



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-5568/1
ARG:klm

2021 SENATE BILL 863

January 13, 2022 - Introduced by Senators DARLING and COWLES, cosponsored by Representatives WITTKKE, BORN, MACCO, CABRAL-GUEVARA, DRAKE, GUNDRUM, KATSMMA, KNODL, KUGLITSCH, MAGNAFICI, MURPHY, SINICKI, STEFFEN and KERKMAN. Referred to Committee on Transportation and Local Government.

1 **AN ACT** *to repeal* 25.18 (1) (o) and (p); *to renumber and amend* 25.167 and
2 25.187 (1); *to amend* 25.156 (3) and (4), 25.16 (2) and (3), 25.165 (2) (c), 25.17
3 (3) (b) 3., 25.17 (3) (dg) 2., 25.17 (70) (intro.), 25.18 (1) (intro.), (a), (f) and (m)
4 and 25.183 (3); and *to create* 25.167 (2m), 25.187 (1) (b) and (c) and 25.187 (4)
5 of the statutes; **relating to:** investment board operations.

Analysis by the Legislative Reference Bureau

This bill makes various changes relating to the State of Wisconsin Investment Board.

Under current law, among its powers and duties, SWIB may do any of the following:

1. Employ special legal or investment counsel in any matters arising out of the scope of its investment authority, notwithstanding certain other statutory provisions relating to state procurement and state agency employment of attorneys, but employment of special legal counsel paid by SWIB must be with the consent of the attorney general.

2. Execute certain indemnification agreements related to securities.

3. Secure insurance against risks relating to SWIB's investments or properties.

4. Liquidate any corporation wholly owned by SWIB or operate the corporation for up to five years until it can be liquidated.

5. Take necessary action to make investments in mortgage loans or purchase real estate interests.

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6. Maintain and repair any building that SWIB owns in fee or in which SWIB owns the beneficial interest and, notwithstanding certain other statutory provisions relating to state procurement or engineering, have exclusive authority to contract as SWIB deems necessary for this purpose.

7. Engage in certain types of securities lending and repurchase agreement transactions.

8. Sell securities that SWIB has the right to acquire by exercising conversion rights.

9. Employ professionals, contractors, or other agents necessary to evaluate or operate any property if a fund managed by SWIB has an interest in, or is considering purchasing or lending money based upon the value of, that property, notwithstanding certain other statutory provisions relating to state procurement.

10. For specified purposes, enter into certain swap transactions.

11. Invest assets of the permanent endowment fund in any investment that is authorized for Wisconsin Retirement System accounts or in certain other investments related to tobacco settlement revenues.

This bill specifies that SWIB's authorization, as provided in items 1 to 11, above, applies notwithstanding any other statute except one restricting SWIB's investment in certain derivatives and reverse repurchase agreements. The bill also modifies this authorization as follows: with respect to item 1, it removes the attorney general consent requirement and authorizes SWIB to employ special legal or investment counsel in any matters arising out of the scope of its operations, not just investment authority; with respect to item 6, it expands the authorized activities to include a leasehold interest and to include, among others, improving, occupying, and furnishing the building; and it repeals the provisions creating the authorization under item 11.

The bill also makes changes related to SWIB's funding of operating expenses. Current law defines, for certain purposes, SWIB's "operating expenditures" to include all costs and expenses incurred by SWIB for the purpose of operating SWIB and managing the assets of each fund for which SWIB has management responsibility, but excludes certain costs or expenses such as those related to the following: employing special legal or investment counsel; securing insurance against certain risks; and contracting with external managers to manage SWIB's assets. These costs and expenses excluded from the definition of "operating expenditures" and are paid from the fund for which the costs or expenses are incurred.

The bill narrows the definition of "operating expenditures" by adding as exclusions from the definition the following costs and expenses: information technology purchases; business travel; recruitment of job applicants; subscriptions to relevant news or industry publications; and office management expenses. The bill also specifies that SWIB's expenditure of operating expenditures is not subject to statutory provisions relating to state procurement but that SWIB may coordinate purchases with the Department of Administration.

The bill further requires SWIB to adopt policies and procedures that specify all of the following: when SWIB must publicly solicit proposals from multiple vendors of goods or services; how SWIB is to evaluate proposals from multiple vendors; and

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how SWIB is to assess any conflict of interest a vendor may have if the vendor sells goods or services to SWIB. The bill also requires SWIB to establish travel policies for SWIB employees and job applicants and a schedule for travel expense reimbursement that takes into account the maximum rate for lodging expenses under the uniform travel schedule for state officers and employees.

The bill makes additional changes, including the following:

1. Under current law, SWIB's executive director and internal auditor, certain SWIB personnel appointed by the executive director, and other SWIB employees may not have any financial interest, either directly or indirectly, in any firm engaged in the sale or marketing of real estate or investments of any kind. The bill qualifies this prohibition so that these individuals may not have such a financial interest if it would create a conflict of interest for SWIB.

2. The bill removes a limit on the number of investment directors that may be appointed by the executive director.

3. The bill makes clarifying changes related to the duties of SWIB's executive director and chief investment officer when both titles are held by the same person.

