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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Labor, Elections and Urban Affairs

Senate Bill 93

Relating to: the investment by certain local units of government of funds held in trust to provide post-employment benefits.

By Senators Lassa, Darling, Grothman and Olsen; cosponsored by Representatives Gottlieb, Ballweg, Fields, Hahn, Mursau, A. Ott, Petrowski and Van Roy.

March 13, 2007 Referred to Committee on Labor, Elections and Urban Affairs.

March 13, 2008 Failed to pass pursuant to Senate Joint Resolution 1.

Adam Plotkin
Committee Clerk



David Carlson, DPI
6-1771

re: SB 93

August 4, 2006 Letter to School District Administrators

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DEPARTMENT OF PUBLIC INSTRUCTION

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Date: August 4, 2006

To: School District Administrators
CESA Administrators
CCDEB Administrators

From: David Carlson, Director
School Financial Services Team

Re: Fund 73 Employee Benefit Trust

Please share the information in this letter with business staff involved in the process of



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Date: August 4, 2006

To: School District Administrators
CESA Administrators
CCDEB Administrators

From: David Carlson, Director
School Financial Services Team

Re: Fund 73 Employee Benefit Trust

Please share the information in this letter with business staff involved in the process of establishing an "Employee Benefit Fund (Fund 73) and with members of the school board.

The Wisconsin Department of Public Instruction provides requirements concerning establishment of an "Employee Benefit Fund (Fund 73). These requirements apply to a Wisconsin School District when providing for postemployment benefits by contributions to a legally established irrevocable trust. This document is available on the school financial services website at: http://www.dpi.wi.gov/sfs/emp_benefit_trust_fund.html

The establishment of a fund 73 cannot be entered into without answering many questions most often addressed by experts in the areas of actuarial evaluation, law, trust documents, IRS regulations or financial investments. Many of the decisions made are based on information obtained from these experts. The following is a list of concerns or questions that your district may want to consider when choosing to fund postemployment benefits with a trust. These are not recommendations or requirements of DPI but rather issues that may arise during the process of setting up a trust:

- When setting up a trust and obtaining a legal opinion, are you working with an expert in what is an appropriate trust document to meet DPI requirements, district needs and state and federal regulations? Are you consulting with an expert knowledgeable of IRS regulations and filing requirements for the trust selected?
- What consideration has been given to the number and selection of trustees? Has your district considered whether one trustee is sufficient or perhaps several trustees representing various aspects (i.e. school board, administration, an employee) may be more desirable? Has the use of a corporate trustee been considered an option?
- Do the trustees understand the purpose of their role as a trustee and their responsibility in that role? One of the DPI requirements is that trustees understand their responsibility. Does the trustee see themselves as the one who manages assets owned by the trust under the terms of the trust document? Do they realize the purpose of the trustee is to safeguard the trust and distribute trust income as directed by the trust document? Is the trustee acting in the interest of plan participants and beneficiaries for the exclusive purpose of providing

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benefits? This requires they act with care, skill, and caution when investing and managing the trust assets.

- Are trustees aware of consequences if they do not act in accordance with the governing plan documents? A district and/or trustee may want to consult the appropriate professionals regarding the potential for personal liability of losses if they breach their fiduciary duty and of ways to reduce a potential liability.
- How well do you know your actuary? When hiring professionals to perform the actuary study, do you know what their experience or expertise is with the operations of governments and more specifically with the operations and aid formula for a Wisconsin School District? Most OPEB benefits are healthcare related so you may want to know what expertise your actuary has in this area.
- Is your District making a contribution to the trust and withdrawing the contribution immediately (within days) for current retiree benefits? DPI requirements include a provision that the trust fund may not be merely an accounting shell consisting of a fund on the district's accounting records. When a school district makes a contribution to the trust which is immediately paid to the current retirees for current fiscal year expenditures, this may be construed to mean the trust is not being used for the intent of funding future employee benefits but rather used as an accounting shell with the intent only to receive additional aid.
- How much risk is involved with your District investments? With the enactment of Assembly Bill 167, investments by school districts of funds held in trust to provide postemployment benefits may be invested in the same manner as is authorized for investments under s. 881.01, "*Uniform prudent investor act*". When the trustee is making investment decisions, their duty is to safeguard the trust and they should be acting in the interest of plan participants and beneficiaries by minimizing the risk of large losses.
- When selecting a financial advisor, is the individual knowledgeable of the Wisconsin investment statute applicable to the trust?

The School Financial Services team often receives questions or concerns like the above list. These decisions are the sole responsibility of the school district. DPI will not make a determination or recommendation regarding experts to hire, investment opportunities or types of trust agreements. It is the sole responsibility of the school district to set up an appropriate trust document to meet DPI and state and federal requirements, properly fund the trust and select a trustee to act in the interest of the plan participants and beneficiaries. We do recommend that you consult an expert in these areas.

