



TO: Local Retirement Fund Investment Study Group

FROM: Ed Burek, Deputy Director *EB*

RE: Comparison of Various Public Pension Fund Investment Statutes

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Introduction

The first section below is a side-by-side showing the State Board of Investment (SBI) permitted investment provision, the expanded list provision, and also the limited list provision applicable to some of the smallest plans. At the first meeting of the study group the State Auditor requested that I provide this information for our next meeting. Later sections of this memo include information on various other provisions of law which add to the investment authority of the various plans, and some discussion of issues. These later sections cover mutual fund authority provisions, including the use of the SBI Supplemental Fund; the definition of limited list plans; junk bonds authority provisions; and equity real estate provisions.

Side-by-Side of SBI, Expanded List, and Limited List Provisions

The prime SBI permissible investment provision is Minnesota Statutes, Section 11A.24; the expanded list permissible investment provision, which is applicable to many, and perhaps most, of the local plans is Minnesota Statutes, Section 356A.06, Subdivision 7; and the limited list provision, applicable to some of the small plans, is Minnesota Statutes, Section 356A.06, Subdivision 6. The following displays these provisions, permitting comparison of the language for substantive differences. However, other provisions, discussed later, considerably alter the investment authority for all plans other than SBI.

SBI Provision	Expanded List Provision	Limited List Provision
11A.24, Subd. 1. Securities generally. The state board shall have the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned as units in commingled trusts that own the securities described in subdivisions 2 to 6.	356A.06, Subd. 7, Para. (a), (b), and Subd. 7a. (a) Authority. Except to the extent otherwise authorized by law, a covered pension plan not described by subdivision 6, paragraph (a), shall invest its assets only in accordance with this subdivision. (b) Securities generally. The covered pension plan has the authority to purchase, sell, lend, or exchange the securities specified in paragraphs (c) to (i), including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. These securities may be owned as units in commingled trusts that own the securities described in paragraphs (c) to (i), including real estate investment trusts and insurance company commingled accounts, including separate accounts.	356A.06, Subd. 6. No provision.
Any agreement to lend securities must be concurrently collateralized with cash or securities with a market value of not less than 100 percent of the market value of the loaned securities at the time of the agreement. Any agreement for put and call options and futures contracts may only be entered into with a fully offsetting amount of cash or securities. Only securities authorized by this section, excluding those under subdivision 6, paragraph (a), clauses (1) to (4), may be accepted as collateral or offsetting securities.	Subd. 7a. Restrictions. Any agreement to lend securities must be concurrently collateralized with cash or securities with a market value of not less than 100 percent of the market value of the loaned securities at the time of the agreement. For a covered pension authorized to purchase put and call options and futures contracts under subdivision 7, any agreement for put and call options and futures contracts may only be entered into with a fully offsetting amount of cash or securities. Only securities authorized by this section, excluding those under subdivision 7, paragraph (g), clause (1), items (i) to (iv), may be accepted as collateral or offsetting securities.	

SBI Provision	Expanded List Provision	Limited List Provision
<p>11A.24, Subd. 2. Government obligations. The state board may invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness provided the issue is backed by the full faith and credit of the issuer or the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which the board may invest under this subdivision include guaranteed or insured issues of (a) the United States, its agencies, its instrumentalities, or organizations created and regulated by an act of Congress; (b) Canada and its provinces, provided the principal and interest is payable in United States dollars; (c) the states and their municipalities, political subdivisions, agencies or instrumentalities; (d) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or any other United States government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars.</p>	<p>356A.06, Subd. 7, Para. (c). (c) Government obligations. The covered pension plan may invest funds in governmental bonds, notes, bills, mortgages, and other evidences of indebtedness if the issue is backed by the full faith and credit of the issuer or the issue is rated among the top four quality rating categories by a nationally recognized rating agency. The obligations in which funds may be invested under this paragraph include guaranteed or insured issues of (1) the United States, its agencies, its instrumentalities, or organizations created and regulated by an act of Congress; (2) Canada and its provinces, provided the principal and interest is payable in United States dollars; (3) the states and their municipalities, political subdivisions, agencies, or instrumentalities; (4) the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, or any other United States government sponsored organization of which the United States is a member, provided the principal and interest is payable in United States dollars.</p>	<p>356A.06, Subd. 6, Para. (b), Cl. (3). (3) governmental obligations, including bonds, notes, bills, or other fixed obligations, issued by the United States, an agency or instrumentality of the United States, an organization established and regulated by an act of Congress or by a state, state agency or instrumentality, municipality, or other governmental or political subdivision that:</p> <p>(i) for the obligation in question, issues an obligation that equals or exceeds the stated investment yield of debt securities not exempt from federal income taxation and of comparable quality;</p> <p>(ii) for an obligation that is a revenue bond, has been completely self-supporting for the last five years; and</p> <p>(iii) for an obligation other than a revenue bond, has issued an obligation backed by the full faith and credit of the applicable taxing jurisdiction and has not been in default on the payment of principal or interest on the obligation in question or any other nonrevenue bond obligation during the preceding ten years;</p>
<p>11A.24, Subd. 3. Corporate obligations. (a) The state board may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof provided that:</p> <p>(1) the principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof shall be payable in United States dollars; and</p> <p>(2) obligations shall be rated among the top four quality categories by a nationally recognized rating agency.</p> <p>(b) The state board may invest in unrated corporate obligations or in corporate obligations that are not rated among the top four quality categories as provided in paragraph (a), clause (2), provided that:</p> <p>(1) the aggregate value of these obligations may not exceed five percent of the market or book value, whichever is less, of the fund for which the state board is investing;</p> <p>(2) the state board's participation is limited to 50 percent of a single offering subject to this paragraph; and</p> <p>(3) the state board's participation is limited to 25 percent of an issuer's obligations subject to this paragraph.</p>	<p>356A.06, Subd. 7, Para. (d). (d) Corporate obligations. The covered pension plan may invest funds in bonds, notes, debentures, transportation equipment obligations, or any other longer term evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States or any state thereof, or the Dominion of Canada or any province thereof if they conform to the following provisions:</p> <p>(1) the principal and interest of obligations of corporations incorporated or organized under the laws of the Dominion of Canada or any province thereof must be payable in United States dollars; and</p> <p>(2) obligations must be rated among the top four quality categories by a nationally recognized rating agency.</p>	<p>356A.06, Subd. 6, Para. (b), Cl. (4). (4) corporate obligations, including bonds, notes, debentures, or other regularly issued and readily marketable evidences of indebtedness issued by a corporation organized under the laws of any state that during the preceding five years has had on average annual net pretax earnings at least 50 percent greater than the annual interest charges and principal payments on the total issued debt of the corporation during that period and that, for the obligation in question, has issued an obligation rated in one of the top three quality categories by Moody's Investors Service, Incorporated, or Standard and Poor's Corporation; and</p>
<p>11A.24, Subd. 4. Other obligations. (a) The state board may invest funds in bankers acceptances, certificates of deposit, deposit notes, commercial paper, mortgage securities and asset backed securities, repurchase agreements and reverse repurchase agreements, guaranteed investment contracts, savings accounts, and guaranty fund certificates, surplus notes, or debentures of domestic mutual insurance companies if they conform to the following provisions:</p>	<p>356A.06, Subd. 7, Para. (e). (e) Other obligations. (1) The covered pension plan may invest funds in bankers acceptances, certificates of deposit, deposit notes, commercial paper, mortgage participation certificates and pools, asset backed securities, repurchase agreements and reverse repurchase agreements, guaranteed investment contracts, savings accounts, and guaranty fund certificates, surplus notes, or debentures of domestic mutual insurance companies if they conform to the following provisions: . . .</p>	<p>356A.06, Subd. 6, Para. (b), Cl. (1)-(2). (b) Investment securities authorized for a pension plan covered by this subdivision are:</p>

