

PUBLIC EDUCATION FOUNDATION AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO EDUCATION FOUNDATIONS; EXPANDING THE POWERS OF PUBLIC EDUCATION FOUNDATIONS; REQUIRING THE FOUNDATIONS TO COMPLY WITH THE STATE MONEY MANAGEMENT ACT; AND ALLOWING THE FOUNDATIONS TO PARTICIPATE IN THE RISK MANAGEMENT FUND.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

51-7-11, as last amended by Chapter 375, Laws of Utah 1997

51-7-13, as last amended by Chapter 169, Laws of Utah 1997

53A-4-205, as enacted by Chapter 2, Laws of Utah 1988

63A-4-204, as last amended by Chapter 55, Laws of Utah 1997

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

Section 1. Section **51-7-11** is amended to read:

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

(1) A public treasurer may conduct investment transactions only through qualified depositories, certified dealers, or directly with issuers of the investment securities.

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

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

(a) negotiable or nonnegotiable deposits of qualified depositories;

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

(i) Government National Mortgage Association mortgage pools;

- (ii) Federal Home Loan Mortgage Corporation mortgage pools;
 - (iii) Federal National Mortgage Corporation mortgage pools;
 - (iv) Small Business Administration loan pools;
 - (v) Federal Agriculture Mortgage Corporation pools; or
 - (vi) other investments authorized by this section;
- (c) qualifying repurchase agreements and reverse repurchase agreements with certified dealers, permitted depositories, or qualified depositories using collateral consisting of:
- (i) Government National Mortgage Association mortgage pools;
 - (ii) Federal Home Loan Mortgage Corporation mortgage pools;
 - (iii) Federal National Mortgage Corporation mortgage pools;
 - (iv) Small Business Administration loan pools; or
 - (v) other investments authorized by this section;
- (d) commercial paper that is classified as "first tier" by two nationally recognized statistical rating organizations, one of which must be Moody's Investors Service or Standard and Poor's, which has a remaining term to maturity of 270 days or less;
- (e) bankers' acceptances that:
- (i) are eligible for discount at a Federal Reserve bank; and
 - (ii) have a remaining term to maturity of 270 days or less;
- (f) fixed rate negotiable deposits issued by a permitted depository that have a remaining term to maturity of 365 days or less;
- (g) obligations of the United States Treasury, including United States Treasury bills, United States Treasury notes, and United States Treasury bonds;
- (h) obligations other than mortgage pools and other mortgage derivative products issued by, or fully guaranteed as to principal and interest by, the following agencies or instrumentalities of the United States in which a market is made by a primary reporting government securities dealer:
- (i) Federal Farm Credit banks;
 - (ii) Federal Home Loan banks;
 - (iii) Federal National Mortgage Association;

- (iv) Student Loan Marketing Association;
- (v) Federal Home Loan Mortgage Corporation;
- (vi) Federal Agriculture Mortgage Corporation; and
- (vii) Tennessee Valley Authority;
- (i) fixed rate corporate obligations that:
 - (i) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be by Moody's Investors Service or Standard and Poor's;
 - (ii) are publicly traded; and
 - (iii) have a remaining term to final maturity of 365 days or less or is subject to a hard put at par value or better, within 365 days;
- (j) tax anticipation notes and general obligation bonds of the state or of any county, incorporated city or town, school district, or other political subdivision of this state, including bonds offered on a when-issued basis without regard to the limitation in Subsection (7);
- (k) bonds, notes, or other evidence of indebtedness of any county, incorporated city or town, school district, or other political subdivision of the state that are payable from assessments or from revenues or earnings specifically pledged for payment of the principal and interest on these obligations, including bonds offered on a when-issued basis without regard to the limitation in Subsection (7);
- (l) shares or certificates in a money market mutual fund as defined in Section 51-7-3;
- (m) variable rate negotiable deposits that:
 - (i) are issued by a qualified depository or a permitted depository;
 - (ii) are repriced at least semiannually; and
 - (iii) have a remaining term to final maturity not to exceed two years;
- (n) variable rate securities that:
 - (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally recognized statistical rating organizations, one of which must be by Moody's Investors Service or Standard and Poor's;

- (B) are publicly traded;
- (C) are repriced at least semiannually; and
- (D) have a remaining term to final maturity not to exceed two years or are subject to a hard put at par value or better, within 365 days;
 - (ii) are not mortgages, mortgage-backed securities, mortgage derivative products, or any security making unscheduled periodic principal payments other than optional redemptions.
- (4) The following public funds are exempt from the requirements of Subsection (3):
 - (a) funds of the permanent land grant trust funds established pursuant to the Utah Enabling Act and the Utah Constitution;
 - (b) funds of member institutions of the state system of higher education and funds of public education foundations acquired by:
 - (i) gift, devise, or bequest; or
 - (ii) federal or private grant;
 - (c) the corpus of funds functioning as endowments of member institutions of the state system of higher education and the corpus of funds functioning as endowments of public education foundations;
 - (d) the Employers' Reinsurance Fund created in Section 34A-2-702; and
 - (e) the Uninsured Employers' Fund created in Section 34A-2-704.
 - (5) If any of the deposits authorized by Subsection (3)(a) are negotiable or nonnegotiable large time deposits issued in amounts of \$100,000 or more, the interest shall be calculated on the basis of the actual number of days divided by 360 days.
 - (6) A public treasurer may maintain fully-insured deposits in demand accounts in a federally insured nonqualified depository only if a qualified depository is not reasonably convenient to the entity's geographic location.
 - (7) The public treasurer shall ensure that all purchases and sales of securities are settled within 15 days of the trade date.

