if it deems it prudent to do so.

Mr. O'Malley generally agreed with Ms. Bannigan. He expressed that moving forward with a constitutional amendment at this time may cause a great deal of consternation without adding much value. He noted that amending the constitution is very cumbersome and that the public may struggle to understand the underlying purpose of the proposal.

Senator Stroebel explained that the current framework is controlled by the constitution, so any change will require a constitutional change, no matter how difficult that may be to accomplish.

Senator Taylor expressed her support of the BCPL's management and investment practices over time and would like to avoid moving forward with a constitutional amendment.

Representative Vruwink stated that he would be willing to consider a constitutional amendment, but he would need to see the proposed language and does not wish to jeopardize the BCPL's progress.

Mr. Merkes agreed that the BCPL has been moving in the right direction, and he is not in favor of a making a constitutional change at this time. Mr. Derr also agreed that a constitutional amendment would be premature.

### **Recommendation - Investment of the School Trust Funds**

Chair Katsma asked whether committee members would be interested in making a nonbinding recommendation that this issue be studied again in the future. Mr. Ramirez explained how the committee could proceed in drafting a recommendation.

The committee discussed the content of a recommendation. Committee members generally expressed agreement that a recommendation in support of giving the BCPL time to implement its current investment practices, of increased returns for beneficiaries, and of additional legislative study in the future, with the engagement of beneficiaries, would be appropriate.

Chair Katsma recessed the committee at 11:38 a.m. to allow Legislative Council staff time to draft a recommendation based on committee input. The committee resumed at 12:19 p.m. and reviewed the draft provided by Legislative Council staff, which provided as follows:

The Study Committee on the Investment and Use of the School Trust Funds:

- Appreciates the importance of the school trust funds to fund beneficiaries.
- Supports the goal of ensuring intergenerational equity through increasing the returns on the funds.
- Recognizes the value of recent legislative changes relating to the investment of the funds.
- Acknowledges that implementation of these changes is ongoing.
- Recommends that the Legislature further study issues relating to the investment of the funds, in consultation with beneficiary groups, once information on the results of the changes becomes available for study.

*Mr. Eager moved, seconded by Mr. O'Malley, to adopt the committee recommendation relating to the investment of the school trust funds. The motion passed by a vote of Ayes, 9 (Reps. Katsma and Vruwink; Sens. Stroebel and Taylor; and Public Members Bannigan, Derr, Eager, Merkes, and O'Malley); and Noes, 0.*

### **Adjournment**

Chair Katsma recessed the meeting at 12:28 p.m. and held the roll open for the purpose of allowing Senator Taylor to vote in person upon her arrival at the capitol building. Chair Katsma adjourned the meeting at 5:01 p.m.

RES:jal

[The preceding is a summary of the December 6, 2018 meeting of the Study Committee on the Investment and Use of the School Trust Funds, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]