For questions about this information, contact dpifin@dpi.state.wi.us (608) 267-9114

Last updated on 8/3/2006 3:22:08 PM



State Superintendent of Public Instruction Elizabeth Burmaster
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 P.O. Box 7841, Madison, WI 53707-7841 (800) 441-4563

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From: Rep. Gottlieb
Sent: Tuesday, February 27, 2007 1:29 PM
To: *Legislative Assembly Democrats; *Legislative Assembly Republicans;
*Legislative Senate Democrats; *Legislative Senate Republicans
Subject: Rep. Gottlieb and Sen. Lassa/LRB-1907 and LRB-2011/OPEB
Legislation/Deadline is Friday, March 9

Attachments: 07-19071.pdf
To: All Legislators

From: Senator Julie Lassa and Representative Mark Gottlieb

Date: February 28, 2007

Re: Co-sponsorship of LRB-2011 and LRB-1907, relating to the investment by certain local units of government of funds held in trust to provide post-employment benefits.

SB 93 AB 184

Co-sponsorship Deadline: Friday, March 9th, at 4:30 pm.

These companion bills are an extension of 2005 Act 99, which allowed school districts to create trusts to invest funds to help pay for the increasing costs of other post-employment benefits (OPEB). Other post-employment benefits include, but are not limited to, health care and life insurance.

Our legislation would allow other local units of government to also create trusts to expand their investment opportunities to help pay OPEB costs, thereby putting other Wisconsin governmental entities on an equal footing with school districts.

It would allow all local units of government to establish trusts and invest using the guidelines established in the Uniform Prudent Investor Act. The Uniform Prudent Investor Act, which was developed by the Uniform Law Commission in 1914, provides rules for governing investments that result in protection for trust assets while providing a prospect for increased income.

The additional income from higher rates of return on trust investments is then used to help offset the annual cost of OPEB. The cost to the local unit of government is the expense of establishing and operating the trust.

If you would like to co-sponsor LRB-1907 and LRB-2011, please contact Rob Richard in the Gottlieb office at 267-2369 or Jessica Ford Kelly in the Lassa office at 266-3123 by March 9th. You will be signed onto both bills unless you specifically state otherwise.

Analysis by the Legislative Reference Bureau

Under current law, a school district may invest and reinvest funds that are held in trust, other than funds held in the public employee trust fund, solely to provide post-employment benefits in the manner provided under the Uniform Prudent Investor Act, which took effect in Wisconsin on April 30, 2004. This bill requires that such funds be held in segregated accounts, and extends the same provisions to other local governmental units, including cities, villages, towns, counties, and technical college districts.



Plotkin, Adam

Subject: AP meets with Jessica Kelly and Greg Hubbard
Location: 123 BS
Start: Fri 09/28/2007 11:00 AM
End: Fri 09/28/2007 11:30 AM
Recurrence: (none)

On SB 93
AP

AB 984

- Rissner supports amendment
- Gottlieb offered amendment in Assembly
- amendment + bill passed unanimously in Senate
 - public hearing in March, sep. 11 exc.
- amendment takes out "or accounts" on page 2, lines 10 & 11



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State of Wisconsin Department of Public Instruction

Elizabeth Burmaster, State Superintendent

November 26, 2007

The Honorable Spencer Coggs, Chair
Senate Committee on Labor, Elections and Urban Affairs
State Capitol
PO Box 7882
Madison, WI 53707-7882

SB 93

copy in both files

Dear Senator Coggs:

Adam Plotkin from your office recently called requesting the department's position on 2007 Assembly Bill 184 (AB 184), which is before your committee. The department had a concern with the bill, but that concern was addressed in the Assembly under Assembly Amendment 1, offered by Rep. Gottlieb and adopted by the Assembly. As a result, the department is now taking no position on the bill as amended.

The original concern the department had with AB 184 was outlined in the fiscal estimate the department completed for 2007 Senate Bill 93 (SB 93), the companion bill to AB 184. It should be noted that the department did not do a fiscal estimate for AB 184 as none was requested from us by the Department of Administration. The language from the SB 93 fiscal estimate is excerpted below.

"The department currently requires school districts to establish a formal, separate legal trust for the investment of post-employment benefits. Transactions related to this trust fund must be accounted for in district finances in a separate accounting fund called Fund 73...."

"...If, under this bill, a district is allowed to hold funds in a separate district account rather than a separate legal entity, the aidable expenditure may revert back to dollars paid to current retirees and raise the potential of aiding the expenditure a second time. Thus, until the meaning of the bill's text that funds for post-employment benefits "...shall be held in a trust fund or account that is separate from all other trust funds or accounts created by, or under the control of, the local governmental unit" is reconciled with current department practice, there may be an indeterminate fiscal effect."

Assembly Amendment 1 to AB 184 removed the "or account" language from the bill and thus removed our concern with the bill by clarifying that the dollars should only be kept in a separate legal entity and thus removing the possibility of aiding the expenditure twice. Please feel free to contact me should you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Kammerud".

Jennifer Kammerud
Legislative Liaison

Cc: Representative Mark Gottlieb and Senator Julie Lassa