SBI Provision	Expanded List Provision	Limited List Provision
(1) bankers acceptances and deposit notes of United States banks are limited to those issued by banks rated in the highest four quality categories by a nationally recognized rating agency;	(i) bankers acceptances and deposit notes of United States banks are limited to those issued by banks rated in the highest four quality categories by a nationally recognized rating agency;	
(2) certificates of deposit are limited to those issued by (i) United States banks and savings institutions that are rated in the top four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies; or (ii) credit unions in amounts up to the limit of insurance coverage provided by the National Credit Union Administration;	(ii) certificates of deposit are limited to those issued by (A) United States banks and savings institutions that are rated in the highest four quality categories by a nationally recognized rating agency or whose certificates of deposit are fully insured by federal agencies; or (B) credit unions in amounts up to the limit of insurance coverage provided by the National Credit Union Administration;	(1) certificates of deposit issued, to the extent of available insurance or collateralization, by a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, is insured by the National Credit Union Administration, or is authorized to do business in this state and has deposited with the chief administrative officer of the plan a sufficient amount of marketable securities as collateral in accordance with section 118A.03;
(3) commercial paper is limited to those issued by United States corporations or their Canadian subsidiaries and rated in the highest two quality categories by a nationally recognized rating agency;	(iii) commercial paper is limited to those issued by United States corporations or their Canadian subsidiaries and rated in the highest two quality categories by a nationally recognized rating agency;	
(4) mortgage securities shall be rated in the top four quality categories by a nationally recognized rating agency;	(iv) mortgage participation or pass through certificates evidencing interests in pools of first mortgages or trust deeds on improved real estate located in the United States where the loan to value ratio for each loan as calculated in accordance with section 61A.28, subdivision 3, does not exceed 80 percent for fully amortizable residential properties and in all other respects meets the requirements of section 61A.28, subdivision 3;	
(5) collateral for repurchase agreements and reverse repurchase agreements is limited to letters of credit and securities authorized in this section;	(v) collateral for repurchase agreements and reverse repurchase agreements is limited to letters of credit and securities authorized in this section;	
(6) guaranteed investment contracts are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this section;	(vi) guaranteed investment contracts are limited to those issued by insurance companies or banks rated in the top four quality categories by a nationally recognized rating agency or to alternative guaranteed investment contracts where the underlying assets comply with the requirements of this subdivision;	
(7) savings accounts are limited to those fully insured by federal agencies; and	(vii) savings accounts are limited to those fully insured by federal agencies; and	(2) savings accounts, to the extent of available insurance, with a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;
(8) asset backed securities shall be rated in the top four quality categories by a nationally recognized rating agency.	(viii) asset backed securities must be rated in the top four quality categories by a nationally recognized rating agency.	
(b) Sections 16A.58, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the state board under paragraph (a), clause (2).	(2) Sections 16A.58, 16C.03, subdivision 4, and 16C.05 do not apply to certificates of deposit and collateralization agreements executed by the covered pension plan under clause (1), item (ii).	

SBI Provision	Expanded List Provision	Limited List Provision
<p>(c) In addition to investments authorized by paragraph (a), clause (4), the state board may purchase from the Minnesota Housing Finance Agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The state board may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The state board may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the state board comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The state board may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.</p>	<p>(3) In addition to investments authorized by clause (1), item (iv), the covered pension plan may purchase from the Minnesota Housing Finance Agency all or any part of a pool of residential mortgages, not in default, that has previously been financed by the issuance of bonds or notes of the agency. The covered pension plan may also enter into a commitment with the agency, at the time of any issue of bonds or notes, to purchase at a specified future date, not exceeding 12 years from the date of the issue, the amount of mortgage loans then outstanding and not in default that have been made or purchased from the proceeds of the bonds or notes. The covered pension plan may charge reasonable fees for any such commitment and may agree to purchase the mortgage loans at a price sufficient to produce a yield to the covered pension plan comparable, in its judgment, to the yield available on similar mortgage loans at the date of the bonds or notes. The covered pension plan may also enter into agreements with the agency for the investment of any portion of the funds of the agency. The agreement must cover the period of the investment, withdrawal privileges, and any guaranteed rate of return.</p>	
<p>11A.24, Subd. 5. Corporate stocks. The state board may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on an exchange regulated by an agency of the United States or Canadian national government, if they conform to the following provisions:</p> <p>(a) The aggregate value of corporate stock investments, as adjusted for realized profits and losses, shall not exceed 85 percent of the market or book value, whichever is less, of a fund, less the aggregate value of investments according to subdivision 6;</p> <p>(b) Investments shall not exceed five percent of the total outstanding shares of any one corporation, except that the state board may hold up to 20 percent of the shares of a real estate investment trust and up to 20 percent of the shares of a closed-end mutual fund.</p>	<p>356A.06, Subd. 7, Para. (f), (i), (h). (f) Corporate stocks. The covered pension plan may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, any corporation organized under the laws of the Dominion of Canada or its provinces, or any corporation listed on an exchange regulated by an agency of the United States or of the Canadian national government, if they conform to the following provisions:</p> <p>(1) the aggregate value of investments under this paragraph, plus paragraphs (g) and (k), plus equity investments under paragraphs (h), (i), and (j), as adjusted for realized gains and losses, must not exceed 85 percent of the market or book value, whichever is less, of a fund; and</p> <p>(2) investments must not exceed five percent of the total outstanding shares of any one corporation.</p> <p>(i) Real estate investment trust; related investments. The covered pension plan may invest in real estate investment trusts secured by mortgages or deeds of trust and sold on an exchange, and insurance company commingled accounts, including separate accounts, of a debt or equity nature.</p> <p>(h) Commingled or mutual investments. The covered pension plan may invest in index funds or mutual funds, including index mutual funds, through bank-sponsored collective funds and shares of open-end investment companies registered under the Federal Investment Company Act of 1940, to the extent that these funds comply with paragraphs (c) to (j).</p> <p><i>[Note: additional mutual fund authority found in other statutes.]</i></p>	<p>356A.06, Subd. 6. No provision.</p>

