

STATE TREASURER AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: Howard A. Stephenson

LONG TITLE

General Description:

This bill modifies the State Money Management Act by amending provisions for the investment of public funds by the state treasurer.

Highlighted Provisions:

This bill:

- ▶ eliminates references in the State Money Management Act to Moody's Investor Service and Standard and Poor's and instead requires public funds investments in assets classified or rated by two nationally recognized statistical ratings organizations;
- ▶ allows public funds investments in assets that are fixed rate corporate obligations in secured obligations, excluding covered bonds, in addition to unsecured obligations, and expands the allowable remaining term to final maturity from 13 months to 15 months or less;
- ▶ allows public funds investments in assets that are variable rate securities in secured obligations, excluding covered bonds, in addition to unsecured obligations, and expands the allowable remaining term to final maturity from not to exceed two years to not to exceed three years; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **51-7-3**, as last amended by Laws of Utah 2011, Chapter 342

33 **51-7-11**, as last amended by Laws of Utah 2011, Chapter 276

34 **51-7-12.1**, as enacted by Laws of Utah 2000, Chapter 351

35 **51-7-12.5**, as last amended by Laws of Utah 2002, Chapter 103



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section **51-7-3** is amended to read:

39 **51-7-3. Definitions.**

40 As used in this chapter:

41 (1) "Agent" means "agent" as defined in Section 61-1-13.

42 (2) "Certified dealer" means:

43 (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York
44 who is certified by the director as having met the applicable criteria of council rule; or

45 (b) a broker dealer who:

46 (i) has and maintains an office and a resident registered principal in the state;

47 (ii) meets the capital requirements established by council rules;

48 (iii) meets the requirements for good standing established by council rule; and

49 (iv) is certified by the director as meeting quality criteria established by council rule.

50 (3) "Certified investment adviser" means a federal covered adviser, as defined in
51 Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by
52 the director as having met the applicable criteria of council rule.

53 (4) "Commissioner" means the commissioner of financial institutions.

54 (5) "Council" means the State Money Management Council created by Section
55 51-7-16.

56 (6) "Covered bond" means a publicly placed debt security issued by a bank, other
57 regulated financial institution, or a subsidiary of either that is secured by a pool of loans that
58 remain on the balance sheet of the issuer or its subsidiary.

59 ~~[(6)]~~ (7) "Director" means the director of the Utah State Division of Securities of the
60 Department of Commerce.

61 ~~[(7)]~~ (8) (a) "Endowment funds" means gifts, devises, or bequests of property of any
62 kind donated to a higher education institution from any source.

63 (b) "Endowment funds" does not mean money used for the general operation of a
64 higher education institution that is received by the higher education institution from:

65 (i) state appropriations;

66 (ii) federal contracts;

67 (iii) federal grants;

68 (iv) private research grants; and

69 (v) tuition and fees collected from students.

70 ~~[(8)]~~ (9) "First tier commercial paper" means commercial paper rated by at least two
71 nationally recognized statistical rating organizations in the highest short-term rating category.

72 ~~[(9)]~~ (10) "Funds functioning as endowments" means funds, regardless of source,
73 whose corpus is intended to be held in perpetuity by formal institutional designation according
74 to the institution's policy for designating those funds.

75 ~~[(10)]~~ (11) "GASB" or "Governmental Accounting Standards Board" means the
76 Governmental Accounting Standards Board that is responsible for accounting standards used
77 by public entities.

78 ~~[(11)]~~ (12) "Hard put" means an unconditional sell-back provision or a redemption
79 provision applicable at issue to a note or bond, allowing holders to sell their holdings back to
80 the issuer or to an equal or higher-rated third party provider at specific intervals and specific
81 prices determined at the time of issuance.

82 ~~[(12)]~~ (13) "Higher education institution" means the institutions specified in Section
83 53B-1-102.

84 ~~[(13)]~~ (14) "Investment adviser representative" ~~[means "investment adviser~~
85 ~~representative" as defined]~~ is as defined in Section 61-1-13.

86 ~~[(14)]~~ (15) (a) "Investment agreement" means any written agreement that has
87 specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated
88 interest rate.

89 (b) "Investment agreement" includes any agreement to supply investments on one or

90 more future dates.

