

First Regular Session
Sixty-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 01-0138.01 Christy Chase

HOUSE BILL 01-1213

HOUSE SPONSORSHIP

Young, Miller, and Coleman

SENATE SPONSORSHIP

Reeves, Anderson, Lamborn, Linkhart, Taylor, and Windels

House Committees
Education

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE MONEYS IN THE PUBLIC SCHOOL FUND.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Legislative Audit Committee. Specifies that the market value of the public school fund (fund) is to remain inviolate and intact.

Authorizes the state treasurer to contract with fund managers, fund advisors, or portfolio managers for the purpose of investing or reinvesting fund moneys in accordance with law. Authorizes the investment of fund moneys in domestic equities with the following limitations:

- Specifies a maximum investment amount in the common or preferred stock of any one corporation;
- Prohibits the acquisition of more than a certain percentage

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

of the outstanding stocks or bonds of any one corporation;
and

- Specifies a maximum percentage of the market value of the fund that may be invested in common or preferred stock or in corporate bonds, notes, or debentures that are convertible into common or preferred stock.

Authorizes the state treasurer to make payments without appropriation of all actual and necessary expenses related to the investment of fund moneys and specifies that payments are to be made from investment assets or income.

Repeals the prohibition against the exchange or sale of securities resulting in a net loss of fund principal in the absence of a prior appropriation from the general assembly to cover the loss. Authorizes the state treasurer to effect exchanges and sales that are in the best interest of the fund.

Requires the state treasurer to submit a biennial report to the joint budget committee of the general assembly, commensurate with the budget presentation of the department of the treasury for the next fiscal year, specifying the market value of the fund and the amount of moneys retained in the fund during the previous 2 fiscal years to account for inflation and losses. Requires the general assembly to appropriate moneys from the general fund to the public school fund to restore the market value of the fund if the state treasurer's report indicates that, after adjustments for inflation and losses, the market value of the fund has diminished between:

- The last day of the fiscal year immediately preceding the fiscal year in which the report is submitted; and
- The first day of the fiscal year immediately preceding said fiscal year.

Specifies that all income derived from the investment and reinvestment of fund moneys is to be credited to the public school income fund. Requires the retention in the public school fund of the following amounts to account for inflation and losses in the market value of the public school fund:

- An amount equal to the percentage change in the consumer price index during the previous calendar year multiplied by the market value of the public school fund on the final day of the immediately preceding fiscal year; and
- An amount needed to ensure that the market value of the public school fund at the end of the fiscal year equals the market value of the public school fund at the beginning of the fiscal year.

Prohibits the amount of money retained in the fund from exceeding the amount of income earned by the fund during the fiscal year for which the calculation is performed. Limits the amount of money retained in the

fund to an amount sufficient to ensure that the market value of the fund has not decreased during the course of the fiscal year when the percentage change in the consumer price index is zero or a negative.

Defines terms.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) The state constitution requires the public school fund of the
5 state to remain forever inviolate and intact.

6 (b) The constitution authorizes the interest and other income from
7 the public school fund to be expended in the maintenance of the schools
8 of the state and to be distributed amongst the several school districts of the
9 state.

10 (c) Currently, all of the earnings from the public school fund are
11 distributed.

12 (d) Absent significant new additions to the public school fund, the
13 purchasing power or real value of the fund is diminished over time due to
14 inflation and the fact that all earnings from the fund are expended.

15 (e) Protecting the real value of the public school fund by retaining
16 a portion of the earnings from the fund to compensate for inflation and
17 other fund losses is consistent with the spirit of the constitutional mandate
18 that the public school fund forever remain inviolate and intact.

19 (f) Retaining a portion of the income earned from the public
20 school fund to compensate for inflation will lead to lower distributions
21 from the fund.

22 (g) However, if the state treasurer is able to diversify the public
23 school fund investments by investing a portion of the assets of the fund in

1 domestic equity securities, the total return earned on the fund may
2 increase over time, thereby protecting the purchasing power of both the
3 corpus and the distributions of the fund.

4 **SECTION 2.** 22-41-102, Colorado Revised Statutes, is amended
5 to read:

6 **22-41-102. Fund inviolate - definitions.** (1) The MARKET VALUE
7 OF THE public school fund shall forever remain inviolate and intact; the
8 ~~interest~~ INCOME thereon, only, shall be expended in the maintenance of
9 the schools of the state and shall be distributed to the several school
10 districts of the state in such manner as may be prescribed by law. No part
11 of said fund, principal or interest, shall ever be transferred to any other
12 fund or used or appropriated, except as provided in this article. The state
13 treasurer shall be custodian of the fund, and the same shall be securely
14 and profitably invested as may be directed by law. The state, by
15 appropriation, shall supply all losses of principal that may occur as
16 determined pursuant to section 2-3-103 (5), C.R.S. ~~or section 22-41-104~~
17 ~~(2)~~.

18 (2) For the purpose of this article:

19 (a) "CONSUMER PRICE INDEX" MEANS THE UNITED STATES
20 CONSUMER PRICE INDEX FOR THE DENVER-BOULDER CONSOLIDATED
21 METROPOLITAN STATISTICAL AREA FOR ALL ITEMS FOR ALL URBAN
22 CONSUMERS AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE
23 UNITED STATES DEPARTMENT OF LABOR OR ITS SUCCESSOR INDEX.