SBI Provision	Expanded List Provision	Limited List Provision
<p>11A.24, Subd. 6. Other investments.</p> <p>(a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:</p> <p>(1) venture capital investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;</p> <p>(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships, bank sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;</p> <p>(3) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940, and closed-end mutual funds listed on an exchange regulated by a governmental agency;</p> <p>(4) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and</p> <p>(5) international securities.</p> <p>(b) The investments authorized in paragraph (a) must conform to the following provisions:</p> <p>(1) the aggregate value of all investments made according to paragraph (a), clauses (1) to (4), may not exceed 35 percent of the market value of the fund for which the state board is investing;</p> <p>(2) there must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), (3), or (4);</p> <p>(3) state board participation in an investment vehicle is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), (3), or (4); and</p> <p>(4) state board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board may not engage in any activity as a limited partner which creates general liability.</p>	<p>356A.06, Subd. 7, Para. (k), (g).</p> <p>(k) Other investments. (1) In addition to the investments authorized in paragraphs (b) to (j), and subject to the provisions in clause (2), the covered pension plan may invest funds in:</p> <p>(i) venture capital investment businesses through participation in limited partnerships and corporations;</p> <p>(ii) real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships or bank sponsored collective funds;</p> <p>(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940 to the extent that a fund or a portion of a fund does not qualify under paragraph (h);</p> <p>(iv) resource investments through limited partnerships, private placements, and corporations; and</p> <p>(v) international debt securities and emerging market equity securities.</p> <p>(2) The investments authorized in clause (1) must conform to the following provisions:</p> <p>(i) the aggregate value of all investments made according to clause (1), including allocated amounts of index and mutual funds, may not exceed 20 percent of the market value of the fund for which the covered pension plan is investing;</p> <p>(ii) there must be at least four unrelated owners of the investment other than the covered pension plan for investments made under clause (1), item (i), (ii), (iii), or (iv);</p> <p>(iii) covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and</p> <p>(iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.</p>	

SBI Provision	Expanded List Provision	Limited List Provision
<p>(c) All financial, business, or proprietary data collected, created, received, or maintained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are nonpublic data under section 13.02, subdivision 9. As used in this paragraph, "financial, business, or proprietary data" means data, as determined by the responsible authority for the state board, that is of a financial, business, or proprietary nature, the release of which could cause competitive harm to the state board, the legal entity in which the state board has invested or has considered an investment, the managing entity of an investment, or a portfolio company in which the legal entity holds an interest. As used in this section, "business data" is data described in section 13.591, subdivision 1. Regardless of whether they could be considered financial, business, or proprietary data, the following data received, prepared, used, or retained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are public at all times:</p> <p>(1) the name and industry group classification of the legal entity in which the state board has invested or in which the state board has considered an investment;</p> <p>(2) the state board commitment amount, if any;</p> <p>(3) the funded amount of the state board's commitment to date, if any;</p> <p>(4) the market value of the investment by the state board;</p> <p>(5) the state board's internal rate of return for the investment, including expenditures and receipts used in the calculation of the investment's internal rate of return; and</p> <p>(6) the age of the investment in years.</p>	<p>(g) Developed market foreign stocks investments. In addition to investments authorized under paragraph (f), the covered pension fund may invest in foreign stock sold on an exchange in any developed market country that is included in the Europe, Australia, and Far East Index.</p>	
<p>11A.24, Subd. 7. Appropriation. There is annually appropriated to the state board, from the assets of the funds for which the state board invests pursuant to subdivision 6, clause (a), sums sufficient to pay the costs for the management of these funds by private management firms.</p>	<p>356A.06, Subd. 7. No provision.</p>	
<p>11A.24. No provision.</p>	<p>356A.06, Subd. 7, Para. (j). (j) Exchange traded funds. The covered pension plan may invest funds in exchange traded funds, subject to the maximums, the requirements, and the limitations set forth in paragraphs (c) to (i), as applicable.</p>	

Mutual Fund Authority, Including SBI Supplemental Fund, and Maximum Percentage of Equities

At the first study group meeting there seemed to be general recognition that changes were needed in mutual fund investment authority provisions. Of all the plan groups, SBI has the most limited authority, although Howard Bicker, SBI Executive Director, suggested at the first meeting that SBI did not feel a need to expand that SBI authority. Mutual fund authority for the other plan administrations is extensive. Among the issues raised is that there are multiple provisions authorizing investment through mutual funds, and these fully or partially duplicate one another, creating confusion. Another is that law currently permits any non-SBI Minnesota public pension plan administration to use the SBI Supplemental Fund (which operates like a

mutual fund), but places no limits on the resulting asset mix. The offerings of the SBI Supplemental Fund could be used alone, or in conjunction with the mutual fund authority, to create a 100 percent equity total portfolio. Given that law prohibits SBI's total portfolio from exceeding 85 percent equities, allowing other associations, even limited list plans, to exceed this percentage may not be the best policy.

a. Mutual Fund Authority

The following indicates the mutual fund authority provisions applicable to the various plan groups. Relevant portions of the statutes are highlighted.