91 ~~[(15)]~~ (16) "Local government" means a county, municipality, school district, local
92 district under Title 17B, Limited Purpose Local Government Entities - Local Districts, special
93 service district under Title 17D, Chapter 1, Special Service District Act, or any other political
94 subdivision of the state.

95 ~~[(16)]~~ (17) "Market value" means market value as defined in the Master Repurchase
96 Agreement.

97 ~~[(17)]~~ (18) "Master Repurchase Agreement" means the current standard Master
98 Repurchase Agreement approved by the Public Securities Association or by any successor
99 organization.

100 ~~[(18)]~~ (19) "Maximum amount" means, with respect to qualified depositories, the total
101 amount of:

- 102 (a) deposits in excess of the federal deposit insurance limit; and
- 103 (b) nonqualifying repurchase agreements.

104 ~~[(19)]~~ (20) "Money market mutual fund" means an open-end managed investment
105 fund:

- 106 (a) that complies with the diversification, quality, and maturity requirements of Rule
107 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money
108 market mutual funds; and
- 109 (b) that assesses no sales load on the purchase of shares and no contingent deferred
110 sales charge or other similar charges, however designated.

111 ~~[(20)]~~ (21) "Nationally recognized statistical rating organization" means an
112 organization that has been designated as a nationally recognized statistical rating organization
113 by the Securities and Exchange Commission's Division of Market Regulation.

114 ~~[(21)]~~ (22) "Nonqualifying repurchase agreement" means a repurchase agreement
115 evidencing indebtedness of a qualified depository arising from the transfer of obligations of the
116 United States Treasury or other authorized investments to public treasurers that is:

- 117 (a) evidenced by a safekeeping receipt issued by the qualified depository;
- 118 (b) included in the depository's maximum amount of public funds; and
- 119 (c) valued and maintained at market value plus an appropriate margin collateral
120 requirement based upon the term of the agreement and the type of securities acquired.

121 ~~[(22)]~~ (23) "Operating funds" means current balances and other funds that are to be
122 disbursed for operation of the state government or any of its boards, commissions, institutions,
123 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school
124 district, political subdivision, or other public body.

125 ~~[(23)]~~ (24) "Permanent funds" means funds whose principal may not be expended, the
126 earnings from which are to be used for purposes designated by law.

127 ~~[(24)]~~ (25) "Permitted depository" means any out-of-state financial institution that
128 meets quality criteria established by rule of the council.

129 ~~[(25)]~~ (26) "Public funds" means money, funds, and accounts, regardless of the source
130 from which the money, funds, and accounts are derived, that are owned, held, or administered
131 by the state or any of its boards, commissions, institutions, departments, divisions, agencies,
132 bureaus, laboratories, or other similar instrumentalities, or any county, city, school district,
133 political subdivision, or other public body.

134 ~~[(26)]~~ (27) (a) "Public money" means "public funds."

135 (b) "Public money," as used in Article VII, Sec. 15, Utah Constitution, means the same
136 as "state funds."

137 ~~[(27)]~~ (28) "Public treasurer" includes the state treasurer and the official of any state
138 board, commission, institution, department, division, agency, or other similar instrumentality,
139 or of any county, city, school district, political subdivision, or other public body who has the
140 responsibility for the safekeeping and investment of any public funds.

141 ~~[(28)]~~ (29) "Qualified depository" means a Utah depository institution or an
142 out-of-state depository institution, as those terms are defined in Section 7-1-103, that is
143 authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19,
144 Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are
145 insured by an agency of the federal government and that has been certified by the commissioner
146 of financial institutions as having met the requirements established under this chapter and the
147 rules of the council to be eligible to receive deposits of public funds.

148 ~~[(29)]~~ (30) "Qualifying repurchase agreement" means a repurchase agreement
149 evidencing indebtedness of a financial institution or government securities dealer acting as
150 principal arising from the transfer of obligations of the United States Treasury or other
151 authorized investments to public treasurers only if purchased securities are:

152 (a) delivered to the public treasurer's safekeeping agent or custodian as contemplated
153 by Section 7 of the Master Repurchase Agreement; and

154 (b) valued and maintained at market value plus an appropriate margin collateral
155 requirement based upon the term of the agreement and the type of securities acquired.

