

1 **MONEY MANAGEMENT ACT AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David Clark**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Money Management Act to allow the use of investment advisers
8 by public treasurers.

9 **Highlighted Provisions:**

10 This bill:

- 11
- 12 ▶ defines the term "certified investment adviser" and establishes requirements and
 - 13 fees necessary to become a certified investment adviser;
 - 14 ▶ allows public treasurers to engage certified investment advisers to make security
 - 15 trades in their behalf;
 - 16 ▶ allows certified investment advisers to make trades with broker-dealers not on the
 - 17 Certified Dealer List;
 - 18 ▶ establishes enforcement mechanisms and other remedies for the violation of this
 - 19 chapter; and
 - 20 ▶ makes technical corrections.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **51-7-3**, as last amended by Chapter 133, Laws of Utah 1996



28 51-7-11, as last amended by Chapter 225, Laws of Utah 1999

29 51-7-18, as last amended by Chapter 133, Laws of Utah 1996

30 51-7-18.3, as enacted by Chapter 229, Laws of Utah 1990

31 ENACTS:

32 51-7-11.5, Utah Code Annotated 1953

33 51-7-18.4, Utah Code Annotated 1953

34 51-7-22.4, Utah Code Annotated 1953

35 51-7-22.5, Utah Code Annotated 1953

36 51-7-24, Utah Code Annotated 1953



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

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

40 **51-7-3. Definitions.**

41 As used in this chapter:

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

43 [~~1~~] (2) "Certified dealer" means:

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

46 (b) a broker dealer who:

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

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

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

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

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

54 [~~2~~] (4) "Commissioner" means the commissioner of financial institutions.

55 [~~3~~] (5) "Council" means the State Money Management Council created by Section
56 51-7-16.

57 [~~4~~] (6) "Director" means the director of the Utah State Division of Securities of the
58 Department of Commerce.

59 ~~[(5)]~~ (7) "First tier commercial paper" means commercial paper rated by at least two
60 nationally recognized statistical rating organizations in the highest short-term rating category.

61 ~~[(6)]~~ (8) "Funds functioning as endowments" means funds, regardless of source, whose
62 corpus is intended to be held in perpetuity by formal institutional designation according to the
63 institution's policy for designating those funds.

64 ~~[(7)]~~ (9) "Hard put" means an unconditional sell-back provision or a redemption
65 provision applicable at issue to a note or bond, allowing holders to sell their holdings back to
66 the issuer or to an equal or higher-rated third party provider at specific intervals and specific
67 prices determined at the time of issuance.

68 (10) "Investment adviser representative" means "investment adviser representative" as
69 defined in Section 61-1-13.

70 ~~[(8)]~~ (11) (a) "Investment agreement" means any written agreement that has
71 specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated
72 interest rate.

73 (b) "Investment agreement" includes any agreement to supply investments on one or
74 more future dates.

75 ~~[(9)]~~ (12) "Market value" means market value as defined in the Master Repurchase
76 Agreement.

77 ~~[(10)]~~ (13) "Master Repurchase Agreement" means the current standard Master
78 Repurchase Agreement approved by the Public Securities Association or by any successor
79 organization.

80 ~~[(11)]~~ (14) "Maximum amount" means, with respect to qualified depositories, the total
81 amount of:

82 (a) deposits in excess of the federal deposit insurance limit; and

83 (b) nonqualifying repurchase agreements.

84 ~~[(12)]~~ (15) "Money market mutual fund" means an open-end managed investment
85 fund:

86 (a) that complies with the diversification, quality, and maturity requirements of Rule
87 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money
88 market mutual funds; and

89 (b) that assesses no sales load on the purchase of shares and no contingent deferred

90 sales charge or other similar charges, however designated.

91 ~~[(13)]~~ (16) "Nationally recognized statistical rating organization" means an
92 organization that has been designated as a nationally recognized statistical rating organization
93 by the Securities and Exchange Commission's Division of Market Regulation.