24 (b) "INCOME" INCLUDES CAPITAL GAINS, INTEREST, AND DIVIDENDS.

25 (c) "Interest" means interest and the net of all realized gains over
26 realized losses, ~~except those losses restored by appropriation~~, associated
27 with investment transactions during the fiscal year.

1 (d) "INVIOLEATE AND INTACT" MEANS THAT THE PUBLIC SCHOOL
2 FUND SHALL BE ADJUSTED ANNUALLY IN ACCORDANCE WITH SECTION
3 22-41-106(1) TO ENSURE THAT THE MARKET VALUE OF THE PUBLIC SCHOOL
4 FUND IS NEVER DIMINISHED BY INFLATION OR LOSSES.

5 (e) "MARKET VALUE" MEANS THE PRICE THE ASSETS OF THE PUBLIC
6 SCHOOL FUND WOULD BRING IF SOLD IN THE OPEN MARKET UNDER
7 ORDINARY AND USUAL CIRCUMSTANCES FOR CASH, ASSUMING THAT THE
8 OWNER OF THE ASSETS IS WILLING TO SELL AND THE PURCHASER IS WILLING
9 TO BUY BUT NEITHER IS UNDER AN OBLIGATION TO SELL OR BUY.

10 **SECTION 3.** 22-41-104 (1) and (2), Colorado Revised Statutes,
11 are amended to read:

12 **22-41-104. Lawful investments.** (1) (a) The state treasurer in the
13 state treasurer's discretion may invest and reinvest moneys accrued or
14 accruing to the public school fund, OR MAY CONTRACT WITH ONE OR MORE
15 PRIVATE PROFESSIONAL FUND MANAGERS, PROFESSIONAL FUND ADVISORS,
16 OR PORTFOLIO MANAGERS FOR THE INVESTMENT OR REINVESTMENT OF
17 MONEYS ACCRUED OR ACCRUING TO THE PUBLIC SCHOOL FUND, in the types
18 of deposits and investments authorized in sections 24-36-109, 24-36-112,
19 and 24-36-113, C.R.S., and bonds issued by school districts. MONEYS
20 ACCRUED OR ACCRUING TO THE PUBLIC SCHOOL FUND MAY ALSO BE
21 INVESTED IN THE EQUITIES OF CORPORATIONS ORGANIZED UNDER THE LAWS
22 OF THE UNITED STATES OR ANY STATE, TERRITORY, OR POSSESSION OF THE
23 UNITED STATES; THE DISTRICT OF COLUMBIA; OR OF THE DOMINION OF
24 CANADA OR ANY PROVINCE THEREOF; EXCEPT THAT:

25 (I) ANY INVESTMENT OF PUBLIC SCHOOL FUND MONEYS IN THE
26 COMMON OR PREFERRED STOCK, OR BOTH, OF ANY SINGLE CORPORATION
27 SHALL NOT EXCEED FIVE PERCENT OF THE THEN MARKET VALUE OF THE

1 FUND;

2 (II) THE PUBLIC SCHOOL FUND SHALL NOT ACQUIRE MORE THAN
3 FIVE PERCENT OF THE OUTSTANDING STOCK OR BONDS OF ANY SINGLE
4 CORPORATION; AND

5 (III) THE AGGREGATE AMOUNT OF MONEYS OF THE PUBLIC SCHOOL
6 FUND INVESTED IN COMMON OR PREFERRED STOCK OR IN CORPORATE
7 BONDS, NOTES, OR DEBENTURES THAT ARE CONVERTIBLE INTO COMMON OR
8 PREFERRED STOCK SHALL NOT EXCEED TWENTY-FIVE PERCENT OF THE THEN
9 MARKET VALUE OF THE FUND.

10 (b) THE STATE TREASURER MAY ALSO MAKE LOANS TO SCHOOL
11 DISTRICTS PURSUANT TO SECTION 22-43.7-103.5 OUT OF THE MONEYS
12 ACCRUED OR ACCRUING TO THE PUBLIC SCHOOL FUND.

13 (c) THE STATE TREASURER MAY MAKE PAYMENTS WITHOUT
14 APPROPRIATION OF ALL ACTUAL AND NECESSARY CHARGES FOR EXPENSES
15 RELATED TO THE INVESTMENT OF THE PUBLIC SCHOOL FUND MONEYS.
16 SUCH PAYMENTS SHALL BE MADE FROM INVESTMENT ASSETS OR INCOME.

17 (2) (a) The state treasurer has authority, to be exercised at the state
18 treasurer's discretion, to effect exchanges or sales whenever such
19 exchanges or sales ~~will not result in any ultimate loss of principal and to~~
20 ~~effect exchanges or sales that will result in a loss of principal whenever~~
21 ~~such loss can be offset by a corresponding gain within the same fiscal year~~
22 ~~of such exchange or sale. No exchange or sale of securities shall be~~
23 ~~consummated by the state treasurer which will result in a net loss of~~
24 ~~principal unless the general assembly has previously appropriated a sum~~
25 ~~to the public school fund equivalent to the anticipated net loss of principal~~
26 ~~from such exchange or sale~~ ARE IN THE BEST INTEREST OF THE FUND.