Section 2. Section **51-7-13** is amended to read:

51-7-13. Funds of member institutions of state system of higher education and public

education foundations -- Authorized deposits or investments -- Release of restrictions on gifts.

(1) The provisions of this section apply to all funds of member institutions of the state system of higher education that are not transferred to the state treasurer under Section 51-7-4 and all funds of public education foundations established under Section 53A-4-205.

(2) (a) (i) Except as provided in Subsection (ii), the following funds shall be invested according to rules established by the council:

- (A) all funds acquired by gift, devise, or bequest or by federal or private grant; and
- (B) the corpus of funds functioning as endowments.

(ii) Notwithstanding Subsection (2)(a)(i), if the terms of a gift or grant require particular investments, the funds shall be invested according to those terms.

(b) Proceeds of general obligation bond issues and all funds pledged or otherwise dedicated to the payment of interest and principal of general obligation bonds issued by or for the benefit of the institution shall be invested according to the requirements of:

- (i) Section 51-7-11 and the rules of the council; or
- (ii) the terms of the borrowing instruments applicable to those bonds and funds if those terms are more restrictive than Section 51-7-11.

(c) (i) The public treasurer shall invest the proceeds of bonds other than general obligation bonds issued by or for the benefit of the institution and all funds pledged or otherwise dedicated to the payment of interest and principal of bonds other than general obligation bonds according to the terms of the borrowing instruments applicable to those bonds.

(ii) If no provisions governing investment of bond proceeds or pledged or dedicated funds are contained in the borrowing instruments applicable to those bonds or funds, the public treasurer shall comply with the requirements of Section 51-7-11 in investing those proceeds and funds.

(d) All other funds in the custody or control of any of those institutions or public education foundations shall be invested as provided in Section 51-7-11 and the rules of the council.

(3) (a) Each institution shall make monthly reports detailing the deposit and investment of funds in its custody or control to its institutional council and the State Board of Regents.

(b) The state auditor may conduct or cause to be conducted an annual audit of the investment

program of each institution.

(c) The State Board of Regents shall:

(i) require whatever internal controls and supervision are necessary to ensure the appropriate safekeeping, investment, and accounting for all funds of these institutions; and

(ii) submit annually to the governor and the Legislature a summary report of all investments by institutions under its jurisdiction.

(4) (a) The State Board of Regents may release, in whole or in part, a restriction imposed by the applicable gift instrument on the investment of a fund held by a member institution by obtaining the written consent of the donor.

(b) (i) If written consent of the donor cannot be obtained because the donor is dead, disabled, unavailable, or cannot be identified, the State Board of Regents may apply in the name of the institution to the district court of the district in which the institution is located for a release from the restriction.

(ii) If, after notice and opportunity to be heard, the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part.

Section 3. Section **53A-4-205** is amended to read:

53A-4-205. Establishment of public education foundations -- Powers and duties -- Tax exempt status.

(1) [~~School districts~~] State and local school boards may establish foundations to:

(a) assist in the development and implementation of the programs authorized under this part to promote educational excellence; and

(b) assist in the accomplishment of other education-related objectives.

(2) A foundation established under Subsection (1):

(a) may solicit and receive contributions from private enterprises for the purpose of this part;

(b) shall comply with Title 51, Chapter 7, State Money Management Act, and rules made under the act;

~~[(b)]~~ (c) has no power or authority to incur contractual obligations or liabilities that constitute a claim against public funds except as provided in this section;

~~[(c)]~~ (d) may not exercise executive, administrative, or rulemaking authority over the programs referred to in this part, except to the extent specifically authorized by the ~~[local]~~ responsible school board; ~~[and]~~

~~[(d)]~~ (e) is exempt from all taxes levied by the state or any of its political subdivisions with respect to activities conducted under this part; and

(f) may participate in the Risk Management Fund under Section 63A-4-204.

Section 4. Section **63A-4-204** is amended to read:

63A-4-204. School district participation in Risk Management Fund.

(1) (a) For the purpose of this section, action by a public school district shall be taken upon resolution by a majority of the members of its board of education.

(b) (i) Upon ~~[the]~~ approval ~~[of]~~ by the state risk manager and the board of education of the school district, a public school district may participate in the Risk Management Fund and may permit a foundation established under Section 53A-4-205 to participate in the Risk Management Fund.

(ii) Upon approval by the state risk manager and the State Board of Education, a state public education foundation may participate in the Risk Management Fund.

(c) Subject to any cancellation or other applicable coverage provisions, either the state risk manager or the public school district may terminate participation in the fund.

(2) The state risk manager shall contract for all insurance, legal, loss adjustment, consulting, loss control, safety, and other related services necessary to support the insurance program provided to a participating public school district, except that all supporting legal services are subject to the prior approval of the state attorney general.

(3) (a) The state risk manager shall treat each participating public school district as a state agency when participating in the Risk Management Fund.

(b) Each public school district participating in the fund shall comply with the provisions of this part that affect state agencies.

(4) (a) The risk manager shall at least annually:

(i) prepare information summarizing the coverage provided to school teachers by the Risk Management Fund; and

- (ii) provide that information to participating school districts.
- (b) Each participating school district shall provide the coverage information to each school teacher.