94 ~~[(14)]~~ (17) "Nonqualifying repurchase agreement" means a repurchase agreement
95 evidencing indebtedness of a qualified depository arising from the transfer of obligations of the
96 United States Treasury or other authorized investments to public treasurers that is:

- 97 (a) evidenced by a safekeeping receipt issued by the qualified depository;
- 98 (b) included in the depository's maximum amount of public funds; and
- 99 (c) valued and maintained at market value plus an appropriate margin collateral

100 requirement based upon the term of the agreement and the type of securities acquired.

101 ~~[(15)]~~ (18) "Operating funds" means current balances and other funds that are to be
102 disbursed for operation of the state government or any of its boards, commissions, institutions,
103 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school
104 district, political subdivision, or other public body.

105 ~~[(16)]~~ (19) "Permanent funds" means funds whose principal may not be expended, the
106 earnings from which are to be used for purposes designated by law.

107 ~~[(17)]~~ (20) "Permitted depository" means any out-of-state financial institution that
108 meets quality criteria established by rule of the council.

109 ~~[(18)]~~ (21) "Public funds" means monies, funds, and accounts, regardless of the source
110 from which the monies, funds, and accounts are derived, that are owned, held, or administered
111 by the state or any of its boards, commissions, institutions, departments, divisions, agencies,
112 bureaus, laboratories, or other similar instrumentalities, or any county, city, school district,
113 political subdivision, or other public body.

114 ~~[(19)]~~ (22) (a) "Public monies" means "public funds."

115 (b) "Public monies," as used in Article VII, Sec. 15, Utah Constitution, means the
116 same as "state funds."

117 ~~[(20)]~~ (23) "Public treasurer" includes the state treasurer and the official of any state
118 board, commission, institution, department, division, agency, or other similar instrumentality,
119 or of any county, city, school district, political subdivision, or other public body who has the
120 responsibility for the safekeeping and investment of any public funds.

121 ~~[(21)]~~ (24) "Qualified depository" means a Utah depository institution or an
122 out-of-state depository institution, as those terms are defined in Section 7-1-103 that is
123 authorized to conduct business in this state under Section 7-1-702 or Title 7, Chapter 19,
124 Acquisition of Failing Depository Institutions or Holding Companies, whose deposits are
125 insured by an agency of the federal government and that has been certified by the commissioner
126 of financial institutions as having met the requirements established under this chapter and the
127 rules of the council to be eligible to receive deposits of public funds.

128 ~~[(22)]~~ (25) "Qualifying repurchase agreement" means a repurchase agreement
129 evidencing indebtedness of a financial institution or government securities dealer acting as
130 principal arising from the transfer of obligations of the United States Treasury or other
131 authorized investments to public treasurers only if purchased securities are:

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

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

136 (26) "Securities division" means Utah's Division of Securities created within the
137 Department of Commerce by Section 13-1-2.

138 ~~[(23)]~~ (27) "State funds" means:

139 (a) public monies raised by operation of law for the support and operation of the state
140 government; and

141 (b) all other monies, funds, and accounts, regardless of the source from which the
142 monies, funds, or accounts are derived, that are owned, held, or administered by the state or any
143 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,
144 or other similar instrumentalities.

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

146 **51-7-11. Authorized deposits or investments of public funds.**

147 (1) ~~[A]~~ (a) Except as provided in Subsection (1)(b), a public treasurer may conduct
148 investment transactions only through qualified depositories, certified dealers, or directly with
149 issuers of the investment securities.

150 (b) A public treasurer may, in furtherance of his duties, designate a certified investment
151 adviser to make trades on behalf of the public treasurer.