1. State Board of Investment. Explicit authority for SBI to use mutual funds is limited. Minnesota Statutes, Section 11A.24, Subdivision 5, mentions an upward limit on SBI's ownership share of a closed-end mutual fund, but not the percentage of SBI assets that can be devoted to such investments. Subdivision 6 of that same section authorizes "regional and mutual" funds and closed-end mutual funds, but these investments may not exceed 35 percent of the total portfolio. As was noted at the first meeting of the study group, it is not clear what a "regional fund" is.

Subd. 5. Corporate stocks. The state board may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on an exchange regulated by an agency of the United States or Canadian national government, if they conform to the following provisions:

(a) The aggregate value of corporate stock investments, as adjusted for realized profits and losses, shall not exceed 85 percent of the market or book value, whichever is less, of a fund, less the aggregate value of investments according to subdivision 6;

(b) Investments shall not exceed five percent of the total outstanding shares of any one corporation, except that the state board may hold up to 20 percent of the shares of a real estate investment trust and up to 20 percent of the shares of a closed-end mutual fund.

Subd. 6. Other investments. **(a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:**

(1) venture capital investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships, bank sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;

(3) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940, and closed-end mutual funds listed on an exchange regulated by a governmental agency;

(4) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and

(5) international securities.

(b) The investments authorized in paragraph (a) must conform to the following provisions:

(1) the aggregate value of all investments made according to paragraph (a), clauses (1) to (4), may not exceed 35 percent of the market value of the fund for which the state board is investing;

(2) there must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), (3), or (4);

(3) state board participation in an investment vehicle is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), (3), or (4); and

(4) state board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board may not engage in any activity as a limited partner which creates general liability.

(c) All financial, business, or proprietary data collected, created, received, or maintained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are nonpublic data under section 13.02, subdivision 9. As used in this paragraph, "financial, business, or proprietary data" means data, as determined by the responsible authority for the state board, that is of a financial, business, or proprietary nature, the release of which could cause competitive harm to the state board, the legal entity in which the state board has invested or has considered an investment, the managing entity of an investment, or a portfolio company in which the legal entity holds an interest. As used in this section, "business data" is data described in section 13.591, subdivision 1. Regardless of whether they could be considered financial, business, or proprietary data, the following data received, prepared, used, or retained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are public at all times:

(1) the name and industry group classification of the legal entity in which the state board has invested or in which the state board has considered an investment;

(2) the state board commitment amount, if any;

(3) the funded amount of the state board's commitment to date, if any;

(4) the market value of the investment by the state board;

(5) the state board's internal rate of return for the investment, including expenditures and receipts used in the calculation of the investment's internal rate of return; and

(6) the age of the investment in years.

2. Expanded List Plans. All expanded list plans have explicit authority to invest in mutual funds under Minnesota Statutes, Section 356A.06, Subdivision 7, Paragraphs (h), (k), and (i), for REIT mutual funds. The combined effect of these provisions, which were added to law in 2006, places no upward limit on the use of mutual funds. For the first class city teacher plans the language in Section 356.06, Subdivision 7, is the only mutual fund authority provision. Other plans, as discussed below, have multiple mutual fund provisions.

Subd. 7. Expanded list of authorized investment securities.

(h) Commingled or mutual investments. The covered pension plan may invest in index funds or mutual funds, including index mutual funds, through bank-sponsored collective funds and shares of open-end investment companies registered under the Federal Investment Company Act of 1940, to the extent that these funds comply with paragraphs (c) to (j).

(i) Real estate investment trust; related investments. The covered pension plan may invest in real estate investment trusts secured by mortgages or deeds of trust and sold on an exchange, and insurance company commingled accounts, including separate accounts, of a debt or equity nature.

(k) Other investments. (1) In addition to the investments authorized in paragraphs (b) to (j), and subject to the provisions in clause (2), the covered pension plan may invest funds in:

(i) venture capital investment businesses through participation in limited partnerships and corporations;

(ii) real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships or bank sponsored collective funds;

(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940 to the extent that a fund or a portion of a fund does not qualify under paragraph (h);

(iv) resource investments through limited partnerships, private placements, and corporations; and

(v) international debt securities and emerging market equity securities.

(2) The investments authorized in clause (1) must conform to the following provisions:

(i) the aggregate value of all investments made according to clause (1), including allocated amounts of index and mutual funds, may not exceed 20 percent of the market value of the fund for which the covered pension plan is investing;

(ii) there must be at least four unrelated owners of the investment other than the covered pension plan for investments made under clause (1), item (i), (ii), (iii), or (iv);

(iii) covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and

(iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.

Those same provisions in Section 356A.06, Subdivision 7, above, apply to the local police and paid fire plans, all of which are expanded list plans under current law. However, there is an additional mutual fund provision applicable to these police and paid fire plans, creating redundancy. Minnesota Statutes, Section 69.77, Subdivision 9, local police and paid fire relief association investment authority, contains language permitting these organizations to invest up to 75 percent of their assets through mutual funds which conform to the expanded list. Given the language contained in Section 356A.06, Subdivision 7, the mutual fund language in Section 69.77, Subdivision 9, seems to serve no useful purpose.

Subd. 9. Local police and paid fire relief association investment authority. (a) The funds of the association must be invested in securities that are authorized investments under section 356A.06, subdivision 6 or 7, whichever applies. Notwithstanding any provision of section 356A.06, subdivision 6 or 7 to the contrary, the special fund of the relief association may be additionally invested in:

(1) open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7, up to 75 percent of the market value of the assets of the fund; and

(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the special fund or 15 percent of the special fund's nonequity assets, whichever is less, the special fund's participation is limited to 50 percent of a single offering of the debt obligations, and the special fund's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories. Securities held by the association before June 2, 1989, that do not meet the requirements of this subdivision may be retained after that date if they were proper investments for the association on that date.