27 (b) BEGINNING IN THE FISCAL YEAR 2003-04 AND EVERY OTHER

1 FISCAL YEAR THEREAFTER, THE STATE TREASURER SHALL SUBMIT A
2 BIENNIAL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL
3 ASSEMBLY, AT THE SAME TIME THE BUDGET FOR THE DEPARTMENT OF THE
4 TREASURY FOR THE NEXT FISCAL YEAR IS PRESENTED, SPECIFYING THE
5 MARKET VALUE OF THE PUBLIC SCHOOL FUND AS OF THE LAST DAY OF THE
6 IMMEDIATELY PRECEDING FISCAL YEAR AND THE FIRST DAY OF EACH OF
7 THE TWO IMMEDIATELY PRECEDING FISCAL YEARS. THE REPORT SHALL
8 ALSO SPECIFY THE AMOUNT OF MONEY RETAINED IN THE FUND PURSUANT
9 TO SECTION 22-41-106(1) FOR EACH OF THE TWO IMMEDIATELY PRECEDING
10 FISCAL YEARS. THE GENERAL ASSEMBLY SHALL APPROPRIATE MONEYS
11 FROM THE GENERAL FUND SUFFICIENT TO RESTORE THE PUBLIC SCHOOL
12 FUND TO ITS MARKET VALUE IF THE REPORT OF THE STATE TREASURER
13 INDICATES THAT, DESPITE THE ANNUAL ADJUSTMENT MADE TO THE FUND
14 PURSUANT TO SECTION 22-41-106 (1), THE MARKET VALUE OF THE FUND
15 HAS DIMINISHED BETWEEN:

16 (I) THE LAST DAY OF THE FISCAL YEAR IMMEDIATELY PRECEDING
17 THE FISCAL YEAR IN WHICH THE REPORT IS SUBMITTED; AND

18 (II) THE FIRST DAY OF THE FISCAL YEAR IMMEDIATELY PRECEDING
19 THE FISCAL YEAR DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH
20 (b).

21 **SECTION 4.** 22-41-106, Colorado Revised Statutes, is amended
22 to read:

23 **22-41-106. Disposition of income.** (1) All ~~interest~~ INCOME
24 derived from the investment and reinvestment of the public school fund
25 shall be credited to the public school income fund and periodically
26 transferred therefrom to the state public school fund. EXCEPT AS
27 PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE FOLLOWING AMOUNTS

1 SHALL ANNUALLY BE RETAINED IN AND BECOME A PART OF THE PUBLIC
2 SCHOOL FUND TO ACCOUNT FOR INFLATION AND THE LOSSES IN THE
3 MARKET VALUE OF THE FUND:

4 (a) AN AMOUNT EQUAL TO THE PERCENTAGE CHANGE IN THE
5 CONSUMER PRICE INDEX DURING THE PREVIOUS CALENDAR YEAR
6 MULTIPLIED BY THE MARKET VALUE OF THE PUBLIC SCHOOL FUND ON THE
7 LAST DAY OF THE IMMEDIATELY PRECEDING FISCAL YEAR; AND

8 (b) ANY AMOUNT NEEDED TO ENSURE THAT THE MARKET VALUE OF
9 THE PUBLIC SCHOOL FUND ON THE LAST DAY OF THE IMMEDIATELY
10 PRECEDING FISCAL YEAR EQUALS THE MARKET VALUE OF THE PUBLIC
11 SCHOOL FUND ON THE FIRST DAY OF THE IMMEDIATELY PRECEDING FISCAL
12 YEAR.

13 (2) THE AMOUNT RETAINED IN THE PUBLIC SCHOOL FUND PURSUANT
14 TO SUBSECTION (1) OF THIS SECTION SHALL NOT EXCEED THE AMOUNT OF
15 INCOME EARNED BY THE FUND DURING THE FISCAL YEAR FOR WHICH THE
16 CALCULATION IS PERFORMED. IF THE PERCENTAGE CHANGE IN THE
17 CONSUMER PRICE INDEX DURING THE PREVIOUS CALENDAR YEAR IS ZERO
18 OR IS NEGATIVE, THE FUND SHALL ONLY RETAIN SUFFICIENT INCOME TO
19 ENSURE THAT THE MARKET VALUE HAS NOT DECREASED DURING THE
20 COURSE OF THE IMMEDIATELY PRECEDING FISCAL YEAR.

21 **SECTION 5. Effective date.** This act shall take effect at 12:01
22 a.m. on the day following the expiration of the ninety-day period after
23 final adjournment of the general assembly that is allowed for submitting
24 a referendum petition pursuant to article V, section 1 (3) of the state
25 constitution; except that, if a referendum petition is filed against this act
26 or an item, section, or part of this act within such period, then the act,
27 item, section, or part, if approved by the people, shall take effect on the

1 date of the official declaration of the vote thereon by proclamation of the
2 governor.