156 [~~30~~] (31) "Securities division" means Utah's Division of Securities created within the
157 Department of Commerce by Section 13-1-2.

158 [~~31~~] (32) "State funds" means:

159 (a) public money raised by operation of law for the support and operation of the state
160 government; and

161 (b) all other money, funds, and accounts, regardless of the source from which the
162 money, funds, or accounts are derived, that are owned, held, or administered by the state or any
163 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,
164 or other similar instrumentalities.

165 Section 2. Section 51-7-11 is amended to read:

166 **51-7-11. Authorized deposits or investments of public funds.**

167 (1) (a) Except as provided in Subsection (1)(b), a public treasurer may conduct
168 investment transactions only through qualified depositories, certified dealers, or directly with
169 issuers of the investment securities.

170 (b) A public treasurer may designate a certified investment adviser to make trades on
171 behalf of the public treasurer.

172 (2) The remaining term to maturity of the investment may not exceed the period of
173 availability of the funds to be invested.

174 (3) Except as provided in Subsection (4), all public funds may be deposited or invested
175 only in the following assets that meet the criteria of Section 51-7-17:

176 (a) negotiable or nonnegotiable deposits of qualified depositories;

177 (b) qualifying or nonqualifying repurchase agreements and reverse repurchase
178 agreements with qualified depositories using collateral consisting of:

179 (i) Government National Mortgage Association mortgage pools;

180 (ii) Federal Home Loan Mortgage Corporation mortgage pools;

181 (iii) Federal National Mortgage Corporation mortgage pools;

182 (iv) Small Business Administration loan pools;

- 183 (v) Federal Agriculture Mortgage Corporation pools; or
184 (vi) other investments authorized by this section;
185 (c) qualifying repurchase agreements and reverse repurchase agreements with certified
186 dealers, permitted depositories, or qualified depositories using collateral consisting of:
187 (i) Government National Mortgage Association mortgage pools;
188 (ii) Federal Home Loan Mortgage Corporation mortgage pools;
189 (iii) Federal National Mortgage Corporation mortgage pools;
190 (iv) Small Business Administration loan pools; or
191 (v) other investments authorized by this section;
192 (d) commercial paper that is classified as "first tier" by two nationally recognized
193 statistical rating organizations, [~~one of which must be Moody's Investors Service or Standard~~
194 ~~and Poor's,~~] which has a remaining term to maturity of:
195 (i) 270 days or [~~less~~] fewer for paper issued under 15 U.S.C. Sec. 77c(a)(3); or
196 (ii) 365 days or [~~less~~] fewer for paper issued under 15 U.S.C. Sec. 77d(2);
197 (e) bankers' acceptances that:
198 (i) are eligible for discount at a Federal Reserve bank; and
199 (ii) have a remaining term to maturity of 270 days or [~~less~~] fewer;
200 (f) fixed rate negotiable deposits issued by a permitted depository that have a
201 remaining term to maturity of 365 days or [~~less~~] fewer;
202 (g) obligations of the United States Treasury, including United States Treasury bills,
203 United States Treasury notes, and United States Treasury bonds;
204 (h) obligations other than mortgage pools and other mortgage derivative products
205 issued by, or fully guaranteed as to principal and interest by, the following agencies or
206 instrumentalities of the United States in which a market is made by a primary reporting
207 government securities dealer, unless the agency or instrumentality has become private and is no
208 longer considered to be a government entity:
209 (i) Federal Farm Credit banks;
210 (ii) Federal Home Loan banks;
211 (iii) Federal National Mortgage Association;
212 (iv) Federal Home Loan Mortgage Corporation;
213 (v) Federal Agriculture Mortgage Corporation; and