(b) The governing board of the association may select and appoint investment agencies to act for and in its behalf or may certify special fund assets for investment by the State Board of Investment under section 11A.17. The governing board of the association may certify general fund assets of the relief association for investment by the State Board of Investment in fixed income pools or in a separately managed account at the discretion of the State Board of Investment as provided in section 11A.14. The governing board of the association may select and appoint a qualified private firm to measure management performance and return on investment, and the firm shall use the formula or formulas developed by the state board under section 11A.04, clause (11).

Many of the volunteer fire plans are expanded list plans. Expanded list volunteer fire plans are governed by Minnesota Statutes, Section 69.775, in addition to Section 356A.06, Subdivision 7. Section 69.775 contains mutual fund language substantively identical to that of Section 69.77. Thus, for expanded list volunteer fire plans, the mutual fund authority in Section 69.775 serves no current purpose since these plans have more extensive mutual fund authority under Section 356A.06, Subdivision 7.

69.775 INVESTMENTS.

(a) The special fund assets of a relief association governed by sections 69.771 to 69.776 must be invested in securities that are authorized investments under section 356A.06, subdivision 6 or 7.

(b) Notwithstanding the foregoing, up to 75 percent of the market value of the assets of the special fund, not including any money market mutual funds, may be invested in open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7.

(c) Securities held by the associations before June 2, 1989, that do not meet the requirements of this section may be retained after that date if they were proper investments for the association on that date.

(d) The governing board of the association may select and appoint investment agencies to act for and in its behalf or may certify special fund assets for investment by the State Board of Investment under section 11A.17.

(e) The governing board of the association may certify general fund assets of the relief association for investment by the State Board of Investment in fixed income pools or in a separately managed account at the discretion of the State Board of Investment as provided in section 11A.14.

(f) The governing board of the association may select and appoint a qualified private firm to measure management performance and return on investment, and the firm shall use the formula or formulas developed by the state board under section 11A.04, clause (11).

3. **Limited List Plans.** The limited list plans have redundant mutual fund provisions. The limited list investment authority provision, Minnesota Statutes, Section 356A.06, Subdivision 6, in Paragraph (b), Clause (5), permits these associations to hold any of the limited list authorized securities in the form of a mutual fund, with no specified upper limit.

Subd. 6. Limited list of authorized investment securities.

(a) Except to the extent otherwise authorized by law, a covered pension plan may invest its assets only in investment securities authorized by this subdivision if the plan does not:

(1) have assets with a book value in excess of \$1,000,000;

(2) use the services of an investment advisor registered with the Securities and Exchange Commission in accordance with the Investment Advisers Act of 1940, or registered as an investment advisor in accordance with sections 80A.58, and 80A.60, for the investment of at least 60 percent of its assets, calculated on book value;

(3) use the services of the State Board of Investment for the investment of at least 60 percent of its assets, calculated on book value; or

(4) use a combination of the services of an investment advisor meeting the requirements of clause (2) and the services of the State Board of Investment for the investment of at least 75 percent of its assets, calculated on book value.

(b) Investment securities authorized for a pension plan covered by this subdivision are:

(1) certificates of deposit issued, to the extent of available insurance or collateralization, by a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, is insured by the National Credit Union Administration, or is authorized to do business in this state and has deposited with the chief administrative officer of the plan a sufficient amount of marketable securities as collateral in accordance with section 118A.03;

(2) savings accounts, to the extent of available insurance, with a financial institution that is a member of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;

(3) governmental obligations, including bonds, notes, bills, or other fixed obligations, issued by the United States, an agency or instrumentality of the United States, an organization established and regulated by an act of Congress or by a state, state agency or instrumentality, municipality, or other governmental or political subdivision that:

(i) for the obligation in question, issues an obligation that equals or exceeds the stated investment yield of debt securities not exempt from federal income taxation and of comparable quality;

(ii) for an obligation that is a revenue bond, has been completely self-supporting for the last five years; and

(iii) for an obligation other than a revenue bond, has issued an obligation backed by the full faith and credit of the applicable taxing jurisdiction and has not been in default on the payment of principal or interest on the obligation in question or any other nonrevenue bond obligation during the preceding ten years;

(4) corporate obligations, including bonds, notes, debentures, or other regularly issued and readily marketable evidences of indebtedness issued by a corporation organized under the laws of any state that during the preceding five years has had on average annual net pretax earnings at least 50 percent greater than the annual interest charges and principal payments on the total issued debt of the corporation during that period and that, for the obligation in question, has issued an obligation rated in one of the top three quality categories by Moody's Investors Service, Incorporated, or Standard and Poor's Corporation; and

(5) shares in an open-end investment company registered under the federal Investment Company Act of 1940, if the portfolio investments of the company are limited to investments that meet the requirements of clauses (1) to (4).

In addition, these organizations are covered by Minnesota Statutes, Section 69.775, (see above) which permits up to 75 percent of a fund's asset value to be invested in mutual funds which invest in assets consistent with the expanded list. Since there does not seem to be any investment on the limited list that is not permitted under the expanded list, the effect of these two laws considered together is to permit a limited list plan to invest up to 75 percent of its assets in mutual funds holding assets conforming to the expanded list, while the other 25 percent could be invested in mutual funds conforming to the limited list.

b. **Authority to Use SBI Supplemental Fund: Asset Mix and Equity Maximum Implications**

In addition to the mutual fund authority described above, all expanded list and limited list plans are permitted to use the SBI Supplemental Fund (Minnesota Statutes, Section 11A.17) to invest all or any portion of their assets. The language for the first class city teacher plans to use the SBI Supplemental Fund is found in Minnesota Statutes, Section 354A.08. Authority permitting local police and paid fire plans and all volunteer fire plans to use the SBI Supplemental Fund is found in Minnesota Statutes, Section 69.77, Subdivision 9, and 69.775, respectively.

354A.08 AUTHORIZED INVESTMENTS.

(a) In addition to investments authorized under section 356A.06, subdivision 7, a teachers retirement fund association may receive, hold, and dispose of:

(1) real estate or personal property acquired by it, whether the acquisition was by purchase, or any other lawful means, as provided in this chapter or in the association's articles of incorporation; and

(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the pension plan or 15 percent of the pension plan's nonequity assets, whichever is less, if the pension plan's participation is limited to 50 percent of a single offering of the debt obligations, and if the pension plan's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories.