4. The bill specifies that SWIB's biennial plan for investment in Wisconsin must address potential investments in the next four years, rather than five years.

5. The bill changes a SWIB position title from executive assistant to the executive director to deputy executive director.

6. The bill specifies that the SWIB internal auditor's compliance monitoring duty is accomplished through periodic internal audits.

7. The bill makes minor changes relating to SWIB's investment authority with respect to unsecured notes and commercial paper.

8. The bill specifies that current restrictions on reverse repurchase agreements apply only in the state investment fund.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 25.156 (3) and (4) of the statutes are amended to read:

2 25.156 (3) The members of the board shall appoint an investment director or
3 ~~the executive assistant to the~~ deputy executive director, internal auditor, chief
4 investment officer, chief financial officer, chief legal counsel, or chief risk officer to
5 act as assistant director, except that until the appointment is made by the members
6 of the board, the executive director may temporarily designate the assistant director.

7 (4) The members of the board shall promulgate rules restricting the executive
8 director, ~~executive assistant to the~~ deputy executive director, internal auditor, chief

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1 investment officer, chief financial officer, chief legal counsel, chief risk officer,
2 investment directors, and employees from having financial interest, directly or
3 indirectly, in firms or corporations providing services to the department and
4 governing the receipt of gifts or favors therefrom, and also governing personal
5 investments of all employees including the executive director, ~~executive assistant to~~
6 ~~the~~ deputy executive director, internal auditor, chief investment officer, chief
7 financial officer, chief legal counsel, chief risk officer, and investment directors to
8 prevent conflicts of interest.

9 **SECTION 2.** 25.16 (2) and (3) of the statutes are amended to read:

10 25.16 (2) The executive director may appoint a chief legal counsel, chief
11 financial officer, chief risk officer, and ~~not more than 11~~ investment directors and,
12 shall appoint a chief investment officer unless the executive director is also the chief
13 investment officer, and shall appoint all other employees necessary to carry out the
14 functions of the board, except that the board shall appoint the internal auditor and
15 shall participate in the selection of the chief investment officer and investment
16 directors and the internal auditor shall appoint his or her staff. The executive
17 director shall appoint all employees outside the classified service. Neither the
18 executive director, the internal auditor, the chief investment officer, the chief legal
19 counsel, the chief financial officer, the chief risk officer, any investment director, nor
20 any other employee of the board shall have any financial interest, either directly or
21 indirectly, in any firm engaged in the sale or marketing of real estate or investments
22 of any kind if it would create a conflict of interest for the investment board, nor shall
23 any of them render investment advice to others for remuneration.

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1 **(3)** The executive director may appoint ~~an~~ a deputy executive assistant
2 director. The deputy executive assistant director shall perform the duties prescribed
3 by the executive director.

4 **SECTION 3.** 25.165 (2) (c) of the statutes is amended to read:

5 25.165 **(2)** (c) ~~Monitor~~ Through periodic internal audits, monitor for compliance
6 with applicable legal requirements and with the board's contractual agreements any
7 bank, savings and loan association, savings bank, or credit union with which the
8 board has entered into a custodial agreement under s. 25.17 (11); any investment
9 advisers with which the board has contracted to manage and control board assets
10 under s. 25.18 (2) (e); and any other external parties with which the board has
11 contracted to provide investment services to the board.

12 **SECTION 4.** 25.167 of the statutes is renumbered 25.167 (1m), and 25.167 (1m)
13 (intro.), as renumbered, is amended to read:

14 25.167 **(1m)** (intro.) ~~Under~~ Except as provided in sub. (2m), under the
15 supervision of the executive director, the chief investment officer shall do all of the
16 following:

17 **SECTION 5.** 25.167 (2m) of the statutes is created to read:

18 25.167 **(2m)** If the executive director and chief investment officer are the same
19 person, the executive director shall designate another investment director to take
20 the actions specified in sub. (1m).

21 **SECTION 6.** 25.17 (3) (b) 3. of the statutes is amended to read:

22 25.17 **(3)** (b) 3. Unsecured notes of corporate issuers, including financial and
23 industrial issuers, maturing within 5 years or less from the date of settlement and
24 having one of the ~~2~~ 3 highest ratings given by a nationally recognized rating service,
25 ~~but if the corporation issuing such notes has any long-term senior debt issues~~

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1 ~~outstanding which also have been rated, the rating must be one of the 3 highest~~
2 ~~ratings so given.~~

3 **SECTION 7.** 25.17 (3) (dg) 2. of the statutes is amended to read:

4 25.17 (3) (dg) 2. Commercial paper maturing within one year or less from the
5 date of investment and rated not lower than prime by the national credit office, if the
6 issuing corporation has one or more long-term senior debt issues outstanding, each
7 of which has one of the 3 highest ratings issued by Moody's investors service or
8 Standard & Poor's corporation a nationally recognized rating service.