- 214 (vi) Tennessee Valley Authority;
- 215 (i) fixed rate corporate obligations that:
 - 216 (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally
 - 217 recognized statistical rating organizations[~~one of which must be by Moody's Investors Service~~
 - 218 ~~or Standard and Poor's~~];
 - 219 (ii) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
 - 220 (iii) are publicly traded; and
 - 221 (iv) have a remaining term to final maturity of [~~13~~] 15 months or less or [~~is~~] are subject
 - 222 to a hard put at par value or better, within 365 days;
 - 223 (j) tax anticipation notes and general obligation bonds of the state or of any county,
 - 224 incorporated city or town, school district, or other political subdivision of this state, including
 - 225 bonds offered on a when-issued basis without regard to the [~~limitation~~] limitations in
 - 226 Subsection (7);
 - 227 (k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or
 - 228 town, school district, or other political subdivision of the state that are payable from
 - 229 assessments or from revenues or earnings specifically pledged for payment of the principal and
 - 230 interest on these obligations, including bonds offered on a when-issued basis without regard to
 - 231 the [~~limitation~~] limitations in Subsection (7);
 - 232 (l) shares or certificates in a money market mutual fund [~~as defined in Section 51-7-3~~];
 - 233 (m) variable rate negotiable deposits that:
 - 234 (i) are issued by a qualified depository or a permitted depository;
 - 235 (ii) are repriced at least semiannually; and
 - 236 (iii) have a remaining term to final maturity not to exceed [~~two~~] three years; and
 - 237 (n) variable rate securities that:
 - 238 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
 - 239 recognized statistical rating organizations[~~one of which must be by Moody's Investors Service~~
 - 240 ~~or Standard and Poor's~~];
 - 241 (B) are senior unsecured or secured obligations of the issuer, excluding covered bonds;
 - 242 (C) are publicly traded;
 - 243 (D) are repriced at least semiannually; and
 - 244 (E) have a remaining term to final maturity not to exceed [~~two~~] three years or are

245 subject to a hard put at par value or better, within 365 days; and

246 (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or
247 any security making unscheduled periodic principal payments other than optional redemptions.

248 (4) The following public funds are exempt from the requirements of Subsection (3):

249 (a) the Employers' Reinsurance Fund created in Section 34A-2-702;

250 (b) the Uninsured Employers' Fund created in Section 34A-2-704; and

251 (c) a local government other post-employment benefits trust fund under Section
252 51-7-12.2.

253 (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or
254 nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be
255 calculated on the basis of the actual number of days divided by 360 days.

256 (6) A public treasurer may maintain fully insured deposits in demand accounts in a
257 federally insured nonqualified depository only if a qualified depository is not reasonably
258 convenient to the entity's geographic location.

259 (7) ~~[The]~~ Except as provided under Subsections (3)(j) and (k), the public treasurer shall
260 ensure that all purchases and sales of securities are settled within:

261 (a) 15 days of the trade date for outstanding issues; and

262 (b) 30 days on new issues.

263 Section 3. Section **51-7-12.1** is amended to read:

264 **51-7-12.1. Deposit or investment of Tobacco Settlement Endowment --**

265 **Authorized deposits and investments -- Asset manager.**

266 (1) Notwithstanding the requirements of Section 51-7-11, money in the permanent state
267 trust fund created by and operated under Utah Constitution Article XXII, Section 4, shall be
268 deposited or invested only in the following:

269 (a) any deposit or investment authorized by Section 51-7-11;

270 (b) equity securities, including common and preferred stock issued by corporations
271 listed on a major securities exchange, in accordance with the following criteria applied at the
272 time of investment:

273 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total
274 endowment assets in the securities of any one issuer;

275 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total

276 endowment assets in a particular industry;

277 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
278 endowment assets in securities of corporations that have been in continuous operation for less
279 than three years;

280 (iv) the endowment may not hold in excess of 5% of the outstanding voting securities
281 of any one corporation; and

282 (v) at least 75% of the corporations in which investments are made under Subsection
283 (1)(b) must appear on the Standard and Poor's 500 Composite Stock Price Index;

284 (c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon
285 securities, and convertible securities issued by domestic corporations rated "A" or higher [~~by~~
286 ~~Moody's Investor's Service, Inc. or by Standard and Poor's Corporation~~] or the equivalent of
287 "A" or higher by two nationally recognized statistical rating organizations in accordance with
288 the following criteria applied at the time of investment:

289 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total
290 endowment assets in the securities of any one issuer;

291 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total
292 endowment assets in a particular industry;

293 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
294 fund assets in the securities of corporations that have been in continuous operation for less than
295 three years; and

296 (iv) the dollar-weighted average maturity of fixed-income securities acquired under
297 Subsection (1)(c) may not exceed 10 years;

298 (d) fixed-income securities issued by agencies of the United States and
299 government-sponsored organizations, including mortgage-backed pass-through certificates and
300 mortgage-backed bonds;

301 (e) shares of an open-end diversified management investment company established
302 under the Investment Company Act of 1940; and

303 (f) shares of or deposits in a pooled-investment program.