(b) In addition to other authorized real estate investments, an association may also invest funds in Minnesota situs nonfarm real estate ownership interests or loans secured by mortgages or deeds of trust. ***The board may also certify assets for investment by the State Board of Investment as provided under section 11A.17.***

69.77 POLICE AND FIREFIGHTERS' RELIEF ASSOCIATION GUIDELINES ACT (Subdivision 9, Local Police and Paid Fire Relief Association investment authority).

Subd. 9. Local police and paid fire relief association investment authority. (a) The funds of the association must be invested in securities that are authorized investments under section 356A.06, subdivision 6 or 7, whichever applies. Notwithstanding any provision of section 356A.06, subdivision 6 or 7 to the contrary, the special fund of the relief association may be additionally invested in:

(1) open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7, up to 75 percent of the market value of the assets of the fund; and

(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the special fund or 15 percent of the special fund's nonequity assets, whichever is less, the special fund's participation is limited to 50 percent of a single offering of the debt obligations, and the special fund's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories. Securities held by the association before June 2, 1989, that do not meet the requirements of this subdivision may be retained after that date if they were proper investments for the association on that date.

(b) The governing board of the association may select and appoint investment agencies to act for and in its behalf or may certify special fund assets for investment by the State Board of Investment under section 11A.17. The governing board of the association may certify general fund assets of the relief association for investment by the State Board of Investment in fixed income pools or in a separately managed account at the discretion of the State Board of Investment as provided in section 11A.14. The governing board of the association may select and appoint a qualified private firm to measure management performance and return on investment, and the firm shall use the formula or formulas developed by the state board under section 11A.04, clause (11).

69.775 INVESTMENTS.

(a) The special fund assets of a relief association governed by sections 69.771 to 69.776 must be invested in securities that are authorized investments under section 356A.06, subdivision 6 or 7.

(b) Notwithstanding the foregoing, up to 75 percent of the market value of the assets of the special fund, not including any money market mutual funds, may be invested in open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7.

(c) Securities held by the associations before June 2, 1989, that do not meet the requirements of this section may be retained after that date if they were proper investments for the association on that date.

(d) The governing board of the association may select and appoint investment agencies to act for and in its behalf or may certify special fund assets for investment by the State Board of Investment under section 11A.17.

(e) The governing board of the association may certify general fund assets of the relief association for investment by the State Board of Investment in fixed income pools or in a separately managed account at the discretion of the State Board of Investment as provided in section 11A.14.

(f) The governing board of the association may select and appoint a qualified private firm to measure management performance and return on investment, and the firm shall use the formula or formulas developed by the state board under section 11A.04, clause (11).

The SBI Supplemental Fund is similar to a mutual fund family. The current offerings include but are not limited to the Income Share Account (a balanced portfolio containing stocks and bonds), the Growth Share Account (an actively managed all-stock portfolio), the Common Stock Index Account (an indexed or passively managed domestic stock account), the International Share Account (a foreign stock portfolio part passive and part actively managed), Bond Market Account, the Money Market Account, and the Fixed Interest Account. The securities in these accounts must conform to the SBI's authorized investment provision, Minnesota Statutes, Section 11A.24. The provisions of statute which authorize expanded list and limited list plans to use the SBI Supplemental fund place no restrictions on its use by these associations.

Because statutes place no restrictions on use of the Supplemental Fund, there is no upper limit to the percentage of equities which a limited list or expanded list plan may hold, despite limits which are stated in some of the investment authority laws applicable to these plans. A limited list plan could use one or more of the stock accounts in the SBI Supplement Plan to create a 100 percent equity total portfolio. Alternatively, it could use the SBI Supplemental Fund and a mutual fund investment authority provision to create the same result. Similarly, any expanded list plan could be 100 percent invested in equities, despite language in the expanded list provision (Minnesota Statutes, Section 356A.06, Subdivision 7, Paragraph (f)) which seems to limit equities to 85 percent. The first class city teacher plans, since they are expanded list plans, could be 100 percent in equities or, due to broad real estate authority in provisions specific to these teacher plans, they could in theory be 100 percent in real estate. Under current law, the only Minnesota public plan investment organization which seems to have an effective

upper limit on equity holdings is SBI, which cannot exceed 85 percent equities in its total portfolio (the Combined Fund, which holds the assets of the Minnesota State Retirement System, Teacher Retirement Association, and Public Employees Retirement Association plans).

Definition of Limited List Plan – Minnesota Statutes, Section 356A.06, Subdivision 6, Paragraph (a)

The study group may choose to review the definition of limited list plan. Minnesota Statutes, Section 356A.06, Subdivision 6, Paragraph (a), is the definition of limited list plan, although it is not labeled as a definition. Any plan which is not a limited list plan falls under the expanded list category.

Subd. 6. Limited list of authorized investment securities.

(a) Except to the extent otherwise authorized by law, a covered pension plan may invest its assets only in investment securities authorized by this subdivision if the plan does not:

(1) have assets with a book value in excess of \$1,000,000;

(2) use the services of an investment advisor registered with the Securities and Exchange Commission in accordance with the Investment Advisers Act of 1940, or registered as an investment advisor in accordance with sections 80A.58, and 80A.60, for the investment of at least 60 percent of its assets, calculated on book value;

(3) use the services of the State Board of Investment for the investment of at least 60 percent of its assets, calculated on book value; or

(4) use a combination of the services of an investment advisor meeting the requirements of clause (2) and the services of the State Board of Investment for the investment of at least 75 percent of its assets, calculated on book value.

Under the criteria in law, a very small plan is an expanded list plan if it uses SBI to invest a substantial portion of its assets, or if it uses registered investment advisors to invest a substantial portion of its assets. However, a plan administration could place all of its assets with the SBI Supplement Fund and still not be prudently invested. SBI does not control the asset mix; it only provides the investment vehicles. The local relief association board creates the asset mix by selecting accounts within the Supplemental Fund in which it chooses to invest, and how much. As noted in the previous section, an association could create an all-equity total portfolio, or all bonds, or all cash equivalents. Furthermore, any plan which has \$1 million or more is automatically an expanded list plan. Crossing that asset value threshold, or any dollar denominated threshold, may not be a good proxy for the level of sophistication of the pension plan administration.