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

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

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

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

159 (i) Government National Mortgage Association mortgage pools;

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

161 (iii) Federal National Mortgage Corporation mortgage pools;

162 (iv) Small Business Administration loan pools;

163 (v) Federal Agriculture Mortgage Corporation pools; or

164 (vi) other investments authorized by this section;

165 (c) qualifying repurchase agreements and reverse repurchase agreements with certified
166 dealers, permitted depositories, or qualified depositories using collateral consisting of:

167 (i) Government National Mortgage Association mortgage pools;

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

169 (iii) Federal National Mortgage Corporation mortgage pools;

170 (iv) Small Business Administration loan pools; or

171 (v) other investments authorized by this section;

172 (d) commercial paper that is classified as "first tier" by two nationally recognized
173 statistical rating organizations, one of which must be Moody's Investors Service or Standard
174 and Poor's, which has a remaining term to maturity of 270 days or less;

175 (e) bankers' acceptances that:

176 (i) are eligible for discount at a Federal Reserve bank; and

177 (ii) have a remaining term to maturity of 270 days or less;

178 (f) fixed rate negotiable deposits issued by a permitted depository that have a
179 remaining term to maturity of 365 days or less;

180 (g) obligations of the United States Treasury, including United States Treasury bills,
181 United States Treasury notes, and United States Treasury bonds;

182 (h) obligations other than mortgage pools and other mortgage derivative products

183 issued by, or fully guaranteed as to principal and interest by, the following agencies or
184 instrumentalities of the United States in which a market is made by a primary reporting
185 government securities dealer:

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

214 (i) (A) are rated "A" or higher or the equivalent of "A" or higher by two nationally
215 recognized statistical rating organizations, one of which must be by Moody's Investors Service
216 or Standard and Poor's;

217 (B) are publicly traded;

218 (C) are repriced at least semiannually; and

219 (D) have a remaining term to final maturity not to exceed two years or are subject to a
220 hard put at par value or better, within 365 days;

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

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

224 (a) funds of the permanent land grant trust funds established pursuant to the Utah
225 Enabling Act and the Utah Constitution;

226 (b) funds of member institutions of the state system of higher education and funds of
227 public education foundations acquired by:

228 (i) gift, devise, or bequest; or

229 (ii) federal or private grant;

230 (c) the corpus of funds functioning as endowments of member institutions of the state
231 system of higher education and the corpus of funds functioning as endowments of public
232 education foundations;

233 (d) the Employers' Reinsurance Fund created in Section 34A-2-702; and

234 (e) the Uninsured Employers' Fund created in Section 34A-2-704.

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

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

241 (7) The public treasurer shall ensure that all purchases and sales of securities are settled
242 within 15 days of the trade date.

243 Section 3. Section **51-7-11.5** is enacted to read:

244 **51-7-11.5. Certified investment advisers -- Scope of and limits to authority.**

245 (1) Except as provided in Subsection (2), certified investment advisers may not make
246 any investments that are inconsistent with this chapter or rules of the council.

247 (2) Certified investment advisers acting on behalf of a public treasurer shall conduct
248 investment transactions only through qualified depositories, certified dealers, or directly with
249 issuers of the investment securities.

250 Section 4. Section **51-7-18** is amended to read:

251 **51-7-18. Duties of council.**

252 (1) The council shall:

253 (a) advise the state treasurer and other public treasurers about investment policies;

254 (b) cooperate with the commissioner of financial institutions by promoting measures
255 and rules that will assist in strengthening the banking and credit structure of the state;

256 (c) at least annually, review the rules adopted under the authority of this chapter that
257 relate to the deposit and investment of public funds;

258 (d) at least annually, distribute the rules and amendments to rules adopted under the
259 authority of this chapter that relate to the deposit and investment of public funds to all public
260 treasurers; and

261 (e) provide, at least semiannually, a list of certified dealers that meet criteria
262 established by this chapter and council rules.

