



STATE OF OREGON
Legislative Counsel Committee

June 10, 2011

To: Paul Warner, Legislative Revenue Officer
From: Alan S. Dale, Deputy Legislative Counsel
Subject: HB 2543-A6

The attached amendments to A-Engrossed House Bill 2543 require the State Treasurer to transfer \$19 million of unexpended moneys in the Common School Fund to the credit of the Senior Property Tax Deferral Revolving Account. Section 2 (2), Article VIII of the Oregon Constitution, provides, "Unexpended moneys in the Common School Fund shall be invested as the Legislative Assembly shall provide by law and shall not be subject to the limitations of section 6, Article XI of this Constitution." For the transfer in A-Engrossed House Bill 2543 to be lawful, we believe the transfer must constitute an investment. While we have not had time to do thorough research on the matter, an Opinion of the Attorney General states that moneys in the Common School Fund,

held in trust for the benefit of the schools, must be used "in such a way as to derive the greatest net profit for the people of this state." We understand "net profit" to refer to the purpose (schools) for which the trust [i.e., the Common School Fund] was established, not some other worthy but unrelated purpose. . . . This means, of course, that the controlling consideration in any investment decision made for the fund is the ultimate financial benefit to the permanent corpus of the fund and to the income to be distributed to the schools. 43 Op. Att'y Gen. 140, 142 (1983).

For this reason, section 24 (2) of the proposed amendments requires repayment of the transferred moneys with interest at a rate equal to the average positive rate of interest earned on all other unexpended moneys from the Common School Fund invested over the period between the initial transfer of the moneys to the Senior Property Tax Deferral Revolving Account and June 15, 2013. This language is specifically intended to satisfy the legal requirements applicable to investments made from the Common School Fund, but there is a chance that a court would hold that the language does not accomplish this intention.

Encl.