While the study group may wish to review and possibly revise this limited list definition, a question is whether it is a useful exercise to do so. Under law there is very little that an expanded list plan can do that a limited list plan cannot. Therefore, trying to better define the cutoff between the two may not be productive.

Junk Bond Authority Provisions

If the study group chooses to review junk bond authority provisions, the following presentation of junk bond authority in present law may be useful.

State Board of Investment	<p>11A.24, Subd. 3, Para. (b)</p> <p>(b) The state board may invest in unrated corporate obligations or in corporate obligations that are not rated among the top four quality categories as provided in paragraph (a), clause (2), provided that:</p> <p>(1) the aggregate value of these obligations may not exceed five percent of the market or book value, whichever is less, of the fund for which the state board is investing;</p> <p>(2) the state board's participation is limited to 50 percent of a single offering subject to this paragraph; and</p> <p>(3) the state board's participation is limited to 25 percent of an issuer's obligations subject to this paragraph.</p>
Local Police and Paid Fire Plans	<p>69.77, Subd. 9, Para. (a), Cl. (2)</p> <p>(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the special fund or 15 percent of the special fund's nonequity assets, whichever is less, the special fund's participation is limited to 50 percent of a single offering of the debt obligations, and the special fund's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories. Securities held by the association before June 2, 1989, that do not meet the requirements of this subdivision may be retained after that date if they were proper investments for the association on that date.</p>
Volunteer Fire Plans	<p>No explicit provision. However, Minnesota Statutes, Section 69.775, Paragraph (b), permits volunteer fire relief associations to invest up to 75 percent of their asset value in mutual funds investing in securities permitted under the expanded list provision (Minnesota Statutes, Section 356A.06, Subdivision 7). Paragraph (k) of that provision has been interpreted as permitting junk bond investing if held in a mutual fund.</p> <p>69.775, Paragraph (b)</p> <p>(b) Notwithstanding the foregoing, up to 75 percent of the market value of the assets of the special fund, not including any money market mutual funds, may be invested in open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7.</p>

356A.06, Subd. 7, Para. (k)
 (k) Other investments. ***(1) In addition to the investments authorized in paragraphs (b) to (j), and subject to the provisions in clause (2), the covered pension plan may invest funds in:***
 (i) venture capital investment businesses through participation in limited partnerships and corporations;
 (ii) real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships or bank sponsored collective funds;
(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940 to the extent that a fund or a portion of a fund does not qualify under paragraph (h);
 (iv) resource investments through limited partnerships, private placements, and corporations; and
 (v) international debt securities and emerging market equity securities.
 (2) The investments authorized in clause (1) must conform to the following provisions:
(i) the aggregate value of all investments made according to clause (1), including allocated amounts of index and mutual funds, may not exceed 20 percent of the market value of the fund for which the covered pension plan is investing;
(ii) there must be at least four unrelated owners of the investment other than the covered pension plan for investments made under clause (1), item (i), (ii), (iii), or (iv);
(iii) covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and
 (iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.

Equity Real Estate

If the study group chooses to review equity real estate provisions, the following presentation of the investment authority in present law may be useful.

First Class City Teacher Fund Associations	<p>354A.08 AUTHORIZED INVESTMENTS.</p> <p><i>(a) In addition to investments authorized under section 356A.06, subdivision 7, a teachers retirement fund association may receive, hold, and dispose of:</i></p> <p><i>(1) real estate or personal property acquired by it, whether the acquisition was by purchase, or any other lawful means, as provided in this chapter or in the association's articles of incorporation; and</i></p> <p><i>(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the pension plan or 15 percent of the pension plan's nonequity assets, whichever is less, if the pension plan's participation is limited to 50 percent of a single offering of the debt obligations, and if the pension plan's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories.</i></p> <p><i>(b) In addition to other authorized real estate investments, an association may also invest funds in Minnesota situs nonfarm real estate ownership interests or loans secured by mortgages or deeds of trust. The board may also certify assets for investment by the State Board of Investment as provided under section 11A.17.</i></p>
State Board of Investment	<p>The provisions permitting SBI to invest in equity real estate investment trusts (REITs) and other forms of equity real estate are Minnesota Statutes, Section 11A.24, Subdivisions 5 and 6.</p> <p>Subd. 5. Corporate stocks. The state board may invest funds in stocks or convertible issues of any corporation organized under the laws of the United States or the states thereof, the Dominion of Canada or its provinces, or any corporation listed on an exchange regulated by an agency of the United States or Canadian national government, if they conform to the following provisions:</p> <p>(a) The aggregate value of corporate stock investments, as adjusted for realized profits and losses, shall not exceed 85 percent of the market or book value, whichever is less, of a fund, less the aggregate value of investments according to subdivision 6;</p> <p><i>(b) Investments shall not exceed five percent of the total outstanding shares of any one corporation, except that the state board may hold up to 20 percent of the shares of a real estate investment trust and up to 20 percent of the shares of a closed-end mutual fund.</i></p>

Subd. 6. Other investments. ***(a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:***

(1) venture capital investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships, bank sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;

(3) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940, and closed-end mutual funds listed on an exchange regulated by a governmental agency;

(4) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and

(5) international securities.

(b) The investments authorized in paragraph (a) must conform to the following provisions:

(1) the aggregate value of all investments made according to paragraph (a), clauses (1) to (4), may not exceed 35 percent of the market value of the fund for which the state board is investing;

(2) there must be at least four unrelated owners of the investment other than the state board for investments made under paragraph (a), clause (1), (2), (3), or (4);

(3) state board participation in an investment vehicle is limited to 20 percent thereof for investments made under paragraph (a), clause (1), (2), (3), or (4); and

(4) state board participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The state board may not engage in any activity as a limited partner which creates general liability.

