

HOUSE BILL REPORT

HB 2936

As Reported by House Committee On:
Appropriations

Title: An act relating to public investments.

Brief Description: Concerning public investments.

Sponsors: Representatives Senn and Chandler; by request of State Treasurer.

Brief History:

Committee Activity:

Appropriations: 2/4/16, 2/9/16 [DPS].

Brief Summary of Substitute Bill

- Eliminates provisions authorizing the State of Washington or any local government to invest in any manner that is authorized for the state or other local governments.
- Preserves the authority of the state or local governments to make investments that law specifically provides for those entities.
- Requires that state or local government investments in commercial paper or corporate notes comply with policies adopted by the Washington State Investment Board.
- Eliminates the authority of the State of Washington and local governments to invest in certain mortgage-related and financial institution-related debt.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Condotta, Dent, Fitzgibbon, Haler, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Taylor, Tharinger and Van Werven.

Staff: David Pringle (786-7310).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Washington Constitution generally prohibits the state and local governments from being investing in private enterprises through vehicles such as stocks and bonds. Unless specifically exempted from these provisions, the investment of state funds is therefore effectively limited to government securities and certificates of deposit. The local government prohibition contains more specificity, which the courts have interpreted to apply equally to the state:

ARTICLE 8, SECTION 7. CREDIT NOT TO BE LOANED. No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

The voters adopted amendments to the Washington Constitution in 1966, 1968, 1985, and 2000, to allow stock investments by the K-12 Common School Permanent Fund, public employee retirement funds, workers' compensation funds, and funds held in trust for the benefit of persons with disabilities. Over time, the provisions have been interpreted to allow some transactions with private financial institutions, such as banks. Public moneys may be deposited in financial institutions that the Public Deposit Protection Commission approves as public depositories, and the rules and statutes governing such deposits have changed over time, such as the addition of qualified state and federal credit unions being added as limited public depositories in 2010 and 2012.

In a 1993 opinion, the Attorney General had advised that in narrow circumstances certain types of corporate debt acquired in the secondary market, such as commercial paper, may not be a constitutionally prohibited investment in stock or bonds. The opinion reasoned that some forms of corporate debt were considered distinct from bonds when the Washington Constitution was drafted, and their purchase creates no public ownership of a private entity as owning stock would.

The Washington State Investment Board adopts and regularly reviews guidelines that must be followed by the State Treasurer and local governments that wish to invest in commercial paper. The current policy was adopted in September 2015, and included requirements that the maturities of the paper not exceed 270 days, have very high credit ratings, not to exceed 25 percent of the assets of a portfolio (nor more than 5 percent from a single issuer), and be purchased in the secondary market.

Different local governmental entities and special districts are authorized to invest funds in many separate chapters and sections of the laws of Washington. For example, housing authorities are authorized by statute to invest in any investments permitted for savings banks, which include stock in small business investment companies, obligations of supranational entities including the International Bank for Reconstruction and Development, the Inter-American Development Bank, and the Asian, African, and other multilateral development banks that the United States government participates in, bankers' acceptances, bills of exchange, promissory notes secured by the pledge of investments otherwise permitted for

purchase by the savings bank, loans to corporations, preferred stock, corporate bonds, or other corporate debt.

In contrast, excess and inactive funds in the treasury of a code or non-code city may be invested in United States bonds or certificates of indebtedness; bonds or warrants of the state; general obligation or utility revenue bonds or warrants; bonds or warrants of a local improvement district; or other investments authorized by law for any other taxing district. Similarly the state and local governments are authorized to invest in any investments authorized by law for the state or any local government of the state other than a metropolitan municipal corporation.

Summary of Substitute Bill:

The State Treasurer and higher education institutions are broadly authorized to invest in: bonds of the State of Washington and local government bonds with one of the three highest credit ratings of a nationally recognized rating agency; general obligation bonds of another state or local governments of another state with similarly high credit ratings; registered warrants of a local government in the same county as the government making the investment; certificates, notes, or bonds of the United States, any corporation wholly owned by the United States, or obligations issued or guaranteed by supranational institutions that have the United States as its largest shareholder; and bankers' acceptances, commercial paper, or corporate notes purchased on the secondary market.

Local governments are similarly authorized, but may invest in Washington and local government bonds without one of the three highest rating of a nationally recognized rating agency. Commercial paper and corporate notes must adhere to the Washington State Investment Board investment policies to be eligible for local government, the State Treasurer, or higher education institutions investment.

The investment authority granted to higher education institutions in the bill does not limit the authority already provided in the laws pertaining to the University of Washington, the Washington State University, regional universities, The Evergreen State College, and the community and technical colleges.

Money market funds and certain types of mutual funds are eliminated from the definitions in the general laws authorizing investment of public funds, and changes are made to the definition of "state" for the chapter to mean any state in the United States other than the State of Washington. The authority for the state and local governments to invest in any investments authorized by law for the state or any other local government is also eliminated. Local government authority to make investments specifically authorized for those entities is not limited by the repeal.

Authority for the State of Washington and any subdivision or local government to invest in debt secured by mortgages insured by the Federal Housing Administrator, or in bonds of the Home Owner's Loan Corporation is eliminated.

Authority for the State of Washington and any subdivision or local government to invest in notes, bonds, or debentures of savings and loan associations, banks, mutual savings banks, savings and loan service corporations, and corporate mortgage companies is eliminated.

The Higher Education Facilities Authority is granted the authority to invest funds held in reserve that are not required for immediate disbursement.

The authority of the State Finance Committee to administer and adopt rules relating to the investment of local government funds laws is repealed.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirement that local governments investing in bonds of the State of Washington or other local governments do so only when the bonds have one of the three highest credit ratings of a nationally recognized rating agency, and adds a section permitting the Higher Education Facilities Authority to invest funds held in reserve that are not required for immediate disbursement.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is an efficiency bill that modernizes statutes that in some cases have not been changed since 1933. It aligns investment authorities of public entities with the Washington Constitution, and has no fiscal impact. While the bill deals with a technically complex subject, the state and local governments have treasuries that must be kept safe. There are 85 years of changes and permutations that are tied together by a "me too" clause. There is an enormous lack of clarity in some of these laws, and some accidental inclusion of investment authority in current law that is probably not constitutional.

(Opposed) None.

Persons Testifying: Representative Senn, prime sponsor; and Wolf Opitz, Office of the State Treasurer.

Persons Signed In To Testify But Not Testifying: None.