9 **SECTION 8.** 25.17 (70) (intro.) of the statutes is amended to read:

10 25.17 (70) (intro.) No later than December 31 of every even-numbered year,
11 submit to the governor and to the presiding officer of each house of the legislature
12 a plan for making investments in this state. The purpose of the plan is to encourage
13 the board to make the maximum amount of investments in this state, subject to s.
14 25.15 and consistent with the statutory purpose of each trust or fund managed by the
15 board. The plan shall discuss potential investments to be made during the
16 succeeding ~~5~~ 4 years beginning in the year after submittal of the plan, and shall
17 include, but not be limited to, the following:

18 **SECTION 9.** 25.18 (1) (intro.), (a), (f) and (m) of the statutes are amended to read:

19 25.18 (1) (intro.) In addition to the powers and duties enumerated in s. 25.17,
20 but subject to s. 25.183, and notwithstanding any other statute except s. 25.183, the
21 board may:

22 (a) ~~Notwithstanding s. 20.930 and all provisions of subch. IV of ch. 16, except~~
23 ~~s. 16.753, employ special~~ Employ legal or investment counsel in any matters arising
24 out of the scope of its investment authority. ~~Section 16.753 does not apply to the~~
25 ~~employment of legal or investment counsel for the purpose of assisting the board with~~

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1 ~~investments. The employment of special legal counsel shall be with the advice and~~
2 ~~consent of the attorney general whenever such special counsel is to be compensated~~
3 ~~by the board or operations. Any expense of counsel so employed shall be borne by the~~
4 ~~fund for which the services shall be furnished.~~

5 (f) ~~Maintain~~ Improve, maintain, occupy, furnish, equip, supply, and repair any
6 building or other structure or premises which it owns in fee or in which it owns ~~the~~
7 ~~a beneficial or leasehold interest and, notwithstanding all provisions of subch. IV or~~
8 ~~V of ch. 16, except s. 16.753, it shall have exclusive authority to make such~~
9 ~~agreements and enter into such contracts as it deems necessary for such purpose.~~
10 ~~Section 16.753 does not apply to agreements and contracts entered into by the board~~
11 ~~for the purpose of assisting the board with investments. All noncapital costs under~~
12 ~~this paragraph shall be charged to the current income accounts of the funds having~~
13 ~~an interest in the building, structure, or premises.~~

14 (m) ~~Notwithstanding all provisions of subchs. IV and V of ch. 16, except s.~~
15 ~~16.753, employ~~ Employ professionals, contractors, or other agents necessary to
16 evaluate or operate any property if a fund managed by the board has an interest in,
17 or is considering purchasing or lending money based upon the value of, that property.
18 ~~Section 16.753 does not apply to the employment of any person for the purpose of~~
19 ~~assisting the board with investments. Costs under this paragraph shall be paid by~~
20 ~~the fund and or charged to the appropriate account under s. 40.04 (3) for which the~~
21 ~~costs were incurred.~~

22 **SECTION 10.** 25.18 (1) (o) and (p) of the statutes are repealed.

23 **SECTION 11.** 25.183 (3) of the statutes is amended to read:

24 25.183 (3) REVERSE REPURCHASE AGREEMENTS. After May 7, 1996, the board may
25 not enter into any reverse repurchase agreement in the state investment fund unless

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1 the repurchase of securities under the agreement is required to occur no later than
2 the next business day.

3 **SECTION 12.** 25.187 (1) of the statutes is renumbered 25.187 (1) (a) and
4 amended to read:

5 25.187 (1) (a) In this section, “operating expenditures” include all costs and
6 expenses incurred by the investment board for the purpose of operating the board
7 and managing the assets of each fund for which the board has management
8 responsibility, but does not include costs or expenses incurred under s. 25.18 (1) (a),
9 (e), (f) or (m) or (2) (d) or (e) or (2) or 40.04 (3) (intro.) or incurred in connection with
10 information technology purchases, including those contemplated under s. 16.751,
11 business travel, recruitment of job applicants, or subscriptions to relevant news or
12 industry publications, or office management expenses.

13 **SECTION 13.** 25.187 (1) (b) and (c) of the statutes are created to read:

14 25.187 (1) (b) The investment board’s expenditure of operating expenditures
15 contemplated by this section is not subject to the provisions of subch. IV of ch. 16, but
16 the investment board may, in its discretion, coordinate purchases with the
17 department of administration under s. 16.71.

18 (c) The investment board shall adopt policies and procedures that specify all
19 of the following:

20 1. When the investment board is required to publicly solicit proposals from
21 multiple vendors of goods or services.

22 2. How the investment board is to evaluate proposals from multiple vendors.

23 3. How the investment board is to assess any conflict of interest a vendor may
24 have if the vendor sells goods or services to the investment board.

25 **SECTION 14.** 25.187 (4) of the statutes is created to read:

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1 25.187 (4) The investment board shall establish travel policies for investment
2 board employees and job applicants and a schedule for the reimbursement of
3 investment board employees and job applicants for travel expenses, which shall take
4 into account the maximum rate for lodging expenses incurred in this state under the
5 approved uniform travel schedule incorporated under s. 20.916 (8) (b) into the
6 current compensation plan under s. 230.12 (1).

7

(END)