(c) All financial, business, or proprietary data collected, created, received, or maintained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are nonpublic data under section 13.02, subdivision 9. As used in this paragraph, "financial, business, or proprietary data" means data, as determined by the responsible authority for the state board, that is of a financial, business, or proprietary nature, the release of which could cause competitive harm to the state board, the legal entity in which the state board has invested or has considered an investment, the managing entity of an investment, or a portfolio company in which the legal entity holds an interest. As used in this section, "business data" is data described in section 13.591, subdivision 1. Regardless of whether they could be considered financial, business, or proprietary data, the following data received, prepared, used, or retained by the state board in connection with investments authorized by paragraph (a), clause (1), (2), or (4), are public at all times:

(1) the name and industry group classification of the legal entity in which the state board has invested or in which the state board has considered an investment;

(2) the state board commitment amount, if any;

(3) the funded amount of the state board's commitment to date, if any;

(4) the market value of the investment by the state board;

(5) the state board's internal rate of return for the investment, including expenditures and receipts used in the calculation of the investment's internal rate of return; and

(6) the age of the investment in years.

Expanded List
Plans

Any expanded list plan has authority to invest in REITs under Minnesota Statutes, Section 356A.06, Subdivision 7, Paragraphs (b) and (i); Paragraph (k) permits other forms of equity real estate.

356A.06, Subd. 7, Para. (b), (i), (k)

(b) **Securities generally.** The covered pension plan has the authority to purchase, sell, lend, or exchange the securities specified in paragraphs (c) to (i), including puts and call options and future contracts traded on a contract market regulated by a governmental agency or by a financial institution regulated by a governmental agency. ***These securities may be owned as units in commingled trusts that own the securities described in paragraphs (c) to (i), including real estate investment trusts and insurance company commingled accounts, including separate accounts.***

...

(i) **Real estate investment trust; related investments.** ***The covered pension plan may invest in real estate investment trusts secured by mortgages or deeds of trust and sold on an exchange, and insurance company commingled accounts, including separate accounts, of a debt or equity nature.***

...

(k) **Other investments.** ***(1) In addition to the investments authorized in paragraphs (b) to (j), and subject to the provisions in clause (2), the covered pension plan may invest funds in:***

(i) venture capital investment businesses through participation in limited partnerships and corporations;

(ii) ***real estate ownership interests or loans secured by mortgages or deeds of trust through investment in limited partnerships or bank sponsored collective funds;***

(iii) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940 to the extent that a fund or a portion of a fund does not qualify under paragraph (h);

(iv) resource investments through limited partnerships, private placements, and corporations; and

(v) international debt securities and emerging market equity securities.

(2) ***The investments authorized in clause (1) must conform to the following provisions:***

(i) ***the aggregate value of all investments made according to clause (1), including allocated amounts of index and mutual funds, may not exceed 20 percent of the market value of the fund for which the covered pension plan is investing;***

(ii) ***there must be at least four unrelated owners of the investment other than the covered pension plan for investments made under clause (1), item (i), (ii), (iii), or (iv);***

(iii) ***covered pension plan participation in an investment vehicle is limited to 20 percent thereof for investments made under clause (1), item (i), (ii), (iii), or (iv); and***

(iv) covered pension plan participation in a limited partnership does not include a general partnership interest or other interest involving general liability. The covered pension plan may not engage in any activity as a limited partner which creates general liability.

In addition, any plan not invested by SBI has authority to invest in Minnesota non-farm real estate under Minnesota Statutes, Section 356.64, as amended by Laws 2010, Chapter 359, Article 12, Section 25, provided the investment is prudent.

356.64 REAL ESTATE INVESTMENTS.

(a) ***Notwithstanding any law to the contrary, any public pension plan whose assets are not invested by the State Board of Investment may invest its funds in Minnesota situs nonfarm real estate ownership interests or loans secured by mortgages or deeds of trust if the investment is consistent with section 356A.04.***

(b) ***An investment otherwise authorized by this section must also comply with the requirements and limitations of section 11A.24, subdivision 6.***

In addition, first class city teacher plans have another provision, Minnesota Statutes, Section 354A.08, which appears to give them unlimited authority to invest in real estate.

354A.08 AUTHORIZED INVESTMENTS.

(a) ***In addition to investments authorized under section 356A.06, subdivision 7, a teachers retirement fund association may receive, hold, and dispose of:***

(1) ***real estate or personal property acquired by it, whether the acquisition was by purchase, or any other lawful means, as provided in this chapter or in the association's articles of incorporation; and***

(2) domestic government and corporate debt obligations that are not rated in the top four quality categories by a nationally recognized rating agency, and comparable unrated securities if the percentage of these assets does not exceed five percent of the total assets of the pension plan or 15 percent of the pension plan's nonequity assets, whichever is less, if the pension plan's participation is limited to 50 percent of a single offering of the debt obligations, and if the pension plan's participation is limited to 25 percent of an issuer's debt obligations that are not rated in the top four quality categories.

(b) ***In addition to other authorized real estate investments, an association may also invest funds in Minnesota situs nonfarm real estate ownership interests or loans secured by mortgages or deeds of trust. The board may also certify assets for investment by the State Board of Investment as provided under section 11A.17.***

Limited List
Plans

These plans have authority to make direct investments in Minnesota non-farm real estate due to Minnesota Statutes, Section 356.64 (see above). The plans can invest in REITs and possibly other forms of equity real estate if the investment is through a mutual fund. Minnesota Statutes, Section 69.775, gives authority for any limited list plan to use mutual funds investment in securities or other assets that comply with section 356A.06, subdivision 7.

69.775 INVESTMENTS.

(a) The special fund assets of a relief association governed by sections 69.771 to 69.776 must be invested in securities that are authorized investments under section 356A.06, subdivision 6 or 7.

(b) Notwithstanding the foregoing, up to 75 percent of the market value of the assets of the special fund, not including any money market mutual funds, may be invested in open-end investment companies registered under the federal Investment Company Act of 1940, if the portfolio investments of the investment companies comply with the type of securities authorized for investment under section 356A.06, subdivision 7.

(c) Securities held by the associations before June 2, 1989, that do not meet the requirements of this section may be retained after that date if they were proper investments for the association on that date.

(d) The governing board of the association may select and appoint investment agencies to act for and in its behalf or may certify special fund assets for investment by the State Board of Investment under section 11A.17.

(e) The governing board of the association may certify general fund assets of the relief association for investment by the State Board of Investment in fixed income pools or in a separately managed account at the discretion of the State Board of Investment as provided in section 11A.14.

(f) The governing board of the association may select and appoint a qualified private firm to measure management performance and return on investment, and the firm shall use the formula or formulas developed by the state board under section 11A.04, clause (11).