

MEMORANDUM

TO: Members of the Joint Budget Committee

FROM: Carolyn Kampman, Joint Budget Committee Staff (303-866-4959)

SUBJECT: Senate Bill 09-260 Clarification (Concerning State School Lands Moneys)

DATE: June 22, 2009

Late in December 2008, as part of our efforts to provide the Committee with multiple options to address the state revenue shortfall, I suggested that the Committee consider introducing legislation to temporarily redirect a portion of school lands moneys that would otherwise be credited to the Public School ("Permanent") Fund. I informed the Committee that the State Treasurer's Office had made monthly transfers to the Permanent Fund (July through November 2008), but that there was no statutory requirement concerning the frequency of such transfers. In order to allow the Committee and the General Assembly the option of considering such a statutory change affecting the remaining transfers in FY 2008-09, the Committee asked the State Treasurer to suspend these monthly transfers beginning in December 2008. I conveyed this request to the State Treasurer's staff, and the State Treasurer agreed to do so.

Subsequently, the Committee voted to introduce legislation concerning the transfer of state lands moneys in FY 2008-09 and FY 2009-10. Senate Bill 09-260 requires that moneys not otherwise allocated from state public school lands be transferred to the State Public School Fund (SPSF) instead of the Permanent Fund. Specifically, S.B. 09-260 requires that the following revenue sources earned or received in FY 2008-09 and FY 2009-10 that are not required for State Land Board administration or the "BEST" capital construction funding program, and are not transferred to the Land Board's Investment and Development Fund, be transferred to the SPSF:

- interest or income earned on the investment of moneys in the Permanent School Fund;
- rental income earned on state school trust lands; and
- royalties and other payments for the depletion or extraction of a natural resource on state school trust lands.

The act includes provisions to appropriate the moneys anticipated to be transferred in each fiscal year for public school finance, and reduce appropriations from the State Education Fund for public school finance by the same amounts. The appropriations were based on projections provided by the State Treasurer's staff. Specifically with respect to FY 2008-09, absent S.B. 09-260, transfers to the Permanent Fund were anticipated to total \$42.6 million. A total of \$18 million had already been transferred to the Permanent Fund through November 2008; this amount was thus part of the principal of the Permanent Fund, and could not be retrieved. Thus, the appropriation clause anticipated that the remaining \$24.6 million would be redirected to the State Public School Fund as a result of S.B. 09-260.

S.B. 09-260 Clarification
June 22, 2009

Unfortunately, S.B. 09-260 does not clearly state that the General Assembly intends to redirect to the SPSF only those amounts that have not already been transferred to the Permanent Fund. Staff recommends that the Committee send a letter to the State Treasurer to clarify that S.B. 09-260 was never intended to apply to moneys transferred to the Permanent Fund prior to December 2008 (see attached draft).

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June 22, 2009

The Honorable Cary Kennedy, State Treasurer
140 State Capitol
Denver, CO 80203-1792

Dear Treasurer Kennedy:

In December 2008, following the release of the quarterly economic forecast, the Joint Budget Committee discussed the possibility of introducing legislation to temporarily redirect a portion of school lands moneys that would otherwise be credited to the Public School ("Permanent") Fund. The Committee was informed that the State Treasurer's Office had made monthly transfers of public school lands moneys to the Permanent Fund from July through November 2008, but that there was no statutory requirement concerning the frequency of such transfers. In order to allow the Committee and the General Assembly the option of considering such a statutory change affecting the remaining transfers in FY 2008-09, the Committee asked the State Treasurer to suspend these monthly transfers beginning in December 2008. You agreed to do so, and we appreciate your cooperation.

Subsequently, the General Assembly passed, and Governor Ritter signed, S.B. 09-260. This act requires, for FY 2008-09 and FY 2009-10, that moneys not otherwise allocated from state public school lands be credited to the State Public School Fund (SPSF) instead of the Permanent Fund. The act includes provisions to appropriate the moneys anticipated to be transferred in each fiscal year for public school finance, and reduce appropriations from the State Education Fund for public school finance by the same amounts. The appropriations were based on projections provided by your staff. Specifically with respect to FY 2008-09, absent S.B. 09-260, transfers to the Permanent Fund were anticipated to total \$42.6 million. A total of \$18 million had already been transferred to the Permanent Fund through November 2008; this amount was thus part of the principal of the Permanent Fund, and could not be retrieved. Thus, the appropriation clause anticipated that the remaining \$24.6 million would be redirected to the SPSF as a result of S.B. 09-260.

This letter is intended to clarify that S.B. 09-260 was never intended to apply to moneys transferred to the Permanent Fund prior to December 2008. We understood, prior to introducing S.B. 09-260, that school land trust funds had already been deposited into the Permanent Fund for the first five months of the fiscal year and that these moneys constitutionally could not be taken back out of the

S.B. 09-260 Clarification

June 22, 2009

Permanent Fund. Thus, we intended that S.B. 09-260 only require that certain school land trust moneys be credited to the SPSF for months beginning December 2008 through June 2010.

If you or your staff require any further clarification or information related to S.B. 09-260, please do not hesitate to contact either Carolyn Kampman of our staff (303-866-4959) or Esther van Mourik at the Office of Legislative Legal Services (303-866-4215).

Sincerely,

Senator Moe Keller
Chairman, Joint Budget Committee

cc: Eric Rothaus, Deputy Treasurer
John Ziegler, Joint Budget Committee Staff Director