Washington Research Council

Policy Brief

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ESJR 8212: A Constitutional Amendment to Treat Long-Term Care Funds the Same as Other, Similar State Funds

Briefly

ESJR 8212 would amend the state constitution to allow money in the new long-term care services and supports trust account to be invested in stocks. If approved by voters in November, this would put the new long-term care fund on the same investment footing as the state's retirement funds, industrial insurance trust funds, and funds held in trust for the benefit of persons with developmental disabilities. Otherwise, the long-term care funds will earn lower rates of return over time.

The new long-term services and supports trust program is to be funded with a payroll tax, at a rate that will maintain actuarial solvency. The more the long-term services and supports trust account earns on the market, the less will need to be raised from taxpayers to maintain its solvency.

Earlier this year, the state Legislature passed Engrossed Senate Joint Resolution 8212. ESJR 8212 would amend the state constitution to allow long-term care services and supports funds to be invested. If approved, this would be the constitution's 110th amendment.

ESJR 8212

ESJR 8212 would amend Article XXIX, section 1 of the state constitution. The amendment would allow money in the long-term care services and supports trust account to be invested. Moneys in public pension or retirement funds, industrial insurance trust funds, and funds held in trust for the benefit of persons with developmental disabilities may already be invested. Thus, this amendment would put the new long-term care fund on the same footing as the state's other, similar trust funds.

The resolution, which had bipartisan sponsorship, was passed by the Senate 45–3 and the House 96–1. To be ratified, the resolution must also be approved by a majority of voters.

Constitutional Background

When Washington's constitution was drafted and ratified in 1889, a former state Supreme Court justice has written, "The proper limits to place on corporations, trusts, and railroads were a central issue" (Dolliver 1989). Further, "In Washington, tension between the desire to protect individuals and the state from overpowering financial forces was set against the recognized need for investment to help develop the vast natural resources and economic potential of the state" (Dolliver 1989).

Given these concerns, the constitution included three sections (Article VIII, sections 5 and 7 and Article XII, section 9) that preclude the investment of state funds in stocks. (See the box on page 2 for their full text.) As an attorney general opinion notes, "Article XII, section 9 of the Washington Constitution prohibits the investment of state funds in the stock of private companies unless other-

Relevant Constitutional Provisions

Article VIII, section 5: "The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation."

Article VIII, section 7: "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."

Article XII, section 9: "The state shall not in any manner loan its credit, nor shall it subscribe to, or be interested in the stock of any company, association or corporation."

wise permitted by another constitutional provision" (Ferguson 2015).

The constitution has since been amended three times to allow for the investment of certain funds in stocks. First, Amendment 49 was ratified in 1968 (72.05%–27.95%). It added a new Article XXIX, section 1: "Notwithstanding the provisions of sections 5, and 7 of Article VIII and section 9 of Article XII or any other section or article of the Constitution of the state of Washington, the moneys of any public pension or retirement fund may be invested as authorized by law."

Next, Amendment 75 was ratified in 1985 (71.37%–28.63%). It allowed the moneys of any industrial insurance trust fund to be invested as well. Finally, Amendment 93 was ratified in 2000 (64.85%–35.15%). It added the moneys of any "fund held in trust for the benefit of persons with developmental disabilities" to the list of funds that may be invested.

In 2012, a resolution that would have amended the constitution to allow the public moneys of the University of Washington and Washington State University to be invested was not approved by voters (43.99% to 56.01%).

In the absence of such a constitutional amendment, investment options for state funds are limited to cash vehicles, government bonds, commercial paper on the secondary market, and "governmentally-insured or guaranteed bank securities such as certificates of deposit" (Eikenberry 1984).

Long-Term Care Services and Supports

In 2019, the Legislature passed 2SHB 1087. The bill created a long-term services and supports trust program. Under the program, a payroll tax will fund a new long-term care insurance benefit. The tax will be assessed on wages beginning Jan. 1, 2022 and benefits will be available beginning Jan. 1, 2025 (WRC 2019). Premiums will be deposited in the new long-term services and supports trust account. The tax rate will initially be 0.58 percent of wages, but it must be set "at the lowest amount necessary to maintain the actuarial solvency" of the trust account. Under the bill, "The revenue generated pursuant to this chapter shall be utilized to expand long-term care in the state." Funds in the trust account are to be invested by the Washington State Investment Board (WSIB), as allowed under the constitution.

The fiscal note for the bill estimated that annual premiums would total $258.1 million in FY 2022 and grow to $1.227 billion by FY 2031.

Fiscal Impact

There is no fiscal note for ESJR 8212, and the Office of Financial Management is not required to produce a fiscal impact statement for the ballot.

However, the investment performance of the long-term services and supports trust account will help determine the solvency of the account, and, therefore, the tax rate. As Sen. John Braun has pointed out, when the long-term modelling for the program was done by Milliman, it assumed that the fund would yield an annual interest rate of 5.3 percent (Braun 2020). If that rate isn't reached, tax rates may have to increase to maintain account solvency. As Milliman explained, "As the interest rate increases, future benefit payments are reduced in present value, which reduces the necessary payroll tax. If interest rates decrease, future benefit payments become more expensive in present value, and the necessary payroll tax increases" (Milliman 2018).

According to the WSIB, for the quarter ended June 30, the 20-year performance of its various investments were as follows:

- 4.87 percent for public equity (stocks)
- 9.37 percent for private equity (stocks)
- 5.95 percent for fixed income (bonds)
- 1.45 percent for cash
- 1.69 percent for 90-day T-Bills

Clearly stocks and bonds provide better earnings opportunities than cash and T-bills, which are examples of what the long-term services and supports trust account could be invested in under current law.

An illustrative example is the Washington State Opportunity Scholarship. The scholarship is funded with private contributions and a state match. The state match cannot be invested in stocks pursuant to the constitution (Ferguson 2015). Consequently, the private funds (which are invested by the WSIB) have earned 5.62 percent since inception and the state funds have earned just 0.91 percent (WSIB 2020).

Comment

It is important for the state to be a responsible steward of public funds. To that end, the state must balance the need to keep funds safe while also providing funds the best opportunity for growth. For funds that are meant to provide long-term reserves for obligations that will occur far in the future, the balance weighs more heavily on the growth side. Indeed, the more such a fund earns on the market, the less needs to be raised from taxpayers to maintain its solvency.

We already trust the WSIB to invest retirement funds and industrial insurance funds in stocks. There's no reason not to extend that trust to the investment of long-term care funds.

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