263 (2) The council may:

264 (a) recommend proposed changes in statutes governing the deposit and investment of
265 public funds to the Legislature;

266 (b) make rules governing:

267 (i) the financial reporting requirements of qualified depositories in which public funds
268 may be deposited;

269 (ii) the conditions and procedures for maintaining and revoking a financial institution's
270 designation as a qualified depository;

271 (iii) the definition of depository capital;

272 (iv) the conditions for maintaining deposits at a permitted depository;

273 (v) the conditions and procedures for maintaining and revoking a primary reporting
274 dealer's or a broker dealer's designation as a certified dealer;

275 (vi) certified investment advisers who deal with public treasurers, including

276 establishing standards and requirements for the use, qualification, and regulation of certified
277 investment advisers;

278 (vii) the conditions and procedures for maintaining and revoking a federal covered
279 adviser's or an investment adviser's designation as a certified investment adviser;

280 [~~vi~~] (viii) the conditions and procedures by which public treasurers may deposit and
281 invest public funds;

282 [~~vii~~] (ix) quality criteria for corporate obligations;

283 [~~viii~~] (x) the conditions and procedures by which public entities may use interest rate
284 contracts authorized by Subsection 51-7-17~~(2)~~(3); and

285 [~~ix~~] (xi) other rules necessary to carry out its functions, powers, duties, and
286 responsibilities under this chapter.

287 (3) The council may not make rules requiring a qualified depository to pledge or
288 deposit any of its assets in order to secure a deposit of public funds, except that public deposits
289 in excess of the maximum amount shall be collateralized as provided in Subsections
290 51-7-18.1(5)(b) and (6).

291 (4) Subject to legislative funding, the state treasurer shall supply qualified staff to the
292 council.

293 (5) If any rule or act of the council would constitute an infringement upon the state
294 treasurer's constitutional duties and powers to have custody of and invest public money, the
295 conflicting rule or act is advisory and not mandatory.

296 Section 5. Section **51-7-18.3** is amended to read:

297 **51-7-18.3. Certified dealers' list -- Fees.**

298 (1) (a) The council shall provide a list of certified dealers to each public treasurer at
299 least semiannually.

300 (b) The list of certified dealers shall include:

301 (i) the name of each certified dealer; and

302 (ii) the name of each agent authorized by the certified dealer to conduct investment
303 transactions with the public treasurers.

304 (2) In addition to the requirements set forth by rule, in order to become a certified
305 dealer as defined in Section 51-7-3, a dealer shall pay to the director an annual certification fee
306 of \$500 due ~~May~~ on or before April 30 of each year.

307 Section 6. Section **51-7-18.4** is enacted to read:

308 **51-7-18.4. Certified investment advisers' list -- Fees.**

309 (1) (a) The council shall provide a list of certified investment advisers to each public
310 treasurer at least semiannually.

311 (b) The list of certified investment advisers shall include:

312 (i) the name of each certified investment adviser; and

313 (ii) the name of each investment adviser representative authorized by the certified
314 investment adviser to provide investment advisory services to public treasurers.

315 (2) In addition to the requirements set forth by rule, in order to become a certified
316 investment adviser as defined in Section 51-7-3, a certified investment adviser shall pay to the
317 director an annual certification fee of \$500 due on or before April 30 of each year.

318 Section 7. Section **51-7-22.4** is enacted to read:

319 **51-7-22.4. Penalties for violation by certified investment advisers.**

320 (1) Each certified investment adviser who violates Section 51-7-7, 51-7-11, or
321 51-7-11.5, or who willfully violates any rule or order under this chapter is guilty of a third
322 degree felony.

323 (2) In addition to any other penalty for a criminal violation of this chapter, the
324 sentencing judge may impose any penalty or remedy provided for in Subsection
325 51-7-22.5(1)(b).

326 Section 8. Section **51-7-22.5** is enacted to read:

327 **51-7-22.5. Enforcement.**

328 (1) Whenever it appears to the council that any person has engaged, is engaging, or is
329 about to engage in any act or practice constituting a violation of this chapter or any rule issued
330 under authority of this chapter:

331 (a) the council may bring an action in the appropriate district court of this state or the
332 appropriate court of another state to enjoin the acts or practices and to enforce compliance with
333 this chapter or any rule under this chapter; and

334 (b) upon a proper showing in an action brought under this section, the court may:

335 (i) issue a permanent or temporary, prohibitory, or mandatory injunction;

336 (ii) issue a restraining order or writ of mandamus or other extraordinary writ;

337 (iii) enter a declaratory judgment;

338 (iv) order disgorgement;

339 (v) order rescission;

340 (vi) impose a fine of not more than \$50,000 for each violation of the chapter; or

341 (vii) provide any other relief that the court considers appropriate.