304 (2) (a) No more than 80% of the total fund assets of any of this endowment, on a cost
305 basis, may be invested in common or preferred stocks at any one time.

306 (b) At least 20% of the total assets of this endowment shall be invested in fixed-income

307 securities authorized by Subsections (1)(a), (c), and (d).

308 (3) The treasurer shall use appropriate investment strategies to protect the principal of
309 the endowment administered under this section during periods of financial market volatility.

310 (4) (a) The treasurer may employ professional asset managers to assist in the
311 investment of assets of the endowment.

312 (b) The treasurer may provide compensation to asset managers from earnings generated
313 by the funds' investments.

314 (5) The council shall give suggestions, advice, and opinions to the treasurer in regard to
315 this section.

316 Section 4. Section **51-7-12.5** is amended to read:

317 **51-7-12.5. Deposit or investment of the Employers' Reinsurance Fund and**
318 **Uninsured Employers' Fund -- Authorized deposits and investments -- Asset manager.**

319 (1) The principal of the Employers' Reinsurance Fund created in Section 34A-2-702,
320 and the Uninsured Employers' Fund created in Section 34A-2-704 shall be deposited or
321 invested only in the following:

322 (a) any deposit or investment authorized by Section 51-7-11;

323 (b) equity securities, including common and preferred stock issued by corporations
324 listed on a major securities exchange, in accordance with the following criteria applied at the
325 time of investment:

326 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total
327 fund assets in the securities of any one issuer;

328 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of total
329 fund assets in a particular industry;

330 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
331 fund assets in securities of corporations that have been in continuous operation for less than
332 three years;

333 (iv) the fund may not hold in excess of 5% of the outstanding voting securities of any
334 one corporation; and

335 (v) at least 75% of the corporations in which investments are made under Subsection
336 (1)(b) must appear on the Standard and Poor's 500 Composite Stock Price Index;

337 (c) fixed-income securities, including bonds, notes, mortgage securities, zero coupon

338 securities and convertible securities issued by domestic corporations rated "A" or higher [by
339 ~~Moody's Investors Service, Inc. or by Standard and Poor's Corporation~~] or the equivalent of
340 "A" or higher by two nationally recognized statistical rating organizations in accordance with
341 the following criteria applied at the time of investment:

342 (i) the treasurer may not invest more than 5%, determined on a cost basis, of the total
343 fund assets in the securities of any one issuer;

344 (ii) the treasurer may not invest more than 25%, determined on a cost basis, of the total
345 fund assets in a particular industry;

346 (iii) the treasurer may not invest more than 5%, determined on a cost basis, of the total
347 fund assets in securities of corporations that have been in continuous operation for less than
348 three years; and

349 (iv) the dollar-weighted average maturity of fixed-income securities acquired under
350 Subsection (1)(c) may not exceed 10 years;

351 (d) fixed-income securities issued by agencies of the United States and
352 government-sponsored organizations, including mortgage-backed pass-through certificates and
353 mortgage-backed bonds;

354 (e) shares of an open-end diversified management investment company established
355 under the Investment Companies Act of 1940; or

356 (f) shares of or deposits in a pooled-investment program.

357 (2) (a) No more than 65% of the total fund assets of any of these funds, on a cost basis,
358 may be invested in common or preferred stocks at any one time.

359 (b) At least 35% of the total assets of these funds shall be invested in fixed-income
360 securities authorized by Section 51-7-11 and Subsections (1)(c) and (d).

361 (3) The state treasurer shall use appropriate investment strategies to protect the
362 principal of the funds administered under this section during periods of financial market
363 volatility.

364 (4) (a) The state treasurer may employ professional asset managers to assist in the
365 investment of assets of the funds.

366 (b) The treasurer may provide compensation to asset managers from earnings generated
367 by the funds' investments.

Legislative Review Note
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Office of Legislative Research and General Counsel