342 (2) An indictment or information may not be returned nor may a civil complaint be
343 filed under this chapter more than five years after discovery of the alleged violation.

344 Section 9. Section **51-7-24** is enacted to read:

345 **51-7-24. Sales and purchase in violation -- Remedies -- Limitation of action.**

346 (1) (a) Each certified investment adviser or certified dealer who transacts securities
347 business with a public treasurer in violation of this chapter or any rule made or order issued
348 under authority of this chapter, is liable to the public treasurer.

349 (b) The public treasurer may either sue to recover either:

350 (i) damages, if the public treasurer no longer owns the security; or

351 (ii) the sum of the following, less the amount of any income received on the security
352 upon the tender of the security:

353 (A) the consideration paid for the security;

354 (B) interest at 12% per year from the date of payment;

355 (C) costs; and

356 (D) reasonable attorney's fees.

357 (c) Damages are the amount that would be recoverable upon a tender less the value of
358 the security when the public treasurer disposed of it and interest at 12% per year from the date
359 of disposition.

360 (2) If the court finds that the violation was reckless or indifferent, the court may, in a
361 suit brought under Subsection (1), award an amount equal to three times the consideration paid
362 for the security before adding interest, costs, and attorney's fees and before subtracting the
363 income received from the sale of the security.

364 (3) (a) Each person who directly or indirectly controls a seller or buyer or investment
365 adviser is liable under Subsection (1).

366 (b) Except as provided in Subsection (3)(c), the following are liable jointly and
367 severally with and to the same extent as the seller or purchaser:

368 (i) each partner, officer, or director of a seller or buyer;

- 369 (ii) each person occupying a similar status or performing similar functions;
370 (iii) each employee of a seller or buyer who materially aids in the sale or purchase;
371 (iv) each certified investment adviser who materially aids in providing the advice; and
372 (v) each broker-dealer or agent who materially aids or abets in the sale.
373 (c) The nonseller or nonpurchaser is not liable under Subsection (3)(b) if the nonseller
374 or nonpurchaser proves that he did not know or should have known, and in exercise of
375 reasonable care could not or should not have known, of the existence of the facts that caused
376 the alleged liability.
377 (4) An action to enforce any liability under this section must begin within five years of
378 the act or transaction constituting the violation or two years after the discovery by the public
379 treasurer of the facts constituting the violation, whichever occurs later.
380 (5) A person may not base any suit on a contract if:
381 (a) the person made or engaged in the performance of the contract in violation of this
382 chapter or any rule or order issued under the authority of this chapter; or
383 (b) the person acquired any purported right under the contract with knowledge of the
384 facts by reason of which the making of the contract or the performance of the contract was a
385 violation of this chapter or any rule or order issued under the authority of this chapter.
386 (6) A condition, stipulation, or provision binding a treasurer acquiring a security to
387 waive compliance with this chapter or a rule made or order issued under authority of this
388 chapter is void.
389 (7) The rights and remedies provided by this section are in addition to any other rights
390 or remedies that may exist at law or in equity.

Legislative Review Note**as of 1-27-04 7:06 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that provisions of this bill will increase revenues to the Commerce Service Fund by \$11,000 annually beginning FY 2005.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Commerce Service Fund	\$0	\$0	\$11,000	\$11,000
TOTAL	\$0	\$0	\$11,000	\$11,000

Individual and Business Impact

The investments industry may financially benefit from providing services as stipulated in the bill.

Office of the Legislative Fiscal Analyst